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G.R. No. 195837 (REPUBLIC OF THE PHILIPPINES, Petitioner, v. HONORABLE SANDIGANBAYAN FIFTH DIVISION, DON FERRY and CESAR ZALAMEA, Respondents.)

G.R. No. 198221 (REPUBLIC OF THE PHILIPPINES, Petitioner, v. SANDIGANBAYAN FIFTH DIVISION, LUCIO TAN, ESTATE OF FERDINAND E. MARCOS (Represented by IMELDA R. MARCOS, IMEE M. MANOTOC, IRENE M. ARANETA and FERDINAND R. MARCOS, JR.), IMELDA R. MARCOS, CARMEN KHAO TAN, FLORENCIO T. SANTOS, NATIVIDAD P. SANTOS, DOMINGO CHUA, TAN HUI NEE, MARIANO TAN ENG LIAN, ESTATE OF BENITO TAN KEE HIONG (Represented by TARCIANA C. TAN), FLORENCIO N. SANTOS, JR., HARRY C. TAN, TAN ENG CHAN, CHUNG POE KEE, MARIANO KHOO, MANUEL KHOO, MIGUEL KHOO, JAMIE KHOO, ELIZABETH KHOO, CELSO C. RANOLA, WILLIAM T. WONG, ERNESTO B. LIM, BENJAMIN T. ALBACITA, DON FERRY, WILLY CO, FEDERICO MORENO, PANFILO O. DOMINGO, HEIRS OF GREGORIO LICAROS, CESAR ZALAMEA, SHAREHOLDINGS, INC., ALLIED BANKING CORP., FOREMOST FARMS, INC., FORTUNE TOBACCO CORP., MARANAW HOTELS AND RESORTS CORP., VIRGINIA TOBACCO REDRYING PLANT, NORTHERN TOBACCO REDRYING PLANT, ASIA BREWERY INC., SIPALAY TRADING CORP., HIMMEL INDUSTRIES, GRANDSPAN DEVELOPMENT CORP., BASIC HOLDINGS CORP., PROGRESSIVE FARMS, INC., MANUFACTURING SERVICES AND TRADE CORP., ALLIED LEASING & FINANCE CORP. JEWEL HOLDINGS INC., IRIS HOLDINGS AND DEVELOPMENT CORP., and VIRGO HOLDINGS AND DEVELOPMENT CORP., Respondents.

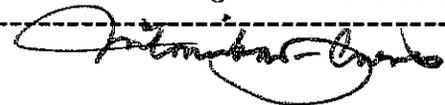
G.R. No. 198974 (REPUBLIC OF THE PHILIPPINES, Petitioner, v. SANDIGANBAYAN FIFTH DIVISION, LUCIO TAN, ESTATE OF FERDINAND E. MARCOS (Represented by IMELDA R. MARCOS, IMEE M. MANOTOC, IRENE M. ARANETA and FERDINAND R. MARCOS, JR.), IMELDA R. MARCOS, CARMEN KHAO TAN, FLORENCIO T. SANTOS, NATIVIDAD P. SANTOS, DOMINGO CHUA, TAN HUI NEE, MARIANO TAN ENG LIAN, ESTATE OF BENITO TAN KEE HIONG (Represented by TARCIANA C. TAN), FLORENCIO N. SANTOS, JR., HARRY C. TAN, TAN ENG CHAN, CHUNG POE KEE, MARIANO KHOO, MANUEL KHOO, MIGUEL KHOO, JAMIE KHOO, ELIZABETH KHOO, CELSO C. RANOLA, WILLIAM T. WONG, ERNESTO B. LIM, BENJAMIN T. ALBACITA, DON FERRY, WILLY CO, FEDERICO MORENO, PANFILO O. DOMINGO, HEIRS OF GREGORIO LICAROS, CESAR ZALAMEA, SHAREHOLDINGS, INC., ALLIED BANKING CORP., FOREMOST FARMS INC., FORTUNE TOBACCO CORP., MARANAW HOTELS AND RESORTS CORP., VIRGINIA TOBACCO REDRYING PLANT,



NORTHERN TOBACCO REDRYING PLANT, ASIA BREWERY INC., SIPALAY TRADING CORP., HIMMEL INDUSTRIES, GRANDSPAN DEVELOPMENT CORP., BASIC HOLDINGS CORP., PROGRESSIVE FARMS, INC., MANUFACTURING SERVICES AND TRADE CORP., ALLIED LEASING & FINANCE CORP., JEWEL HOLDINGS, INC., IRIS HOLDINGS AND DEVELOPMENT CORP., and VIRGO HOLDINGS AND DEVELOPMENT CORP., Respondents.

G.R. No. 203592 (REPUBLIC OF THE PHILIPPINES, Petitioner, v. LUCIO TAN, ESTATE OF FERDINAND E. MARCOS (Represented by IMELDA R. MARCOS, IMEE M. MANOTOC, IRENE M. ARANETA and FERDINAND R. MARCOS, JR.), IMELDA R. MARCOS, CARMEN KHAO TAN, FLORENCIO T. SANTOS, NATIVIDAD P. SANTOS, DOMINGO CHUA, TAN HUI NEE, MARIANO TAN ENGLIAN, ESTATE OF BENITO TAN KEE HIONG (represented by TARCIANA C. TAN), FLORENCIO N. SANTOS, JR., HARRY C. TAN, TAN ENG CHAN, CHUNG POE KEE, MARIANO KHOO, MANUEL KHOO, MIGUEL KHOO, JAMIE KHOO, ELIZABETH KHOO, CELSO C. RANOLA, WILLIAM T. WONG, ERNESTO B. LIM, BENJAMIN T. ALBACITA, DON FERRY, WILLY CO, FEDERICO MORENO, PANFILO O. DOMINGO, HEIRS OF GREGORIO LICAROS, CESAR ZALAMEA, SHAREHOLDINGS, INC., ALLIED BANKING CORP., FOREMOST FARMS INC., FORTUNE TOBACCO CORP., MARANAW HOTELS AND RESORTS CORP., VIRGINIA TOBACCO REDRYING PLANT, NORTHERN TOBACCO REDRYING PLANT, ASIA BREWERY INC., SIPALAY TRADING CORP., HIMMEL INDUSTRIES, GRANDSPAN DEVELOPMENT CORP., BASIC HOLDINGS CORP., PROGRESSIVE FARMS, INC., MANUFACTURING SERVICES AND TRADE CORP., ALLIED LEASING & FINANCE CORP., JEWEL HOLDINGS, INC., IRIS HOLDINGS AND DEVELOPMENT CORP., and VIRGO HOLDINGS AND DEVELOPMENT CORP., Respondents. Promulgated: October 3, 2023

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CONCURRING AND DISSENTING OPINION

LEONEN, J.:

This Court resolves the consolidated Petitions for Review on *Certiorari*¹ from a Complaint for Reversion, Reconveyance, Restitution, Accounting, and Damages filed by the Republic before the Sandiganbayan against 26 individuals, namely: (1) Lucio C. Tan (Tan); (2) Marcos, Sr.; (3) Imelda; (4) Carmen Khao Tan (Carmen); (5) Florencio T. Santos (Florencio); (6) Natividad P. Santos (Natividad); (7) Domingo Chua (Chua); (8) Tan Hui

¹ *Rollo* (G.R. No. 195837), pp. 31-121; *Rollo* (G.R. No. 198221), pp. 3-119; *Rollo* (G.R. No. 198974), pp. 3-84; *Rollo* (G.R. No. 203592), pp. 261-546.



Nee; (9) Mariano Tan Eng Lian (Mariano); (10) Estate of Benito Tan Kee Hiong represented by Tarciana C. Tan (Estate of Benito); (11) Florencio N. Santos, Jr. (Florencio); (12) Harry C. Tan (Harry); (13) Tan Eng Chan, (14) Chung Poe Kee, (15) Mariano Khoo; (16) Manuel Khoo; (17) Miguel Khoo; (18) Jamie Khoo; (19) Elizabeth Khoo; (20) Celso C. Ranola (Celso); (21) William T. Wong (William); (22) Ernesto B. Lim (Lim); (23) Benjamin T. Albacita; (Albacita); (24) Don Ferry (Ferry); (25) Willy Co; and (26) Federico Moreno (Moreno; collectively, Tan et al.).²

This case involves, among others, the interpretation of “ill-gotten wealth” in relation to Executive Order Nos. 1³ and 2⁴ and the Presidential Commission on Good Government Rules and Regulations.

The *ponencia* disposed of the Petitions as follows:

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

- (1) G.R. No. 195837, the Petition for Review on *Certiorari* filed by the Republic is **DENIED**, and the Sandiganbayan's Resolutions dated 22 December 2010 and 25 February 2011 are **AFFIRMED**. The Sandiganbayan's dismissal of the complaint against respondents Don Ferry and Cesar Zalamea is declared valid.
- (2) In G.R. No. 198221, the Petition for *Certiorari* filed by the Republic is **DISMISSED**, and the Sandiganbayan's Order dated 9 June 2011 and Resolution dated 2 August 2011 are **AFFIRMED**. The Court holds that the testimonies of Joselito Yujuico and Aderito Yujuico were correctly excluded from evidence by the Sandiganbayan.

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

- (3) In **G.R. No. 198974**, the Petition for *Certiorari* filed by the Republic is **DISMISSED**, and the Sandiganbayan Resolutions dated 8 July 2011 and 23 August 2011, which denied the Republic's Motion to Admit Third Amended Complaint, are **AFFIRMED**.
- (4) In G.R. No. 203592, the Sandiganbayan Decision dated 11 June 2012 and Resolution dated 26 September 2012 dismissing the Republic's Second Amended Complaint for reversion, reconveyance, restitution, accounting and damages are **AFFIRMED**. Consequently, the Petition for Review on

² *Rollo* (G.R. No. 203592), p. 15.

³ Executive Order No. 1 (1986), Creating the Presidential Commission on Good Government.

⁴ Executive Order No. 2 (1986), Regarding the Funds, Moneys, Assets, and Properties Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, their Close Relatives, Subordinates, Business Associates, Dummies, Agents, or Nominees.

Certiorari of the Republic of the Philippines is **DENIED** for lack of merit.

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

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

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

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

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

The facts are as follows:

On March 12, 1986, former President Corazon C. Aquino issued Executive Order No. 1 to create the Presidential Commission on Good Government. The Commission was tasked to recover the assets and properties illegally acquired or misappropriated during the administration of former President Marcos, Sr.

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

⁵ *Rollo* (G.R. No. 203592), pp. 16, 3670.

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

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

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

<i>Year</i>	<i>Amount in PHP</i>
1975	11 million
1977	2 million
1979	44 million
1980	10 million
1981	10 million
1982	20 million
1983	40 million
1984	40 million
1985	50 million
1986	50 million

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

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

⁶ *Id.* at 3671.

⁷ *Id.* at 3674.

⁸ *Id.* at 3675-3676

⁹ *Id.* at 3677.

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

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

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

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

On July 17, 1991, the Sandiganbayan, acting on a motion for summary judgment, dismissed the case against Moreno.¹⁶ This dismissal became final and executory on August 19, 1993.¹⁷

¹⁰ *Id.*

¹¹ *Id.* at 3677.

¹² *Id.* at 3678.

¹³ *Id.*

¹⁴ *Id.* at 3681.

¹⁵ *Id.* at 3681-3682.

¹⁶ *Id.* at 22.

¹⁷ *Id.*

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

In the Second Amended Complaint, the Republic impleaded the following domestic and foreign corporations as additional defendants: (1) Shareholdings Inc.; (2) Asia Brewery; (3) Allied Banking; (4) Fortune Tobacco; (5) Maranaw Hotels; (6) Virginia Tobacco; (7) Northern Tobacco; (8) Foremost Farms, Inc. (Foremost Farms); (9) Sipalay Trading; (10) Himmel Industries; (11) Grandspan Development Corp. (Granspan Developement); (12) Basic Holdings Corp. (Basic Holdings); (13) Progressive Farms, Inc. (Progressive Farms); (14) Manufacturing Services and Trade Corp.; (15) Allied Leasing & Finance Corp. (Allied Leasing); (16) Jewel Holdings Inc. (Jewel Holding); (17) Iris Holdings and Development Corp. (Iris Holdings); (18) Virgo Holdings and Development Corp. (Virgo Holdings);²⁰ (19) Polo Nominees, Ltd.; (20) Limited Services, Ltd.; (21) Red Seal, Ltd.; (22) Commons Seal, Ltd.; (23) Splendid Nominees Ltd.; (24) Young Tai, Ltd.; (25) Young Jin, Ltd.; (26) Co Finance Nominees Ltd.; (27) Corporate Finances (D.C.T.), Ltd.; (28) Harries Secretaries, Allied Pacific Corp.; (29) B & McKay Nominees, Ltd.; (30) Zanith Establishment, (31) Arinsi S.A.; (32) Cotton Corp. (B.V.I.), Ltd.; (33) Bartondale, Ltd.; (34) Hong Kong, Oceanic Bank, San Francisco; (35) The Sterling Carpet Man, Ltd.; (36) The Sterling Carpet Sales, Ltd.; (37) The Sterling Carpet Distributions, Ltd.; (38) Mercury Drug Stores, Ltd., Calgary Alberta; and (39) Mercury Energy Resources, Ltd. (collectively, Tan's Group of Companies).²¹

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

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

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 3657.

²¹ *Id.*

²² *Id.* at 3660–3663.

²³ *Id.* at 34.

²⁴ *Id.* at 3658–3659.

²⁵ *Id.* at 3671.

²⁶ *Id.* at 4092.

participated in the sale of Century Park to Sipalay Trading.²⁷

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

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

A. Aircraft

- 1) RP-C298 BEECH KING AIR E 90
- 2) RP-C 1082 HUGHIS 500D

B. Shares of Stocks of:

- 1) Shareholdings Inc.
- 2) Allied Banking Corporation (Allied Bank)
- 3) Foremost Farms, Inc. (Foremost Farms)
- 4) Fortune Tobacco Corporation (Fortune Tobacco)
- 5) Maranaw Hotels & Resort Corp./Sipalay (Maranaw Hotels/Sipalay)
- 6) Virginia Tobacco Redrying Plant
- 7) Northern Tobacco Redrying Plant
- 8) Asia Brewery, Inc. (Asia Brewery)
- 9) Century Park Sheraton (Century Park)
- 10) Sipalay Trading Corp. (Sipalay Trading)
- 11) Himmel Industries (Himmel)
- 12) Grandspan Development Corp. (Grandspan)
- 13) Basic Holdings Corp. (Basic Holdings)
- 14) Progressive Farms, Inc. (Progressive Farms)
- 15) Manufacturing Services and Trade Corporation (Manufacturing Services)
- 16) Allied Leasing & Finance Corp (Allied Leasing)
- 17) Jewel Holdings, Inc. (Jewel Holdings)
- 18) Iris Holdings and Development (iris Holdings)
- 19) Virgo Holdings and Development Corp. (Virgo Holdings).²⁹

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

On September 6, 1995, Imelda filed her Answer with Counter-Claim.³⁰ On the other hand, Tan et al., other than Marcos, Sr., Imelda, Ferry, and Moreno, filed their respective Manifestations and Answers dated May 8, 2000.³¹

Years later, on November 20, 2001, Imelda filed her Motion for Leave

²⁷ *Id.* at 3678.

²⁸ *Id.* at 95.

²⁹ *Id.* at 3400-3401.

³⁰ *Id.* at 25.

³¹ *Id.* at 28.

to File Amended Answer with Counter-Claim and Compulsory Cross-Claim.³²

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

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

After several delays, the Republic commenced the presentation of its evidence on May 24, 2006.³⁶

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

Later, the Republic heard of the planned merger between Philippine National Bank and Allied Bank. Thus, on December 19, 2008, the Republic filed an application for the issuance of temporary restraining order and/or writ

³² *Id.* at 34.

³³ *Id.* at 1289-1311.

³⁴ *Id.* at 34.

³⁵ *Id.* at 154.

³⁶ *Rollo* (G.R. No. 198221), p. 46.

³⁷ *Rollo* (G.R. No. 203592), p. 98

³⁸ *Id.* at 103.

³⁹ 524 Phil. 232 (2006) [Per J. Garcia, Second Division].

⁴⁰ *Rollo* (G.R. No. 203592), p. 4139.

of preliminary injunction to have it enjoined.⁴¹ The Sandiganbayan denied this due to insufficiency in form and substance.⁴²

In its April 23, 2009 Order,⁴³ the Sandiganbayan terminated the Republic's presentation of evidence despite its manifestation that it still had witnesses to present and urged that the Sandiganbayan enforce its order requiring the then Presidential Commission on Good Government Special Counsel, Atty. Catalino Generillo, to surrender a substantial number of vital documentary exhibits.⁴⁴ Consequently, the Republic filed its Manifestation and Formal Offer of Evidence *Ex Abutande Ad Cautelam* dated October 19, 2009.⁴⁵

Thereafter, the defense presented its evidence.⁴⁶

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

On August 23, 2010, Zalamea filed his Motion to Dismiss (Demurrer to Evidence).⁴⁹ He stated that the Republic showed no right of relief against him, as its evidence was irrelevant and did not sufficiently establish his participation in amassing ill-gotten wealth by a preponderance of evidence.⁵⁰ He argued that granting his motion to dismiss would result in a faster disposition of the case.⁵¹

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

⁴¹ *Id.* at 102–103.

⁴² *Id.* at 103.

⁴³ *Rollo* (G.R. No. 198221), p. 121.

⁴⁴ *Id.* at 17–18.

⁴⁵ *Id.* at 18.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Rollo* (G.R. No. 203592), p. 115.

⁵⁰ *Rollo* (G.R. No. 195837), pp. 224–225.

⁵¹ *Id.* at 225.

⁵² *Rollo* (G.R. No. 203592), p. 116.

⁵³ *Id.* at 228.

⁵⁴ *Id.* at 229.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ 516 Phil. 509 (2006) [Per J. Sandoval-Gutierrez, Second Division].

as valid the transaction he participated in and held that the Development Bank officers acted in good faith and sound exercise of judgment.⁵⁸

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

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

SO ORDERED.⁶²

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

On March 16, 2011, the Republic filed a Rule 45 Petition⁶⁴ docketed as G.R. No. 195837 and entitled *Republic of the Philippines v. Sandiganbayan, Don Ferry and Cesar Zalamea* to assail the Sandiganbayan's December 22, 2010 and February 24, 2011 Minute Resolutions.

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

In its December 14, 2010 Order, the Sandiganbayan, during the February 3, 2011 hearing, explained that even if Mariano was granted immunity, he could no longer testify for the Republic because the latter had

⁵⁸ *Rollo* (G.R. No. 203592), p. 230.

⁵⁹ *Id.* at 119.

⁶⁰ *Rollo* (G.R. No. 195837), p. 21.

⁶¹ *Id.*

⁶² *Id.* at 9–22. The December 16, 2010 Minute Resolution in Civil Case No. 0005 was penned by Associate Justice Roland B. Jurado, and concurred in by Associate Justices Teresita V. Diaz-Baldos and Napoleon E. Inoturan of the Fifth Division, Sandiganbayan, Quezon City.

⁶³ *Id.* at 23–24. The February 24, 2011 Minute Resolution in Civil Case No. 0005 was penned by Associate Justice Roland B. Jurado, and concurred in by Associate Justices Teresita V. Diaz-Baldos and Napoleon E. Inoturan of the Fifth Division, Sandiganbayan, Quezon City.

⁶⁴ *Rollo* (G.R. No. 195837), pp. 3–122.

⁶⁵ *Rollo* (G.R. No. 198221), p. 17.

⁶⁶ *Id.* at 19.

⁶⁷ *Id.*

⁶⁸ *Id.*

already rested its case. The prosecution is no longer allowed to reopen the case.⁶⁹

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

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

On February 18, 2011, the Republic filed a motion to have Tan et al. explain the merger, manifest whether the interests subject of this case have been conveyed, cause the substitution of Fortune Tobacco with Philip Morris Fortune Tobacco Corp., and suspend proceedings until the substitution is effected.⁷³ The Sandiganbayan denied this in its Minute Resolution dated March 3, 2011.⁷⁴ During the March 10, 2011 hearing, the Republic received a copy of the Sandiganbayan's Resolution denying its Motion for Substitution and Motion to Suspend Proceedings.⁷⁵ The Republic manifested in open court that it would file a motion for reconsideration, and it prayed that the setting of its presentation of rebuttal evidence be cancelled until the final disposition of the issue.⁷⁶

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

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

⁶⁹ *Id.* at 20.

⁷⁰ *Id.* at 21.

⁷¹ *Id.*

⁷² *Id.* at 22-23.

⁷³ *Rollo* (G.R. No. 203592), p. 121.

⁷⁴ *Id.* at 122.

⁷⁵ *Rollo* (G.R. No. 198221), p. 24.

⁷⁶ *Id.* at 24.

⁷⁷ *Id.* at 25.

⁷⁸ *Id.*

members of the Sandiganbayan Fifth Division.⁷⁹

Nonetheless, the Sandiganbayan continued the hearings.⁸⁰ On March 24, 2011 the Republic moved to adduce additional evidence and submit a manifestation indicating the names of their proposed additional witnesses and the tentative dates for presentation, as the proceeding would require. The Republic filed its compliance on May 5, 2011.⁸¹

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

The Sandiganbayan held that they had never been biased and partial in favor of Atty. Mendoza and as against the Republic. The Sandiganbayan "almost always. . . granted [the Republic's] repeated requests for postponement, extensions[,] and cancellation in order that [the Republic] could readily prepare its evidence."⁸⁴ It did not rest the case for the Republic, nor was the Republic coerced to terminate its presentation of evidence in chief at the instance of Tan et al.'s counsel.⁸⁵ The Sandiganbayan found that the Republic was afforded due process considering it was given years to prepare and present evidence and rebut Tan et al.'s defense.⁸⁶ It also noted that 64 trial dates were given to the Republic but used only 24.⁸⁷ It found that while all parties caused delays in the proceedings,⁸⁸ from 2006 until April 23, 2009, the Republic primarily caused the delays, and the Sandiganbayan had been very lenient, to the extent that it even allowed one of their witnesses to testify again even after the conclusion of the testimony.⁸⁹ It noted that four years of delay in trial for the Republic is too much.⁹⁰ The Sandiganbayan ruled that its objective was to resolve the case with dispatch⁹¹ and in accordance with A.M. No. 008-05-SC.⁹² Further, on motion of the Republic, and as agreed by the parties, the Republic was allowed to present its evidence-in-chief, and the Sandiganbayan will no longer allow any more postponements.⁹³

⁷⁹ *Rollo* (G.R. No. 203592), p. 123.

⁸⁰ *Rollo* (G.R. No. 198221), p. 28.

⁸¹ *Id.*

⁸² *Rollo* (G.R. No. 203592), p. 128.

⁸³ *Rollo* (G.R. No. 198221), p. 127.

⁸⁴ *Id.*

⁸⁵ *Id.* at 128, 131.

⁸⁶ *Id.* at 129–130.

⁸⁷ *Id.* at 134.

⁸⁸ *Id.*

⁸⁹ *Id.* at 132.

⁹⁰ *Id.*

⁹¹ *Id.* at 132–133.

⁹² *Re: Problem of Delays in Cases Before the Sandiganbayan*, 422 Phil. 246 (2001) [Per J. Pardo, *En Banc*].

⁹³ *Rollo* (G.R. No. 198221), p. 133.

It ruled that the motion for voluntary inhibition is dilatory in nature, and must be filed when the case is about to be submitted for decision.⁹⁴ It found that the Republic failed to ascribe any act of partiality that should cause the members of the Division to inhibit.⁹⁵ The allegations of prejudgment is a mere conjecture and not one of the just and valid reasons for the inhibition of a judge under Rule 137 of the Rules of Court.⁹⁶ Mere suspicion or perception is not enough.⁹⁷ Allowing this would open the floodgates to forum shopping and further delay the proceedings.⁹⁸ It held that none of the instances under Rule 3.12 of the Code of Judicial Conduct⁹⁹ is present in this case to warrant their inhibition.¹⁰⁰ Repeated rulings against a litigant are not a basis for disqualification.¹⁰¹ To question its rulings, the Republic's remedy is a Petition for *Certiorari*.¹⁰²

It also maintained its disallowance of the testimony of Mariano for the Republic.¹⁰³ It found that Mariano had his turn to present his evidence and had repeatedly requested its postponement since 2009.¹⁰⁴ Assuming Mariano will be granted immunity by the Republic, it is unprocedural for him to testify for the Republic, considering he is one of the defendants and would only testify for his defense.¹⁰⁵

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

⁹⁴ *Id.* at 132.

⁹⁵ *Id.* at 131.

⁹⁶ *Id.* at 134.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ CODE OF JUD. CONDUCT, Canon 3, Rule 3.12 provides:

RULE 3.12 – A judge should take no part in a proceeding where the judge's impartiality might reasonably be questioned. These cases include among others, proceedings where:

(a) the judge has personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as executor, administrator, guardian, trustee or lawyer in the case or matter in controversy, or a former associate of the judge served as counsel during their association, or the judge or lawyer was a material witness therein;

(c) the judge's ruling in a lower court is the subject of review;

(d) the judge is related by consanguinity or affinity to a party litigant within the sixth degree or to counsel within the fourth degree;

(e) the judge knows the judge's spouse or child has a financial interest, as heir, legatee, creditor, fiduciary, or otherwise, in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.

In every instance, the judge shall indicate the legal reason for inhibition.

¹⁰⁰ *Rollo* (G.R. No. 198221), p. 135.

¹⁰¹ *Id.* at 131.

¹⁰² *Id.*

¹⁰³ *Id.* at 132.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 136.

¹⁰⁷ *Id.*

It found that this was not the first time it was asked to inhibit. On April 6, 1994, the Republic had already filed a Motion for Voluntary Inhibition of the Chairman of the Sandiganbayan Division, then hearing the case.¹⁰⁸ This was denied.¹⁰⁹ Likewise, its Orders dated April 23, 2009¹¹⁰ and July 20, 2009¹¹¹ were supported by facts and law and were accepted by the Republic without complaints.¹¹²

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

SO ORDERED.¹¹³

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

On June 6, 2011, the Republic filed a Motion with Leave of Court to Admit Attached Third Amended Complaint seeking to formally implead Philip Morris Fortune Tobacco Corp. and several other individuals¹¹⁶ alleging that substantial capital and assets of Fortune Tobacco have been fraudulently transferred to Philip Morris to form a new corporation, which is the Philip Morris Fortune Tobacco Corp. pending litigation of the instant case.¹¹⁷ The Republic asserts that the additional Fortune Tobacco and Northern Tobacco cooperated in forming Philip Morris Fortune Tobacco Corp. despite being fully aware of the pendency of the ill-gotten wealth case.¹¹⁸

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

¹⁰⁸ *Id.* at 135.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 107–108.

¹¹¹ *Id.* at 109.

¹¹² *Id.* at 131.

¹¹³ *Id.* at 120–136. The April 19, 2011 Resolution in Civil Case No. 0005 was penned by Associate Justice Roland B. Jurado, and concurred in by Associate Justices Teresita V. Diaz-Baldos and Napoleon E. Inoturan of the Fifth Division of the Sandiganbayan, Quezon City.

¹¹⁴ *Id.* at 138–141. The July 4, 2011 Resolution in Civil Case No. 0005 was penned by Associate Justice Roland B. Jurado, and concurred in by Associate Justices Teresita V. Diaz-Baldos and Napoleon E. Inoturan of the Fifth Division of the Sandiganbayan, Quezon City.

¹¹⁵ *Id.* at 142.

¹¹⁶ *Id.*

¹¹⁷ *Rollo* (G.R. No. 198974), pp. 85–86.

¹¹⁸ *Id.* at 86.

¹¹⁹ *Id.* at 131.

¹²⁰ *Id.*

¹²¹ *Rollo*, (G.R. No. 198221), p. 29.

disallowed in an Order dated June 9, 2011:¹²²

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

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

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

In its July 18, 2011 Resolution, the Sandiganbayan denied the Republic's Motion with Leave of Court to Admit Attaches Third Amended Complaint.¹³⁰ It found that Philip Morris Fortune Tobacco Corp. and the additional defendants sought to be included¹³¹ are neither indispensable nor necessary parties.¹³² It ruled that assuming Fortune Tobacco, Northern Tobacco, and Philip Morris Fortune Tobacco Corp. are organized with ill-gotten wealth, there is no need to implead Philip Morris Fortune Tobacco Corp. and the additional defendants because there is no cause of action against them.¹³³ The dispositive portion of the July 18, 2011 Resolution reads:

WHEREFORE, premises considered, this Court finds that plaintiff Republic of the Philippines' Motion with Leave of Court to Admit Attached

¹²² *Id.* at 131.

¹²³ *Id.* at 142.

¹²⁴ *Rollo* (G.R. No. 203592), p. 131.

¹²⁵ *Id.* at 132.

¹²⁶ *Id.* at 133.

¹²⁷ *Id.* at 132.

¹²⁸ *Id.*

¹²⁹ *Id.* at 133.

¹³⁰ *Rollo* (G.R. No. 198974), pp. 85–90.

¹³¹ *Id.* at 86. The additional defendants in G.R. No. 198974, who though fully aware of the pendency of ill-gotten wealth case allegedly cooperated in forming the Philip Morris Fortune Tobacco Corp. are: (1) Lucio K. Tan, Jr., (2) Michael G. Tan, (3) Christopher Nelson, (4) Douglas Werth, (5) Mitchell Gault, (6) Raymond Miranda, (7) Varinia Elero, (8) Vincent Nguyen, (9) Domingo Chua, (10) Juanita Tan Lee, (11) Peter Y. Ong, (12) Shirley L. Santillan, (13) Myra Vida G. Jamora, and (14) Henry N. Sitosta.

¹³² *Id.* at 88.

¹³³ *Id.* at 89–90.

3rd Amended Complaint dated 1 June 2011, is hereby DENIED for lack of merit.

SO ORDERED.¹³⁴

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

In its August 2, 2011 Resolution,¹³⁶ the Sandiganbayan likewise denied the Republic's Motion with Memorandum of Authorities in support of its recall of Joselito on the witness stand for the continuation of his testimony.¹³⁷ It held that it had already resolved the propriety of offering Joselito's testimony in its Resolutions dated December 22, 2008 and June 29, 2009.¹³⁸ In *General Bank & Trust Co.*, this Court has adopted the exhaustive narration of facts surrounding GenBank's insolvency and the transfer of its assets to Allied Bank, and the finding that the Monetary Board did not act in bad faith or with grave abuse of discretion in approving the liquidation plan of the Tan's Group of Companies.¹³⁹ It was likewise ruled that the offer of testimony by the Republic regarding the matters which Joselito¹⁴⁰ will be testifying on has already been considered by this Court in *General Bank & Trust Co.* when it resolved the legality of the liquidation of the GenBank. Hence, it no longer needs to be considered in this case.¹⁴¹

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

SO ORDERED.¹⁴²

On September 5, 2011, the Republic filed a Rule 65 Petition for *Certiorari*,¹⁴³ which was docketed as G.R. No. 198221 and entitled *Republic*

¹³⁴ *Id.* at 90.

¹³⁵ *Id.* at 3–84.

¹³⁶ *Rollo* (G.R. No. 198221), pp. 143–147. The August 2, 2011 Resolution in Civil Case No. 0005 was penned by Associate Justice Roland B. Jurado and concurred in by Associate Justices Teresita B. Diaz-Baldos and Alex L. Quiroz of the Fifth Division of the Sandiganbayan, Quezon City.

¹³⁷ *Id.* at 131.

¹³⁸ *Id.* at 146.

¹³⁹ *Id.*, citing *General Bank & Trust Co. v. Central Bank of the Philippines*, 524 Phil. 232 (2006) [Per J. Garcia, Second Division].

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.* at 146.

¹⁴³ *Id.* at 3–119.

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of the *Philippines v. Sandiganbayan, Lucio Tan, Estate of Ferdinand E. Marcos, et. al.*, to nullify the Sandiganbayan's (1) May 3, 2011 Resolution denying the Republic's Motion for Voluntary Inhibition of the chairman and members of the Fifth Division, (2) July 4, 2011 Resolution denying the Republic's motion for reconsideration, (3) June 9, 2011 Order denying the Republic's Motion in open court to recall Joselito to the witness stand for the continuation of his testimony, and (4) August 2, 2011 Resolution denying the Republic's Motion with Memorandum of Authorities in support of its recall of Joselito on the witness stand.¹⁴⁴

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

On January 3, 2012 the Republic filed Manifestation and Motion praying to admit the Amended Answer with Counter-Claim and Compulsory Cross-Claim of Imelda be offered as part of the formal offer of exhibits by the Republic. After admitting all its formal offers of evidence of the Republic, the Sandiganbayan considered that the Republic rested its case on January 12, 2012.¹⁴⁷

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

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

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

It found that the Republic failed to prove that the subject assets and properties were ill-gotten wealth because it did not show that they originated from the government's resources.¹⁵¹ It referred to the "whereas" clauses of Executive Order No. 1 and this court's discussion of "ill-gotten wealth" in

¹⁴⁴ *Rollo* (G.R. No. 203592), p.7

¹⁴⁵ *Id.* at 138.

¹⁴⁶ *Id.* at 139.

¹⁴⁷ *Id.* at 142–143.

¹⁴⁸ *Id.* at 143.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 171–240. The September 26, 2012 Resolution in Civil Case No. 0005 was penned by Associate Justice Roland B. Jurado, and concurred in by Associate Justices Teresita V. Diaz-Baldos and Alex L. Quiroz of the Fifth Division, Sandiganbayan, Quezon City.

¹⁵¹ *Id.* at 149.

Chavez v. Presidential Commission on Good Government.¹⁵² It then concluded that two concurring elements must be present and proved before assets or properties are considered ill-gotten wealth: (1) they must have “originated from the government itself,” and (2) they must have been taken by former President Marcos Sr., his immediate family, relatives, and close associates by illegal means.¹⁵³ It ruled that the Republic failed to prove these elements.

It found that GenBank’s properties did not originate from the government and affirmed that this issue has been settled¹⁵⁴ in *General Bank & Trust Co.*

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

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

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

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

¹⁵² 360 Phil. 133 (1998) [Per J. Panganiban, First Division].

¹⁵³ *Rollo* (G.R. No. 203592), pp. 146, 231–232, 236.

¹⁵⁴ *Id.* at 151–152, citing *General Bank & Trust Co. v. Central Bank of the Philippines*, 524 Phil. 232 (2006) [Per J. Garcia, Second Division].

¹⁵⁵ *Id.* at 156–168.

¹⁵⁶ *Id.* at 153.

¹⁵⁷ *Id.* at 154.

¹⁵⁸ *Id.* at 151.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 156–157.

¹⁶¹ *Id.* at 163–164.

¹⁶² *Id.* at 159.

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

The Sandiganbayan held that the same rules apply to the testimony of the Republic's other witnesses, who are incompetent and not qualified to testify on the documents they brought, produced, and presented before the Sandiganbayan, considering that they have no direct participation on its execution. It found that they could not even identify and verify the signatures of the persons appearing on the documents they presented. Thus, they merely testified as to the existence of the documents but not the veracity of their contents.¹⁶⁵ The witnesses are as follows:

- (1) Atty. Edith C. Napalan (Atty. Napalan), a counsel of the Securities and Exchange Commission, who presented to prove the existence of the documents, the articles of incorporation of Allied Bank and Fortune Tobacco, and other documents previously marked as exhibits;¹⁶⁶
- (2) Cresencio Cababat Orias, Jr. (Orias), a bank officer in the Bangko Sentral ng Pilipinas, who supervises and controls the records handled in his department was presented to prove the existence of the documents with Tan et al.'s acquisition of GenBank;¹⁶⁷
- (3) Ma. Yvette Victoria S. Buban (Buban), presidential staff officer and officer-in-charge of the Malacañang Library, who presented documents that are found and kept in the files of the former Presidential Library and turned over to the Malacañang Library;¹⁶⁸
- (4) Way Caban Castillo (Castillo), a record officer of the Philippine Commission on Good Government, who testified that he obtained documents from the Malacañang Presidential Library on Marcos, Sr., and Tan et al. and turned them over to Philippine Commission on Good Government. He signed an acknowledgment receipt stating that he received the original documents from Tan found in the Presidential Library;¹⁶⁹
- (5) Ronnie Arenas Inacay (Inacay), a record officer of the Court of Appeals, who attested to several exhibits as duplicate originals in his

¹⁶³ *Id.* at 159–161.

¹⁶⁴ *Id.* at 159, 161.

¹⁶⁵ *Id.* at 161.

¹⁶⁶ *Id.* at 160.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

custody of the Special Proceedings No. 107812 of Branch 37, Regional Trial Court, Manila, which was docketed in the Court of Appeals as CA-G.R. CV No. 39939, entitled *Central Bank of the Philippines vs. Banker's Worldwide Insurance and Surety Company, et al.*¹⁷⁰

(6) Feliza U. Arrojado (Arrojado), of the Bureau of Internal Revenue, who testified that their office does not have in its custody income tax returns mentioned the subpoena sent to the Bureau;¹⁷¹

(7) Generosa Nakpil (Nakpil) of the Supervision and Examination Department of Bangko Sentral ng Pilipinas, who brought duplicate memorandum, carbon copies, and duplicate original of documents in the custody of Bangko Sentral ng Pilipinas;¹⁷²

(8) Rowena Santillan Martinez (Martinez) and Nora Sarmiento (Sarmiento), who brought to the Sandiganbayan the documents in the custody of Bangko Sentral ng Pilipinas;¹⁷³

(9) Aurora Trias (Trias) of the Bangko Sentral ng Pilipinas, who presented a fact book based on the reports of the banks submitted to the Supervision and Examination Department of Bangko Sentral ng Pilipinas;¹⁷⁴

(10) Jeremy Robert Morales Barns, Director IV of the Malacañang Museum, who presented to the Sandiganbayan the two documents in the custody of the museum;¹⁷⁵ and

(11) Edgar Fatalla Camacho (Camacho) of the National Archives of the Philippines, who confirmed the signatures of the Officer-in-Charge of the Archives Division of the National Archives, appearing at the back pages of several exhibits.¹⁷⁶

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

It further found that the excerpt of the minutes of the proceedings before the Monetary Board may be considered a public document since it was taken during the Monetary Board's exercise of its mandate. Thus, it was not attested

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 161.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

to by the legal custodian to be a correct copy of the original.¹⁷⁸ Atty. Martinez, the witness who testified on it, admitted that she was not a member of the Monetary Board in 1977, the date of the minutes, and only joined the Monetary Board in 2000.¹⁷⁹ Thus, she did not intervene or participate in the preparation, execution, delivery, and signing of the documents mentioned in the subpoena.¹⁸⁰

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

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

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

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

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

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at 161–162.

¹⁸⁰ *Id.* at 162.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 168.

¹⁸⁶ *Id.*

¹⁸⁷ 678 Phil. 358 (2011) [Per J. Brion, *En Banc*].

¹⁸⁸ *Rollo* (G.R. No. 203592), pp. 166–167.

DISMISSED.

SO ORDERED.¹⁸⁹

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

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

Tan et al.,¹⁹¹ Zalamea,¹⁹² Ferry,¹⁹³ the Domingo heirs,¹⁹⁴ and the Licaros heirs¹⁹⁵ filed their respective Comments.

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

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

The Republic further alleged that the Amended Plan of Merger and the Amended Articles of Merger of the Allied Bank had been submitted to and approved by the Securities and Exchange Commission, Bangko Sentral ng Pilipinas, and the Philippine Deposit Insurance Corporation.²⁰¹ However, the

¹⁸⁹ *Id.* at 168–169.

¹⁹⁰ *Id.* at 3130–3132.

¹⁹¹ *Id.* at 2111–2236.

¹⁹² *Id.* at 2673–2683.

¹⁹³ *Id.* at 4220–4223.

¹⁹⁴ *Id.* at 2586–2625.

¹⁹⁵ *Id.* at 2718–2724.

¹⁹⁶ *Id.* at 2105.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 2735.

¹⁹⁹ *Id.* at 2046–2047.

²⁰⁰ *Id.* at 2046–2062.

²⁰¹ *Id.* at 2048.

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

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

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

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

²⁰² *Id.* at 2047.

²⁰³ *Id.* at 2048, 2052, 2054.

²⁰⁴ *Id.* at 2059.

²⁰⁵ *Id.* at 2058–2060.

²⁰⁶ *Id.* at 2272.

²⁰⁷ *Id.* at 2241–2276.

²⁰⁸ *Id.* at 2245.

²⁰⁹ *Id.* at 2246–2247.

²¹⁰ *Id.* at 2249.

²¹¹ *Id.*

²¹² *Id.* at 2250.

²¹³ *Id.* at 2251.

²¹⁴ *Id.* at 2266–2267.

²¹⁵ *Id.* at 2267, 2269.

They also argue that the impediments to the merger have been cleared considering that this Court had nullified the Republic's sequestration order over the shares of stock of Allied Bank²¹⁶ and had found valid Allied Bank's acquisition of GenBank's assets.²¹⁷ They allege that the Sandiganbayan has also denied the Republic's application for a temporary restraining order and/or preliminary injunction writ to enjoin the merger.²¹⁸

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

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

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

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

²¹⁶ *Id.* at 2252, citing *Presidential Commission on Good Government v. Tan*, 564 Phil. 426 (2007) [Per J. Sandoval-Gutierrez, First Division].

²¹⁷ *Id.* at 2251. See also *General Bank & Trust Co. v. Central Bank of the Philippines*, 524 Phil. 232 (2006) [Per J. Garcia, Second Division].

²¹⁸ *Id.* at 2252.

²¹⁹ *Id.* at 2256.

²²⁰ *Id.* at 2263.

²²¹ *Id.* at 2265.

²²² *Id.*

²²³ *Id.* at 2266.

²²⁴ *Id.* at 2270.

²²⁵ *Id.*

²²⁶ *Id.* at 2272.

²²⁷ *Id.*

²²⁸ *Id.*

to oppose it before the Sandiganbayan, the Bangko Sentral ng Pilipinas, the Securities and Exchange Commission, and the Philippine Deposit Insurance Corporation.²²⁹

Zalamea,²³⁰ the Domingo heirs,²³¹ the Licaros Heirs,²³² the Estate of Marcos, Sr.,²³³ and Mariano²³⁴ filed their respective Comments to the Republic's Motion for Substitution.

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

The Republic filed its Replies to the Comments of the Licaros Heirs²³⁸ and Tan et al.²³⁹

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

The Republic,²⁴¹ the Licaros heirs,²⁴² Tan et al.,²⁴³ Zalamea,²⁴⁴ and the Domingo heirs²⁴⁵ filed their respective Memoranda.

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

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

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

²²⁹ *Id.* at 2273.

²³⁰ *Id.*

²³¹ *Id.* at 4271.

²³² *Id.* at 4280–4281.

²³³ *Id.* at 4264.

²³⁴ *Id.* at 4290–4291.

²³⁵ *Id.* at 2758–2789.

²³⁶ *Id.* at 2821–2826.

²³⁷ *Id.* at 3135–3162.

²³⁸ *Id.* at 2801–2815.

²³⁹ *Id.* at 2828–2864.

²⁴⁰ *Rollo* (G.R. No. 195837), pp. 988–989.

²⁴¹ *Rollo* (G.R. No. 203592), pp. 3802–4211.

²⁴² *Id.* at 3300–3322.

²⁴³ *Id.* at 4230–4246.

²⁴⁴ *Id.* at 3342–3553.

²⁴⁵ *Id.* at 3223–3293.

²⁴⁶ *Id.* at 3342.

²⁴⁷ *Id.* at 4218.

other executor *in solidum* of the Estate.²⁴⁸

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

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

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

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

Imelda still did not file her Comment or Memorandum.²⁵⁵

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

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

In G.R. No. 195837, the Republic argues that the Sandiganbayan acted with grave abuse of discretion in dismissing the case against Zalamea and Ferry on demurrer to evidence.²⁵⁸ It stressed that since they were being charged as officers of the Development Bank for conspiring with Tan and

²⁴⁸ *Id.* at 3209.

²⁴⁹ *Id.*

²⁵⁰ *Id.* at 4260–4261.

²⁵¹ *Id.* at 4311–4318.

²⁵² *Id.* at 4311.

²⁵³ *Id.* at 4312.

²⁵⁴ *Id.* at 4330–4332.

²⁵⁵ *Id.* at 4338-A–4338-B.

²⁵⁶ *Id.*

²⁵⁷ *Id.* at 4363–4365.

²⁵⁸ *Id.* at 4080.

Marcos, Sr. to acquire ill-gotten wealth, it is immaterial that they were not business associates of the Tan Group of Companies or that they did not acquire the ill-gotten wealth for themselves.²⁵⁹ Considering that conspiracy extensively covers all acts relating to or arising from the charge against Tan et al., Ferry and Zalamea may be held liable if it is proven.²⁶⁰

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

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

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

²⁵⁹ *Id.* at 4085–4086, 4091.

²⁶⁰ *Id.* at 4085–4086.

²⁶¹ *Id.* at 4087, 4090.

²⁶² *Id.* at 4111.

²⁶³ *Id.* at 4111–4112.

²⁶⁴ *Id.* at 4112.

²⁶⁵ *Id.* at 4113.

²⁶⁶ *Id.*

²⁶⁷ *Id.* at 4092, 4082.

²⁶⁸ *Id.* at 4100.

²⁶⁹ *Id.* at 4102.

²⁷⁰ *Id.* at 4100.

²⁷¹ *Id.* at 4106.

²⁷² *Id.* at 4106, 4108.

²⁷³ *Id.* at 4108.

stipulation and the genuineness and due execution of the documents.²⁷⁴

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

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

The Republic argues, citing *Republic v. Desierto*,²⁸⁰ does not apply in this case as it only affirmed that there was no probable cause to hold Tan et al. liable under Section 3(e) of Republic Act No. 3019²⁸¹ for entering into the Deal with Sipalay Trading.²⁸² The Republic alleges that factual conclusions in preliminary investigations are findings not tested on the merits during trial.²⁸³ Moreover, the case did not rule on the nature of Sipalay Trading as an ill-gotten wealth corporation of Tan and Marcos.²⁸⁴ Civil cases only required a preponderance of evidence.²⁸⁵ Likewise, in this case, the issue centers on the culpability of Zalamea and Ferry being the most responsible officers who approved the sale of the Development Bank shares to Sipalay Trading to the disadvantage and prejudice of the government.²⁸⁶

The Republic also argues that the Sandiganbayan’s resolutions granting the demurrer to evidence failed to comply with constitutional requirements

²⁷⁴ *Id.* at 4109.

²⁷⁵ *Id.* at 4114.

²⁷⁶ *Id.* at 4113.

²⁷⁷ *Id.* at 4115.

²⁷⁸ *Id.* at 4082.

²⁷⁹ *Id.* at 4106.

²⁸⁰ 516 Phil. 509 (2006) [Per J. Sandoval-Gutierrez, Second Division].

²⁸¹ Republic Act No. 3019 (1960), sec. 3(e) provides:

SECTION 3. *Corrupt Practices of Public Officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

....
(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

²⁸² *Rollo* (G.R. No. 203592), pp. 4114–4115.

²⁸³ *Id.* at 4115.

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ *Id.* at 4116.

and its internal rules of procedure in rendering final orders and decisions.²⁸⁷ The Republic insists that the Sandiganbayan should have rendered a decision, not a minute resolution,²⁸⁸ especially because a dismissal based on demurrer to evidence is a final order that calls for a review of the evidence presented.²⁸⁹

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

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

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

²⁸⁷ *Id.* at 4117.

²⁸⁸ *Id.* at 4121.

²⁸⁹ *Id.* at 4117, 4121.

²⁹⁰ *Id.* at 4121–4122, 4213.

²⁹¹ *Id.* at 4125.

²⁹² *Id.*

²⁹³ *Id.* at 4118–4119.

²⁹⁴ *Id.* at 4220, 4222.

²⁹⁵ *Id.* at 4221.

²⁹⁶ *Id.* at 4220.

²⁹⁷ *Id.* at 4221.

²⁹⁸ *Id.* at 4222.

²⁹⁹ *Id.*

³⁰⁰ *Id.* at 4233.

³⁰¹ *Id.*

government official facilitating Tan's acquisition of private corporations.³⁰²

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

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

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

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

Zalamea further maintains the Republic is guilty of forum shopping.³¹⁵ He argues that the dismissal of the case against him was elevated to this Court docketed as G.R. No. 195837.³¹⁶ Nonetheless, he was impleaded in the other

³⁰² *Id.*

³⁰³ *Id.* at 4234.

³⁰⁴ *Id.*

³⁰⁵ *Id.* at 4241.

³⁰⁶ *Id.* at 4242.

³⁰⁷ *Id.* at 4237.

³⁰⁸ *Id.* at 4239.

³⁰⁹ *Id.* at 4238.

³¹⁰ *Id.*

³¹¹ *Id.*

³¹² *Id.*

³¹³ *Id.* at 4233, 4239–4240.

³¹⁴ *Id.* at 4240–4241.

³¹⁵ *Id.* at 4242–4243.

³¹⁶ *Id.* at 4243.

Petitions involving the other respondents.³¹⁷ Further, when the Republic sought to file its Third Amended Complaint, it impleaded him again.³¹⁸ There is thus a double filing of petitions for review against him based on the same allegations and grounds.³¹⁹ He also argues that the Republic's disclosure of the pending Petitions in its certification of forum shopping does not change the nature of its acts as forum shopping.³²⁰ Consolidating the cases is also not an excuse and only served to delay the proceedings in G.R. No.195837.³²¹

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

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

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

It likewise asserts that there is no identity of parties in the two cases.³³⁰ It points that the Presidential Commission on Good Government, the Marcoses, Licaros, Tan, and the Republic were not impleaded in the GenBank liquidation case.³³¹ Furthermore, when it was filed in 1977, Marcos, Sr. was immune from suit.³³² The Republic points out that the Central Bank and the

³¹⁷ *Id.*

³¹⁸ *Id.* at 4244.

³¹⁹ *Id.* at 4245.

³²⁰ *Id.*

³²¹ *Id.*

³²² *Id.* at 4127, 4155.

³²³ *Id.* at 4149.

³²⁴ *Id.*

³²⁵ *Id.* at 4155.

³²⁶ 524 Phil. 232 (2006) [Per J. Garcia, Second Division].

³²⁷ *Rollo* (G.R. No. 203592), p. 4134.

³²⁸ *Id.* at 4131.

³²⁹ *Id.* at 4128, 4134, 4136.

³³⁰ *Id.* at 4148.

³³¹ *Id.* at 151–152, 4139. *General Bank and Trust Co. v. Central Bank of the Philippines*, 524 Phil. 232 (2006) [Per J. Garcia, Second Division].

³³² *Rollo* (G.R. No. 203592), p. 4139.

Solicitor General's participation in the GenBank liquidation case cannot bind the Republic or deprive it of its right to prosecute the ill-gotten wealth case at the Sandiganbayan.³³³ While the Central Bank was the petitioner in the GenBank liquidation case, it acted in a specified limited authority, and did not have the power to represent the Republic.³³⁴ Similarly, the Office of the Solicitor General then acted as advisor of the Central Bank on how to proceed with the liquidation.³³⁵ It thus did not participate as the usual court litigator protecting the interests of the government.³³⁶

It further points that the issues are different. The validity of the liquidation in the GenBank liquidation case was premised on the meaning of insolvency,³³⁷ and insolvency and liquidation proceedings are specific and limited.³³⁸ On the other hand, the issue in this case is whether Marcos had proprietary interests in Tan's businesses, including Allied Bank, considering the schemes they used in the Central Bank, and the concessions and accommodations extended to Tan and his businesses.³³⁹ The Republic further asserts that the Sandiganbayan's conclusion relied only on obiter dictum. The GenBank liquidation case³⁴⁰ did not explicitly state that Allied Bank is not part of Marcos, Sr.'s ill-gotten wealth.³⁴¹

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

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

They point out that the Sandiganbayan had ruled on the disallowance several times.³⁴⁵ Tan et al. stress that even before the Sandiganbayan's June

³³³ *Id.* at 4136.

³³⁴ *Id.* at 4148.

³³⁵ *Id.* at 4142.

³³⁶ *Id.*

³³⁷ *Id.* at 4139. *See also id.* at 4141, where it cites *Presidential Commission on Good Government v. Sandiganbayan*, 495 Phil. 485 (2005) [Per J. Puno, *En Banc*], which ruled that the liquidation of GenBank pertains to a different issue from the sequestration cases.

³³⁸ *Id.* at 4148.

³³⁹ *Id.* at 4140.

³⁴⁰ *Id.* at 151–152, 4139. *General Bank and Trust Co. v. Central Bank of the Philippines*, 524 Phil. 232 (2006) [Per J. Garcia, Second Division].

³⁴¹ *Id.* at 4140.

³⁴² *Id.*

³⁴³ *Id.* at 4151.

³⁴⁴ *Id.* at 3240, 3306; *Rollo* (G.R. 198221), p. 1102.

³⁴⁵ *Rollo* (G.R. No. 203592) 3240–3241, 3306. *General Bank and Trust Co. v. Central Bank of the Philippines*, 524 Phil. 232 (2006) [Per J. Garcia, Second Division]. *See also Rollo* (G.R. No. 198221), pp. 142, 1104.

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

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

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

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

³⁴⁶ *Rollo* (G.R. 198221), p. 1104.

³⁴⁷ *Id.* at 1105.

³⁴⁸ *Id.*

³⁴⁹ *Rollo* (G.R. No. 203592), p. 3306.

³⁵⁰ *Id.* at 3245.

³⁵¹ *Id.* at 3243. *General Bank and Trust Co. v. Central Bank of the Philippines*, 524 Phil. 232 (2006) [Per J. Garcia, Second Division]. See also *Rollo* (G.R. 198221), pp. 1107, 1111.

³⁵² *Rollo* (G.R. No. 203592), pp. 3240–3241, 3251, 3304, 3314. *General Bank and Trust Co. v. Central Bank of the Philippines*, 524 Phil. 232 (2006) [Per J. Garcia, Second Division]. See also *Rollo* (G.R. No. 198221), p. 142, June 9, 2011 Order.

³⁵³ *Rollo* (G.R. No. 203592), pp. 3244, 3282; *Rollo* (G.R. No. 198221), pp. 1107, 1111.

³⁵⁴ *Id.* at 1114.

³⁵⁵ *Id.* at 1115.

³⁵⁶ *Rollo* (G.R. No. 203592), pp. 3283, 3286–3287. See *General Bank and Trust Co. v. Central Bank of the Philippines*, 524 Phil. 232 (2006) [Per J. Garcia, Second Division].

³⁵⁷ *Rollo* (G.R. No. 203592), p. 3284.

substantial identity.³⁵⁸

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

As to the specific allegations against Licaros, the Licaros heirs point out that the allegations against him are limited to his participation as Central Bank governor and Monetary Board chairperson in the liquidation of GenBank and its acquisition by Tan.³⁶⁶ They emphasize that there was no allegation that Licaros was a business associate of Marcos, Sr. or Tan, or that he was an officer, director, stockholder, dummy, or alter ego of any of the corporations mentioned in the Republic's Complaint.³⁶⁷ They likewise argue that any evidence presented against Licaros did not point to any accumulation of ill-gotten wealth³⁶⁸ or any violation of any law or regulation when the Monetary Board approved GenBank's liquidation and Tan's acquisition of its assets.³⁶⁹

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

³⁵⁸ *Id.* at 3285.

³⁵⁹ *Id.* at 3243.

³⁶⁰ *Id.*

³⁶¹ *Id.* at 3252.

³⁶² *Id.* at 3252, 3260.

³⁶³ *Id.* at 3261.

³⁶⁴ *Id.*

³⁶⁵ *Id.* at 3262.

³⁶⁶ *Id.* at 3301, 3304, 3308.

³⁶⁷ *Id.* at 3302, 3308.

³⁶⁸ *Id.* at 3308.

³⁶⁹ *Id.* at 3307.

³⁷⁰ *Id.* at 3312.

³⁷¹ *Id.*

³⁷² *Id.* at 3313.

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

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

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

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

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

The Republic likewise contends that the Sandiganbayan allowed Atty.

³⁷³ *Id.* at 3308.

³⁷⁴ *Id.* at 3309.

³⁷⁵ *Rollo* (G.R. No. 198221), p. 95.

³⁷⁶ *Id.* at 77-78.

³⁷⁷ *Id.* at 78.

³⁷⁸ *Id.* These include the: (i) motion for leave to intervene filed by the Yujuicos; (ii) motion for substitution of Fortune Tobacco by Philip Morris Fortune Tobacco Corp.; (iii) motion for voluntary inhibition; (iv) motion with memorandum of authorities for the recall of Joselito to the witness stand; and (v) motion for the admission of its Third Amended Complaint.

³⁷⁹ *Id.* at 82.

³⁸⁰ *Id.* at 84.

³⁸¹ *Id.*

³⁸² *Id.* at 86.

³⁸³ *Id.* at 85.

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

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

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

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

Tan et al. and the Domingo heirs assert that the Sandiganbayan also allowed the Republic to adduce additional evidence upon the original case.³⁹⁶ The Domingo heirs claim that the Republic was instructed to give a list of its

³⁸⁴ *Id.* at 86–87.

³⁸⁵ *Id.* at 87–88.

³⁸⁶ *Id.* at 89–90.

³⁸⁷ *Id.* at 90.

³⁸⁸ *Id.* at 97–99.

³⁸⁹ *Id.* at 97–100.

³⁹⁰ *Id.* at 97.

³⁹¹ *Id.* at 100.

³⁹² *Id.* at 91.

³⁹³ *Id.* at 92.

³⁹⁴ *Rollo* (G.R. No. 203592), p. 3246; *Rollo* (G.R. No. 198221) pp. 1099–1100.

³⁹⁵ *Rollo* (G.R. No. 203592), p. 3246.

³⁹⁶ *Rollo* (G.R. No. 203592), p. 3246; *Rollo* (G.R. No. 198221) pp. 1099–1100.

witnesses with their dates of testimony, but the Republic did not follow the schedule and presented different witnesses.³⁹⁷ Thereafter, the Sandiganbayan denied the Republic's further motions to cancel the hearings, which were in accordance with law, and in the sound discretion of the court.³⁹⁸

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

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

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

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

³⁹⁷ *Rollo* (G.R. No. 203592), p. 3246.

³⁹⁸ *Id.*

³⁹⁹ *Id.* at 3247.

⁴⁰⁰ *Id.* at 3248.

⁴⁰¹ *Id.*

⁴⁰² *Id.*

⁴⁰³ *Rollo* (G.R. No. 198221), p. 1074.

⁴⁰⁴ *Id.* at 1097.

⁴⁰⁵ *Id.* at 1074.

⁴⁰⁶ *Id.*

⁴⁰⁷ *Id.* at 1098.

⁴⁰⁸ *Rollo* (G.R. No. 203592), p. 3318.

⁴⁰⁹ *Id.*

⁴¹⁰ *Id.* at 4159.

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

It contends that Fortune Tobacco transferred not only its shares of stocks, but its entire business and contributing assets and liabilities beyond its legal and authorized capital.⁴¹³ The Republic further maintains that Fortune Tobacco is no longer operating its core business as an entity separate from Philip Morris Fortune Tobacco Corp.⁴¹⁴ It claims that Philip Morris International, another stockholder of Philip Morris Fortune Tobacco Corp., already manages the latter's day-to-day operations and has the majority of the board of directors.⁴¹⁵

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

Thus, the Republic argues that the Complaint should have been amended to include Philip Morris Fortune Tobacco Corp. and the individual

⁴¹¹ *Id.* at 4159–4160, 4166. In p. 4168, it cites Philip Morris's Annual Report for 2010: "In February 2010, PMI announced that its affiliate, Philip Morris Philippines Manufacturing Inc. (PMPMI), and Fortune Tobacco Corporation (FTC), one of the five largest privately-owned cigarette companies in the world, had signed an agreement to unite their respective business activities by transferring selected assets and liabilities of PMPMI and FTC to a new company called PMFTC, with each party holding an equal economic interest[.]"

In pp. 4171–4174, the Republic also cites the Philip Morris International website and the United States Securities and Exchange Commission Form 10-K submitted on February 25, 2011, to show that Philip Morris Fortune Tobacco Corp. was formed and organized principally using the combined capital, funds, and resources of Fortune Tobacco and Philip Morris.

⁴¹² *Id.* at 4180.

⁴¹³ *Id.* at 4174–4175. The Republic points that Fortune Tobacco's General Information Sheet for 2010 states it only has an authorized capital stock of PHP 700 million. But it contributed assets and properties that had a fair value of USD 1.17 billion. It further states that Philip Morris Fortune Tobacco, Corp. fraudulently misrepresented its own authorized capital of USD 1 billion since what had been contributed by Fortune Tobacco was outrageously greater.

⁴¹⁴ *Id.* at 4174.

⁴¹⁵ *Id.*

⁴¹⁶ *Id.* at 4175.

⁴¹⁷ *Id.*

⁴¹⁸ *Id.* at 4180–4181.

defendants.⁴¹⁹ It alleges that Philip Morris Fortune Tobacco Corp. is an indispensable and necessary party and its inclusion in the case is a condition *sine qua non* for the exercise of judicial power⁴²⁰ under Rule 3, Sections 2, 7, and 8 of the Rules of Court, Executive Order No. 2, and jurisprudence.⁴²¹

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

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

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

It argues that the 1995 case of *Republic v. Sandiganbayan First Division*⁴³² does not apply because the parties it is seeking to implead are not simply corporations organized with ill-gotten wealth.⁴³³ It argues that Philip

⁴¹⁹ *Id.* at 4160.

⁴²⁰ *Id.* at 4161.

⁴²¹ *Id.* at 4159.

⁴²² *Id.* at 4175.

⁴²³ *Id.*

⁴²⁴ *Id.*

⁴²⁵ *Id.*

⁴²⁶ *Id.*

⁴²⁷ *Id.*

⁴²⁸ *Id.* at 4161, 4178.

⁴²⁹ *Id.* at 4176.

⁴³⁰ *Id.*

⁴³¹ *Id.* at 4181.

⁴³² *Republic v. Sandiganbayan (First Division)*, 310 Phil. 401 (1995) [Per C.J. Narvasa, *En Banc*].

⁴³³ *Rollo* (G.R. No. 203592), pp. 4185-4186.

Morris Fortune Tobacco Corp., its directors, and officers acted in concert in fraudulently and illicitly transferring and depleting the assets and property, taking the *res* out of litigation and beyond the court's authority and jurisdiction.⁴³⁴

The Republic also cites Sections 1 and 3 of Rule 10 of the Rules of Court⁴³⁵ and this Court's liberal stance on the admissions of amendments to the complaint to serve the ends of justice and to avoid multiplicity of suits.⁴³⁶ It asserts that its motion is not made to delay the action.⁴³⁷ Furthermore, the administration of justice takes precedence over speed in trial.⁴³⁸ It points out that this case is one of the most important cases filed by the Republic against Marcos, Sr. and his close associates.⁴³⁹ Thus, it must be allowed to prosecute the case against all parties in the wrong.⁴⁴⁰ It further claims that the substantial delay in this case was caused by respondents who filed all pleadings and motions to escape prosecution.⁴⁴¹

It argues that the Sandiganbayan's ruling is a failure to protect and guard against the dissipation of assets and capital of Fortune Tobacco and Northern Tobacco pending final disposition of this case.⁴⁴²

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

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

Tan et al., the Licaros heirs, and the Domingo heirs, however, contest the impleading of Philip Morris Fortune Tobacco Corp. and its directors and officers as defendants. Tan et al. and the Licaros heirs claim that they have no bearing on the Republic's cause of action, and it will only delay the resolution

⁴³⁴ *Id.* at 4186-4188.

⁴³⁵ *Id.* at 4188.

⁴³⁶ *Id.* at 4190.

⁴³⁷ *Id.* at 4190-4191.

⁴³⁸ *Id.* at 4191.

⁴³⁹ *Id.*

⁴⁴⁰ *Id.*

⁴⁴¹ *Id.*

⁴⁴² *Id.* at 4192.

⁴⁴³ *Id.*

⁴⁴⁴ *Id.*

⁴⁴⁵ *Id.* at 4193.

of this case.⁴⁴⁶ They argue that the Republic has other remedies to obtain the relief it seeks, like the filing of a separate action.⁴⁴⁷

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

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

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

⁴⁴⁶ *Rollo* (G.R. No. 203592), p. 3320; *Rollo* (G.R. No. 198221), pp. 1117, 1119.

⁴⁴⁷ *Rollo* (G.R. No. 203592), p. 3321; *Rollo* (G.R. No. 198221), pp. 1118, 1125.

⁴⁴⁸ *Rollo* (G.R. No. 198221), p. 1117.

⁴⁴⁹ *Id.* at 1119.

⁴⁵⁰ *Id.* at 1122.

⁴⁵¹ *Id.*

⁴⁵² *Id.* at 1123.

⁴⁵³ *Id.*

⁴⁵⁴ *Id.* at 1122.

⁴⁵⁵ *Rollo* (G.R. 203592), p. 3249.

⁴⁵⁶ *Rollo* (G.R. 203592), p. 3249; *Rollo* (G.R. No. 198221), p. 1116.

⁴⁵⁷ *Rollo* (G.R. 203592), p. 3249.

⁴⁵⁸ *Rollo* (G.R. No. 198221), p. 1119. *Rollo* (G.R. 203592), p. 3240.

⁴⁵⁹ *Rollo* (G.R. No. 198221), p. 1120. *Rollo* (G.R. 203592), p. 3240.

⁴⁶⁰ *Rollo* (G.R. No. 198221), pp. 1118, 1125.

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

In G.R. No. 203592, the Republic asserts that ill-gotten wealth is not restricted to assets and property originally owned by the government taken by Marcos, Sr. or his close associates.⁴⁶³ The Republic contends that under Executive Orders No. 1 and 2, and the Presidential Commission on Good Government Rules and Regulations, ill-gotten wealth can be divided into two kinds: assets and properties acquired (i) through the improper or illegal use of funds or properties owned by the government, or (ii) by taking undue advantage of their office, authority, influence, connections, or relationship, resulting in their unjust enrichment and causing grave damage and prejudice to the Republic and the Filipino people.⁴⁶⁴ The property or assets in the second kind need not solely originate from the government to be deemed ill-gotten.⁴⁶⁵

The Republic states that the clear language and overriding principle of the laws and regulations should be considered.⁴⁶⁶ Furthermore, current legislation⁴⁶⁷ allegedly show that “ill-gotten wealth,” “unlawfully, acquired property,” and “unexplained wealth,” pertain to money or property acquired through unlawful activity.⁴⁶⁸ The Republic argues that the interpretation of laws must be sensible, reasonable, practical and must “promote the ends for which they are enacted.”⁴⁶⁹ It should not be interpreted to allow an act prohibited by law or to defeat compliance with the law, create inconsistencies, or contravene its plain meaning.⁴⁷⁰

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

It argues that the Presidential Commission on Good Government Rules

⁴⁶¹ *Id.* at 1067.

⁴⁶² *Id.* at 1072.

⁴⁶³ *Rollo* (G.R. No. 203592), pp. 3891–3892.

⁴⁶⁴ *Id.* at 3892, 3895–3896, 3899–3900.

⁴⁶⁵ *Id.* at 3900.

⁴⁶⁶ *Id.* at 3894, 3901.

⁴⁶⁷ Executive Order No. 1 (1986), Republic Act No. 7080 (1991), Republic Act No. 1379 (1955), Republic Act No. 3019 (1960), Republic Act No. 9160 (2001).

⁴⁶⁸ *Rollo* (G.R. No. 203592), p. 3914.

⁴⁶⁹ *Id.* at 3900.

⁴⁷⁰ *Id.* at 3901.

⁴⁷¹ *Id.* at 3902.

⁴⁷² *Id.*

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

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

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

This was allegedly shown in Marcos, Sr. and Tan's close personal relations⁴⁷⁹ and the latter's delivery of amounts of money to the former. They also allegedly had an arrangement in which Marcos, Sr. will own 60% of the shares of stocks, equity, and other forms and interest and participation in Tan's businesses (60-40 business arrangement).⁴⁸⁰ Tan created layers of corporations to conceal the ill-gotten wealth and to create a semblance of legitimacy and rightful ownership.⁴⁸¹ Marcos, Sr. likewise allegedly established a tobacco monopoly in favor of Tan through presidential

⁴⁷³ *Id.* at 3900–3902. *The PCGG Rules and Regulations Implementing Executive Orders No. 1 and 2* (1986) states:

SECTION 1. *Definition.* — (A) “Ill-gotten wealth” is hereby defined as any asset, property, business enterprise or material possession of persons within the purview of Executive Orders Nos. 1 and 2, acquired by them directly, or indirectly thru dummies, nominees, agents, subordinates and/or business associates by any of the following means or similar schemes: (1) Through misappropriation, conversion, misuse or malversation of public funds or raids on the public treasury;

(2) Through the receipt, directly or indirectly, of any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the official concerned.

(3) By the illegal or fraudulent conveyance or disposition of assets belonging to the government or any of its subdivisions, agencies or instrumentalities or government owned or controlled corporations;

(4) By obtaining, receiving or accepting directly or indirectly any shares of stocks, equity, or any other form of interest or participation in any business enterprise or undertaking;

(5) Through the establishment of agricultural, industrial or commercial monopolies or other combination and/or by the issuance, promulgation and/or implementation of decrees and orders intended to benefit particular persons or special interest; and

(6) By taking undue advantage of official position, authority, relationship or influence for personal gain or benefit.

⁴⁷⁴ *Rollo* (G.R. No. 203592), p. 3910; *Republic v. Estate of Hans Menzi*, 512 Phil. 425 (2005) [Per J. Tinga, *En Banc*].

⁴⁷⁵ *Rollo* (G.R. No. 203592), p. 3905; *Yuchengco v. Sandiganbayan*, 515 Phil. 1 (2006) [Per J. Carpio Morales, *En Banc*].

⁴⁷⁶ *Republic v. Sandiganbayan (First Division)*, 525 Phil. 804 (2006) [Per J. Carpio Morales, *En Banc*].

⁴⁷⁷ *Rollo* (G.R. No. 203592), p. 3916.

⁴⁷⁸ *Id.* at 3923.

⁴⁷⁹ *Id.* at 3976.

⁴⁸⁰ *Id.* at 3915.

⁴⁸¹ *Id.*

intervention, numerous concessions, favorable tax applications, and import quota exemptions. The Republic also alleges that Marcos, Sr. facilitated the fraudulent conveyance or disposition of assets belonging to the government to Tan through the sales of: (i) Century Park Sheraton Hotel (Century Park) to one of Tan's business ventures, Sipalay Trading Corporation (Sipalay Trading); and the (ii) liquidation of GenBank and the sale of its assets to Tan.⁴⁸² Tan likewise allegedly organized Asia Brewery in order for Marcos, Sr. to acquire control over San Miguel Corporation.⁴⁸³

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

The Republic points out that civil actions to recover ill-gotten wealth may be proven by a preponderance of evidence and does not require proof beyond reasonable doubt.⁴⁸⁵ Furthermore, in resolving ill-gotten wealth cases, this Court has consistently set aside technicalities to serve the broader interest of justice.⁴⁸⁶ Nonetheless, it asserts that it presented compelling and irrefutable evidence conclusively proving the assets in this case are ill-gotten wealth.⁴⁸⁷

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

The Republic asserts that Marcos, Sr. and Tan's close personal relations is evidenced by Marcos, Sr.'s favors to Tan, which was initially seen in Tan Eng Chan's naturalization proceedings.⁴⁸⁹ Tan Eng Chan did not meet the minimum residency requirement, yet Marcos, Sr. instructed the secretary of foreign affairs to grant his application.⁴⁹⁰ Tan's other sibling, Tan Eng Lian, was also naturalized through Marcos, Sr.'s Presidential Decree No. 836.⁴⁹¹ Marcos, Sr.'s closeness to Tan was also seen in the appointment of the retired Philippine Constabulary Metropolitan Command chief, General Mariano G. Ordoñez (General Ordoñez), as the president of Fortune Tobacco.⁴⁹² General Ordoñez also stood as a character witness for the naturalization of Harry.⁴⁹³

⁴⁸² *Id.*

⁴⁸³ *Id.* at 3942–3943.

⁴⁸⁴ *Id.* at 3992.

⁴⁸⁵ *Id.* at 3927, 3937.

⁴⁸⁶ *Id.* at 3935.

⁴⁸⁷ *Id.* at 3912, 3939.

⁴⁸⁸ *Id.* at 3932.

⁴⁸⁹ *Id.* at 3977.

⁴⁹⁰ *Id.*

⁴⁹¹ *Id.*

⁴⁹² *Id.*

⁴⁹³ *Id.*

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

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

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

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

The Republic contests Tan's claim that he was a victim of the Marcos, Sr. regime, and insists that all signs indicate that Tan is a Marcos crony.⁵⁰³ He earned tremendous profits and received approvals and favorable actions on

⁴⁹⁴ *Id.* at 3941-945, 3947-3951.

⁴⁹⁵ *Id.* at 3950.

⁴⁹⁶ Gapud allegedly admitted that he did not really own 400 shares of Prime Holdings and asserts that these shares were indorsed in blank and delivered to Marcos.

⁴⁹⁷ *Rollo* (G.R. No. 203592), pp. 3949-3950; *Republic v. Sandiganbayan*, 461 Phil. 598 (2003) [Per J. Corona, *En Banc*].

⁴⁹⁸ *Rollo* (G.R. No. 203592), pp. 3949-3950; *Yuchengco v. Sandiganbayan*, 515 Phil. 1 (2006) [Per J. Carpio Morales, *En Banc*].

⁴⁹⁹ *Rollo* (G.R. No. 203592), p. 3955.

⁵⁰⁰ *Id.* at 3940-3941, 3969.

⁵⁰¹ *Id.* at 3956-3957.

⁵⁰² *Id.* at 3957.

⁵⁰³ *Id.* at 3958-3959.

his requests for preferential and exclusive benefits, which allowed his businesses to grow. That he was coerced by Marcos is belied by: (1) his requests for intervention, concessions, financing, and assistance; and (2) his updates and reports to Marcos, Sr. on his business ventures and the holding companies.⁵⁰⁴

The Republic argues that Tan's Written Disclosure and the circumstances of its execution (i.e., his offer of compromise) show that the factual statements are competent evidence to prove its truth.⁵⁰⁵ It was not accompanied by any express or implied denial of his liability or the government's claim, and it contains his willingness to settle.⁵⁰⁶ These allegedly constitute an acknowledgment and confession that the subject assets and properties form part of the Marcos ill-gotten wealth.⁵⁰⁷ Even if the compromise is not an admission of guilt, his admissions of independent facts is admissible and competent as evidence against him.⁵⁰⁸ A written statement with an offer of compromise may be competent as evidence for other purposes.⁵⁰⁹

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

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

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

⁵⁰⁴ *Id.* at 3959.

⁵⁰⁵ *Id.* at 3960.

⁵⁰⁶ *Id.* at 3964.

⁵⁰⁷ *Id.*

⁵⁰⁸ *Id.* at 3964, 3973-3974.

⁵⁰⁹ *Id.* at 3963.

⁵¹⁰ *Id.* at 4058.

⁵¹¹ *Id.* at 3994-3995.

⁵¹² *Id.* at 3995-3996, 4000-4001.

⁵¹³ *Id.* at 4000.

⁵¹⁴ *Id.* at 3996.

⁵¹⁵ *Id.* at 4000.

⁵¹⁶ *Id.* at 3996.

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

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

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

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

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

The Republic posits that Gapud's Sworn Statement falls within the declaration of an agent admissible against his principal.⁵³⁰ It is also supported

⁵¹⁷ *Id.* at 4000-4003. Citing Rule 130, Sections 29, 30, and 31 of the Rules of Court.

⁵¹⁸ *Id.* at 4007.

⁵¹⁹ *Id.* at 4010.

⁵²⁰ *Id.* at 4011.

⁵²¹ *Id.* at 4012-4013.

⁵²² *Id.* at 4013.

⁵²³ *Id.*

⁵²⁴ *Id.* at 4017.

⁵²⁵ *Id.* at 4018.

⁵²⁶ *Id.* at 4019.

⁵²⁷ *Id.* at 4020.

⁵²⁸ *Id.* at 4019.

⁵²⁹ *Id.*

⁵³⁰ *Id.* at 4022.

by overwhelming documentary evidence.⁵³¹ The Republic adds that in *Republic v. Estate of Hans Menzi*⁵³² and *Yuchengco v. Sandiganbayan*,⁵³³ this Court relied on Gapud's statements to declare shares in favor of the Republic.⁵³⁴

The Republic also argues that Imelda's Amended Answer, Tan's Written Disclosure, and Gapud's Sworn Statement constitute interlocking confessions.⁵³⁵ It asserts that because their extrajudicial statements are identical such that they corroborate each other on material points,⁵³⁶ and there was no collusion, their confessions are admissible against those implicated in it.⁵³⁷ They are also admissible as circumstantial evidence to show the probability of the implicated person's actual participation in the commission of the crime, and as corroborative evidence if other circumstances show that other persons participated in the crime charged.⁵³⁸ The Republic further points out that confessions constitute evidence of a high order because the law presumes that no person would deliberately confess to a crime unless prompted by truth and conscience.⁵³⁹

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

As to its allegations in relation to Fortune Tobacco, the Republic maintains that Tan, using his close association with Marcos, manipulated the Philippine tobacco market at the expense of the farmers and the Filipino people.⁵⁴⁰ It stresses that Tan's requests to import foreign tobacco were expediently granted, regardless of the import quota imposed by the law. The resulting over importations saturated the market and caused lower prices, and consequently affected the farmers' profits.⁵⁴¹ Tan, then through the financial concessions, used public funds to buy the locally-grown tobacco at the lowest prices.⁵⁴² It alleges that Marcos, Sr. also extended to Tan and Fortune Tobacco preferential tax applications and exemptions which deprived the Republic of much needed revenue.⁵⁴³ Tan also allegedly used Marcos, Sr. to set cigarette prices to favor Fortune Tobacco.⁵⁴⁴ It further claims that per Tan's suggestion, specific taxes were decreased while retail prices increased.⁵⁴⁵ The Republic

⁵³¹ *Id.*

⁵³² 512 Phil. 425 (2005) [Per J. Tinga, *En Banc*].

⁵³³ 515 Phil. 1 (2006) [Per J. Carpio Morales, *En Banc*].

⁵³⁴ *Rollo* (G.R. No. 203592), p. 4025.

⁵³⁵ *Id.* at 4010.

⁵³⁶ *Id.* at 4011. The material points include the existence of: (1) dummy corporations; (2) deeds of assignments indorsed in blank; (3) Marcos, Sr.'s favorable indorsements; and (4) Tan's offer of compromise.

⁵³⁷ *Id.* at 4010-4011.

⁵³⁸ *Id.* at 4010.

⁵³⁹ *Id.* at 4011.

⁵⁴⁰ *Id.* at 3979.

⁵⁴¹ *Id.* at 3981.

⁵⁴² *Id.*

⁵⁴³ *Id.* at 3982.

⁵⁴⁴ *Id.* at 3983.

⁵⁴⁵ *Id.*

maintains that the favors and concessions in favor of Tan were not available to other business people.⁵⁴⁶ It adds that Tan et al. failed to controvert this active collaboration.⁵⁴⁷

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

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

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

The Republic also presented the following documents to show that Tan delivered money to Marcos, Sr.: (1) October 3, 1979 Allied Bank Check No. 

⁵⁴⁶ *Id.* at 3984.

⁵⁴⁷ *Id.*

⁵⁴⁸ *Id.* at 3818. Tan's April 5, 1983 letter to Marcos, Sr. requested for a "special rediscounting facility" while Marcos, Sr.'s April 8, 1983 handwritten note referred the letter to Central Bank Governor Jaime Laya "for favorable action."

⁵⁴⁹ *Id.* Tan's December 9, 1983 letter to Marcos, Sr. requested for a 180-day dollar account arrangement to allow Fortune Tobacco to import raw materials, while Marcos, Sr.'s handwritten note referred the letter on December 11, 1983 to Central Bank Governor Jaime Laya with a favorable recommendation.

⁵⁵⁰ *Id.* Tan's December 10, 1983 letter request another special rediscounting facility, while Marcos, Sr.'s handwritten note referred the letter request to Central Bank Governor for action.

⁵⁵¹ *Id.* Juan Tuvera's December 29, 1983 Memorandum addressed to Central Bank Governor Jaime Laya informing the latter of Marcos, Sr.'s instruction to accommodate Fortune Tobacco's request.

⁵⁵² *Id.* at 3819. As shown by Fortune Tobacco President Florencio Santos's April 28, 1976 letters to Philippine National Bank President Panfilo Domingo and Philippine Veterans Bank President Esteban Cabanos.

⁵⁵³ *Id.* at 3979.

⁵⁵⁴ *Id.* at 3984-3985.

⁵⁵⁵ *Id.* at 3985.

⁵⁵⁶ *Id.*

202523 in the amount of USD 500,000.00 received from Lucio Tan; (2) eight postdated Allied Bank checks in the amount of PHP 40 million; (3) two Allied Bank checks for PHP 10 million and PHP 15 million; (4) Steno notebook with cover Bandera stenographic notes showing that Fe Roa Jimenez made a list of all receipts of money from Tan and respondents; (5) Steno notebook with cover Phoenix Brand documenting Marcos, Sr.'s United States and Rome trips, proving that Tan gave substantial amounts of money to the Marcoses.⁵⁵⁷

The Republic's other documentary evidence include "notarized deeds of assignments, [M]onetary [B]oard resolutions, corporate documents of respondent corporations, naturalization documents, letter requests from Tan as collated by the Malacañang Presidential Library and authenticated by its official custodian, [Jeremy Barns], pleadings and court orders and resolution pertaining to the liquidation of [GenBank], list of disbursements from Tan in favor of the Marcoses recovered from Malacañang, various laws and presidential decrees, escrow documents, document reports, and records in the custody of [Presidential Commission on Good Government], collated pursuant to the its investigatory powers."⁵⁵⁸

The Republic contests the Sandiganbayan's finding that their documentary evidence did not comply with the best evidence rule.⁵⁵⁹ It points out that the Sandiganbayan admitted all of them in evidence over the respondents' objections.⁵⁶⁰ It maintains that all the 520 documents are all certified true copies of public documents, or public records of private documents, presented and identified by their official custodians as required under Rule 132, Sections 24 and 27 of the Rules of Court.⁵⁶¹ The Republic adds that the public officers and official custodians of these documents are competent witnesses to prove the veracity of the contents of the documents.⁵⁶²

⁵⁵⁷ *Id.* at 3992–3993.

⁵⁵⁸ *Id.* at 4064.

⁵⁵⁹ *Id.* at 4027.

⁵⁶⁰ *Id.*

⁵⁶¹ *Id.* at 4027, 4064.

⁵⁶² *Id.* at 4061–4063. (a) Ma. Lourdes Magno Oliveros is the records custodian of the Presidential Commission on Good Government, and among her principal duties are to supervise the library and records division, safekeep documents turned over to the library, and certify as authentic the documents needed in Court. She testified to prove that the Presidential Commission on Good Government has custody and possession of the documents she presented and identified in court.

(b) Atty. Edith C. Napalan is the securities counsel for the Securities and Exchange Commission tasked to process articles of incorporation, by-laws, and corporation reviews. She monitors compliance with reportorial requirements and appears in court with regard to the filing of cases. She submitted the Articles of Incorporation, By-laws, General Information Sheets, and other documents submitted by respondent corporations. She was presented to prove the existence of Sabales Corp.'s documents, the articles of incorporation of Allied Bank and Fortune Tobacco, and other documents previously marked as exhibits.

(c) Cresencio Cababat Orias, Jr. is a Bank Officer III in the Bangko Sentral ng Pilipinas and he supervises and controls the records handled in his department. He was presented to prove the existence of the documents in relation to Tan et al.'s acquisition of GenBank.

(d) Ma. Yvette Victoria S. Buban is the Presidential Staff Officer and Officer-in-Charge of the Malacañang Library, in charge of technical services in processing books and safekeeping of materials like presidential issuances in the Malacañang compound. The Malacañang Library has custody of the files and documents that were previously kept in the Presidential Library. She was presented to establish the documents which were kept in the Presidential Library. These documents showed the relationship between Tan and Marcos, Sr., and their participation in the case.

They are accountable for its loss and can be held liable for infidelity in the custody of public documents under Article 226 of the Revised Penal Code.⁵⁶³

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

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

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

(e) Way Cabana Castillo is a Presidential Commission on Good Government records officer who receives documents from the Office of the President librarian. He was presented to testify that he obtained from the Malacañang Presidential Library documents pertaining to the Marcoses and his friends and turned it over to the Presidential Commission on Good Government. He signed an acknowledgement receipt which states that he received the original of documents from Tan found in the Presidential Library.

(d) Ronnie Arenas Inacay is a record officer in the Court of Appeals. He was presented to identify certified true copies of Court of Appeals documents in relation to Special Proceedings No. 107812, docketed in the Court of Appeals as CA-G.R. No. CV-39939, titled *Central Bank of the Philippines v. Banker's Worldwide Insurance and Surety Company, et al.* He attested several exhibits as duplicate originals.

⁵⁶³ *Id.* at 4065.

⁵⁶⁴ *Id.* at 4066.

⁵⁶⁵ *Id.* at 4065.

⁵⁶⁶ *Id.* at 4034.

⁵⁶⁷ *Id.*

⁵⁶⁸ *Id.* at 4027.

⁵⁶⁹ *Id.* at 4036.

⁵⁷⁰ *Id.*

⁵⁷¹ *Id.* at 4061.

⁵⁷² *Id.* at 4066.

⁵⁷³ *Id.* at 4067-4074.

Presidential Commission on Good Government, and the Securities and (A)Exchange Commission.⁵⁷⁴

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

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

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

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

They assert that ill-gotten wealth is property that must have formed part of government resources that were amassed by Marcos, Sr., his family, relatives, and close associates by illegal means.⁵⁸⁶ They argue that the concept of ill-gotten wealth as expressed in the Whereas Clause of Executive Order

⁵⁷⁴ *Id.* at 4074.

⁵⁷⁵ *Id.* at 4075. As concluded by National Bureau of Investigation Examiner Caroline Pitoy.

⁵⁷⁶ *Id.* at 4074-4075.

⁵⁷⁷ *Id.* at 3993.

⁵⁷⁸ *Id.*

⁵⁷⁹ *Id.*

⁵⁸⁰ *Id.* at 3994.

⁵⁸¹ *Id.* at 4075.

⁵⁸² *Id.* at 4077.

⁵⁸³ *Id.*

⁵⁸⁴ *Id.* at 4079.

⁵⁸⁵ *Id.* at 3384, 3401.

⁵⁸⁶ *Id.* at 3360, 3462-3463, 3367.

No. 1 is *sui generis*.⁵⁸⁷ They claim that the pillage of government resources is one of the principal reasons that gave rise to the 1986 EDSA Revolution,⁵⁸⁸ adding that Executive Order No. 1 established that the *corpus* is the vast resources of the government, while Executive Order No. 2 provided the manner by which it was amassed.⁵⁸⁹ They further claim that the Presidential Commission on Good Government Rules and Regulations does not define ill-gotten wealth, but refers only to Executive Orders No. 1 and 2.⁵⁹⁰ They also invoke the principle of *stare decisis* and Article 8 of the Civil Code in arguing that the Sandiganbayan is mandated to apply the definition of ill-gotten wealth under Executive Orders No. 1 and 2 in *Republic v. Sandiganbayan*.⁵⁹¹

They assert that while the nature of the Complaint is for the recovery of ill-gotten wealth, the Republic's Statement of Facts only alleged unestablished and irrelevant facts.⁵⁹² Some of the allegations and causes of action in the complaint refer to the forfeiture of property of public officials under Republic Act No. 1379.⁵⁹³ However, forfeiture cannot be done collaterally and this is not a complaint for forfeiture under Republic Act No. 1379.⁵⁹⁴ None of the procedural requirements under Republic Act No. 1379 were complied with.⁵⁹⁵ Furthermore, Tan et al. were never public officials and thus, their properties cannot be forfeited.⁵⁹⁶ Treating it as a forfeiture case will violate their due process rights and procedural laws.⁵⁹⁷

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

However, they insist that ill-gotten wealth does not include properties

⁵⁸⁷ *Id.* at 3463.

⁵⁸⁸ *Id.*

⁵⁸⁹ *Id.*

⁵⁹⁰ *Id.* at 3464.

⁵⁹¹ *Id.* at 3469. See also *Republic v. Sandiganbayan*, 663 Phil. 212 (2011) [Per J. Bersamin, *En Banc*].

⁵⁹² *Rollo* (G.R. No. 203592), pp. 3360, 3486, 3518.

⁵⁹³ *Id.* at 3407, 3409.

⁵⁹⁴ *Id.* at 3486, 3518.

⁵⁹⁵ *Id.* at 3409.

⁵⁹⁶ *Id.* at 3360, 3409, 3518.

⁵⁹⁷ *Id.* at 3518.

⁵⁹⁸ *Id.* at 3369.

⁵⁹⁹ *Id.* at 3361.

⁶⁰⁰ *Id.*

⁶⁰¹ *Id.*

of private individuals acquired by “taking undue advantage of office, authority, influence, connections or relationship.”⁶⁰²

They contend that the Republic admits that the subject assets and properties belong to Tan.⁶⁰³ The Republic implicitly concedes that the subject assets and properties were owned by the shareholders from inception.⁶⁰⁴ They argue that the Republic has conceded that the subject assets and properties do not form part of the “vast resources of the government.”⁶⁰⁵ They assert that the Republic simply forwards another definition of ill-gotten wealth, arguing that it is not limited to property that formed part of the vast resources of the government.⁶⁰⁶ They add that the Republic is insisting on this definition because it failed to prove that the subject assets and properties originated from the government.⁶⁰⁷ They also point out that the Republic also failed to identify who originally owned the subject assets and properties.⁶⁰⁸ If the wealth was at all ill-gotten, it is such in a generic sense, but not under Executive Orders No. 1 and 2 over which the Sandiganbayan has jurisdiction.⁶⁰⁹

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

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

They point out that the Republic failed to identify who initially owned the subject assets and properties.⁶¹⁵ They simply insist that the properties were

⁶⁰² *Id.* at 3462.

⁶⁰³ *Id.* at 3458.

⁶⁰⁴ *Id.* at 3487.

⁶⁰⁵ *Id.* at 3360.

⁶⁰⁶ *Id.* at 3377–3378.

⁶⁰⁷ *Id.* at 3474.

⁶⁰⁸ *Id.* at 3483.

⁶⁰⁹ *Id.* at 3488.

⁶¹⁰ *Id.* at 3466; Under paragraphs 10, 11 of the Complaint.

⁶¹¹ *Id.* at 3467.

⁶¹² *Id.* at 3378–3380, 3467–3468.

⁶¹³ *Id.* at 3406.

⁶¹⁴ *Id.* at 3379.

⁶¹⁵ *Id.* at 3512.

acquired through unlawful means, and thus belong to the people.⁶¹⁶ However, they point that the Republic provided no legal basis for this assertion.⁶¹⁷

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

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

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

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

⁶¹⁶ *Id.* at 3515.

⁶¹⁷ *Id.* at 3486.

⁶¹⁸ *Id.*

⁶¹⁹ *Id.* at 3487.

⁶²⁰ *Id.* at 3445-3447.

⁶²¹ *Id.* at 3379.

⁶²² *Id.* at 3491.

⁶²³ *Id.*

⁶²⁴ *Id.*

⁶²⁵ *Id.* at 3495.

⁶²⁶ *Id.* at 3504.

⁶²⁷ *Id.* at 3505.

⁶²⁸ *Id.*

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

This is a change in the Republic's theory of its case because the allegation that Marcos, Sr. owns 60% of Shareholdings, Inc. is not consistent with its allegation that ill-gotten wealth are properties amassed by Marcos which were part of the vast resources of the government.⁶³²

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

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

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

Tan et al. also claim that the Republic subverted its own cause of action by relying on Marcos, Jr.'s testimony and on the documents seized by the

⁶²⁹ *Id.* at 3388.

⁶³⁰ *Id.* at 3515.

⁶³¹ *Id.* at 3517.

⁶³² *Id.* at 3518.

⁶³³ *Id.* at 3389.

⁶³⁴ *Id.* at 3390–3391, 3519–3520. In G.R. No. 155790, this Court dismissed Imelda's petition questioning the Sandiganbayan's denial of her motion to admit her Amended Answer and Cross-claim in its March 17, 2003 Resolution.

⁶³⁵ *Id.* at 3519.

⁶³⁶ *Id.*

⁶³⁷ *Id.* at 3519, 3521.

⁶³⁸ *Id.* at 3522.

United States Customs Service.⁶³⁹

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

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

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

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

In addition, they assert that Gapud's Sworn Statement cannot be subject of judicial notice because Gapud did not testify as a witness to identify or

⁶³⁹ *Id.* at 3390.

⁶⁴⁰ *Id.* at 3524.

⁶⁴¹ *Id.* at 3524-3526.

⁶⁴² *Id.* at 3527-3528.

⁶⁴³ *Id.* at 3530.

⁶⁴⁴ *Id.* at 3533.

⁶⁴⁵ *Id.*

⁶⁴⁶ *Id.* at 3540.

⁶⁴⁷ *Id.*

⁶⁴⁸ *Id.*

⁶⁴⁹ *Id.* at 3541.

⁶⁵⁰ *Id.* at 3539.

testify on the Sworn Statement.⁶⁵¹ It is thus hearsay, inadmissible in evidence, and without probative value.⁶⁵²

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

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

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

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

They argue that the testimony of Senator Salonga who, in turn, relies on his book, "Presidential Plunder" to prove the favors is unconvincing

⁶⁵¹ *Id.* at 3534; Under Rule 129, Sections 1-3 of the Rules of Court.

⁶⁵² *Id.*

⁶⁵³ *Id.* at 3441.

⁶⁵⁴ *Id.* at 3509.

⁶⁵⁵ *Id.* at 3510. *See also* Rule 132, Section 19 of the Rules of Court.

⁶⁵⁶ *Rollo* (G.R. No. 203592), pp. 3509-3510.

⁶⁵⁷ *Id.* at 3509.

⁶⁵⁸ *Id.* at 3443.

⁶⁵⁹ *Id.* at 3362.

⁶⁶⁰ *Id.*

⁶⁶¹ *Id.* at 3442.

⁶⁶² *Id.* at 3442-3443.

⁶⁶³ *Id.* at 3541.

⁶⁶⁴ *Id.* at 3442-3443.

⁶⁶⁵ *Id.* at 3442, 3444, citing Article 434 of the Civil Code.

because Senator Salonga's testimony was presented as evidence of the execution of the written exhibits, but not as evidence of the facts stated in it.⁶⁶⁶

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

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

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

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

They also argue that the Republic did not adequately describe or identify the property sought to be reverted or reconveyed to it.⁶⁷⁶ It only prays for the return and reconveyance of "all funds and other property impressed with constructive trust."⁶⁷⁷ They claim that this shows that the Republic still

⁶⁶⁶ *Id.* at 3505–3506.

⁶⁶⁷ *Id.* at 3507.

⁶⁶⁸ *Id.* at 3508.

⁶⁶⁹ *Id.*

⁶⁷⁰ *Id.*

⁶⁷¹ *Id.* at 3508–3509.

⁶⁷² *Id.* at 3509.

⁶⁷³ *Id.*

⁶⁷⁴ *Id.* at 3511.

⁶⁷⁵ *Id.*

⁶⁷⁶ *Id.* at 3382. *See also* Rule 7, Section 2(c) of the Rules of Court.

⁶⁷⁷ *Id.* at 3383.

does not know what properties of Tan et al. may be regarded as ill-gotten wealth.⁶⁷⁸ A judgment on those terms allegedly cannot be executed.⁶⁷⁹

Tan, et al., argue that the Republic, in filing a Rule 45 Petition, is improperly calling for a review of factual issues.⁶⁸⁰ They further claim that the Petition ignores the findings of fact of the Sandiganbayan, and suggests other bases upon which the Decision can be reversed.⁶⁸¹ It does not attempt to describe in detail the evidence it presented to show that the Sandiganbayan erred in ruling against it.⁶⁸² Neither does it assert that the Sandiganbayan erred in reaching the findings of fact.⁶⁸³ They point that the Republic thus conceded that the Sandiganbayan correctly ruled on the matter by keeping silent as to paragraphs 10, 11, and 12.⁶⁸⁴

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

They further posit that the causes of action in paragraphs 16 to 20 do not state ultimate facts, but are in conclusory language, which is contrary to procedural requirements⁶⁸⁸ The ultimate facts are found in paragraphs 10, 11, 12, 13, and 14.⁶⁸⁹ The acts allegedly committed by Tan et al. which resulted in the acquisition of ill-gotten wealth are those described in paragraphs 10 and 11.⁶⁹⁰ They point out that while paragraphs 10, 11, and 12 are under the General Averments of illegal acts and paragraphs 14 and 15 are under the Specific Averments, the allegations in paragraphs 14 and 15 may not stand alone and are distinct from paragraphs 10 to 12.⁶⁹¹ The former are supportive of the allegations in the latter. Thus, it was in this context the Sandiganbayan understood and resolved paragraph 14 of the Complaint.⁶⁹² Since the Republic did not present evidence to substantiate their claims under paragraphs 10 and 11, it started alleging that the subject assets and properties were acquired by the acts alleged in paragraph 14.⁶⁹³ Nonetheless, the Sandiganbayan also ruled that the Republic failed to prove the commission of the acts in paragraph 14 or that the commission of the acts resulted in the acquisition of the subject

⁶⁷⁸ *Id.* at 3384.

⁶⁷⁹ *Id.* at 3383.

⁶⁸⁰ *Id.* at 3451.

⁶⁸¹ *Id.* at 3452.

⁶⁸² *Id.* at 3456.

⁶⁸³ *Id.* at 3458.

⁶⁸⁴ *Id.* at 3457.

⁶⁸⁵ *Id.* at 3475.

⁶⁸⁶ *Id.* at 3476.

⁶⁸⁷ *Id.*

⁶⁸⁸ *Id.* at 3480–3481; Rule 6, Sections 2 and 3; Rule 8, Section 1 of the Rules of Court.

⁶⁸⁹ *Id.* at 3481.

⁶⁹⁰ *Id.*

⁶⁹¹ *Id.* at 3485–3486.

⁶⁹² *Id.* at 3483.

⁶⁹³ *Id.*

assets and properties.⁶⁹⁴

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

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

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

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

⁶⁹⁴ *Id.* at 3483.

⁶⁹⁵ *Id.* at 3249.

⁶⁹⁶ *Id.* at 3251.

⁶⁹⁷ *Id.* at 3256–3257.

⁶⁹⁸ *Id.* at 3260.

⁶⁹⁹ *Id.* at 3252.

⁷⁰⁰ *Id.* at 3264.

⁷⁰¹ *Id.*

⁷⁰² *Id.* at 3251.

⁷⁰³ *Id.* at 3252.

⁷⁰⁴ *Id.* at 3254.

⁷⁰⁵ *Id.* at 3255.

⁷⁰⁶ *Id.*

⁷⁰⁷ *Id.* at 3256.

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

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

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

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

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

Fifth, whether the Republic is guilty of forum shopping.

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

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

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

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

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

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

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

⁷⁰⁸ *Rollo* (G.R. No. 203592), p. 4082.

I

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

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

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

SECTION 1. *Demurrer to Evidence.* — After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence.

The grant of a motion to dismiss on demurrer to evidence means the complainant failed to discharge the burden to prove his or her allegations against the defendant.⁷⁰⁹ It means that based on everything that was proven by the complainant, the latter was still unable to show his or her entitlement to what was prayed for. In *Republic v. Spouses Gimenez*,⁷¹⁰

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

A demurrer to evidence may be issued when, upon the facts and the law, the plaintiff has shown no right to relief. Where the 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 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.

⁷⁰⁹ *Republic v. Sps. Gimenez*, 776 Phil. 233, 264 (2016) [Per J. Leonen, Second Division].

⁷¹⁰ 776 Phil. 233 (2016) [Per J. Leonen, Second Division].



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

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

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

I(A)

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

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

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

It is considered that a judgment presents evidence of the facts of so high a nature that nothing which could be proved by evidence *aliunde* would be sufficient to overcome it; and therefore it would be useless for a party against whom it can

⁷¹¹ *Id.* at 263–264.

⁷¹² *Rollo* (G.R. No. 203592), p. 4092.

⁷¹³ *Id.* at 4093.

⁷¹⁴ *Presidential Decree No. 1271 Committee v. De Guzman*, 801 Phil. 731, 764–765 (2016) [Per J. Leonen, Second Division].

⁷¹⁵ *Id.* at 767.

⁷¹⁶ *Id.* at 765.

be properly applied to adduce any such evidence, and accordingly he is estopped or precluded by law from doing so.

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

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

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

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

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

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

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

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

⁷¹⁷ *Id.* at 764–765.

⁷¹⁸ *Id.* at 763–764.

⁷¹⁹ *Id.* at 765.

⁷²⁰ *Id.*

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

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

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

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

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

.....

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

⁷²¹ *Id.*

⁷²² 801 Phil. 731 (2016) [Per J. Leonen, Second Division].

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

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

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

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

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

Ferry and Zalamea invoke *Desierto* in arguing that the complaint

⁷²³ *Id.* at 765-768.

against them is barred by *res judicata* by conclusiveness of judgment.

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

In 1984, the Development Bank of the Philippines (DBP), a government-owned and controlled financial institution, found itself in dire financial straits. In order to address its liquidity problems, DBP decided to sell some of its assets. One of these was its equity holdings in the Maranao Hotel Resort Corporation (MHRC), which then owned the Century Park Sheraton Hotel in Manila. Accordingly, pursuant to its Resolution No. 1937 dated August 22, 1984, the DBP Board of Governors offered to sell the said shares for US\$8.33 million (or P150 million at the exchange rate then prevailing) either on a cash basis or upon a down payment of thirty percent (30%) of the selling price, the balance payable for a term not longer than five (5) years, with an interest rate of five percent (5%) per annum.

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

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

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

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

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



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

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

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

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

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

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

⁷²⁴ *Republic v. Desierto*, 516 Phil. 509, 511–512, 515–516 (2006) [Per J. Sandoval-Gutierrez, Second Division].

In this case, Zalamea is being held liable as the former Chair of the Board of Development Bank and Maranaw Hotels.⁷²⁵ Ferry, in turn, is being charged as the Vice Chair of Development Bank⁷²⁶ and as President of Maranaw Hotels.⁷²⁷ The Republic alleges that Ferry and Zalamea acted in bad faith by selling Development Bank's Maranaw Hotels shares to Sipalay Trading. The allegations against the two in the Second Amended Complaint read:

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

xxx xxx xxx

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

....

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

xxx xxx xxx

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

(1) Sometime in 1984, Lucio C. Tan wrote defendant Ferdinand E. Marcos informing him among other things that "new business prospect to buy out from [Development Bank] Holding" includes the Century Park Sheraton Hotel (Sheraton, for short). Apparently receiving favorable reaction from Marcos, Lucio Tan organized and established on October 5, 1984 the [Sipalay Trading], with a capitalization of only P900,000.00 to serve as front

⁷²⁵ *Rollo* (G.R. No. 203592), p. 4092.

⁷²⁶ *Id.* at 4093. Ferry was appointed vice chair of Development Bank from August 13, 1981 until June 1, 1986.

⁷²⁷ *Id.* Ferry held the position in 1984.

organization of the Marcos-Lucio Tan partnership. Defendant Harry C. Tan became Chairman and President of the corporation, whose incorporators appear to be fictitious or mere dummies of Lucio Tan and his relatives.

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

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

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

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

In the present case, Ferry and Zalamea are being charged with conspiracy to acquire ill-gotten wealth because they approved and facilitated the sale of Development Bank's Maranaw Hotels shares to Sipalay Trading

⁷²⁸ *Id.* at 4092-4095.

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

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

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

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

In *Desierto*, the issue of bad faith was tackled because it is an element of the offense of Section 3(e) of Republic Act No. 3019.⁷³⁰ Thus, it was necessary to determine the bad faith of the officers and the validity of the sale to Sipalay Trading in *Desierto*. The same issues are again being raised in this

⁷²⁹ *Id.*

⁷³⁰ Republic Act No. 3019 (1960), sec. 3 provides:

SECTION 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

.....
(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

case, and the evidence needed to resolve it would have authorized a judgment for Ferry and Zalamea in *Desierto*. Thus, these issues are barred by the ruling in *Desierto*. The ruling that there is no bad faith is final, conclusive, and can no longer be raised as an issue in this case. Necessarily, this means that Ferry and Zalamea acted in good faith as Development Bank officers.

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

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

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

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

I(B)

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

<i>Exhibits</i>	<i>Documents</i>	<i>Purpose</i>
K	Articles of Incorporation SEC Reg. 123098 of	to prove the corporate existence, stockholders of record and purposes of Sipalay as of 1980.

⁷³¹ 512 Phil. 425 (2005) [Per J. Tinga, *En Banc*].

⁷³² *Id.* at 456–457.

⁷³³ *Rollo* (G.R. No. 195837), p. 21; *ponencia*, pp. 30–31.

⁷³⁴ *Id.* at 100–101. Citations omitted.

	Sipalay Trading Corp. dated Oct[ober] 17, 1984	
L	Certificate of Filing of By-Laws SEC Reg. 123098 of Sipalay Trading Corp. dated March 12, 1985	to prove that the by-laws of Sipalay were duly filed with the SEC on March 12, 1985
M	Development Bank Office Correspondence dated November 7, 1984 to the Chairman, Vice Chairman and Acting Executive Officer, SPD I Re: Maranaw Hotels & Resorts Corp.— Sale of DBP Shares of Stocks from Ma. Estela M. Ladrido, DBP Acting Exec. Officer	to prove that on August 22, 1984, the DBP Board, under Resolution No. 1937 fixed, among others, the selling price of the DBP's equity holdings in MHRC at P150 M or US\$8.33 M (net) and that in its letter of Nov. 2, 1984, PCI Management Consultants, Inc. offered in behalf of their foreign clients to purchase.
N	Pledge dated April 22, 1985 by and between Sipalay Trading and Development Bank of the Phil.	to prove that Sipalay Trading Corporation entered into a contract of pledge with Development Bank of the Philippines on April 22, 1985.
O	Deed of Sale dated April 22, 1985 by and between Development Bank of the Philippines and Sipalay Trading Corp.	To prove that [Development Bank of the Philippines] through VP Don Ferry sold its shares of stock of Maranaw Hotels to Sipalay Trading Corporation thru Chairman Harry C. Tan
P	Letter dated May 8, 1985 Attn: Mr. Harry C. Tan from Ma. Estela M. Ladrido	to prove that Sipalay Trading was sent a check representing interest on its escrow deposit.
Q	Letter dated Jan. 7, 1986 to Sipalay Trading Corp. Attn: Mr. Harry C. Tan from Ma. Estela M. Ladrido	to prove that Sipalay [Trading] bought in accordance with the Deed of Sale signed on April 22, 1985, the 360, 875, 511 shares of stocks of Maranaw Hotels and Resorts Corporations Sipalay purchased from [Development Bank of the Philippines].
R	[Development Bank of the Philippines] Resolution No. 2639 dated November 14, 1984	to prove that [Development Bank of the Philippines] approved the sale of Maranaw Hotels and Resorts Corporation to the Lucio Tan Group.

S	Escrow Agreement between Sipalay Trading Corp. and [Development Bank of the Philippines] dated March 1, 1985	To prove the sale of Maranaw Hotels and Resorts Corp. to the Lucio Tan Group.
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The evidence that they rely on is still anchored in their allegation that Ferry and Zalamea as Development Bank officers acted in bad faith in entering the deal with Sipalay. As discussed, this has been ruled in *Desierto* and can no longer be relitigated.

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

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

I(C)

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

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

Minute resolutions are those promulgated by courts through the Clerk of Court for the prompt dispatch of actions. A minute resolution is

⁷³⁵ *Ponencia*, pp. 25–26.

⁷³⁶ *In re Laureta*, 232 Phil. 353 (1987) [*Per Curiam, En Banc*].

⁷³⁷ *Id.*

differentiated from a decision in that the former is promulgated through the Clerk of Court, is generally unsigned by the justices, and does not require certification of the Chief Justice.

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

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

The 2002 Revised Internal Rules of the Sandiganbayan⁷³⁸ allows the Sandiganbayan to issue minute resolutions. Under Rule II, Section 6(b)(2), the Clerk of Court of each division releases the minute resolutions, notices of decisions, resolutions, and supervises the stenographers in the recording of the proceedings and preparation of its minutes.

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

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

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

A judgment may be considered as one rendered on the merits "when it determines the rights and liabilities of the parties based on the disclosed facts, irrespective of formal, technical or dilatory objections"; or when the judgment is rendered "after a determination of which party is right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point."

....

To reiterate, "[d]emurrer to evidence authorizes a judgment on the merits of the case without the defendant having to submit evidence on his [or her] part, as he [or she] would ordinarily have to do, if plaintiff's evidence shows that he [or she] is not entitled to the relief sought." The

⁷³⁸ Administrative Matter No. 02-6-07-SB, August 28, 2002.

order of dismissal must be clearly supported by facts and law since an order granting demurrer is a judgment on the merits:

As it is settled that an order dismissing a case for insufficient evidence is a judgment on the merits, it is imperative that it be a reasoned decision clearly and distinctly stating therein the facts and the law on which it is based.⁷³⁹ (Citation omitted)

A judgment on the merits must comply with Rule 36, Section 1 of the Rules of Court, which states:

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

Considering that a judgment on the merits must be prepared by the judge, it cannot be dispensed with through a minute resolution.

The Sandiganbayan did not dismiss the case through a minute resolution.⁷⁴⁰ The Sandiganbayan's resolutions were in the form of minutes of the proceedings. While it is not entitled as a resolution or decision, the minutes were not signed through the Clerk of Court and were instead signed and approved by the Fifth Division Sandiganbayan justices, Associate Justice Roland B. Jurado, and concurred in by Associate Justices Teresita V. Diaz-Baldos and Napoleon E. Inoturan.⁷⁴¹ The document likewise contains the statement of the parties, allegations, its consideration of the evidence presented by the parties, and its conclusion, and a dispositive portion. It is 14 pages in length. The dismissal thus complies with the requirements of a judgment on the merits.⁷⁴²

I(D)

I also agree that the Republic is not guilty of forum shopping.⁷⁴³

A party commits forum shopping when he or she files two or more suits in different courts raising the same issue and praying for the same relief, to increase its chances of getting a favorable ruling on the matter. It is prohibited under Rule 7, Section 5 of the Rules of Court, which states:

⁷³⁹ *Republic v. Sps. Gimenez*, 776 Phil. 233, 285 (2016) [Per J. Leonen, Second Division].

⁷⁴⁰ *Rollo* (G.R. No. 195837), pp. 23–24.

⁷⁴¹ *Id.* at 24.

⁷⁴² *Id.*

⁷⁴³ *Ponencia*, pp. 31–32.

SECTION 5. *Certification Against Forum Shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

The parties must certify that they did not file any other case involving the same issues in any other court. Any party that commits forum shopping runs the risk of having their case summarily dismissed. They also may be held liable for contempt or sanctioned administratively or criminally. In *City of Taguig v. City of Makati*.⁷⁴⁴

Top Rate Construction & General Services, Inc. v. Paxton Development Corporation explained that:

Forum shopping is committed by a party who institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes or to grant the same or substantially the same reliefs, on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action.

....

Top Rate Construction discussed the rationale for the rule against forum shopping as follows:

It is an act of malpractice for it trifles with the courts, abuses their processes, degrades the administration of justice and adds to the already congested court dockets. What is critical is the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same

⁷⁴⁴ 787 Phil. 367 (2016) [Per J. Leonen, Second Division].

issues, regardless of whether the court in which one of the suits was brought has no jurisdiction over the action.

Jurisprudence has recognized that forum shopping can be committed in several ways:

(1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).

....

The test for determining forum shopping is settled. In *Yap v. Chua, et al.*:

To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.

....

These settled tests notwithstanding:

Ultimately, what is truly important to consider in determining whether forum-shopping exists or not is the vexation caused the courts and parties-litigant by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or to grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issue.⁷⁴⁵

The Republic did not institute two suits in different courts. All the petitions involved in this case originated from the same case for the recovery of ill-gotten wealth filed in the Sandiganbayan. The different petitions involve different issues. It thus cannot be said that the Republic committed forum shopping.

⁷⁴⁵ *Id.* at 383-385.

II

The *ponencia* ruled that Joselito and Aderito's testimonies are barred by *res judicata*.⁷⁴⁶

I disagree.

I opine that the GenBank liquidation case does not bar by *res judicata* Joselito or Aderito's testimony.

As discussed, the elements of *res judicata* are: "(1) the first judgment must be final; (2) the first judgment was rendered by a court that has jurisdiction over the subject and the parties; (3) the disposition must be a judgment on the merits; and (4) the parties, subject, and cause of action in the first judgment are identical to that of the second case. If, in the first judgment and in the second case, the causes of action are different such that only the parties and the issues are the same, there is *res judicata* by conclusiveness of judgment."⁷⁴⁷

In the GenBank liquidation case, this Court ruled on the validity of Central Bank Monetary Board Resolution Nos. 675 and 677.

Monetary Board Resolution No. 675 was issued on March 25, 1977. It disallowed GenBank from doing business and designated Arnulfo B. Aurellano as its receiver. This resolution was prompted by GenBank's insolvency and its failure to comply with Central Bank Monetary Board requirements. It found that GenBank's continuance in business would cause losses to its depositors and creditors.

Thereafter, the Central Bank required the submission of sealed bids for the acquisition of GenBank's assets and assumption of its liabilities by March 28, 1977 at 7:00 p.m. Tan, acting with Willy Co, Ramon Lee, Florencio Santos, and Sixto L. Orosa, represented by Ramon S. Orosa (Tan's group), were the only ones able to comply.⁷⁴⁸

The day after the deadline, Monetary Board Resolution No. 677⁷⁴⁹ was issued ordering GenBank's liquidation, with Arnulfo B. Aurellano as liquidator and approving a liquidation plan in which Tan's group will acquire all the assets of GenBank and assume all its liabilities.

⁷⁴⁶ *Ponencia*, pp. 32, 34-37.

⁷⁴⁷ *Presidential Decree No. 1271 Committee v. De Guzman*, 801 Phil. 731, 766 (2016) [Per J. Leonen, Second Division].

⁷⁴⁸ *Rollo* (G.R. No. 195837), p. 1099.

⁷⁴⁹ *Id.* at 1050-1053. Adopted on March 29, 1977.

In confirming the validity of the Monetary Board Resolutions, this Court affirmed that GenBank was insolvent and that there was no factual infirmity in the findings and recommendation that gave rise to the issuance of Monetary Board Resolution No. 675.⁷⁵⁰ This Court noted that prior to the resolutions, the Central Bank extended assistance to help restore GenBank. It also held that GenBank failed to prove the Monetary Board's bad faith or arbitrariness in its closure. This Court held that the Central Bank performed its duty to maintain public confidence in the banking system when it approved the liquidation plan and the acquisition of assets by Tan's group through Allied Bank. This was allegedly shown by Allied Bank's ability to resume normal banking operations, meet the demands for deposit withdrawals, and pay off all emergency advances extended by the Central Bank to GenBank.

Finally, as to petitioner Genbank's lament about the Monetary Board acting, under the premises, in bad faith or committing grave abuse of discretion in approving the liquidation plan of the Lucio Tan Group, suffice it to restate what the CA wrote in this regard:

Indeed, that the Genbank, Now Allied Bank, was able to resume normal banking operations immediately on June 2, 1977, thereafter meeting all the demands for deposit withdrawals and paying off all CB emergency advances to Genbank (Exh. K, L, and P), is a strong indication that the Central Bank performed its duty to maintain public confidence in the banking system[.]⁷⁵¹ (Citations omitted)

It further held that the Court hesitates to interfere with the Central Bank's exercise of its mandate as administrator of the banking system absent any evidence of bad faith:

Absent, in sum, of compelling proof to becloud the *bona fides* of the decision of the Central Bank to close and order the liquidation of Genbank pursuant to Monetary Board Resolution Nos. 675 and 677, the Court, as the

⁷⁵⁰ *General Bank and Trust Co. v. Central Bank of the Philippines*, 524 Phil. 237, 252–253 (2006) [Per J. Garcia, Second Division]. The summary of comments and recommendation are enumerated as follows:
1. As of Feb[ruary] 28, 1977, the Bank's liquid assets amounted to P33.5 million only. On the other hand, total deposit and deposit substitutes which had to be paid amounted to P269.563 million. Total advances from the CB amounted to P300.961 million, of which P252.365 million (unsecured overdrawn) is payable on demand. Considering the poor quality of the Bank's loan portfolio, the bank cannot expect to generate enough funds out of these loans to meet payment of said obligations. In view hereof, the bank is insolvent within the meaning of Sec. 29, R.A. 265, as amended.
2. As of February 28, 1977, the Bank's capital accounts after adjustment for provision for bad debts and interest on OD and CB and penalties for reserve deficiencies amounted to P14.1 million only which amount would be eaten up completely within a period of less than five (5) months considering the average monthly operating loss of P2.868 million. In view of this, the Bank's continuance in business would involve losses to its depositors and creditors.

.....
In view of the foregoing, it is recommended that in accordance with the provisions of Sec. 29, R.A. 265, as amended, the General Bank and Trust Co. be forbidden to do business in the Philippines considering that it is insolvent and its continued operation would involve probable loss to its depositors and creditors and that a receiver be designated to take charge immediately of the Bank's assets and liabilities.

⁷⁵¹ *Id.* at 259.

CA before it, loathes to interfere with what basically is the exercise by the Central Bank of its mandate as administrator of the banking system.⁷⁵²

The GenBank liquidation case thus determined that Monetary Board Resolution Nos. 675 and 677 were valid and issued in good faith. It held that the Central Bank did not act with grave abuse of discretion or violate any existing procedural or substantive law when the Monetary Board issued the resolutions.

Given these findings, the Republic is barred from raising as an issue the validity of the Monetary Board Resolutions and the bad faith of the Monetary Board and the Central Bank in issuing them.

However, in this case, Joselito and Aderito were presented by the Republic as witnesses to testify on Paragraph 14, subparagraphs (a) (1) (2) (3), (b), and (c), which reads:

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

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

(1) In 1976, [GenBank] got into financial difficulties. The Central Bank then extended an emergency loan to [GenBank] reaching a total of ₱310 million. In extending this loan, the CB however, took control of [GenBank] when the latter executed an irrevocable proxy of 2/3 of [GenBank]'s outstanding shares in favor of the [Central Bank] and when 7 of the 11-member Board of Directors were [Central Bank] nominees. Subsequently, on March 25, 1977, the Monetary Board of [Central Bank] issued a Resolution declaring [GenBank] insolvent, forbidding it to do business and placing it under receivership.

(2) In the meantime, a public bidding for the sale of [GenBank] assets and liabilities was scheduled at 7:00 P.M. on Ma[r]ch 28, 1977. Among the conditions of the bidding were: (a) submission by the bidder of Letter of Credit issued by a bank acceptable to [Central Bank] to guaranty payment or as collateral of the [Central Bank] emergency loan; and (b) a 2-year period to repay the said CB emergency loan. On

⁷⁵² *Id.* at 259-260.

March 29, 1977, [Central Bank] thru a Monetary Board Resolution, approved the bid of the group of Lucio Tan and Willy Co. This bid, among other things, offered to pay only ₱500,000.00 for [GenBank] assets estimated at ₱688,201,301.45; Capital Accounts of ₱103,984,477.55; Cash of ₱25,698,473.00; and the takeover of the [GenBank] Head Office and branch offices. The required Letter of Credit was not also attached to the bid. What was attached to the bid was a letter of Defendant [Domingo] as PNB President promising to open an irrevocable letter of credit to secure the advances of the Central Bank in the amount of ₱310 Million. Without this letter of commitment, the Lucio Tan bid would not have been approved. But such letter of commitment was a fraud because it was not meant to be fulfilled. Defendants [Marcos], [Licaros] and [Domingo] conspired together in giving the Lucio Tan group undue favors such as doing away with the required irrevocable letter of credit, the extension of the term of payment from two years to five years, the approval of second mortgage as collateral for the Central Bank advances which was deficient by more than ₱90 Million, and many other concessions to the great prejudice of the government and of the [GenBank] stockholders.

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

(b) delivered to Defendant spouses Ferdinand and Imelda Marcos, sometime in July, 1977 or thereafter, substantial beneficial interests in shares of stock worth millions of pesos in the [Asia Brewery] through dummies, nominees or agents, with the active collaboration, knowledge and willing participation of Defendants Florencio T. Santos, as then President [Tan Eng Lian], as then Treasurer, and Domingo Chua Mariano Khoo, as then Directors of [Asia Brewery] in consideration of substantial concessions which their varied business ventures were unduly privileged to enjoy, such as but not limited, the grant of dollar allocation amounting to about U.S. \$6,934,500.00.

(c) gave improper payments such as gifts, bribes and commissions, and/or guaranteed "dividends" to said Defendant spouses in various sums, such as ₱10M in 1980, ₱10M in 1981, ₱20M in 1982, ₱40 1983, ₱40M in 1984, ₱50M in 1985, ₱50M in 1986, in consideration of Defendant Spouses' continued support of Defendant Lucio tan's diversified business ventures and/or Defendant Spouses' ownership or interest in said diversified business ventures, such as [Allied Bank], and its subsidiaries here and abroad, including [the respondent corporations and the foreign corporations]. Even earlier, Tan gave the amounts of ₱11 million in 1975, about ₱2 million in 1977, and ₱44 million in 1979, among other amounts.⁷⁵³

Considering these allegations in the Second Amended Complaint, not all elements of *res judicata* are present in this case.

⁷⁵³ Rollo (G.R. No. 203592), pp. 4092-4095.

Certainly, the GenBank liquidation case precludes delving into the validity of the Monetary Board Resolutions. Thus, Joselito's testimony, which puts into issue the validity of the insolvency and liquidation of GenBank, is barred by *res judicata*.

However, there is no identity of issues in these two cases. In this case, the testimonies of Joselito and Aderito were also presented to prove the conspiracy among Marcos, Sr., Licaros, and Domingo to give Tan undue favors at the expense of the government and GenBank shareholders. These allegations thus raise new issues that were not tackled in the GenBank liquidation case. Furthermore, the present complaint does not seek to invalidate the Monetary Board Resolutions, but simply to show that it is part of the undue favors granted by Marcos, Sr. to Tan.

There is likewise no identity of parties. This ill-gotten wealth case involves other parties who were not involved in the GenBank liquidation case. In the GenBank liquidation case, GenBank was the petitioner, and the Central Bank and Arnulfo B. Aurellano, in his capacity as liquidator of GenBank, were the respondents. Marcos, Sr. and Imelda were not parties to the GenBank liquidation case. On the other hand, this ill-gotten wealth case involves Marcos, Sr., Imelda, Tan, Willy Co, Allied Bank, Central Bank Governor Licaros, PNB President Domingo, GenBank, Central Bank Monetary Board Member Florencio T. Santos, Asia Brewery, Tan Eng Lian, Domingo Chua, and Mariano Khoo.

The *ponencia* found that the relevant parties in this case are privies and/or successors-in-interest of the parties in the GenBank liquidation case.⁷⁵⁴ While this may be correct as to Tan, Willy Co, Allied Bank, and any member of the Central Bank, the same cannot be said with regard to the Marcoses.

In Republic v. Grijaldo.⁷⁵⁵

In defining the word "privy" this Court, in a case, said:

"The word 'privy' denotes the idea of succession . . . hence, an assignee of a credit, and one subrogated to it, etc. will be privies; in short, he who, by succession is placed in the position of one of those who contracted the juridical relation and executed the private document and appears to be substituting him in his personal rights and obligation is a privy"

The Marcoses' connection or privity to Tan is being established in this case. It is what the Republic itself is trying to prove with the testimony of

⁷⁵⁴ *Ponencia*, p. 36.

⁷⁵⁵ *Republic v. Grijaldo*, 122 Phil. 1060, 1065 (1965) [Per J. Zaldivar, *En Banc*].

Joselito and Aderito—that the Marcoses gave undue favors and concessions to Tan resulting in the accumulation of ill-gotten wealth. This matter was not established in the GenBank liquidation case. Thus, the two cases cannot be said to have involved the same parties or the same issues.

Considering that not all elements of *res judicata* are present, the Sandiganbayan erred in disallowing the testimony of Joselito and Aderito. Their testimonies should have been heard to prove the Republic's other claims of conspiracy among Marcos, Sr., Licaros, and Domingo, especially as to the undue favors and concessions granted to Tan. Since, Marcos, Sr., Imelda, and Domingo were not impleaded as parties in the GenBank liquidation case, and the issue in this case pertains to their undue favors to Tan, it involves different matters and different parties, which do not render the doctrine of *res judicata* applicable.

II(A)

Nonetheless, I agree that the Republic failed to prove malice and bad faith on the part of the Sandiganbayan for the members to inhibit in the case.⁷⁵⁶

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

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

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

In the then applicable Revised Internal Rules of the Sandiganbayan,⁷⁵⁷ the same grounds for inhibition are provided:

SECTION 5. *Grounds for Inhibition of Division Members.* —

A Division member may inhibit himself from a case on the following grounds:

- (a) When he was the *Ponente* of the appealed decision of the lower court;
- (b) When he was counsel or member of a law firm which was counsel in a case before the Division; or he, his wife or

⁷⁵⁶ *Ponencia*, p. 39.

⁷⁵⁷ A.M. No. 02-6-07-SB, August 28, 2002.

child is pecuniarily interested in said case as heir, legatee, creditor or otherwise; or he is related to either party in the case within the sixth degree of consanguinity or affinity or to counsel within the fourth degree, computed according to the rules of the civil law; or he has been executor, administrator, guardian or trustee in the case.

A Division member may inhibit himself for any compelling reason other than those mentioned above.

Jurisprudence thus distinguished two types of inhibition: mandatory and voluntary.⁷⁵⁸ In mandatory inhibition, justices and judges are unquestionably disqualified from hearing cases should any of the following grounds be present: (1) the case is one in which the judge, or his or her spouse or child is pecuniarily interested as an heir, legatee, creditor or otherwise, (2) the judge is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, (3) it is a case in which the judge has been executor, administrator, guardian, trustee or counsel, or (4) it is a case in which the judge has presided in any inferior court when his or her ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.⁷⁵⁹

Voluntary inhibition on the other hand, involves the judge or justice's exercise of discretion, in consideration of a just or valid reason, and keeping in mind justice, fairness, and the duty to keep the people's faith in the courts. In *Barnes v. Reyes*:⁷⁶⁰

The first paragraph of the section relates to the mandatory inhibition of judges; the second, to their voluntary inhibition.

The discretion referred to in the second paragraph is a matter of conscience and is addressed primarily to the judges' sense of fairness and justice. Indeed, as this Court has held in *Pimentel v. Salanga*, judges may not be legally prohibited from sitting in a litigation. However, when suggestion is made of record that they might be induced to act with bias or prejudice against a litigant arising out of circumstances reasonably capable of inciting such a state of mind, they should conduct a careful self-examination. Magistrates should exercise their discretion in a way that the people's faith in the courts of justice is not impaired. They should, therefore, exercise great care and caution before making up their minds to act or withdraw from a suit. If, after reflection, they resolve to voluntarily desist from sitting in a case in which their motives or fairness might be seriously impugned, their action is to be interpreted as giving meaning and substance to the second paragraph of Section 1, Rule 137 of the Rules of Court.⁷⁶¹

⁷⁵⁸ *Barnes v. Reyes*, 614 Phil. 299, 303 (2009) [Per J. Nachura, Third Division].

⁷⁵⁹ *Id.*

⁷⁶⁰ 614 Phil. 299 (2009) [Per J. Nachura, Third Division].

⁷⁶¹ *Id.* at 303-304.

This Court has held that an allegation of bias or partiality is not a just and valid reason for a judge or justice to inhibit. The movant must indicate the judge or justice's arbitrary and prejudicial acts or conduct, and must present clear, convincing, and extrinsic evidence to establish bad faith and malice.

Nonetheless, while the rule allows judges, in the exercise of sound discretion, to voluntarily inhibit themselves from hearing a case, it provides that the inhibition must be based on just or valid reasons. In prior cases interpreting this rule, the most recent of which is *Philippine Commercial International Bank v. Spouses Wilson Dy Hong Pi, etc., et al.*, the Court noted that the mere imputation of bias or partiality is not enough ground for inhibition, especially when the charge is without basis. Acts or conduct clearly indicative of arbitrariness or prejudice has to be shown. Extrinsic evidence must further be presented to establish bias, bad faith, malice, or corrupt purpose, in addition to palpable error which may be inferred from the decision or order itself. Stated differently, the bare allegations of the judge's partiality will not suffice in the absence of clear and convincing evidence to overcome the presumption that the judge will undertake his noble role of dispensing justice in accordance with law and evidence, and without fear or favor. Verily, for bias and prejudice to be considered valid reasons for the involuntary inhibition of judges, mere suspicion is not enough. Let it be further noted that the option given to a judge to choose whether or not to handle a particular case should be counterbalanced by the judge's sworn duty to administer justice without fear of repression.⁷⁶² (Citations omitted)

In this case, the Republic indicated the acts that it deemed prejudicial to it. However, it failed to prove the malice, bad faith, and ill motive on the part of the members of the Sandiganbayan. It was unable to overturn the presumption that the Sandiganbayan justices were dispensing with justice in accordance with law and evidence. Given this presumption, the acts of the Sandiganbayan justices simply showed that they wanted to expedite the disposition of the case considering it has been pending for several years.

Nonetheless, I opine that the Sandiganbayan should have granted the Republic more leeway in the presentation of its evidence considering the nature of the case, the voluminous documents involved, and the assets, properties, and amounts in question.

In *Republic v. Sandiganbayan (Second Division)*,⁷⁶³ this Court found the Sandiganbayan to have gravely abused its discretion when it disallowed the reopening of the case for the Republic to present additional evidence. It noted that the Sandiganbayan should have taken into consideration the voluminous documents and papers involved in ill-gotten wealth cases, and its act of disallowance deprived the Republic of its chance to fully prove its case and recover what could be "illegally-gotten" wealth, thus causing serious

⁷⁶² *Id.* at 304–305.

⁷⁶³ 643 Phil. 283 (2010) [Per J. Villarama, Jr., Third Division].

miscarriage of justice:

Considering that petitioner, in requesting to reopen the presentation of additional evidence after it has rested its case, sought to present documentary exhibits consisting of certified copies which had earlier been denied admission for being photocopies, additional documents previously mentioned in its pre-trial brief and new additional evidence material in establishing the main issue of ill-gotten wealth allegedly amassed by the private respondents, singly or collectively, public respondent should have, in the exercise of sound discretion, properly *allowed such presentation of additional evidence*. Bearing in mind that even if the originals of the documentary exhibits offered as additional evidence have been in the custody of the PCGG since the filing of the complaint or at least at the time of the preparation of its original pre-trial brief in September 1990, public respondent should have duly considered the explanation given by PCGG Commissioner Ruben C. Carranza and PCGG Librarian Ma. Lourdes O. Magno in their respective affidavits attached to the motion, as to the belated discovery of the original documentary evidence which had long been in the possession of PCGG. *Given the voluminous documents and papers involved in ill-gotten wealth cases, it was indeed unavoidable that in the course of trial certain documentary exhibits were omitted or unavailable by inadvertence, as what had happened in this case where the subject original documentary evidence were found misfiled in a different case folder.*

....

However, perusal of the records plainly reveals that petitioner was not responsible for the delay in the prosecution of this case. The protracted litigation was due to the numerous pleadings, postponements and various motions filed by respondents Marcoses. Clearly, public respondent's rigid application of the rule on order of trial was arbitrary, improper and in utter disregard of the demands of substantial justice.

Executive Order No. 14, series of 1986, issued by former President Corazon C. Aquino, provided that technical rules of procedure and evidence shall not be strictly applied to cases involving ill-gotten wealth. *Apropos* is our pronouncement in *Republic v. Sandiganbayan (Third Division)*:

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



....

It was incumbent upon the public respondent to adopt a liberal stance in the matter of procedural technicalities. More so in the instant case where the showing of a *prima facie* case of ill-gotten wealth was sustained by this Court in *Silverio v. Presidential Commission on Good Government* in No. L-77645 under the Resolution dated October 26, 1987. Petitioner should be given the opportunity to fully present its evidence and prove that the various business interests of respondent Silverio “have enjoyed considerable privileges obtained from [respondent] former President Marcos during [the latter’s] tenure as Chief Executive in violation of existing laws; privileges which could not have been so obtained were it not for the close association of [Silverio] with the former President.”⁷⁶⁴ (Emphasis supplied, citations omitted)

Thus, the Sandiganbayan should have been more liberal in the application of procedural rules and should have granted the Republic the opportunities to fully present its evidence.

III

I agree that Philip Morris Fortune Tobacco Corp. need not be impleaded. It is not an indispensable party.⁷⁶⁵

An indispensable party is one who must be joined in an action, otherwise, the case cannot be determined with finality. Rule 3, Sections 2 and 7 of the Rules of Court states:

SECTION 2. *Parties in Interest.* — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

....

SECTION 7. *Compulsory Joinder of Indispensable Parties.* — Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.

In *Florete, Jr. v. Florete*,⁷⁶⁶ this Court discussed that the failure to join an indispensable party renders any judgment null and void for want of jurisdiction:

There are two consequences of a finding on appeal that indispensable parties

⁷⁶⁴ *Republic v. Sandiganbayan (Second Division)*, 643 Phil. 283, 300–302 (2010) [Per J. Villarama, Jr., Third Division].

⁷⁶⁵ *Ponencia*, p. 40.

⁷⁶⁶ 778 Phil. 614 (2016) [Per J. Leonen, Second Division].

have not been joined. First, all subsequent actions of the lower courts are null and void for lack of jurisdiction. Second, the case should be remanded to the trial court for the inclusion of indispensable parties. It is only upon the plaintiff's refusal to comply with an order to join indispensable parties that the case may be dismissed.

All subsequent actions of lower courts are void as to both the absent and present parties. To reiterate, the inclusion of an indispensable party is a *jurisdictional* requirement:

While the failure to implead an indispensable party is not *per se* a ground for the dismissal of an action, considering that said party may still be added by order of the court, on motion of the party or on its own initiative at any stage of the action and/or such times as are just, it remains essential — *as it is jurisdictional* — that any indispensable party be impleaded in the proceedings *before the court renders judgment*. This is because the absence of such indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.

....

In *Metropolitan Bank and Trust Co. v. Alejo* and *Arcelona v. Court of Appeals*, this court clarified that the courts must first acquire *jurisdiction over the person* of an indispensable party. Any decision rendered by a court without first obtaining the required jurisdiction over indispensable parties is null and void for want of jurisdiction: "the presence of indispensable parties is necessary to vest the court with jurisdiction, which is 'the authority to hear and determine a cause, the right to act in a case.'"

In *Divinagracia v. Parilla*, *Macawadib v. Philippine National Police Directorate for Personnel and Records Management*, *People v. Go*, and *Valdez-Tallorin v. Heirs of Tarona*, among others, this court annulled judgments rendered by lower courts in the absence of indispensable parties.⁷⁶⁷

The Rules of Court allows the plaintiff to join defendants in the alternative if it is uncertain for whom it is entitled to relief:

SECTION 13. *Alternative Defendants*. — Where the plaintiff is uncertain against who of several persons he is entitled to relief, he may join any or all of them as defendants in the alternative, although a right to relief against one may be inconsistent with a right of relief against the other. (13a)

In ill-gotten wealth cases, this Court has ruled that it is not necessary to implead as defendants the corporations which have served as tools or instruments for acquisition or were the depositaries or fruits of ill-gotten wealth. In *Republic v. Sandiganbayan First Division*,⁷⁶⁸

⁷⁶⁷ *Florete, Jr. v. Florete*, 778 Phil. 614, 653–654 (2016) [Per J. Leonen, Second Division].

⁷⁶⁸ 310 Phil. 402 (1995) [Per C.J. Narvasa, *En Banc*].

It is postulated, however, that the judicial actions instituted by the PCGG in relation to or in connection with its orders of sequestration or seizure against corporations or shares of stock held by supposed dummies, suffered from a grave procedural defect. The sequestered corporations—which, in the above mentioned view of the PCGG had served as tools or instruments for acquisition of ill-gotten wealth, or were the depositaries or fruits thereof—or the natural persons ostensibly owning stock as “dummies,” had not been impleaded as defendants in the various complaints.

....

As regards actions in which the complaints seek recovery of defendants' shares of stock in existing corporations (e.g., San Miguel Corporation, Benguet Corporation, Meralco, etc.) because allegedly purchased with misappropriated public funds, in breach of fiduciary duty, or otherwise under illicit or anomalous conditions, *the impleading of said firms would clearly appear to be unnecessary. If warranted by the evidence, judgments may be handed down against the corresponding defendants divesting them of ownership of their stock, the acquisition thereof being illegal and consequently burdened with a constructive trust, and imposing on them the obligation of surrendering them to the Government.*

Quite the same thing may be said of illegally obtained funds deposited in banks. The impleading of the banks would also appear unnecessary. Indeed, there would exist no cause of action against them. Judgment may properly be rendered on the basis of competent evidence, that said funds are ill-gotten wealth over which the defendants have no right, and should consequently be surrendered to their rightful owner, the Government. The judgment would constitute sufficient warrant for the bank to make the corresponding transfer of the funds.

....

And as to corporations organized with ill-gotten wealth, but are not themselves guilty of misappropriation, fraud or other illicit conduct — in other words, the companies themselves are the object or thing involved in the action, the *res* thereof — there is no need to implead them either. Indeed, their impleading is not proper on the strength alone of their having been formed with ill-gotten funds, absent any other particular wrongdoing on their part. The judgment may simply be directed against the shares of stock shown to have been issued in consideration of ill-gotten wealth.⁷⁶⁹

The rationale for this rule is that corporations who received or were formed with ill-gotten wealth are not the same as the persons who formed or used them to acquire or conceal ill-gotten wealth. It was acknowledged that these corporations are not the parties who committed the unlawful act which the Republic bases its cause of action on:

Such showing of having been formed with, or having received ill-gotten funds, however strong or convincing, does not, without more, warrant identifying the corporations in question with the persons who

⁷⁶⁹ *Republic v. Sandiganbayan First Division*, 310 Phil. 402, 509–510 (1995) [Per C.J. Narvasa, *En Banc*].

formed or made use of them to give the color or appearance of lawful, innocent acquisition to illegally amassed wealth — at the least, not so as place on the Government the *onus* of impleading the former together with the latter in actions to recover such wealth. Distinguished, in terms of juridical personality and legal culpability from their erring members or stockholders, said corporations are not themselves guilty of the sins of the latter, of the embezzlement, asportation, etc., that gave rise to the Government's cause of action for recovery; their creation or organization was merely the result of their members' (or stockholders') manipulations and maneuvers to conceal the illegal origins of the assets or monies invested therein. In this light, *they are simply the res in the actions for the recovery of illegally acquired wealth*, and there is, in principle, no cause of action against them and no ground to implead them as defendants in said actions.

The Government is, thus, not to be faulted for not making such corporations defendants in the actions referred to. It is even conceivable that had this been attempted, motions to dismiss would have lain to frustrate such attempts.⁷⁷⁰

Even if there is an allegation that the corporation cooperated in any illicit or fraudulent act, the defect is not fatal. Rule 3, Section 11 of the Rules of Court states:

SECTION 11. *Misjoinder and Non-joinder of Parties.* — Neither misjoinder nor non-joinder of parties is ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately.

In *Republic v. Sandiganbayan First Division*, it was explained that the failure to implead these parties is a mere technical defect that may be addressed at any stage of the proceedings, even after judgment:

Even in those cases where it might reasonably be argued that the failure of the Government to implead the sequestered corporations as defendants *is* indeed a procedural aberration, as where said firms were allegedly used, and actively cooperated with the defendants, as instruments or conduits for conversion of public funds or property or illicit or fraudulent obtention of favored Government contracts, etc., slight reflection would nevertheless lead to the conclusion that the defect is not fatal, but one correctible under applicable adjective rules—e.g., Section 10, Rule 5 of the Rules of Court [specifying the remedy of amendment during trial to authorize or to conform to the evidence]; Section 1, Rule 20 [governing amendments before trial], in relation to the rule respecting the omission of so-called necessary or indispensable parties, set out in Section 11, Rule 3 of the Rules of Court. It is relevant in this context to advert to the old, familiar doctrines that the omission to implead such parties “is a mere technical defect which can be cured at any stage of the proceedings even after judgment”; and that, particularly in the case of indispensable parties, since their presence and participation is essential to the very life of the action, for

⁷⁷⁰ *Id.* at 510–511.

without them no judgment may be rendered, amendments of the complaint in order to implead them should be freely allowed, even on appeal, in fact even after rendition of judgment by this Court, where it appears that the complaint otherwise indicates their identity and character as such indispensable parties.

....

Furthermore, if actions are not to be dismissed for lack of an indispensable party, where the latter may be subsequently joined by amendment of the pleadings, no reason appears why provisional remedies in those actions, such as sequestrations, should be affected by the initial non-inclusion of an indispensable party, the obvious remedy being to allow amendment of the complaint to effect the impleading.⁷⁷¹

In this case, Philip Morris Fortune Tobacco Corp. is being impleaded because the Republic argues that Philip Morris Fortune Tobacco Corp. was fraudulently formed and organized to remove the substantial capital and assets of Fortune Tobacco and Northern Tobacco, take the rest out of litigation, and place it beyond this Court's authority and jurisdiction.⁷⁷² The Republic claims that this was committed with Philip Morris Fortune Tobacco Corp., its directors and officers acting in concert fraudulently and illicitly. Thus, the parties it is seeking to implead are not simply corporations organized with ill-gotten wealth.⁷⁷³

The Republic further argues that it has a cause of action against Philip Morris Fortune Tobacco Corp. because the transfer of capital assets of Fortune Tobacco and Northern Tobacco pending litigation is prohibited under Executive Order No. 2.⁷⁷⁴ However, Philip Morris Fortune Tobacco Corp. is not an indispensable party. This action for the recovery of ill-gotten wealth may be determined with finality without impleading Philip Morris Fortune Tobacco Corp., and without injuring or affecting its interests. None of the causes of action reveal that Philip Morris Fortune Tobacco Corp. participated with Tan and Marcos, Sr. to accumulate ill-gotten wealth. Philip Morris Fortune Tobacco Corp. was only incorporated some time in 2010. Thus, it could not have participated in the alleged schemes of Marcos, Sr. with Tan during the former's administration. Philip Morris Fortune Tobacco Corp. is only being impleaded because it now allegedly transferred to itself assets and properties that are subject of this case.

However, an action may still be pursued against the original party even if its interests have been transferred to another. Rule 3, Section 19 of the Rules of Court provides:

SECTION 19. *Transfer of Interest.* — In case of any transfer of interest,

⁷⁷¹ *Id.* at 511–514.

⁷⁷² *Rollo* (G.R. No. 203592), pp. 4159–4160, 4166, 4168, 4171–4174, 4186–4188.

⁷⁷³ *Id.* at 4185–4186.

⁷⁷⁴ *Id.* at 4161, 4178.

the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. (20)

As discussed in *Republic v. Sandiganbayan First Division*, corporations created under illicit or anomalous conditions with ill-gotten wealth are burdened with a constructive trust. Judgment may be handed against these corporations, divesting them of ownership of their stock, if the Republic successfully proves its right to recover the assets, properties, or shares of stock.

Moreover, the allegations against Philip Morris Fortune Tobacco Corp. are premised on a separate cause of action, which is the violation of Executive Order No. 2,⁷⁷⁵ which states:

NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, hereby;

(1) Freeze all assets and properties in the Philippines in which former President Marcos and/or his wife, Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents, or nominees have any interest or participation.

(2) Prohibit any person from transferring, conveying, encumbering or otherwise depleting or concealing such assets and properties or from assisting or taking part in their transfer, encumbrance, concealment, or dissipation under pain of such penalties as are prescribed by law.

(3) Require all persons in the Philippines holding such assets or properties, whether located in the Philippines or abroad, in their names as nominees, agents or trustees, to make full disclosure of the same to the Commission on Good Government within (30) days from publication of this Executive Order, or the substance thereof, in at least two (2) newspapers of general circulation in the Philippines.

(4) Prohibit former President Ferdinand Marcos and/or his wife, Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents, or nominees from transferring, conveying, encumbering, concealing or dissipating said assets or properties in the Philippines and abroad, pending the outcome of appropriate proceedings in the Philippines to determine whether any such assets or properties were acquired by them through or as a result of improper or illegal use of or the conversion of funds belonging to the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their official position, authority, relationship, connection or influence to unjustly enrich themselves at the expense and to the grave damage and prejudice of the Filipino people and the Republic of the Philippines[.] (Emphasis supplied)

⁷⁷⁵ Executive Order No. 2 (1986), Funds, Moneys, Assets, and Properties Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, Their Close Relatives, Subordinates Business Associates, Dummies, Agents, or Nominees.

Philip Morris Fortune Tobacco Corp., its directors, and officers are thus not being impleaded for acquiring ill-gotten wealth, but for transferring or conveying assets and properties alleged to be ill-gotten wealth. Their interests are thus separable from the interests of other parties. While impleading Philip Morris Fortune Tobacco Corp. will avoid multiple litigation, the Republic may pursue its claims against Philip Morris Fortune Tobacco Corp. in a separate case.

The same principle applies to the transfer of assets, shares, and properties of Allied Bank.

IV

I find that the Sandiganbayan unduly restricted the concept of ill-gotten wealth.

The concept of ill-gotten wealth amassed by the Marcoses is a class of its own. Unlike other cases involving public officers acquiring ill-gotten wealth, it is already of judicial notice that the Marcoses accumulated unconscionable amounts of wealth at the expense of the Filipino people through numerous schemes and ploys.⁷⁷⁶ This has become part of our political history such that no evidence need to be introduced to prove this.⁷⁷⁷ Section 1 of Rule 128 of the Rules of Court provides:

SECTION 1. *Judicial notice, when mandatory.* — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, *their political history*, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, *the political constitution and history of the Philippines*, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

These established facts were acknowledged in Executive Order Nos. 1 and 2.

Executive Order No. 1⁷⁷⁸ created and tasked the Presidential Commission on Good Government to recover all ill-gotten wealth accumulated by Marcos, Sr., his immediate family, relatives, subordinates, and close associates. The Presidential Commission on Good Government was also empowered to take over or sequester all business enterprises and entities owned or controlled by the Marcoses through taking undue advantage of

⁷⁷⁶ See also *Philippine Coconut Producers Federation, Inc. v. Republic*, 679 Phil. 508, 581 (2012) [Per J. Velasco, Jr., *En Banc*].

⁷⁷⁷ *Id.*

⁷⁷⁸ Creating the Presidential Commission on Good Government, February 28, 1986.

public office and/or using their powers, authority, influence, connections, or relationship during the Marcos administration. Sections 1 and 2 of Executive Order No. 1 states:

SECTION 1. There is hereby created a Commission, to be known as the Presidential Commission on Good Government, composed of Minister Jovito R. Salonga, as Chairman, Mr. Ramon Diaz, Mr. Pedro L. Yap, Mr. Raul Daza and Ms. Mary Concepcion Bautista as Commissioners.

SECTION 2. The Commission shall be charged with the task of assisting the President in regard to the following matters:

(a) *The recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship.*

(b) The investigation of such cases of graft and corruption as the President may assign to the Commission from time to time.

(c) The adoption of safeguards to ensure that the above practices shall not be repeated in any manner under the new government, and the institution of adequate measures to prevent the occurrence of corruption. (Emphasis supplied)

In Executive Order No. 1, the wealth recognized as that amassed by the Marcoses came from the vast resources of the Government. The whereas clauses of Executive Order No. 1 read:

WHEREAS, vast resources of the government have been amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad;

WHEREAS, there is an urgent need to recover all ill-gotten wealth;

Shortly thereafter, Executive Order No. 2⁷⁷⁹ was issued to prevent the disposition, concealment, or dissipation of the assets and properties which the Presidential Commission on Good Government was tasked to recover.⁷⁸⁰

⁷⁷⁹ Funds, etc. Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, et al., March 12, 1986.

⁷⁸⁰ NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, hereby:
(1) Freeze all assets and properties in the Philippines in which former President Marcos and/or his wife, Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents, or nominees have any interest or participation.
(2) Prohibit any person from transferring, conveying, encumbering or otherwise depleting or concealing such assets and properties or from assisting or taking part in their transfer, encumbrance, concealment, or dissipation under pain of such penalties as are prescribed by law.
(3) Require all persons in the Philippines holding such assets or properties, whether located in the Philippines or abroad, in their names as nominees, agents or trustees, to make full disclosure of the same

Executive Order No. 2, however, expanded the nature of properties acknowledged to have been illegally amassed by the Marcoses. The assets include those “acquired by through or as a result of the improper or illegal use of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or *by taking undue advantage of their office, authority, influence, connections or relationship*, resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines.” The whereas clauses of Executive Order No. 2 read:

WHEREAS, the Government of the Philippines is in possession of evidence showing that there are assets and properties purportedly pertaining to former President Ferdinand E. Marcos, and/or his wife, Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents or nominees which had been or were *acquired by them directly or indirectly, through or as a result of the improper or illegal use of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their office, authority, influence, connections or relationship, resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines;*

WHEREAS, said assets and properties are in the form of *bank accounts, deposits, trust accounts, shares of stocks, buildings, shopping centers, condominium, mansions, residences, estates, and other kinds of real and personal properties in the Philippines and in various countries of the world;*

WHEREAS, a Presidential Commission on Good Government has been established primarily charged with the responsibility of recovering the aforesaid assets and properties for the Philippine Government;

WHEREAS, any transfer, disposition, concealment or dissipation of said assets and properties would frustrate, obstruct or hamper the efforts of the Government of the Philippines to recover such assets and properties;

WHEREAS, the Presidential Commission on Good Government is further

to the Commission on Good Government within (30) days from publication of this Executive Order, or the substance thereof, in at least two (2) newspapers of general circulation in the Philippines.

(4) Prohibit former President Ferdinand Marcos and/or his wife, Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents, or nominees from transferring, conveying, encumbering, concealing or dissipating said assets or properties in the Philippines and abroad, pending the outcome of appropriate proceedings in the Philippines to determine whether any such assets or properties were acquired by them through or as a result of improper or illegal use of or the conversion of funds belonging to the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their official position, authority, relationship, connection or influence to unjustly enrich themselves at the expense and to the grave damage and prejudice of the Filipino people and the Republic of the Philippines.

The Commission on Good Government is hereby authorized to request and appeal to foreign governments wherein any such assets or properties may be found to freeze them and otherwise prevent their transfer, conveyance, encumbrance, concealment or liquidation by former President Ferdinand E. Marcos and Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents, or nominees, pending the outcome of appropriate proceedings in the Philippines to determine whether such assets or properties were acquired by such persons through improper or illegal use of funds belonging to the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks, or financial institutions or by taking undue advantage of their office, authority, influence, connections or relationship.

charged with the duty of investigating any claims with respect to these assets and properties;

WHEREAS, in accordance with the requirements of justice and due process, it is the position of the new democratic government that former President Marcos and his wife, Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents or nominees be afforded fair opportunity to contest these claims before appropriate Philippine authorities; . . . (Emphasis supplied)

On April 11, 1986, the Presidential Commission on Good Government Rules and Regulations⁷⁸¹ were enacted, providing a formal definition of "ill-gotten wealth." Section 1 reads:

SECTION 1. *Definition.* — (A) "Ill-gotten wealth" is hereby defined as any asset, property, business enterprise or material possession of persons within the purview of Executive Orders Nos. 1 and 2, acquired by them directly, or indirectly thru dummies, nominees, agents, subordinates and/or business associates *by any of the following means* or similar schemes:

(1) Through misappropriation, conversion, misuse or malversation of public funds or raids on the public treasury;

(2) Through the receipt, directly or indirectly, of any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the official concerned;

(3) By the illegal or fraudulent conveyance or disposition of assets belonging to the government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations;

(4) *By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation in any business enterprise or undertaking;*

(5) Through the establishment of agricultural, industrial or commercial monopolies or other combination and/or by the issuance, promulgation and/or implementation of decrees and orders intended to benefit particular persons or special interests; and

(6) *By taking undue advantage of official position, authority, relationship or influence for personal gain or benefit.* (Emphasis supplied)

Later, the constitutionality of Executive Orders Nos. 1 and 2 were challenged in *Bataan Shipyard and Engineering Co., Inc. v. Presidential Commission on Good Government (Bataan Shipyard)*.⁷⁸² In that case, this Court determined that Bataan Shipyard and Engineering Co., Inc.'s (BASECO) shares of stock constituted ill-gotten wealth. It held that there was *prima facie* showing that Marcos, Sr. owned the shares through nominee

⁷⁸¹ Presidential Commission on Good Government Rules and Regulations, April 11, 1986.

⁷⁸² 234 Phil. 180 (1987) [Per J. Narvasa, *En Banc*].

directors and stockholders who executed and delivered to him deeds of assignment signed in blank. This Court held that he acquired the shares by taking undue advantage of his public office and/or using his powers, authority, or influence, and used the same means to take over businesses and assets of government-owned or controlled entities. In upholding the Executive Orders, this Court discussed the governing principles on, and the scope and extent of, ill-gotten wealth:

The impugned executive orders are avowedly meant to carry out the explicit command of the Provisional Constitution, ordained by Proclamation No. 3, that the President — in the exercise of legislative power which she was authorized to continue to wield “(u)ntil a legislature is elected and convened under a new Constitution” — “shall give priority to measures to achieve the mandate of the people,” among others to *(r)ecover ill-gotten properties amassed by the leaders and supporters of the previous regime and protect the interest of the people through orders of sequestration or freezing of assets or accounts.*”

b. Executive Order No. 1

Executive Order No. 1 stresses the “urgent need to recover all ill-gotten wealth,” and postulates that “vast resources of the government have been amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad.” Upon these premises, the Presidential Commission on Good Government was created, “charged with the task of assisting the President in regard to . . . (certain specified) matters,” among which was precisely —

“ . . . The recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship.”

...

c. Executive Order No. 2

Executive Order No. 2 gives additional and more specific data and directions respecting “the recovery of ill-gotten properties amassed by the leaders and supporters of the previous regime.” It declares that:

1) “ . . . *the Government of the Philippines is in possession of evidence showing that there are assets and properties purportedly pertaining to former Ferdinand E. Marcos, and/or his wife Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents or nominees which had been or were acquired by them directly or indirectly, through or as a result of the improper or illegal use of funds or properties owned by the government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their office, authority, influence, connections*

or relationship, resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines;" and

2) ". . . said assets and properties are in the form of bank accounts, deposits, trust accounts, shares of stocks, buildings, shopping centers, condominiums, mansions, residences, estates, and other kinds of real and personal properties in the Philippines and in various countries of the world."

Upon these premises, the President —

1) *froze* "all assets and properties in the Philippines in which former President Marcos and/or his wife, Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents, or nominees have any interest or participation;"

2) *prohibited* former President Ferdinand Marcos and/or his wife . . . , their close relatives, subordinates, business associates, dummies, agents, or nominees from *transferring, conveying, encumbering, concealing or dissipating* said assets or properties in the Philippines and abroad, pending the outcome of appropriate proceedings in the Philippines to determine whether any such assets or properties were acquired by them through or as a result of improper or illegal use of or the conversion of funds belonging to the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their official position, authority, relationship, connection or influence to unjustly enrich themselves at the expense and to the grave damage and prejudice of the Filipino people and the Republic of the Philippines;"

3) *prohibited* "any person from *transferring, conveying, encumbering or otherwise depleting or concealing* such assets and properties or from assisting or taking part in their transfer, encumbrance, concealment or dissipation under pain of such penalties as are prescribed by law;" and

4) *required* "all persons in the Philippines holding such assets or properties, whether located in the Philippines or abroad, in their names as nominees, agents or trustees, to make *full disclosure* of the same to the Commission on Good Government within thirty (30) days from publication of * (the) Executive Order, . . ."

d. *Executive Order No. 14*

A third executive order is relevant: Executive Order No. 14, by which the PCGG is empowered, "with the assistance of the Office of the Solicitor General and other government agencies, . . . to *file and prosecute all cases investigated by it . . . as may be warranted by its findings.*" All such cases, whether civil or criminal, are to be filed "with the *Sandiganbayan*, which shall have exclusive and original jurisdiction thereof." Executive Order No. 14 also pertinently provides that "(c)ivil suits for restitution, reparation of damages, or indemnification for consequential damages, forfeiture proceedings provided for under Republic Act No. 1379, or any other civil actions under the Civil Code or other existing laws, in connection with . . . (said Executive Orders Numbered 1 and 2) may be filed

separately from and proceed independently of any criminal proceedings and may be proved by a preponderance of evidence;" and that, moreover, the "technical rules of procedure and evidence shall not be strictly applied to . . . (said) civil cases."

5. *Contemplated Situations*

The situations envisaged and sought to be governed are self-evident, these being:

1) that "(i)ll-gotten properties (were) amassed by the leaders and supporters of the previous regime";

a) more particularly, that "(i)ll-gotten wealth (was) accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, . . . located in the Philippines or abroad, . . . (and) business enterprises and entities (came to be) owned or controlled by them, during . . . (the Marcos) administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship;"

b) otherwise stated, that "there are assets and properties purportedly pertaining to former President Ferdinand E. Marcos, and/or his wife Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents or nominees which had been or were acquired by them directly or indirectly, through or as a result of the improper or illegal use of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their office, authority, influence, connections or relationship, resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines";

c) that "said assets and properties are in the form of bank accounts, deposits, trust accounts, shares of stocks, buildings, shopping centers, condominiums, mansions, residences, estates, and other kinds of real and personal properties in the Philippines and in various countries of the world;" and

2) that certain "business enterprises and properties (were) taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos."⁷⁸³

Based on the above-discussed provisions, ill-gotten wealth is defined as "assets acquired through or as a result of the improper or illegal use of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their office, authority, influence, connections or relationship, resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines."

⁷⁸³ *Id.* at 199-204.

Breaking down this definition, the following elements are apparent:

- (1) Assets and properties were acquired;
- (2) They were acquired by Marcos, Sr., Imelda, their close relatives, subordinates, business associates, dummies, agents, or nominees;
- (3) The manner of acquisition was either:
 - (a) through or as a result of the improper or illegal use of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, *or*
 - (b) by taking undue advantage of their office, authority, influence, connections, or relationship;
- (4) The acquisition (a) resulted in the Marcoses' unjust enrichment *and* (b) caused grave damage and prejudice to the Filipino people and the Republic of the Philippines.

Thus, the *subject* is the assets and properties. The *act* is the acquisition of these assets and properties. The *persons* who acquired may either be Marcos, Sr., Imelda, their close relatives, subordinates, business associates, dummies, agents, or nominees. The *manner* by which the assets and properties were acquired is either (1) through the improper or illegal use of government funds; *or* (2) through taking undue advantage of office or authority. The *result* is (1) the unjust enrichment of those who acquired the properties; and (2) grave damage and prejudice to the Filipino people and the Republic of the Philippines.

It is important to note that in the manner of acquiring the property, the disjunctive word "*or*" is used in between the phrases "through or as a result of the improper or illegal use of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions" and "by taking undue advantage of their office, authority, influence, connections, or relationship."

The rule is too well-settled to require any citation of authorities that the word "*or*" is a disjunctive term signifying dissociation and independence of one thing from each of the other things enumerated unless the context requires a different interpretation. While in, the interpretation of statutes, '*or*' may read '*and*' and vice versa, it is so only when the context so

requires.⁷⁸⁴

Thus, there are two ways by which ill-gotten wealth is acquired and one is not associated with the other. The acquisition “by or as a result of the improper or illegal use of government funds or properties” is independent from the acquisition “by taking undue advantage of office, authority, or relationship.”

In the second manner of acquiring ill-gotten wealth, it does not state that any Government property is involved. What is necessary is that Marcos, Sr., Imelda, their close relatives, subordinates, business associates, dummies, agents, or nominees acquired assets and properties by taking undue advantage of their office, authority, influence, connections, or relationship, and that this acquisition resulted in their unjust enrichment and caused grave damage and prejudice to the Filipino people and the Republic of the Philippines.

Thus, this Court has determined as ill-gotten wealth several assets and properties that did not originate from the Government.

In *Republic v. Estate of Hans Menzi*,⁷⁸⁵ this Court affirmed the Sandiganbayan’s finding that several shares held by Eduardo M. Cojuangco, Jr., Jose Yao Campos, and Cesar Zalamea in Bulletin Publishing Corporation were ill-gotten wealth. This Court found that they acted as dummies of the Marcos spouses in acquiring the shares and transferring them to Hans Menzi Holdings and Management, Inc. to prevent disclosure and recovery of the illegally obtained assets. Even if the Government did not previously own these shares, this Court relied on the definition of ill-gotten wealth under the Presidential Commission on Good Government Rules and Regulations to rule on the matter:

In contrast to Cojuangco's consistent, albeit unsupported, disclaimer, the Sandiganbayan found the Republic's evidence to be preponderant. These pieces of evidence consist of: the affidavit of Quimson detailing how Campos, Cojuangco and Zalamea became Marcos' nominees in Bulletin; the affidavit Teodoro relative to the circumstances surrounding the sale of Menzi's substantial shares in Bulletin to Marcos' nominees and Menzi's retention of only 20% of the corporation; the sworn statement of Gapud describing the business interests and associates of Marcos and stating that Bulletin checks were periodically issued to Campos, Cojuangco and Zalamea but were deposited after indorsement to Security Bank numbered accounts owned by the Marcoses dividend checks issued to Campos, Cojuangco and Zalamea even after their shares have been transferred to HMHMI; the Certificate of Incorporation, Articles of Incorporation and Amended Articles of Incorporation of HMHMI showing that Bulletin shares held by Campos, Cojuangco and Zalamea were used to set up HMHMI; Deed of Transfer and Conveyance showing that Campos,

⁷⁸⁴ *People v. Martin*, 148-A Phil. 294, 300 (1971) [Per J. Castro, *En Banc*].

⁷⁸⁵ 512 Phil. 425 (2005) [Per J. Tinga, *En Banc*].

Cojuangco, Zalamea and Menzi transferred several shares, including Bulletin shares, to HMHMI in exchange for shares of stock in the latter which shares were not issued; the Inventory of Menzi's assets as of May 15, 1985 which does not include Bulletin shares; notes written by Marcos regarding Menzi's resignation as aide-de-camp to devote his time to run Bulletin's operations and the reduction of his shares in the corporation to 12%; and letters and correspondence between Marcos and Menzi regarding the affairs of Bulletin.

These pieces of uncontradicted evidence suffice to establish that the 198 and 214 blocks are indeed ill-gotten wealth as defined under the Rules and Regulations of the PCGG, viz:

Sec. 1. *Definition.* — (A) "Ill-gotten wealth is hereby defined as any asset, property, business enterprise or material possession of persons within the purview of Executive Orders Nos. 1 and 2, acquired by them directly, or indirectly through dummies, nominees, agents, subordinates and/or business associates by any of the following means or similar schemes:

- (1) Through misappropriation, conversion, misuse or malversation of public funds or raids on the public treasury;
- (2) Through the receipt, directly or indirectly, of any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the official concerned;
- (3) By the illegal or fraudulent conveyance or disposition of assets belonging to the government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations;
- (4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation in any business enterprise or undertaking;
- (5) Through the establishment of agricultural, industrial or commercial monopolies or other combination and/or by the issuance, promulgation and/or implementation of decrees and orders intended to benefit particular persons or special interests; and
- (6) By taking undue advantage of official position, authority, relationship or influence for personal gain or benefit.

Cojuangco's disavowal of any proprietary interest in the Bulletin shares is conclusive upon him. His prayer that he be declared the owner of the said shares, together with all the cash and stock dividends which have accrued thereto since October 15, 1987, and that the PCGG be ordered to return the cash deposit of P8,174,470.32 to Bulletin, therefore, has no legal basis and should perforce be denied.⁷⁸⁶

Likewise, in *Yuchengco v. Sandiganbayan*,⁷⁸⁷ this Court ruled that a block of Philippine Telecommunications Investment Corporation shares registered in the name of Prime Holdings Incorporated was ill-gotten wealth. It found that Prime Holdings Incorporated was a dummy of the Marcoses, as it was completely organized by associates of Jose Yao Campos, who had categorically testified to having organized it for the benefit of Marcos, Sr.

⁷⁸⁶ *Id.* at 457-459.

⁷⁸⁷ 515 Phil. 1 (2006) [Per J. Carpio-Morales, *En Banc*].

On the basis of the evidence, therefore, President Marcos owned PHI and all the incorporators thereof acted under his direction. Once this is acknowledged, the following conclusions inevitably follow:

1. Cojuangco was elected President and took over the management of PHI in 1981 with the cooperation of the Marcos nominees who, it must be emphasized, still held the majority stockholding as of that date;

2. As the remaining incorporators on the Board divested their shares only in 1983, Cojuangco managed a Marcos-controlled corporation for at least two years;

3. The simultaneous divestment of shares by the three remaining incorporators on the Board to Cojuangco's close relatives in 1983 were with the knowledge and authorization of their principal — President Marcos.

Clearly, all these circumstances mark out Cojuangco either as a nominee of Marcos as was Gapud whom he replaced as President of PHI or, at the very least, a close associate of Marcos. As such, the PCGG which is charged, under E.O. No. 1 issued by President Aquino pursuant to her legislative powers under the Provisional Constitution, with assisting the President in regard to, *inter alia*,

The recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship.

can and must recover for the Republic the 111,415 PTIC shares being held by PHI, they bearing the character of ill-gotten wealth whether they be in the hands of Marcos or those of Cojuangco.⁷⁸⁸ (Emphasis in the original)

This Court is aware of its ruling in *Republic v. Sandiganbayan* (Cojuangco Case),⁷⁸⁹ which sought to recover San Miguel Corporation shares owned by Eduardo M. Cojuangco, Jr. (Cojuangco) for being ill-gotten wealth. The Republic alleged that Cojuangco illegally acquired the shares using coconut levy funds because it borrowed from the United Coconut Planters Bank (UCPB) and obtained advances from the Coconut Industry Investment Fund Oil Mills. This Court ruled that the Republic failed to establish by preponderance of evidence that the shares were illegally acquired because the Republic did not adduce evidence, and merely relied on claims that the UCPB and the Coconut Industry Investment Fund Oil Mills were public corporations. The Cojuangco Case discussed that ill-gotten wealth assumes a public character and thus must originate first from the Government. It states:

⁷⁸⁸ *Id.* at 45–46.

⁷⁸⁹ 663 Phil. 212 (2011) [Per J. Bersamin, *En Banc*].

The first official issuance of President Aquino, which was made on February 28, 1986, or just two days after the EDSA Revolution, was Executive Order (E.O.) No. 1, which created the Presidential Commission on Good Government (PCGG). Ostensibly, E.O. No. 1 was the first issuance in light of the EDSA Revolution having come about mainly to address the pillage of the nation's wealth by President Marcos, his family, and cronies.

E.O. No. 1 contained only two WHEREAS Clauses, to wit:

WHEREAS, **vast resources of the government** have been amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad;

WHEREAS, there is an urgent need to recover **all ill-gotten wealth**;

Paragraph (4) of E.O. No. 2 further required that the wealth, to be ill-gotten, must be "acquired by them through or as a result of improper or illegal use of or the conversion of funds belonging to the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their official position, authority, relationship, connection or influence to unjustly enrich themselves at the expense and to the grave damage and prejudice of the Filipino people and the Republic of the Philippines."

Although E.O. No. 1 and the other issuances dealing with ill-gotten wealth (*i.e.*, E.O. No. 2, E.O. No. 14, and E.O. No. 14-A) only identified the subject matter of ill-gotten wealth and the persons who could amass ill-gotten wealth and did not include an explicit definition of *ill-gotten wealth*, we can still discern the meaning and concept of *ill-gotten wealth* from the WHEREAS Clauses themselves of E.O. No. 1, in that *ill-gotten wealth* consisted of the "*vast resources of the government*" amassed by "former President Ferdinand E. Marcos, his immediate family, relatives and close associates both here and abroad." It is clear, therefore, that *ill-gotten wealth* would not include all the properties of President Marcos, his immediate family, relatives, and close associates but only the part that originated from the "vast resources of the government."

In time and unavoidably, the Supreme Court elaborated on the meaning and concept of *ill-gotten wealth*. In *Bataan Shipyard & Engineering Co., Inc. v. Presidential Commission on Good Government, or BASECO*, for the sake of brevity, the Court held that:

. . . until it can be determined, through appropriate judicial proceedings, **whether the property was in truth "ill-gotten,"** *i.e.*, acquired through or as a result of improper or illegal use of or the conversion of **funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions**, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State. And this, too, is the sense in which the term is commonly understood in other jurisdictions.



The *BASECO* definition of *ill-gotten wealth* was reiterated in *Presidential Commission on Good Government v. Lucio C. Tan*, where the Court said:

On this point, we find it relevant to define "ill-gotten wealth." In *Bataan Shipyard and Engineering Co., Inc.*, this Court described "ill-gotten wealth" as follows:

"Ill-gotten wealth is that acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State. And this, too, is the sense in which the term is commonly understood in other jurisdiction."

Concerning respondents' shares of stock here, there is no evidence presented by petitioner that they belong to the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions. Nor is there evidence that respondents, taking undue advantage of their connections or relationship with former President Marcos or his family, relatives and close associates, were able to acquire those shares of stock.

Incidentally, in its 1998 ruling in *Chavez v. Presidential Commission on Good Government*, the Court rendered an identical definition of *ill-gotten wealth*, viz.:

... We may also add that 'ill-gotten wealth', by its very nature, assumes a public character. Based on the aforementioned Executive Orders, 'ill-gotten wealth' refers to assets and properties purportedly acquired, directly or indirectly, by former President Marcos, his immediate family, relatives and close associates through **or as a result of their improper or illegal use of government funds or properties; or their having taken undue advantage of their public office; or their use of powers, influence or relationships**, "resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines." **Clearly, the assets and properties referred to supposedly originated from the government itself. To all intents and purposes, therefore, they belong to the people. As such, upon reconveyance they will be returned to the public treasury**, subject only to the satisfaction of positive claims of certain persons as may be adjudged by competent courts. Another declared overriding consideration for the expeditious recovery of ill-gotten wealth is that it may be used for national economic recovery.



All these judicial pronouncements demand two concurring elements to be present before assets or properties were considered as *ill-gotten wealth*, namely: (a) they must have “originated from the government itself,” and (b) they must have been taken by former President Marcos, his immediate family, relatives, and close associates *by illegal means*.⁷⁹⁰ (Emphasis in the original)

However, this discussion and the cited cases of *Chavez v. Presidential Commission on Good Government*⁷⁹¹ and *Presidential Commission on Good Government v. Lucio C. Tan*⁷⁹², reveal the use of the *same* definition of ill-gotten wealth: It is “property acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions, *or* by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State.”

It still includes the second manner of acquiring ill-gotten wealth of taking undue advantage of official position, authority, relationship, connection, or influence.

The Cojuangco Case simply emphasized the first manner of acquiring ill-gotten wealth because the Republic’s allegation was that the shares were acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government, i.e., coco levy funds.

The dissents in the Cojuangco Case likewise use the same definition of ill-gotten wealth. Though Justice Conchita Carpio-Morales’s discussion was also limited to the first manner of accumulating ill-gotten wealth, she noted that further legislation and jurisprudence have expanded the definition of ill-gotten wealth:

E.O. No. 2 describes ill-gotten assets as, *inter alia*, shares of stock acquired through *or* as a result of the improper or illegal use of or the conversion of funds or properties owned by the Government or its branches, instrumentalities, enterprises, banks or financial institutions.

The scope of inquiry on *ill-gotten* shares of stock is not restricted to those that were personally “acquired through” public funds in the form of a simple direct purchase which, crude and unsophisticated it may seem, is illegal *per se*. Having conceivably taken into account the ingenious and “organized pillage” perpetrated by the Marcos regime, E.O. No. 2 saw it fit to include those that were “acquired as a result of the improper or *illegal* use of” public funds. Notably, E.O. No. 2 covers acquisitions resulting not

⁷⁹⁰ *Id.* at 297–300.

⁷⁹¹ 360 Phil. 133 (1998) [Per J. Panganiban, First Division].

⁷⁹² 564 Phil. 426 (2007) [Per J. Sandoval-Gutierrez, First Division].

only from illegal use but also from *improper* use of public funds or properties, not to mention *conversion* thereof.

That the law includes funds from government banks and financial institutions bolsters this conclusion and readily negates respondents' vivid illustrations of bank loan transactions.

Respondents' position only attempts to explain that the subject SMC shares were not directly *acquired through* public funds, but it does not negate the other modes of acquisition (i.e., *acquired as a result of the improper or illegal use or conversion* of public funds) which could take on several forms.

"Ill-gotten wealth" is hereby defined as any asset, property, business enterprise or material possession of persons within the purview of Executive Orders Nos. 1 and 2, acquired by them directly, or indirectly thru dummies, nominees, agents, subordinates and/or business associates by any of the following means or similar schemes:

(1) Through misappropriation, conversion, misuse or malversation of public funds or raids on the public treasury;

(2) Through the receipt, directly or indirectly, of any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the official concerned.

(3) By the illegal or fraudulent conveyance or disposition of assets belonging to the government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations;

(4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation in any business enterprise or undertaking;

(5) Through the establishment of agricultural, industrial or commercial monopolies or other combination and/or by the issuance, promulgation and/or implementation of decrees and orders intended to benefit particular persons or special interests; and

(6) By taking undue advantage of official position, authority, relationship or influence for personal gain or benefit.

The act of respondents in employing the instrumentality of a loan transaction and exploiting the legal import thereof does not thus save the day for them, so to speak. The defense's thesis shatters in the context of ill-gotten wealth cases.



The majority holds that ill-gotten wealth must be acquired or taken through “illegal means” only. This limited restatement of the elements and modes of acquiring ill-gotten wealth goes against the expanded and developed nature and dynamics of ill-gotten wealth as legally defined above and which was quoted and applied in the *Hans Menzi* case.

Interestingly, the majority cites the same basic document of Executive Order No. 2 (March 12, 1986) which, in fact, expressly recognizes that acquisitions of ill-gotten wealth may result from either an illegal or improper use or conversion of public funds.

The Court, nonetheless, discusses in no uncertain terms, the series of legal provisions and rules *vis-à-vis* the acts and omissions of Cojuangco, *et al.* in concluding the presence of illegal means of acquisition, in the succeeding portions.⁷⁹³ (Emphasis in the original)

The dissent of Associate Justice Arturo Brion in the Cojuangco Case also broke down the provision, as follows:

EO No. 1, in relation with EO Nos. 2, 14 and 14-A, is another law that authorizes the government to recover ill-gotten wealth. A recovery action under EO No. 1 requires:

(1) **a subject defendant**, which refers to the former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and **close associates**.

(2) **an object** or the ill-gotten wealth, which refers to assets and properties (in the form of bank accounts, deposits, trust accounts, shares of stocks, buildings, shopping centers, condominium, mansions, residences, estates, and other kinds of real and personal properties in the Philippines and in various countries) belonging to the defendants. This can include business enterprises and associations owned or controlled by the defendants, during the Marcos administration, directly or through nominees;

(3) **the mode of acquisition**, through which the ill-gotten wealth was acquired, directly or indirectly,

(a) through or as a result of the improper or illegal use of or conversion of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or

(b) *by taking undue advantage of their office, authority, influence, connections or relationship.*

(4) **prejudice to the government**, as the act/s of the defendant/s result in their unjust enrichment and causing grave damage to the Filipino people and the Republic of the Philippines.

⁷⁹³ J. Carpio-Morales, Dissenting Opinion in *Republic v. Sandiganbayan*, 663 Phil. 212, 386–388 (2011) [Per J. Bersamin, *En Banc*].

RA No. 1379 and EO No. 1 differ in two respects: (1) in the subjects or the persons covered, and (2) in the object sought to be forfeited or recovered. While RA No. 1379 broadly covers *all public officers*, EO No. 1 is confined to President Marcos, his immediate family, relatives, subordinates and close associates. Unlike EO No. 1, RA No. 1379 is not concerned with the manner of acquisition of the unlawfully acquired property. Despite these differences, both laws provide basis for the recovery or forfeiture of properties that rightfully belong to the State.

A reading of the complaint shows that the Republic's action for recovery under EO No. 1 of the Cojuangco block of SMC shares was premised on Cojuangco's act of supposedly *taking undue advantage of official position or authority*, resulting in his unjust enrichment and grave damage and prejudice to the State. Thus, **it was crucial for the Republic to prove that, at the time the subject shares were acquired, Cojuangco occupied an official position.**⁷⁹⁴ (Emphasis in the original)

The conclusion that ill-gotten wealth must originate from the Government is based only on the whereas clause of Executive Order No.1. However, as earlier stated, Executive Order No. 2, the Presidential Commission on Good Government Rules and Regulations, and several cases have expanded the definition such that it also includes other means by which ill-gotten wealth is acquired. Furthermore, whereas clauses of laws cannot "be used as basis for giving it a meaning not apparent on its face. A preamble or explanatory note is resorted to only for clarification in cases of doubt."⁷⁹⁵ In this case, the provisions of Executive Order Nos. 1 and 2, the Presidential Commission on Good Government Rules and Regulations, and several cases are clear: Ill-gotten wealth may be acquired *by taking undue advantage of their office, authority, influence, connections, or relationship*.

As it is, if the assets and properties were found to be ill-gotten, it is the government who will recover the property and it will be returned to the public treasury. Tan et al. argue that it is absurd for the government to seek reconveyance of a property that it did not originally own.⁷⁹⁶

However, this ignores the nature of the subject assets and properties accumulated by Marcos, Sr. through the abuse of his power. It ignores the circumstance that had Marcos, Sr. not been President at that time, he and his cronies would not have been able to acquire these assets and properties. Marcos, Sr. was able to acquire the wealth because of his public office. Thus, while some of the properties did not originally come from government coffers, it came about because of the power Marcos, Sr. held and abused as Chief Executive of the Republic.

The argument that only government property may be recovered in ill-

⁷⁹⁴ J. Brion, Dissenting Opinion in *Republic v. Sandiganbayan*, 663 Phil. 212, 463-465 (2011) [Per J. Bersamin, *En Banc*].

⁷⁹⁵ *People v. Garcia*, 85 Phil. 651, 663 (1950) [Per J. Tuason, *En Banc*].

⁷⁹⁶ *Rollo* (G.R. No. 203592), p. 3379.

gotten wealth cases ignores the circumstance that Marcos, Sr. used complex schemes to acquire wealth, and it was not limited to simply taking money from the coffers of the Government.⁷⁹⁷

E.O. 1, 2, 14 and 14-A, it bears to stress, were issued precisely to effect the recovery of ill-gotten assets amassed by the Marcoses, their associates, subordinates and cronies, or through their nominees. Be that as it may, it stands to reason that persons listed as associated with the Marcoses refer to those in possession of such ill-gotten wealth but holding the same in behalf of the actual, albeit undisclosed owner, to prevent discovery and consequently recovery. Certainly, it is well-nigh inconceivable that ill-gotten assets would be distributed to and left in the hands of individuals or entities with obvious traceable connections to Mr. Marcos and his cronies. The Court can take, as it has in fact taken, judicial notice of schemes and machinations that have been put in place to keep ill-gotten assets under wraps. These would include the setting up of layers after layers of shell or dummy, but controlled, corporations or manipulated instruments calculated to confuse if not altogether mislead would-be investigators from recovering wealth deceitfully amassed at the expense of the people or simply the fruits thereof. Transferring the illegal assets to third parties not readily perceived as Marcos cronies would be another. So it was that in *PCGG v. Pena*, the Court, describing the rule of Marcos as a "well entrenched plundering regime of twenty years," noted the magnitude of the past regime's organized pillage and the ingenuity of the plunderers and pillagers with the assistance of experts and the best legal minds in the market.⁷⁹⁸

The argument likewise refuses to recognize that recovery of ill-gotten wealth by the Government is beneficial to the public. As stated in *Chavez v. Presidential Commission on Good Government*, the recovered funds may be used for national economic recovery. Thus, in Republic Act No. 10368,⁷⁹⁹ amounts adjudged in *Republic vs. Sandiganbayan*⁸⁰⁰ as Marcos ill-gotten wealth and forfeited in favor of the Republic were used as the principal source of funds for the reparation of human rights victims during the Marcos regime:

SECTION 7. *Source of Reparation.* — The amount of Ten billion pesos (P10,000,000,000.00) plus accrued interest which form part of the funds transferred to the government of the Republic of the Philippines by virtue of the December 10, 1997 Order of the Swiss Federal Supreme Court, adjudged by the Supreme Court of the Philippines as final and executory in *Republic vs. Sandiganbayan* on July 15, 2003 (G.R. No. 152154) as Marcos ill-gotten wealth and forfeited in favor of the Republic of the Philippines, shall be the principal source of funds for the implementation of this Act.

Furthermore, it is not unusual for the Government to forfeit assets and properties that are proceeds or are used as means of committing illegal acts, whether or not the property previously belonged to the Government. Thus, in

⁷⁹⁷ *Philippine Coconut Producers Federation, Inc. v. Republic*, 679 Phil. 508 (2012) [Per J. Velasco, Jr., *En Banc*].

⁷⁹⁸ *Id.* at 581–582.

⁷⁹⁹ Human Rights Victims Reparation and Recognition Act of 2013, February 25, 2013.

⁸⁰⁰ 453 Phil. 1059 (2003) [Per J. Corona, *En Banc*].

Article 45 of the Revised Penal Code, the proceeds of the crime and the instruments or tools with which it was committed are forfeited in favor of the Government if they are not properties of a third person:

ARTICLE 45. *Confiscation and Forfeiture of the Proceeds or Instruments of the Crime.* — Every penalty imposed for the commission of a felony shall carry with it the forfeiture of the proceeds of the crime and the instruments or tools with which it was committed.

Such proceeds and instruments or tools shall be confiscated and forfeited in favor of the Government, unless they be the property of a third person not liable for the offense, but those articles which are not subject of lawful commerce shall be destroyed.

In Republic Act No. 1379,⁸⁰¹ property acquired by a public officer or employee that is manifestly out of proportion to his or her salary as a public officer or employee, to other lawful income, and to the income from legitimately acquired property may be forfeited in favor of the State, regardless of whether the property originated from the Government.

SECTION 2. *Filing of petition.* — Whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed *prima facie* to have been unlawfully acquired.

SECTION 6. *Judgment.* — If the respondent is unable to show to the satisfaction of the court that he has lawfully acquired the property in question, then the court shall declare such property, forfeited in favor of the State, and by virtue of such judgment the property aforesaid shall become property of the State: *Provided*, That no judgment shall be rendered within six months before any general election or within three months before any special election. The Court may, in addition, refer this case to the corresponding Executive Department for administrative or criminal action, or both.

A similar provision is found in Republic Act No. 3019,⁸⁰² in case of a violation of its provisions:

SECTION 9. *Penalties for violations.* — (a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than one year nor more than ten years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

Any complaining party at whose complaint the criminal prosecution was

⁸⁰¹ Law of Forfeiture of Ill-Gotten Wealth, June 18, 1955.

⁸⁰² Anti-Graft and Corrupt Practices Act, August 17, 1960.

initiated shall, in case of conviction of the accused, be entitled to recover in the criminal action with priority over the forfeiture in favor of the Government, the amount of money or the thing he may have given to the accused, or the value of such thing...

It is thus absurd to not allow the Republic to forfeit in its favor ill-gotten wealth accumulated by Marcos, Sr., especially when as stated, it is in our political history that Marcos, Sr., with his family, relatives, and other associates, resorted to various schemes to illegally acquire or misappropriate this wealth. Thus, this Court holds that ill-gotten wealth need not originate from the vast resources of the Government.

To summarize, ill-gotten wealth includes *not only* assets and properties that originated from the Government. It also includes those acquired by Marcos, Sr., Imelda, their close relatives, subordinates, business associates, dummies, agents, or nominees by taking advantage of their office, authority, influence, connections, or relationships, *regardless* of the assets' or properties' origins. The four elements to determine whether a piece of property is ill-gotten wealth are:

First, assets and properties were acquired;

Second, they were acquired by Marcos, Sr., Imelda, their close relatives, subordinates, business associates, dummies, agents, or nominees;

Third, the manner of acquisition was either:

(a) through or as a result of the improper or illegal use of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, *or*

(b) by taking undue advantage of their office, authority, influence, connections or relationship; and,

Fourth, the acquisition (a) resulted in their unjust enrichment *and* (b) caused grave damage and prejudice to the Filipino people and the Republic of the Philippines.

IV(A)

To sufficiently prove that a particular asset or property is ill-gotten wealth, there must be a showing that it is so by a preponderance of evidence.

Executive Order No. 14-A⁸⁰³ provides:

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

Preponderance of evidence means that parties must show that, as opposed to the evidence of the other party, their evidence has more weight or is more credible. In *Republic v. Estate of Hans Menzi*.⁸⁰⁴

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

The party who alleges a fact has the burden of proving it. The burden of proof may be on the plaintiff or the defendant. It is on the defendant if he alleges an affirmative defense which is not a denial of an essential ingredient in the plaintiff's cause of action, but is one which, if established, will be a good defense — *i.e.*, an “avoidance” of the claim.⁸⁰⁵ (Citations omitted)

The rationale for the requirement of proving the allegations by preponderance of evidence is to protect and accord respect to the fundamental rights of property and free enterprise. In *Bataan Shipyard*.⁸⁰⁶

There can be no debate about the validity and eminent propriety of the Government's plan “to recover all ill-gotten wealth.”

Neither can there be any debate about the proposition that assuming the above described factual premises of the Executive Orders and Proclamation No. 3 to be true, to be amassed demonstrable by competent evidence, the recovery from Marcos, his family and his minions of the assets and properties involved, is not only a right but a duty on the part of Government.

But however plain and valid that right and duty may be, still a balance must be sought with the equally compelling necessity that a proper

⁸⁰³ Amending E.O. No. 14 (May 7, 1986) Re: Ill-Gotten Wealth of Former President Ferdinand Marcos, Executive Order No. 14-A, August 18, 1986.

⁸⁰⁴ 512 Phil. 425 (2005) [Per J. Tinga, *En Banc*].

⁸⁰⁵ *Id.* at 456–457.

⁸⁰⁶ 234 Phil. 180 (1987) [Per J. Narvasa, *En Banc*].

respect be accorded and adequate protection assured, the fundamental rights of private property and free enterprise which are deemed pillars of a free society such as ours, and to which all members of that society may without exception lay claim.

“ . . . Democracy, as a way of life enshrined in the Constitution, embraces as its necessary components freedom of conscience, freedom of expression, and freedom in the pursuit of happiness. *Along with these freedoms are included economic freedom and freedom of enterprise within reasonable bounds and under proper control. . . .* Evincing much concern for the protection of property, the Constitution distinctly recognizes the preferred position which real estate has occupied in law for ages. *Property is bound up with every aspect of social life in a democracy as democracy is conceived in the Constitution.* The Constitution realizes the indispensable role which property, owned in reasonable quantities and used legitimately, plays in the stimulation to economic effort and the formation and growth of a solid social middle class that is said to be the bulwark of democracy and the backbone of every progressive and happy country.”⁸⁰⁷ (Emphasis in the original)

Thus, *proof beyond reasonable doubt is not needed* to show that the properties are ill-gotten wealth. It is sufficient that the Sandiganbayan weigh the evidence of the parties and determine using common human experience which of their theories is more credible.⁸⁰⁸

In weighing the evidence presented by the parties, the Presidential Commission on Good Government Rules and Regulations⁸⁰⁹ provide that there is *prima facie* evidence that wealth is ill-gotten if there is an accumulation of assets and properties—the value of which is disproportionate to their known lawful income:

SECTION 9. *Prima facie* evidence. — Any accumulation of assets, properties, and other material possessions of those persons covered by Executive Orders Nos. 1 and 2, whose value is out of proportion to their known lawful income is *prima facie* deemed ill-gotten wealth.

“The term *prima facie* evidence denotes evidence which, if unexplained or uncontradicted, is sufficient to sustain the proposition it supports or to establish the facts. *Prima facie* means it is ‘sufficient to establish a fact or raise a presumption unless disproved or rebutted.’”⁸¹⁰

⁸⁰⁷ *Id.* at 204–205.

⁸⁰⁸ *Yuchengco v. Sandiganbayan*, 515 Phil. 1, 24 (2006) [Per J. Carpio-Morales, *En Banc*].

⁸⁰⁹ Presidential Commission on Good Government Rules and Regulations Implementing Executive Orders Nos. 1 and 2, April 11, 1986.

⁸¹⁰ *Republic v. Sandiganbayan*, 663 Phil. 212, 383 (2011) [Per J. Bersamin, *En Banc*].

In this case, the Sandiganbayan found that the Republic failed to prove that the subject assets and properties were ill-gotten because there was no showing that the wealth acquired by Tan originated from the vast resources of the Government.

Generally, this Court accords respect and finality to the factual findings of lower courts, and thus, in Rule 45 petitions, it does not entertain questions of fact or issues which call for the examination of evidence. However, in *Medina v. Mayor Asistio, Jr.*,⁸¹¹ this Court enumerated the exceptions to the rule:

It is a well-settled rule in this jurisdiction that only questions of law may be raised in a petition for certiorari under Rule 45 of the Rules of Court, this Court being bound by the findings of fact made by the Court of Appeals. The rule, however, is not without exception. Thus, findings of fact by the Court of Appeals may be passed upon and reviewed by this Court in the following instances, none of which obtain in the instant petition:

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.⁸¹² (Citations omitted)

Considering that the Sandiganbayan's ruling is based on its conclusion that the properties acquired must always originate from the Government to be deemed ill-gotten wealth, it no longer looked into whether the evidence presented by the Republic was sufficient to show that the subject assets and properties were acquired by Tan et al. by taking undue advantage of their office, authority, influence, connections, or relationship.

It is thus necessary to determine whether there was sufficient evidence to support the Republic's claim that the subject assets and properties were ill-gotten wealth based on the second manner of acquisition.

After a review of the submissions of the parties, I agree that the Republic failed to prove that most of the assets and properties sought to be reverted were ill-gotten. A bulk of the evidence presented by the Republic

⁸¹¹ 269 Phil. 225 (1990) [Per J. Bidin, Third Division].

⁸¹² *Id.* at 232.

were either inadmissible or lacking in probative value; hence, they are insufficient to prove that the assets and properties subject of this case were acquired by Tan et al. by taking advantage of their connections with the Marcos family.

However, I join Associate Justice Caguioa in finding that the Republic sufficiently established that Tan was able to secure a brewery license for Asia Brewery by taking undue advantage of his connections with the Marcoses.⁸¹³

A piece of evidence is considered admissible when it is relevant to the issue and is not excluded by the Constitution, the law, or the Rules of Court.⁸¹⁴ Relevance is such relation to the fact in issue as to induce belief in its existence or nonexistence⁸¹⁵ and, therefore, is a matter of logic and common sense.⁸¹⁶ If the evidence presented has no relation whatsoever to the fact sought to be established, it is inadmissible and cannot be considered by the court in deciding the case.

Apart from relevance, admissibility requires competence. Competent evidence are those not excluded by the law and the Rules.

The rules on admissibility depend on the type of evidence presented. In general, object⁸¹⁷ and documentary⁸¹⁸ evidence must be authenticated and vouched for by a witness as proof of the fact claimed to be true. Object evidence is authenticated by a witness who testifies on it being the very object involved in the case.

For documentary evidence, or those the contents of which are the subject of the inquiry, their original must be presented in evidence so as not to be excluded. Formerly called the best evidence rule, the original document rule⁸¹⁹ is required to prevent any mistransmissions or inaccuracies that may be reflected by a mere copy or reproduction of the evidence sought to be entered.⁸²⁰ The rule ensures that the exact contents of the document are brought before the court.⁸²¹

⁸¹³ J. Caguioa, Concurring and Dissenting Opinion, p. 2.

⁸¹⁴ RULES OF COURT, Rule 128, sec. 3.

⁸¹⁵ RULES OF COURT, Rule 128, sec. 4.

⁸¹⁶ See *People v. Galleno*, 353 Phil. 942, 955 (1998) [*Per Curiam, En Banc*].

⁸¹⁷ RULES OF COURT, Rule 130, sec. 1 provides:

SECTION 1. *Object as evidence.* – Objects as evidence are those addressed to the senses of the court. When an object is relevant to the fact in issue, it may be exhibited to, examined or viewed by the court.

⁸¹⁸ RULES OF COURT, Rule 130, sec. 2 provides:

SECTION 2. *Documentary evidence.* – Documents as evidence consist of writings, recording, photographs or any material containing letters, words, sounds, numbers, figures, symbols, or their equivalent, or other modes of written expressions offered as proof of their contents. Photographs include still pictures, drawings, stored images, x-ray films, motion pictures or videos.

⁸¹⁹ RULES OF COURT, Rule 130, sec. 3.

⁸²⁰ See *Goopio v. Maglalang*, 837 Phil. 564 (2018) [*Per J. Jardeleza, En Banc*].

⁸²¹ See *Republic v. Mupas*, 769 Phil. 21, 173 (2015) [*Per J. Brion, En Banc*].

In addition, for private documents, those who may have seen the document executed or written must be presented in court.⁸²² Without this authentication, the written statement remains hearsay,⁸²³ hence, inadmissible.

As for testimonial evidence, or those offered to prove the truth of a statement, the witness must have personal knowledge of the matters he or she testifies on.⁸²⁴ Lack of personal knowledge renders the testimony hearsay and, again, inadmissible in evidence.

Hearsay evidence is excluded because it is neither given under oath or solemn affirmation nor it is subjected to cross-examination by the opposing counsel:

The personal knowledge of a witness is a substantive prerequisite for accepting testimonial evidence that establishes the truth of a disputed fact. A witness bereft of personal knowledge of the disputed fact cannot be called upon for that purpose because her testimony derives its value not from the credit accorded to her as a witness presently testifying but from the veracity and competency of the extrajudicial source of her information.

In case a witness is permitted to testify based on what she has heard another person say about the facts in dispute, the person from whom the witness derived the information on the facts in dispute is not *in court* and *under oath* to be examined and cross-examined. The weight of such testimony then depends not upon the veracity of the witness but upon the veracity of the other person giving the information to the witness without oath. The information cannot be tested because the declarant is not standing in court as a witness and cannot, therefore, be cross-examined.

It is apparent, too, that a person who relates a hearsay is not obliged to enter into any particular, to answer any question, to solve any difficulties, to reconcile any contradictions, to explain any obscurities, to remove any ambiguities; and that she entrenches herself in the simple assertion that she was told so, and leaves the burden entirely upon the dead or absent author. Thus, the rule against hearsay testimony rests mainly on the ground that there was no opportunity to cross-examine the declarant. The testimony may have been given under oath and before a court of justice, but if it is offered against a party who is afforded no opportunity to cross-examine the witness, it is hearsay just the same.

Moreover, the theory of the hearsay rule is that when a human utterance is offered as evidence of the truth of the fact asserted, the credit of the assertor becomes the basis of inference, and, therefore, the assertion can be received as evidence only when made on the witness stand, subject to the test of cross-examination....

Section 36, Rule 130 of the *Rules of Court* is understandably not the only rule that explains why testimony that is hearsay should be excluded from consideration. Excluding hearsay also aims to preserve the right of

⁸²² RULES OF COURT, Rule 132, sec. 20.

⁸²³ RULES OF COURT, Rule 130, sec. 37.

⁸²⁴ RULES OF COURT, Rule 130, sec. 22.

the opposing party to cross-examine the *original* declarant claiming to have a direct knowledge of the transaction or occurrence. If hearsay is allowed, the right stands to be denied because the declarant is not in court. It is then to be stressed that the right to cross-examine the adverse party's witness, being the only means of testing the credibility of witnesses and their testimonies, is essential to the administration of justice.

....

We thus stress that the rule excluding hearsay as evidence is based upon serious concerns about the trustworthiness and reliability of hearsay evidence due to its not being given under oath or solemn affirmation and due to its not being subjected to cross-examination by the opposing counsel to test the perception, memory, veracity and articulateness of the out-of-court declarant or actor upon whose reliability the worth of the out-of-court statement depends.⁸²⁵

Nevertheless, the rules on admissibility have exceptions. Instead of the original document, secondary evidence may be introduced so long as the basis for their production are laid.⁸²⁶ Hearsay testimony may likewise be admitted if they fall within any of the exceptions enumerated in Rule 130, Sections 38 to 50⁸²⁷ of the Rules of Court, as amended.

That a piece of evidence is admissible does not automatically mean it has probative value. Admissibility refers to whether a piece of evidence may be considered by the courts in the first place.⁸²⁸ Probative value, meanwhile, deals with whether a piece of evidence already admitted proves an issue.⁸²⁹

Taking the foregoing principles in mind, we begin to examine each of the parties' respective evidence.

The Republic's theory is that Marcos, Sr., Imelda, and Tan used the following schemes to unjustly enrich themselves.⁸³⁰

(1) the liquidation of GenBank and the acquisition of its assets by Tan through Allied Bank without sufficient collateral and consideration,⁸³¹

(2) Tan's delivery to Marcos, Sr. and Imelda of substantial beneficial interest in shares of stock in Asia Brewery

⁸²⁵ *Patula v. People*, 685 Phil. 376, 393–396 (2012) [Per J. Bersamin, First Division].

⁸²⁶ RULES OF COURT, Rule 130, secs. 5–9.

⁸²⁷ These exceptions are dying declaration, statement of decedent or person of unsound mind, declaration against interest, act or declaration about pedigree, family reputation or tradition regarding pedigree, common reputation, part of the *res gestae*, records of regularly conducted business activity, entries in official records, commercial lists and the like, learned treatises, testimony or deposition at a former proceeding, and residual exception.

⁸²⁸ *See Tabuada v. Tabuada*, 840 Phil. 33, 43 (2018) [Per J. Bersamin, First Division].

⁸²⁹ *Id.*

⁸³⁰ *Rollo* (G.R. No. 203592), p. 3670.

⁸³¹ *Id.* at 3671.

beginning July 1977 in exchange for concessions and privileges for his business ventures;⁸³²

(3) Tan's delivery of improper gifts, bribes, concessions, and/or guaranteed "dividends" to Marcos, Sr. and Imelda in various sums in consideration of their continued support for and/or their ownership of interests in his business ventures. The amounts are as follows:⁸³³

<i>Year</i>	<i>Amount in PHP</i>
1975	11 million
1977	2 million
1979	44 million
1980	10 million
1981	10 million
1982	20 million
1983	40 million
1984	40 million
1985	50 million
1986	50 million

(4) the establishment of Shareholdings, Inc. to allegedly prevent the disclosure and recovery of their illegally obtained assets.⁸³⁴ The Republic alleged that Shareholdings, Inc. beneficially held and/or controlled substantial shares of stock in Fortune Tobacco, Asia Brewery, Foremost Farms, Himmel Industries, Silangan, Holdings, and Allied Bank.⁸³⁵ Tan et al. allegedly transferred to Shareholdings, Inc. their dummy shares to these corporations and to Grandspan Development Corp. and Silangan Holdings;⁸³⁶

(5) the selling of Development Bank's controlling interest in Century Park, owned by Maranaw Hotels, to Sipalay Trading. The Republic alleged that this sale caused losses in millions to Development Bank because Sipalay Trading was a grossly undercapitalized company controlled by Tan;⁸³⁷

(6) the printing of Bureau of Internal Revenue strips stamps worth billions of pesos without legal authority, and its affixing on packs of cigarettes produced by Fortune Tobacco, in violation of Section 189 of the Internal Revenue Code of 1977. This allegedly defrauded the Republic and the Filipino of billions

⁸³² *Id.* at 3671, 3676.

⁸³³ *Id.* at 3675-3676.

⁸³⁴ *Id.* at 3677.

⁸³⁵ *Id.*

⁸³⁶ *Id.* at 3675-3676.

⁸³⁷ *Id.* at 3678.

of pesos in tax receipts;⁸³⁸ and

(7) the establishment of Northern Redrying, a Virginia tobacco company, which, on several instances, imported and purchased tobacco beyond the ceilings allowed by law.⁸³⁹

The Republic primarily relies on the following evidence to substantiate these claims: (1) Imelda's Amended Answer; (2) Tan's Written Disclosure; (3) Marcos, Jr.'s testimony; (4) Gapud's Sworn Statement; and (5) voluminous documentary evidence found by the Presidential Commission on Good Government in its investigations.

IV(A)(1)

When the Republic filed its Second Amended Complaint on September 13, 1991, Imelda filed her Answer with Counterclaim on September 6, 1995.⁸⁴⁰ On November 20, 2001, Imelda filed a Motion for Leave to File Amended Answer with Counterclaim and Compulsory Cross-claim.⁸⁴¹ In addition to her previous defenses in her Answer with Counterclaim, she alleged in her Compulsory Cross-claim that Marcos, Sr. had 60% beneficial ownership in several of Tan's companies.⁸⁴² She stated:

42. Way before and continuing through 1985, former President Ferdinand E. Marcos (FM) had beneficial ownership, together with defendant Lucio C. Tan ("LT"), his family and associates, in the following operating companies, as well as the subsidiaries and companies which these operating companies have acquired or in turn invested in, to wit:

1. Himmel Industries, Inc.
2. Fortune Tobacco Corp.
3. Foremost Farms, Inc.
4. Asia Brewery, Inc.
5. Grandspan Development Corp.
6. Silangan Holdings, Inc.
7. Dominion Realty and Construction Corp.

43. FM had a sixty percent (60%) beneficial ownership in said companies, which beneficial interests were held in trust by LT personally and through his family members and business associates who appeared as the recorded stockholders of said companies.⁸⁴³

She likewise alleged that Marcos, Sr. and Tan consolidated their interests in the companies in Shareholdings, Inc.:

⁸³⁸ *Id.* at 3681.

⁸³⁹ *Id.* at 3681-3682.

⁸⁴⁰ *Id.* at 25.

⁸⁴¹ *Id.* at 34.

⁸⁴² *Id.* at 1307.

⁸⁴³ *Id.*

44. Sometime in late 1980, FM and LT agreed to consolidate their ownership interests in the various businesses in one holding company organized under the name Shareholdings, Inc.

44.1 To implement such consolidation, the record (or nominee) stock holders of the above-named seven (7) operating companies transferred their stockholdings in said companies to defendant Shareholdings, Inc. through separate Deeds of Sale of Shares of Stock.

44.2 In consideration, and in exchange, for such transfer of shares of the operating companies, Shareholdings, Inc. in turn, issued its shares of stock to the record (nominee) stockholders of the above-named operating companies.

44.3 In fine, the transferring record (nominee) stockholders of the operating companies became likewise the record (nominee) stockholders of the holding company, Shareholdings, Inc.⁸⁴⁴

Imelda also narrated that Marcos, Sr. and Tan divided their ownership, with Marcos, Sr. holding 60% and Tan holding 40%:

45. Having achieved the consolidation of their beneficial ownership interests, through the organization of the holding company, Shareholdings, Inc., FM and LT then agreed to structure the segregation of their beneficial ownership interests in the proportion of sixty (60%) for FM and forty percent (40%) for LT.

45.1 For this purpose, three ultimate holding companies were organized, in the middle of 1984: Basic Holdings Corp. ("Basic"), Supreme Holdings, Inc. ("Supreme") and Falcon Holdings Corp. ("Falcon"), with the intention of having Basic as the record owner of the beneficial interests of LT and his group (40%) and Supreme and Falcon, as the record owners of the aggregate beneficial interests of FM (60%).

45.2 In express acknowledgment of the fact that they merely held their recorded interest in Shareholdings, Inc. in trust for FM and LT, in the ratio of 60% - 40% respectively, the record (nominee) stockholders of Shareholdings, Inc. then *assigned* their stockholdings in Shareholdings, Inc. to the newly organized ultimate holding companies as follows:

<i>Stockholders</i>	<i>No. of Shares</i>	<i>% of Holdings</i>
Basic Holdings, Corp.	61,617,500	49%
Supreme Holdings, Inc.	31,437,500	25%
Falcon Holdings, Corp.	31,437,500	25%
Lucio C. Tan	628,750	0.5%
Mariano [Tan Eng Lian]	628,750	0.5%
TOTAL	125,750,000	100%

⁸⁴⁴ *Id.* at 1307-1308.

45.4 To make the shareholdings of Basic conform to the agreed 60%-40% ratio, Basic executed a Deed of Sale of Shares of Stock in favor of Supreme, transferring 9% of Shareholdings, Inc. shares held by the former in favor of the latter.

45.5 After Basic transferred 9% of its 49% stock ownership in Shareholdings Inc., the stock ownership in Shareholdings, Inc. became as follows:⁸⁴⁵

<i>Stockholders</i>	<i>No. of Shares</i>	<i>% of Holdings</i>
Basic Holdings, Corp.	50,300,000	40%
Supreme Holdings, Inc.	42,755,500	34%
Falcon Holdings, Corp.	31,437,500	25%
Lucio C. Tan	628,750	0.5%
Mariano [Tan Eng Lian]	628,750	0.5%
TOTAL	125,750,000	100%

Imelda explained that the incorporators who held the shares of Marcos, Sr. executed and delivered to him blank deeds of assignment:

46. In express recognition of the beneficial ownership of FM, the incorporators of both Falcon and Supreme executed and delivered to FM blank Deeds of Assignment.

47. The *assignment* by the defendants-record stockholders of Shareholdings, Inc. of sixty percent (60%) of that company's then outstanding capital stock to Falcon and Supreme which are, in turn, beneficially owned entirely by FM, is an express acknowledgment by such defendants, including defendant LT, that they held such interests in trust for, and for the benefit of FM.

48. Defendant Imelda R. Marcos as surviving spouse and heir of FM and the Estate of Ferdinand E. Marcos the latter being the Legal successor-in-interest of FM, repeatedly demanded from defendant LT and the other defendants-record stockholders of Shareholdings, Inc. that they *perform* or *enforce* the trust by delivering and recording the ownership of sixty percent (60%) of Shareholdings, Inc.'s outstanding capital stock to defendant Estate of Ferdinand E. Marcos thru Falcon and Supreme, in accordance with the Deeds of Assignment.

49. Despite and notwithstanding such repeated demands, defendants LT and record (nominee) stockholders of Shareholdings, Inc. failed and refused to comply with said demands.⁸⁴⁶

The Sandiganbayan, in its Resolution dated June 20, 2002, denied Imelda's Motion to Admit Amended Answer with Cross-claim.⁸⁴⁷ It found that Imelda's Cross-claim was premised on an independent and distinct claim against Tan et al. and that she may pursue these claims in a separate proceeding in the Regional Trial Court.⁸⁴⁸ It found that she failed to allege

⁸⁴⁵ *Id.* at 1308-1309.

⁸⁴⁶ *Id.* at 1309-1310.

⁸⁴⁷ *Id.* at 3646.

⁸⁴⁸ *Id.* at 3649-3650.

that her Cross-claim arises out of the transaction that is the subject matter of the Complaint.⁸⁴⁹ Furthermore, the Sandiganbayan has no jurisdiction over her Cross-claim because the case is limited to the forfeiture and recovery of ill-gotten wealth.⁸⁵⁰ It was also filed more than 14 years after the Complaint. The denial by Sandiganbayan was affirmed by this Court through a March 17, 2003 Minute Resolution in *Imelda R. Marcos v. Lucio C. Tan, et al.*⁸⁵¹

Considering that it was not admitted, the Amended Answer with Cross-claim is deemed to not have been filed. It cannot be considered a judicial admission⁸⁵² that dispenses with proof, but as an extrajudicial admission⁸⁵³ that had to be formally offered to be admitted in evidence. In *Ching v. Court of Appeals*:⁸⁵⁴

In an order dated 19 November 1993, the RTC-Manila, Branch 53, admitted the amended complaint. Accordingly, with the lower court's admission of the amended complaint, the judicial admission made in the original complaint was, in effect, superseded.

Under the Rules, pleadings superseded or amended disappear from the record, lose their status as pleadings and cease to be judicial admissions. While they may nonetheless be utilized against the pleader as extrajudicial admissions, they must, in order to have such effect, be formally offered in evidence. If not offered in evidence, the admission contained therein will not be considered.

Consequently, the original complaint, having been amended, lost its character as a judicial admission, which would have required no proof, and became merely an extrajudicial admission, the admissibility of which, as evidence, required its formal offer.⁸⁵⁵

The Republic formally offered in evidence the Amended Answer with Cross-claim.⁸⁵⁶ Imelda's statements thus may be deemed admissions against her interest.⁸⁵⁷ However, it can only bind Imelda. It cannot be used against Tan et al. under the *res inter alios acta* rule. Under Rule 130, Section 28 of the Rules of Court:

SECTION 28. *Admission by third party.* — The rights of a party cannot be prejudiced by an act, declaration, or omission of another, except as hereinafter provided.

⁸⁴⁹ *Id.* at 3649.

⁸⁵⁰ *Id.* at 3650.

⁸⁵¹ *Id.* at 3651–3652.

⁸⁵² RULES OF COURT, Rule 129, sec. 4 provides:

SECTION 4. *Judicial admissions.* — An admission, oral or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that the imputed admission was not, in fact, made.

⁸⁵³ RULES OF COURT, Rule 130, sec. 26 provides:

SECTION 26. *Admission of a party.* — The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.

⁸⁵⁴ 387 Phil. 28 (2000) [Per J. Buena, Second Division].

⁸⁵⁵ *Id.* at 45.

⁸⁵⁶ *Rollo* (G.R. No. 203592), p. 4000.

⁸⁵⁷ RULES OF COURT (1997), Rule 130, sec. 38.

In *People v. Vda. de Ramos*.⁸⁵⁸

The *res inter [alios] acta* rule provides that the rights of a party cannot be prejudiced by an act, declaration, or omission of another. Consequently, an extrajudicial confession is binding only upon the confessant and is not admissible against his co-accused. The reason for the rule is that, on a principle of good faith and mutual convenience, a man's own acts are binding upon himself, and are evidence against him. So are his conduct and declarations. Yet it would not only be rightly inconvenient, but also manifestly unjust, that a man should be bound by the acts of mere unauthorized strangers; and if a party ought not to be bound by the acts of strangers, neither ought their acts or conduct be used as evidence against him.⁸⁵⁹

The relevant exceptions to the *res inter alios acta* rule are provided in Sections 29 (admission by copartner or agent),⁸⁶⁰ 30 (admission by conspirator),⁸⁶¹ and 31 (admission by privies)⁸⁶² of Rule 130 of the Rules of Court,⁸⁶³ none of which apply in this case. There is no independent proof of conspiracy or partnership or agency between Imelda and Tan et al. Lastly, there was no privity of estate, denoting a succession in rights, between Imelda and Tan et al. As such, her extrajudicial statements in the Amended Answer with Cross-claim cannot be used against Tan et al.

As the statements relevant herein involve those made by Imelda, Section 29 of Rule 130 of the Rules of Court cannot apply as there was no partnership or agency between her and Tan, et al. The alleged business relationship at issue in this case is that between Marcos and Tan, et al. Neither does Section 31 of Rule 130 of the Rules of Court apply, as there is no privity of estate, denoting a succession in rights,⁴⁰ between Imelda and Tan, et al.

On the other hand, for the statements to be treated as admissions by conspirator under Section 30 of Rule 130 of the Rules of Court, the requisites laid down by this Court in the case of *Estrada v. Office of the Ombudsman* can give guidance:

⁸⁵⁸ 451 Phil. 214 (2003) [Per J. Ynares-Santiago, First Division].

⁸⁵⁹ *Id.* at 224–225.

⁸⁶⁰ RULES OF COURT (1997), Rule 130, sec. 29, provides:

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

⁸⁶¹ RULES OF COURT (2017), Rule 130, sec. 30 provides:

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

⁸⁶² RULES OF COURT (2017), Rule 130, sec. 31 provides:

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

⁸⁶³ Before its amendment in 2019.

In order that the admission of a conspirator may be received as evidence against his co-conspirator, it is necessary that *first*, the conspiracy be first proved by evidence other than the admission itself; *second*, the admission relates to the common object; and *third*, it has been made while the declarant was engaged in carrying out the conspiracy.

Following the pronouncement in the *Estrada* case, even if we assume that the first and second requisites are present, the third requisite cannot be established in this case. Imelda made the statements in 2001 when the Amended Answer was filed, while the alleged schemes happened approximately within the period of years 1975 to 1986. Imelda did not make the declarations while engaged in carrying out the conspiracy. Therefore, her statements cannot be used against Tan, et al. as admissions of a conspirator.⁸⁶⁴

For these reasons, the statement of Imelda in the Amended Answer with Cross-claim cannot be evidence of Tan et al.'s use of their connections with Marcos, Sr. to amass ill-gotten wealth.

IV(A)(2)

The Republic thus relies on Tan's Written Disclosure and Offer of Compromise, which was executed and submitted by Tan in 1986 to Senator Salonga, the first chairperson of the Presidential Commission on Good Government.⁸⁶⁵ It was given during the Presidential Commission on Good Government's investigations of the partnership between Tan and Marcos, Sr. for the filing of criminal and civil charges against them.⁸⁶⁶ Both the original and certified copy of Tan's Written Disclosure was presented and identified in court by Senator Salonga.⁸⁶⁷ The Republic likewise offered in evidence excerpts from Senator Salonga's book titled *Presidential Plunder* to provide a background on Tan's Written Disclosure.⁸⁶⁸ It states:

"On April 29, Lucio Tan came to the house to give me a partial and preliminary draft of the fair and full disclosure of his relations with the Marcoses, which I had required him to submit, plus the restitution of the money he should now give back to the Government. I remember telling him, in the presence of his lawyer, I would not tolerate any attempt to influence in any manner, any member of our Commission. I promised to study his draft and verify its contents."

"Another written disclosure was made by Lucio Tan in the early morning of May 10. Because of my impending trip, I asked my fellow

⁸⁶⁴ J. Zalameda, Reflections in *Republic v. Tan*, G.R. No. 195873 et al. [Per J. Leonen, *En Banc*], pp. 13-14.

⁸⁶⁵ *Rollo* (G.R. No. 203592), pp. 76, 88, 3940.

⁸⁶⁶ *Id.* at 3940.

⁸⁶⁷ *Id.*

⁸⁶⁸ *Id.* at 73.

commissioners to go over his disclosure to find out whether they may be considered fair and full.⁸⁶⁹

Tan et al., however, argue that Senator Salonga's direct examination on the matter was not completed, and he was not cross-examined by the defense.⁸⁷⁰ Thus, his testimony is worthless and may be stricken off the record.⁸⁷¹ They however admit that the Written Disclosure was presented as evidence.⁸⁷² They do not deny its execution.

Tan's Written Disclosure states in full:⁸⁷³

Prior to his establishment of Himmel Industries, Inc., [Himmel Industries] in 1959, Lucio C. Tan [Tan] worked as a chemist with Bataan Cigar and Cigarette Factory. [Himmel Industries] is primarily engaged in the manufacturing, trading and importing of industrial chemicals. It is at present likewise participating in a joint venture for the local manufacture and sale of essences and fragrances using indigenous raw materials. As a pioneer venture and considering the volume of Philippine imports of similar products, it is assured not only of a local market but a considerable export potential as well.

Earnings plowed back into business, [Tan] with some close associates established [Fortune Tobacco] in 1965 and thereafter organized [Foremost Farms] in 1970. At the time [Marcos, Sr.] declared martial law in 1972, [Tan] and his various enterprises have already been successfully established in the domestic as well as the foreign scene. He had proven the time honored adage in perseverance and the sweat of one's brow coupled with a natural business acumen provides a self-rewarding exercise. That same motivation and industry catapulted [Tan] from his austere and humble beginnings to his present stature as an established businessman revered by his peers here and abroad.

For the duration of martial law which had effectively negated any opposition to [Marcos, Sr.], [Tan] and his enterprises were not spared by the various forms of intimidation and harassment that had plagued other successful businessmen. Details of the [Marcos, Sr.] exercise are further described. Perhaps owing to sheer perseverance, the [Tan] enterprises have managed to survived the pressure and in the Martial Law era two major [Tan] companies were organized namely: a) [Allied Bank] which was granted by the Central Bank a new commercial banking license in May 1977; and, b) [Asia Brewery], which had succeeded in proving the misnomer in Brewery Industry being classified as an overcrowded industry for the last two decades [in spite] of the monopoly's continued expansion projects.

II

ALLIED BANK

⁸⁶⁹ *Id.* at 3939.

⁸⁷⁰ *Id.* at 3491.

⁸⁷¹ *Id.*

⁸⁷² *Id.* at 3495.

⁸⁷³ *Id.* at 839-848.

On March 25, 1977, the [Central Bank] under Monetary Board Resolution No. 675 prohibited [GenBank] from further doing business and consequently placed it under receivership. On March 29, 1977, thru Monetary Board Resolution No. 677, the [Central Bank] ordered the liquidation of [GenBank] and at the same time cancelled [GenBank's] banking authorities and licenses. Prior to adoption by the Central Bank of its liquidation plan for [GenBank], a public bidding was scheduled for the sale of [GenBank's] assets and assumption of its liabilities. There were several interested groups among which were two groups headed by Willy Co and [Tan]. None of the interested groups was able to comply with the bid requirements of the Central Bank which among others required a letter of credit issued by an acceptable bank in favor of [Central Bank] to guaranty payment of the emergency advances availed by [GenBank] in the aggregate amount of ₱320 million. Combining resources, [Tan] and Willy Co formed one group. The resulting group was able to meet the bid requirement thereby becoming the sole qualified bidder. Consequently, the [Tan]-Willy Co group organized a corporation on the first week of April 1977 then and now known as [Allied Bank]. In May 1977, the [Central Bank] granted to [Allied Bank] a new commercial banking license.

The [total] paid up shares of [Allied Bank] stands at 492,295 shares of which 8.9% or 44,089 shares is owned by Mr. Ignacio Jimenez, the husband of Fe Jimenez who is the personal secretary of Imelda Marcos. The said 8.9% shares in [Allied Bank] has a par value of ₱44.089 million (at ₱1,000 per share) and a book value of around ₱72 million (as of December 31, 1985).

The stock certificates evidencing ownership of the said shares were issued to and received by Mr. Jimenez. No lien, pledge or encumbrance has been registered in the stock and transfer book in respect of said shares. As a sign of good faith and willingness to cooperate with the new government, arrangements may be made in respect of a possible sequestration of the same. The corporate stock and transfer book as well as the corresponding stubs of the stock certificates may likewise be made available for examination. A list of all accounts with [Allied Bank] frozen by virtue of the order of the commission relayed thru the [Central Bank] shall likewise be submitted as soon as collated. Aside from the aforementioned shares of Mr. Jimenez, all other shares in the capital stock of [Allied Bank] properly belong to and are legally owned by the respective stockholders in whose names said shares are registered.

III

ASIA BREWERY

By hindsight, we can now conclude that [Marcos, Sr.], from the very beginning wanted to acquire the San Miguel Corporation (SMC). However, it was impossible to acquire SMC because it was tightly controlled by the Soriano and Ayala families. The only way is to give SMC a competitor, [to bring] down the market price of SMC shares and to create conflicts within and among the SMC stockholders.

[Marcos, Sr.] then started to say publicly that SMC was a monopoly, that there should be free enterprise, Meanwhile, the GSIS and SSS were ordered to buy SMC shares to a point that Roman Cruz, Jr. became a director of SMC.

The ambition of John Gokongwei in becoming a director of SMC resulted in a proxy fight and court battle, which in turn resulted in a lot of revelations on the very high profitability of a brewery. Before that, every year, SMC would make it of record with the BOI that the market demand will always be met and that therefore, no new brewery should be approved for establishment. It was also on record that SMC had continually been increasing its brewery and bottling facilities.

Preparations went underway for the establishment of the second brewery. Discussions with the BOI were steadfastly maintained and supported SMC's stand on the industry being overcrowded [in spite] of its continued approval of SMC's expansion projects reached a stalemate.

The issue of [Asia Brewery's] petition of being the secondary brewery was broached to [Marcos, Sr.] and nothing seemed to please him more than to provide SMC with competition to realize his obsession of gaining control of SMC. Upon his instruction, BOI approved the application of Asia Brewery to establish the second brewery and immediately, the market value of SMC's shares declined from ₱48 to ₱25 per share. At this point, Danding Cojuangco started to buy SMC shares. Eventually he was able to buy Gokongwei's and Enrique Zobel's block of shares which gave him a substantial holding. Finally, Andres Soriano sold out to Cojuangco. Thus full control went to Cojuangco.

[Marcos, Sr.] however also took special interest in [Asia Brewery]. As a condition to the grant of a brewery license, [Marcos, Sr.] demanded that 25% of the Company be given to him.

IV

In compliance with the said condition, Silangan Holdings, Inc. (Silangan) was incorporated on October 9, 1979. Twenty five percent (25%) of [Asia Brewery's] shares of stock of fifty million shares was then transferred to Silangan. Upon [Marcos, Sr.]'s insistence, a fake certificate of stocks purportedly representing 100% of the total shares of Silangan were delivered to him, endorsed in blank. In truth however, the genuine book of certificates of stock of Silangan remained intact and remains so to date. Not a single certificate of stock of Silangan has as yet been issued as none of the subscriptions to the capital stock have been fully paid.

V

As insurance versus a possible claim by [Marcos, Sr.] or any assignee upon the shares of Silangan purportedly evidenced by the fake certificate of stocks issued and delivered to him in blank, all stockholders of Silangan sold 100% of their shares to [Shareholdings, Inc.] on December 19, 1980. Moreover, on December 22, 1980, Silangan sold 49.5 million shares of [Asia Brewery] to [Shareholdings, Inc.] (retaining only 500,000 shares).

VI

[Shareholdings, Inc.] was incorporated on November 11, 1979. The original intention for setting up this company was for it to purchase and hold at least 99% of the shares of stock from existing stockholders of the following companies:

1. [Fortune Tobacco]
2. [Asia Brewery]
3. [Foremost Farms]
4. [Himmel Industries]
5. [Grandspan Development]
6. Dominion Realty and Construction Corp.

This set up is necessary in order to systematize the stock ownership in the various corporations. Also, since the group of companies was getting quite big, [Tan] felt and wanted to insure that the various companies would stay under one umbrella in the event that anything should happen to him – [Tan] wanted to ensure continuity of the companies which he had worked so hard to build up.

By the end of 1980, it became imperative for [Shareholdings, Inc.] to close the purchase of the aforementioned shares in order to avail of the minimal transfer tax of $\frac{1}{4}$ of 1% which became unavailable starting 1981. On October 19, 1981, [Shareholdings, Inc.] also acquired all the shares of stock of DRCC, a realty firm which owns vast tracts of land in Cabuyao, Laguna upon which [Asia Brewery's] plant stands.

VII

After the collapse of the mega business of his closest cronies (DISINI, SILVERIO AND CUENCA), upon the rapid deterioration of his health, and perhaps also on account of the inability of [Asia Brewery] to generate satisfactory income, [Marcos, Sr.] began to press that he be given a share of [Shareholdings, Inc.]. [Tan] attempted to evade the unconscionable demand of [Marcos, Sr.] by spending most of his time outside the Philippines. From 1983 to the start of 1986, [Tan] spent most of his time abroad. Despite [Tan's] absence, [Marcos, Sr.] kept up the pressure threatening the issuance of various tax decrees designed at crippling [Fortune Tobacco]. In fact an ad valorem tax was slapped increasing the specific tax on cigarettes. The said tax immediately caused [Fortune Tobacco's] sales to drop by 35% while increasing the sales of La Suerte by 50%. [Tan] was compelled to choose from the following options:

1. liquidate and/or siphon his assets and run abroad (like cronies who really did not build up their businesses with their own capital and hardwork), or,
2. delay the takeover by trying to get around the persistent demands for issuance of certificates of stock in blank and hope for the best, but with a resolve to stay in the country in any eventuality.

[Tan] decided to stay in the country and took the second option.

VIII

On July 20, 1983, three holding companies were incorporated as follows:

1. Basic Holdings Corp. (BASIC)
2. Falcon Holdings Corp. (FALCON)
3. Supreme Holdings, Inc. (SUPREME)

On the same day, the incorporators of FALCON and SUPREME

after paying their subscription in full, sold and transferred 100% of their shares to a new group led by [Tan]. In the meantime, [Marcos, Sr.] thru [Gapud], persisted in his demand for a 50[%], then 51%, then 60% share in [Shareholdings, Inc.]

On July 16, 1984, the three holding companies purchased 99% of the shares of the stockholders of [Shareholdings, Inc.], with the exception of [Tan] and [Mariano] who retained 0.5% each. On the same day the said three holding companies borrowed from the stockholders-vendors of [Shareholdings, Inc.] amounts equivalent to the respective purchase prices of the aforementioned shares on a 30-day term. Unable to pay the loan at maturity, the three companies sold back (on August 22, 1984) the said shares to the original vendors-stockholders in the same proportion as when purchased.

When the pressure became too heavy to bear and with [Marcos, Sr.] already displaying fangs of anger, deeds of assignment signed in blank (without issuing much less surrendering the corresponding stock certificates) by the original incorporators of FALCON AND SUPREME as well as by [Tan] and [Mariano] for their respective shares which all together were supposed to have accounted for 51% of Shareholdings, Inc.'s shares were delivered to Gapud without revealing that:

1. The original incorporators had already much earlier transferred and assigned their share to the new group led by [Tan] who were then the genuine and registered owners of the shares with the sole and exclusive authority to transfer the same;
2. FALCON and SUPREME had already previously divested themselves of [Shareholdings, Inc.'s] shares having resold the same to the original owners;
3. There could be no valid transfer of [Tan] and [Mariano] shares in [Shareholdings, Inc.] as their respective subscriptions had not been fully paid and to date remains unpaid.

IX

Thereafter, Marcos demanded for an additional 9% to give himself supposedly a 60% control over Shareholdings, Inc. To give the semblance of compliance with said demand, it was made to appear that on Feb. 28, 1985, BASIC transferred the equivalent of 9% of [Shareholdings, Inc.'s] total shares to SUPREME without revealing that:

1. BASIC had in fact already divested itself of all its [Shareholdings, Inc.'s] shares (as of August 22, 1984) in favor of its original owners;
 2. At any rate, no transfer could legally be effected since the subscriptions thereon have to date not yet been fully paid; and
 3. Moreover, the transfer document itself was ineffective because:
 - a. What was transferred were 11,317,500 shares of BASIC (not [Shareholdings, Inc.'s]) when BASIC only had a total of 1,000,000 paid up shares from a total authorized capital stock of 5,000,000 shares;
 - b. The document was executed by some persons who are not stockholders of BASIC.
- 

CONCLUSION

[Marcos, Sr.]'s greed compelled [Tan] to take the aforescribed defensive stance. What [Marcos, Sr.] wanted to do was to simply takeover, without any basis, much less consideration, control and substantial ownership of a business which took a lifetime to build.

[Tan] undoubtedly had to deal with the past regime of [Marcos, Sr.]. [Tan] however cannot be termed a crony of [Marcos, Sr.] in the sense that he did not take undue advantage of any of his dealings with the past government.

Perusal of the records of all the government owned or controlled banks will show that [Tan] or any of his companies either does not have any outstanding loan or credit accommodations or if there is such, the same is fully secured and is up-to-date in its payments. [Tan] has never been involved in the handling, much less in the misuse of public funds.

On the contrary, the [Tan] group of companies presently employs directly and/or indirectly a total workforce of more or less 20,000 people. The group subsidizes as well the members of the families of its employees, the 400,000 tobacco farmers, not to mention the countless cigarette vendors and sari-sari owners. The BIR records will show that the group's contribution annually in terms of taxes amount to more or less ₱2 billion. [Tan] has also set up companies which are not well known but nevertheless provide job opportunities for numerous persons notwithstanding the fact that they are operating on a loss and/or on a marginal and negligible return on investment. When the country suffered a scarcity of foreign currency, several companies of the group were re-oriented and geared towards exportation to help bring in the much needed foreign exchange. [Fortune Tobacco] is in fact now exporting cigarettes to China and the Middle East. [Allied Bank] has historically pioneered and led the way in supporting small, medium scale and agriculture based companies. While [Tan] has through the years supported and continues to support various charitable projects, this is neither the venue nor does he has the inclination to enumerate them herein.

[Tan] is a legitimate businessman who has been doing and will continue to do more than his share in the country's development effort. He was plainly a victim not an aggressor under the former dispensation. The February Revolution liberated the [Tan] group of companies just as it did the Filipino people. [Tan] had come home to the Philippines with a clean conscience and a fresh hope that the period of oppression has finally ended. Unfortunately, the initial joy has somehow diminished with the realization that further hardships may lie ahead. His hope however remains as undiminished and just as strong as his resolve to stay in the Philippines and to help the country as not only the fulfilment of a duty but as an exercise of his basic right.⁸⁷⁴

I agree with Associate Justice Caguioa that Tan's Written Disclosure can be admitted as evidence of the truth of its contents. Tan did not deny its execution. He also did not deny that it was properly presented as documentary evidence. This document was presented in its original. Furthermore, Tan

⁸⁷⁴ *Id.* at 839-848.

relied on this Written Disclosure in his own Memorandum in arguing that he was under duress.⁸⁷⁵ This can be taken as an admission of its authenticity as a private document.

Considering Tan's Written Disclosure is admissible in evidence, it may be considered in determining the existence of the undue advantage granted to him by Marcos, Sr.

As astutely assessed by Associate Justice Caguioa, while the Written Disclosure does not sufficiently prove the 60-40 Business Arrangement between Tan and Marcos, Sr., it still reveals that Tan was able to secure a brewery license in favor of Asia Brewery because of his close business relationship with Marcos, Sr.⁸⁷⁶ As to this fact, thus, I agree that this is sufficient to prove the element of taking undue advantage of his business relationship.

IV(A)(3)

The Republic likewise relies on Marcos, Jr.'s testimonies on August 21, 2007 and February 13, 2008.⁸⁷⁷

On August 21, 2007, Marcos, Jr. testified on his meetings with Marcos, Sr. and Tan, and how he came to know about Marcos, Sr.'s business interests in Tan's companies, including the 60% interest in Shareholdings, Inc. as owned by Falcon Holdings Corp. (Falcon Holdings) and Supreme Holdings, Inc. (Supreme Holdings), which were turned over to Marcos, Sr. through deeds of assignment of stocks indorsed in blank, thus:

Q: When was the first time that you saw defendant Lucio Tan?

[Marcos, Jr.]: I could not give you the specific date but I know it was in the early '70s. As I said, the first time I saw him was in the area of the Palace that we call the "Study Room", which is the area next to my father's office.

Q: Did you have opportunity to talk to defendant Lucio Tan?

A: Yes, several times after we have been introduced. We would say "hello" to each other when we cross each other's paths. And on a couple of occasions, we actually had an opportunity to have substantive conversations *asi de* from meetings.

Q: What do you mean "substantive meetings" or discussions?

A: **Well, I remember that at one point, I was summoned by**

⁸⁷⁵ *Rollo* (G.R. No. 203592), pp. 3498-3499. See also *See* J. Caguioa, Concurring and Dissenting Opinion in *Republic v. Tan*, G.R. No. 195873 et al. [Per J. Zalameda, *En Banc*], p. 25,

⁸⁷⁶ *See* J. Caguioa, Concurring and Dissenting Opinion in *Republic v. Tan*, G.R. No. 195873 et al. [Per J. Zalameda, *En Banc*], pp. 34-38.

⁸⁷⁷ *Rollo* (G.R. No. 203592), pp. 73, 83-88.

my father to his office and so I went. And he was there with Mr. Lucio Tan in the discussion.

And he at that point told me that he would like me to familiarize myself with the operations of some of the enterprises that we have interests in and that Mr. Lucio Tan was going to help me to be more familiar with the said operations.

Q: Why did your father summon you to his office to familiarize yourself with the business interest of the Marcoses?

A: It was part of a larger effort on the part of the family to really clarify and to conduct an inventory and legal audit of all those business interest that we have.

My sister Imee, who has legal training, was given the job of conducting the legal audit, and I was given the job to go to as many of these enterprises as I could and as I said, learn the operations and meet the people who were running them so that when the time comes that we would take over, we would know how to manage these different interests.

Q: And what was the condition of your father when he summoned you to his office?

A: At that time, he was still quite strong. But then, he was starting to feel the effect of his kidney disease. So perhaps, even that has a factor in his wanting us to know the family's interests.

Q: What happened after that meeting with your father and defendant Lucio Tan?

A: Well, at the end of the meeting, Lucio Tan and I talked and discussed the possibility of having a meeting, just the two of us.

And if I am not mistaken, he was leaving for abroad and so he said that he will contact me as to when we will have that meeting.

Q: Was there any occasion for your father to show proof of the family's interests in Lucio Tan?

A: Well, when we first began this whole effort, he had me and my sister, we met and we sat down and showed us some documents which are essentially Deeds of Assignment, Shares of Stock, Titles to properties, and all these kinds of things. And he tried to give us a sketch of exactly how the structures were.

And then his instructions to us were – we go out and make sure that first, all documentations were in place because maybe the documents or something were in some persons, the documents or something were in another person, to really reorganize them and collate everything. So, that was the gist of --- We had several of those meetings, and that was then I saw these documents.

xxx xxx xxx

Q: Now, let us go back to the instance where you had substantial discussion with defendant Lucio Tan.

Where did it take place?

A: Well, as I have mentioned, the first time that we actually sat

down and talked of anything substantive was in my father's office.

Subsequently, I received a message from Lucio Tan's office that he would ask me to meet him at his office in Allied Bank. That is about I think a week or fortnight after I was summoned by my father.

Q: And you met him at his office?

A: Yes, at his office in Allied Bank.

Q: **And what did you discuss with him in that meeting?**

A: **He laid out the ownership structure of the different corporations that we had an interest in.**

Q: **Did he tell you what those corporations are?**

A: **Yes, he actually drew out a diagram, a piece of paper, explaining that there was a company, Shareholdings, Inc., which was a holding corporation for several other corporations.**

I will try to remember them all—Foremost Farms, Fortune Tobacco, Asia Brewery, Himmel Industries, Grandspan, Dominion—I might be missing some but basically, Shareholdings, Inc. was the holding corporation for all those corporations.

Q: Aside from that meeting in Allied Bank, where else did you meet defendant Lucio Tan?

A: I think a couple of months after that, I flew to the bottling plant of Asia Brewery in Laguna, by helicopter.

I remember clearly the visit because there was a difficulty landing in the Asia Brewery Compound itself. We nearly had an accident and so we had to land on the next compound, then took a car to Asia Brewery.

Q: What happened in that plant visit?

A: At the plant visit, Mr. Lucio Tan took me around and basically explained to me what they did in the bottling plant, how the bottles were made, the different sizes that they made, the different kinds of beer, how they fill out the bottles, how they package them, the general operations of the plant.

XXX XXX XXX

Q: You mentioned Shareholdings, Inc.

What is the relationship of the Shareholdings Inc. with the other corporations that you mentioned earlier?

ATTY. MENDOZA

The best evidence are the corporate documents, Your Honors.

J. ESTRADA

Witness may answer!

A: Shareholdings, Inc. was the holding company for the other companies that I mentioned. And the ownership of the Shareholdings, Inc. was divided at least initially, between three other companies.

This [is] explanation that Mr. Tan gave me while we were at his office in Allied Bank.

Q: Could you name the three other companies holding shares in the Shareholdings, Inc.?

A: Yes. The three companies that own Shareholdings, Inc. [are] Basic, Supreme and Falcon.

Initially, Basic own[s] 50% of Shareholdings, Inc.; Falcon had 25% and Supreme had 25%.

This changed I think in early 1985 when some shares of Basic were sold to Supreme, the net effect of which, Supreme owned 34% of Shareholdings, Inc.

xxx xxx xxx

Q: Mr. Witness, do you have proof that Supreme Holdings, Inc. and Falcon Holdings, Inc. have interests in Shareholdings, Inc.?

A: **Well, there are documents that show Deeds of Sale of Shareholdings, Inc. to the three companies – Basic, Falcon and Supreme. There are also Deeds of Sale of certain percentage of Basic to Supreme.**

This was relevant to us because we held the shares of stock in Falcon and in Supreme which were with us, endorsed in blank.⁸⁷⁸ (Emphasis supplied)

On February 13, 2008, Marcos, Jr. also testified about Gapud's statements of the 60-40 Business Arrangement between Tan and Marcos, Sr.:

Q: Now Mr. Witness in your last testimony you testified that a certain Rolando [Gapud] was the financial manager of your father, do you remember that?

A: Yes, I do.

Q: How do you know that this Rolando [Gapud] was the financial manager of your father?

A: For one thing my father told me sir; and secondly, he would regularly come to the Palace to discuss certain aspects of the cases that he was handling with my father and subsequently with my mother, my sister Imee and with myself.

Q: When you say subsequently 'with myself', are you trying to say that Rolando [Gapud] also reported to you?

A: Well, he would not come to report if I don't know if I had mentioned it. I held office in Security Bank and which Rolando [Gapud] was the President, so we would see each other quite regularly and discuss some of these things. He did going [sic] to see Imee specifically to discuss whatever issues were current at that time. As I said when my father asked Imee and I to look into the family interest, we would then [be] included in their meetings, when he would come to the Palace to see my father.

⁸⁷⁸ *Id.* at 4013-4017.

Q: How often if you know did this Rolando [Gapud] report or talk to your father in Malacañang?

....

Witness: He did not have regularly schedule [sic] meeting, he would come in, I would suppose on average he would come in once a month or every two months. Sometimes, I supposed when they were in the midst as I said that they need to be dealt with, it would be more often. As I said, not regular; But I would say once a month on the average.

Atty. Generillo:

Q: How about with respect to your meeting with this Rolando [Gapud], how often did you meet him when you were holding office in Security Bank?

A: Well, I see him practically every time I went to the Security Bank Building.

Q: Now in connection with Lucio C. Tan, what did Rolando [Gapud] tell you?

....

A: In case of Lucio Tan Corporations, I remember one thing that he told me that he was finalizing the 60/40 sharing between Lucio Tan and my father.

....

Q: Apart from the statement of Rolando [Gapud] that he was finalizing the arrangement between your father and Lucio Tan on a 60/40 sharing arrangement. What else did Rolando [Gapud] tell you with respect to defendant Lucio Tan?

A: Well, he was commenting on the discussions that were being made between Lucio Tan and my father; That Lucio Tan made the counter proposal that the sharing will be 50/50 rather than 60/40.

Q: What did Rolando [Gapud] tell you with respect to this counter proposal of Lucio Tan to have a 50/50 arrangement?

A: I remembered verbatim said that Ilocano prevail. [sic]

Q: What do you mean?

A: My father's proposal for a 60/40 sharing was in the end and what was followed.⁸⁷⁹ (Emphasis supplied)

Marcos, Jr.'s testimony is hearsay. He only heard from Marcos, Sr. their interests in Tan's various corporations and Tan thereafter informed him of the ownership structure of these corporations. He was not privy to the transfer of shares and lacks personal knowledge of the transactions between and among the various corporations. Marcos, Jr. likewise testified that it was only Gapud who told him of the 60-40 business arrangement between Tan and Marcos, Sr. Thus, counsel for the respondents objected to the offer of Marcos, Jr.'s testimony as being hearsay, since the best evidence should be the documents

⁸⁷⁹ *Id.* at 1682-1685, 1687-1688.

themselves for the transfer of shares.⁸⁸⁰ The counsel for the respondents likewise posed a continuing objection for his testimony as to what Gapud told him, for being hearsay and immaterial.⁸⁸¹

Marcos, Jr.'s testimony, however, is admissible as an independently relevant statement, or that which is relevant independently of whether they are true or not:

Moreover, *the ban on hearsay evidence does not cover independently relevant statements*. These are statements which are *relevant independently of whether they are true or not*. They belong to two (2) classes: (1) those statements which are the very facts in issue, and (2) those statements which are *circumstantial evidence of the facts in issue*. The second class includes the following:

- a. *Statements of a person showing his state of mind*, that is, his mental condition, knowledge, belief, intention, ill will and other emotions;
- b. Statements of a person which show his physical condition, as illness and the like;
- c. *Statements of a person from which an inference may be made as to the state of mind of another*, that is, the knowledge, belief, motive, good or bad faith, etc. of the latter;
- d. Statements which may identify the date, place and person in question; and
- e. Statements showing the lack of credibility of a witness.

Again, *Jones tells us why these independently relevant statements are not covered by the prohibition against hearsay evidence*:

“§1088. *Mental State or Condition — Proof of Knowledge*. — There are a number of common issues, forming a general class, in proof of which hearsay is so obviously necessary that it is not customary to refer to its admissibility as by virtue of any exception to the general exclusionary rule. Admissibility, in such cases, is as of course. For example, *where any mental state or condition is in issue*, such as motive, malice, knowledge, intent, assent or dissent, unless direct testimony of the particular person is to be taken as conclusive of his state of mind, the *only method of proof available is testimony of others to the acts or statements of such person*. Where his acts or statements are against his interest, they are plainly admissible within the rules hereinabove announced as to admissions against interest. And even where not against interest, if they are so closely connected with the event or transaction in issue as to constitute once of the very facts in controversy, *they become admissible of necessity*.”⁸⁸² (Emphasis in the original)

⁸⁸⁰ *Id.* at 1658–1661.

⁸⁸¹ *Id.* at 1685–1686.

⁸⁸² *Estrada v. Desierto*, 408 Phil. 194, 227–228 (2001) [Per J. Puno, *En Banc*].

In its Memorandum, the Republic states that “Marcos, Jr.’s testimony . . . [was] based on his direct personal knowledge, derived from his meetings with [Marcos, Sr.], [Tan] and [Gapud].”⁸⁸³ Thus, his testimony, if admissible, may only be admitted as an independent relevant statement as to the fact that he had conversations with Marcos, Sr., Tan, and Gapud, but it would be hearsay as to the truthfulness of the contents or the facts subject of the meeting.

I agree that Marcos Jr.’s testimony is hearsay and may not be used to prove the truth of the facts asserted in the statement, which is that Marcos, Sr. owned part of Tan’s properties. Being hearsay evidence and clearly objected to as such by the defendant’s counsel, Marcos Jr.’s testimony has no probative value. The Republic further failed to show that the evidence falls within any of the exceptions to the hearsay rule, as provided in the Rules of Court.

Assuming however that Marcos Jr.’s testimony is admissible in evidence, Marcos, Jr.’s testimony may only be admitted to prove ownership similar to Imelda’s declarations in her Amended Answer, but not that Tan et al. took undue advantage of their office, authority, influence, connections, or relationship to obtain ownership of these business interests.

IV(A)(4)

In 1980, Gapud was the President and Chief Executive Officer of Security Bank and Trust Company, and the financial executor of Marcos, Sr. and Imelda.⁸⁸⁴ On January 14, 1987, Gapud executed a Sworn Statement where he detailed Marcos, Sr.’s dealings with his cronies, including how Marcos, Sr. had beneficial interest in Tan’s businesses. He confirmed Marcos, Sr. and Tan’s 60-40 Business Arrangement and the concessions extended by the former to the latter.⁸⁸⁵ The Sworn Statement was personally typed by Senator Salonga after the latter interviewed Gapud in Hong Kong. Senator Salonga signed it as a witness.⁸⁸⁶

Gapud’s Sworn Statement reads in part:

SWORN STATEMENT

I, ROLANDO C. GAPUD, a Filipino citizen of legal age, hereby depose and state under oath:

xxx xxx xxx

6. I recall that I submitted to PCGG, through Commissioner Raul

⁸⁸³ *Rollo* (G.R. No. 203592), p. 4017.

⁸⁸⁴ *Id.* at 1493, 4020.

⁸⁸⁵ *Id.* at 1498, 4019.

⁸⁸⁶ *Id.* at 1493, 4019.

Daza, a brief description of the businesses of business associates and relatives of Mr. Marcos – including the following: (Annex “A”)

G. Araneta
Campos
Cojuangco
R.M. Cuenca
Benedicto
Lucio Tan
Floirendo
Sabido
Luis Yulo
Raymundo Feliciano
G. Tanseco
Enriquez/ Panlilio
Nieto
Tantoco
Roman
Disini
Alfonso Lim
Menzi/Yap
R. Nubla
Romualdez
M. Elizalde, Jr.
H. Poblador / E. Razon
Ilusorio
E. Balao
A.Fonacier
F.R. Cuevas
Anthony Lee
Ismael Mathay, Jr.
J. Marcelo, Jr.

I was the one who prepared and typed Annex “A”. I submitted it to Commissioner Daza, before I left the Philippines through the back-door in or around June 1986, because of what I perceived to be some great danger to my life. I remember that shortly after the creation of PCGG, I met Minister Jovito R. Salonga and described to him the corporate devices resorted to by the Bernstein brothers (Joseph and Ralph) and by Mrs. Cliceria Tantoco in connection with the 4 buildings in Manhattan, New York — Crown Building, 40 Wall Street, Herald Center, and 200 Madison Avenue. I also had meetings with Commissioner Ramon Daza, before my departure for abroad.

7. . . . [I] was the Financial Executor of Mr. and Mrs. Ferdinand Marcos. It is quite not accurate to say that I was the financial advisor of Mr. and Mrs. Marcos and in that sense acted as financial advisor, in truth I was often carrying out the instructions of Mr. and Mrs. Marcos. These instructions came to me, either through Ms. Fe R. Gimenez who used to call me up to convey them, or given to me directly by [Marcos, Sr.] or Mrs. Imelda R. Marcos, after being asked by Mrs. Gimenez to go to [Malacañang].

8. With particular reference, for example to MR. LUCIO TAN, I know that Mr. [Marcos, Sr.] and Mr. [Tan] had understanding that Mr. [Marcos, Sr.] owns 60% of Shareholding, Inc. which owns shares of Fortune Tobacco, [Asia Brewery], Allied Bank, and Foremost Farms. I was asked

sometime in 1985 to formalize this arrangement. I went to Mr. [Tan] for that purpose. He tried to bargain by reducing the equity of Mr. [Marcos, Sr.] to 50%. I told him that I was merely carrying out the instructions of Mr. [Marcos, Sr.] and that if he wanted to bargain, he should take up the matter directly with Mr. [Marcos, Sr.]. As a matter of fact, Mr. [Tan], apart from the 60% equity of Mr. [Marcos, Sr.] had been regularly paying, through Security Bank, Sixty Million Pesos ([PHP] 60 [m]illion) to One Hundred Million Pesos ([PHP] 100 million) to Mr. [Marcos, Sr.], in exchange for privileges and concessions Mr. [Marcos, Sr.] had been giving him in relation to the businesses managed by Mr. Lucio Tan. As I said . . . Mr. [Tan] gained substantial concessions in specific taxes and stamp duties for his cigarette (Fortune Tobacco) and beer (Asia Brewery) operations. He belongs to the group that could get presidential decrees and letters on instruction from Mr. [Marcos, Sr.] for their joint benefit. I understand that Mr. Tan asserted that he was the victim of extortion, and that he outwitted Mr. [Marcos, Sr.] by issuing to Mr. [Marcos, Sr.] his 60% equity in fake certificate of stock. This is not accurate. Mr. [Marcos, Sr.] and Mr. Tan were in partnership, and they derived great material benefits from the relationship. As far as I know, Mr. Tan was not in a position to outwit and outmaneuver Mr. [Marcos, Sr.]. I do not know that there is a crony or business associate of Mr. [Marcos, Sr.] who could have done that.⁸⁸⁷ (Citations omitted)

A part of Gapud's Sworn Statement reads:

L. Tan

1. The main companies under this party are: [Allied Bank], Fortune Tobacco, Asia Brewery, Foremost Farms, and [Himmel Industries]. A holding company called [Shareholdings, Inc.] has also been organized to consolidate their joint holdings.
2. It is also believed that this person had gained substantial concession in specific taxes and stamp duties for his cigarette (Fortune Tobacco) and beer (Asia Brewery) operation.⁸⁸⁸

Gapud's Sworn Statement is inadmissible in evidence.

An evidence being offered in court, unless a self-authenticating document, must be authenticated, as a preliminary step in showing admissibility of evidence.⁸⁸⁹ The requirement of authentication proceeds from the presumption that: "objects and documents presented in evidence are, as a rule, counterfeit."⁸⁹⁰ Thus, the nature of documents, whether public or private, determines how it may be offered and admitted as evidence in court:

The nature of documents as either public or private determines how the documents may be presented as evidence in court. A public document,

⁸⁸⁷ *Id.* at 1492–1494, 4020–4021.

⁸⁸⁸ *Id.* at 4021–4022.

⁸⁸⁹ WILLARD B. RIANO, EVIDENCE: THE BAR LECTURE SERIES 277 (2013).

⁸⁹⁰ *Id.*

by virtue of its official or sovereign character, or because it has been acknowledged before a notary public (except a notarial will) or a competent public official with the formalities required by law, or because it is a public record of a private writing authorized by law, is self-authenticating and requires no further authentication in order to be presented as evidence in court. In contrast, a private document is any other writing, deed, or instrument executed by a private person without the intervention of a notary or other person legally authorized by which some disposition or agreement is proved or set forth. Lacking the official or sovereign character of a public document, or the solemnities prescribed by law, a private document requires authentication in the manner allowed by law or the Rules of Court before its acceptance as evidence in court. The requirement of authentication of a private document is excused only in four instances, specifically: (a) when the document is an ancient one within the context of Section 21, Rule 132 of the Rules of Court; (b) when the genuineness and authenticity of an actionable document have not been specifically denied under oath by the adverse party; (c) when the genuineness and authenticity of the document have been admitted; or (d) when the document is not being offered as genuine.⁸⁹¹ (Citations omitted)

Although considered as public documents if acknowledged before a notary public, affidavits are still inadmissible in evidence for being hearsay and excluded from the judicial proceeding, unless the affiants take the witness stand and affirm the averments in their affidavits.⁸⁹² The reason for this has been explained in *Republic v. Marcos-Manotoc*:⁸⁹³

Neither did petitioner present as witnesses the affiants of these Affidavits or Memoranda submitted to the court. Basic is the rule that, while affidavits may be considered as public documents if they are acknowledged before a notary public, these Affidavits are still classified as hearsay evidence. The reason for this rule is that they are not generally prepared by the affiant, but by another one who uses his or her own language in writing the affiant's statements, parts of which may thus be either omitted or misunderstood by the one writing them. Moreover, the adverse party is deprived of the opportunity to cross-examine the affiants. For this reason, affidavits are generally rejected for being hearsay, unless the affiants themselves are placed on the witness stand to testify thereon.⁸⁹⁴

In *Dantis v. Maghinang, Jr.*,⁸⁹⁵ an affidavit, which was not identified and where its averments were not affirmed by affiant, was excluded from the judicial proceedings being an inadmissible hearsay evidence, thus:

To begin with, Exhibit "3," the affidavit of Ignacio, is hearsay evidence and, thus, cannot be accorded any evidentiary weight. Evidence is hearsay when its probative force depends on the competency and credibility of some persons other than the witness by whom it is sought to be produced. The exclusion of hearsay evidence is anchored on three

⁸⁹¹ *Patula v. People*, 685 Phil. 376, 397–398 (2012) [Per J. Bersamin, First Division].

⁸⁹² *Republic v. Marcos-Manotoc*, 681 Phil. 380, 404–405 (2012) [Per J. Sereno, Second Division]; *People v. Quidato, Jr.*, 357 Phil. 674 (1998) [Per J. Romero, Third Division].

⁸⁹³ 681 Phil. 380 (2012) [Per J. Sereno, Second Division].

⁸⁹⁴ *Id.* at 404–405.

⁸⁹⁵ 708 Phil. 575 (2013) [Per J. Mendoza, Third Division].

reasons: 1) absence of cross-examination; 2) absence of demeanor evidence; and 3) absence of oath.

Jurisprudence dictates that an affidavit is merely hearsay evidence where its affiant/maker did not take the witness stand. The sworn statement of Ignacio is of this kind. The affidavit was not identified and its averments were not affirmed by affiant Ignacio. Accordingly, Exhibit "3" must be excluded from the judicial proceedings being an inadmissible hearsay evidence.⁸⁹⁶ (Citations omitted)

In *Tating v. Marcella*,⁸⁹⁷ the Court equated the sworn statement to an affidavit, and found that it should not be given probative weight considering that the affiant failed to take the witness stand:

There is no issue in the admissibility of the subject sworn statement. However, the admissibility of evidence should not be equated with weight of evidence. The admissibility of evidence depends on its relevance and competence while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade. Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence. It is settled that affidavits are classified as hearsay evidence since they are not generally prepared by the affiant but by another who uses his own language in writing the affiant's statements, which may thus be either omitted or misunderstood by the one writing them. Moreover, the adverse party is deprived of the opportunity to cross-examine the affiant. For this reason, affidavits are generally rejected for being hearsay, unless the affiants themselves are placed on the witness stand to testify thereon. The Court finds that both the trial court and the CA committed error in giving the sworn statement probative weight. Since Daniela is no longer available to take the witness stand as she is already dead, the RTC and the CA should not have given probative value on Daniela's sworn statement for purposes of proving that the contract of sale between her and petitioner was simulated and that, as a consequence, a trust relationship was created between them.⁸⁹⁸

Here, Gapud's Sworn Statement is an affidavit, which must be identified, and its averments must be affirmed by Gapud, the affiant. However, Gapud never testified before the Sandiganbayan; he did not authenticate his Sworn Statement, and thus, he was not cross-examined on his statement.

In *Republic v. Sandiganbayan*,⁸⁹⁹ where the taking of Gapud's deposition was denied until after the individual's filed their Answers, the Court considered that Gapud had no intention of returning to the Philippines for fear of his safety:

In the case at bar, petitioner alleges that the taking of Mr. Gapud's

⁸⁹⁶ *Id.* at 589.

⁸⁹⁷ 548 Phil. 19 (2007) [Per J. Austria-Martinez, Third Division].

⁸⁹⁸ *Id.* at 28.

⁸⁹⁹ 410 Phil. 536 (2001) [Per J. Puno, First Division].

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

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

There is no question that the trial court has the power to direct, in its discretion, that a deposition shall not be taken, if there are valid reasons for so ruling. Petitioner's reasons do not amount to an "exceptional" or "unusual" case for us to grant leave and reverse respondent court. Petitioner has not sufficiently shown the necessity for taking Mr. Gapud's deposition *at this point in time* before the other defendants, particularly the individual defendants, have served their answers. Petitioner has not alleged that Mr. Gapud is old, sick or infirm as to necessitate the taking of his deposition. Indeed, no urgency has been cited and no ground given that would make it prejudicial for petitioner to await joinder of issues.

Finally, the Court notes that petitioner waited all these years for a ruling on this case instead of working for the rest of the defendants to be summoned and their answers be filed. Petitioner can, as a matter of course, take Mr. Gapud's deposition after the individual defendants have at least filed their answers.⁹⁰⁰ (Emphasis in the original)

However, during the hearing on October 16, 2007, the Sandiganbayan already allowed the taking of Gapud's deposition since the answers are completed:

Atty. Generillo:

Your Honor please, if I may. Contrary to the contention of the counsel, Your Honor. The plaintiff has attempted to take the deposition of Mr. Gapud, but this Honorable Court did not allow the plaintiff to take the deposition of Mr. Gapud. Why? According to this Court, the defendants have not yet completed their Answer; and because the defendants have not yet filed the complete Answer, the deposition of Rolando Gapud may not be taken. In fact, the PCGG appealed from the ruling of this Honorable Court to the Supreme Court questioning the denial of the action of the plaintiff to take the deposition of Rolando Gapud. But then, the Supreme Court sustained the ruling of this Honorable Court denying the taken [sic] of the deposition of Rolando Gapud, on the ground that Answers have not yet been completed.

⁹⁰⁰ *Id.* at 554-555.

CHAIRPERSON:

But this time, Answers are already completed.

Atty. Generillo:

Yes, Your Honor.

CHAIRPERSON:

You can take now the deposition of Mr. Gapud.

Atty. Generillo:

Yes, Your Honor.

But then, as I said in my offer of evidence, the distinguished witness personally typed the Affidavit of Mr. Gapud.

CHAIRPERSON:

Okay, you go ahead. Let the witness testify. Whatever the testimony of Senator Salonga, the Court will find out.

....

Atty. Generillo:

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

CHAIRPERSON:

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

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

Atty. Generillo:

Thank You, Your Honor.

CHAIRPERSON:

We note that an Affidavit is hearsay. If the affiant will not testify or swear, that he is not presented to say that the statements therein are his statements we considered the Affidavit as hearsay. That is

the jurisprudence.

Atty. Generillo:

We are aware of that, Your Honor, but only for purposes of establishing the existence, due execution and genuineness of the Gapud Affidavit, Your Honor.⁹⁰¹ (Emphasis supplied)

Despite Tan et al.'s counsel's objection to the testimony for being hearsay,⁹⁰² the Republic offered Senator Salonga's testimony and conceded that the purpose would be to establish the circumstances surrounding the execution of Gapud's Sworn Statement.⁹⁰³ Accordingly, Senator Salonga testified that he personally typed Gapud's Statement in Hong Kong after Gapud narrated to him his role on Marcos, Sr.'s various holdings, and thereafter he signed it as a witness.⁹⁰⁴ However, Senator Salonga's testimony was not completed and he was not cross-examined on Gapud's Sworn Statement. The Republic's counsel stated that they will offer the Gapud Sworn Statement some other time⁹⁰⁵ and was made aware by the court that it would be treated as hearsay if the affiant, Gapud, will not testify on his statements.⁹⁰⁶

Despite the Sandiganbayan's allowance of the taking of Gapud's deposition and despite clear warning that his affidavit will be treated as hearsay if Gapud failed to take the witness stand, the Republic still failed to acquire Gapud's deposition or put him on the witness stand to attest to his statement or authenticate his Sworn Statement. Despite the subpoenas, Gapud never came to the court to testify.⁹⁰⁷

Accordingly, the Gapud Sworn Statement is hearsay, inadmissible as evidence and has no probative value. Like in *Republic v. Marcos-Manotoc*, this Court again expressed its dismay to the prosecution for failure to provide any reason whatsoever in their nonpresentation of witnesses to support the government's claims despite having the expansive resources of government.⁹⁰⁸

However, even assuming that it is admissible, Gapud's Sworn Statement may only be admitted as an independently relevant statement, and admissible to show that the document exists but not to prove the truth of its contents.

⁹⁰¹ *Rollo* (G.R. No. 203592), pp. 1567–1571.

⁹⁰² *Id.* at 1566.

⁹⁰³ *Id.* at 1570, 1602.

⁹⁰⁴ *Id.* at 1591–1593, 4019.

⁹⁰⁵ *Id.* at 1570.

⁹⁰⁶ *Id.* at 1570–1571.

⁹⁰⁷ *Id.* at 3537.

⁹⁰⁸ *Republic v. Marcos-Manotoc*, 681 Phil. 380 (2012) [Per J. Sereno, Second Division].

IV(A)(5)

The following are the documents appended by the Republic to prove its ill-gotten wealth allegations against Tan et al.:

<i>Title</i>	<i>Date</i>	<i>Contents</i>	<i>Purpose of Presentation</i>	<i>Nature of Document (Original or Copy)</i>	<i>Original Document Rule exception</i>	
Sandiganbayan Decision ⁹⁰⁹	June 11, 2012	Dismissed the Republic's Complaint for Reversion, Reconveyance, Reconstitution, Accounting, and Damages	Compliance with jurisdictional requirement	Original	N/A	
Sandiganbayan Resolution ⁹¹⁰	September 26, 2012	Denied the Republic's Motion for Reconsideration	Compliance with jurisdictional requirement	Original	N/A	
Notice of Hearing ⁹¹¹	October 12, 1957	Served as public notice of Tan's petition for naturalization Contains details of Tan's Chinese origins and first involvement in the tobacco industry	Establishes Tan's Filipino citizenship	Copy	Public Record	
Bureau of Immigration Identification Certificate ⁹¹²	September 16, 1960	Identification of Tan as a naturalized citizen		Copy	None	
Bureau of Immigration Letter ⁹¹³	September 15, 1960	Canceled the alien registry entries of Tan and his wife Carmen Khao		Copy	None	
Certificate of Naturalization ⁹¹⁴	September 3, 1960	Official certification of Tan's status as a naturalized citizen Issued by the Court of First Instance of Rizal, Branch IV, Quezon City		Copy	None	
Case Decision ⁹¹⁵	August 15, 1958	Discussed compliance of Tan with the requirements for naturalization under Commonwealth Act No. 473		Certified True Copy	Public Record	
Certificate of Naturalization	January 16, 1976	Official certification of Mariano's status as a naturalized citizen		Establishes Mariano's Filipino	Certified True Copy	Public Record

⁹⁰⁹ *Rollo* (G.R. No. 203592), pp. 14-169.

⁹¹⁰ *Id.* at 171-240.

⁹¹¹ *Id.* at 775. Public record as found on the Official Gazette.

⁹¹² *Id.* at 776.

⁹¹³ *Id.* at 777.

⁹¹⁴ *Id.* at 779.

⁹¹⁵ *Id.* at 780-785.

916		Issued by the Special Committee on Naturalization	citizenship		
Applicant's Bio Data ⁹¹⁷	N/A	Contains applicant's name, age, citizenship, civil status, residence, occupation, years of residence in the Philippines, and special qualifications. Also contains names of witnesses.		Certified True Copy	Public Record
Naturalization Case Evaluation Sheet ⁹¹⁸	May 6, 1975	Checklist of naturalization requirements under Letter of Instruction No. 270. Shows Mariano's compliance with the requirements. Contains the Special Committee's recommendation of Mariano's naturalization by Presidential Decree.		Certified True Copy	Public Record
Certificate of Naturalization ⁹¹⁹	January 15, 1976	Official certification of Harry's status as a naturalized citizen Issued by the Special Committee on Naturalization		Certified True Copy	Public Record
Naturalization Case Evaluation Sheet ⁹²⁰	April 30, 1976	Checklist of naturalization requirements under Letter of Instruction No. 270. Shows Harry's compliance with the requirements. Contains the Special Committee's recommendation of Harry's naturalization by Presidential Decree.	Establishes Harry's Filipino citizenship	Certified True Copy	Public Record
Petition for Naturalization ⁹²¹	N/A	Filed by Tan Eng Chan before the Special Committee on Naturalization	Establishes Tan Eng Chan's Filipino citizenship	Certified True Copy	Public Record
Oath of Allegiance ⁹²²	December 7, 1976	Tan Eng Chan's sworn renunciation of allegiance to China and oath of allegiance to the Philippines		Certified True Copy	Public Record

⁹¹⁶ *Id.* at 786.

⁹¹⁷ *Id.* at 787.

⁹¹⁸ *Id.* at 788-794.

⁹¹⁹ *Id.* at 795.

⁹²⁰ *Id.* at 796-799. Pages for Items 6 to 11 are missing.

⁹²¹ *Id.* at 800.

⁹²² *Id.* at 801-804.

		Also contains Tan Eng Chan's educational background, years of residency in the Philippines, special qualification, and language proficiencies, and the names of the character witnesses		
Certificate of Naturalization ⁹²³	December 20, 1976	Official certification of Tan Eng Chan's status as a naturalized citizen Issued by the Special Committee on Naturalization	Certified True Copy	Public Record
Naturalization Case Evaluation Sheet ⁹²⁴	July 10, 1976	Checklist of naturalization requirements under Letter of Instruction No. 270. Shows Tan Eng Chan's compliance with the requirements. Contains the Special Committee's recommendation of Tan Eng Chan's naturalization by Presidential Decree.	Certified True Copy	Public Record
Applicant's Bio Data ⁹²⁵	N/A	Contains applicant's name, age, citizenship, civil status, residence, occupation, years of residence in the Philippines, and special qualifications. Also contains names of witnesses.	Certified True Copy	Public Record
Affidavit of Character Witness ⁹²⁶	May 19, 1975	Michael Sebuguero's attestation of Tan Eng Chan's good moral character and qualifications for naturalization. Also contains Sebuguero's bio data and circumstance of acquaintanceship with Tan Eng Chan.	Certified True Copy	Public Record
Patent Application ⁹²⁷	May 30, 1975	Supporting document for Tan Eng Chan's special qualification for naturalization; provides introduction of a useful invention	Certified True Copy	Public Record

⁹²³ *Id.* at 805, 813.⁹²⁴ *Id.* at 806-812, 814-820.⁹²⁵ *Id.* at 821.⁹²⁶ *Id.* at 822-823.⁹²⁷ *Id.* at 824-825.

Alien Certificate of Registration ⁹²⁸	Issued November 12, 1973	Supporting document for petition for naturalization Issued by the Bureau of Immigration		Certified True Copy	Public Record
Social Security System ID ⁹²⁹	September 10, 1974	Supporting document for petition for naturalization		Certified True Copy	Public Record
Income Tax Return ⁹³⁰	March 8, 1973	Harry's Income Tax Return for the Calendar Year 1972 Indicates annual income of PHP 11,600.00 from Fortune Tobacco.		Certified True Copy	Public Record
Income Tax Return ⁹³¹	February 16, 1974	Harry's Income Tax Return for the Calendar Year 1973 Indicates annual income of PHP 27,000.00 from Fortune Tobacco and PHP 315.00 from Lepanto Consolidated Mining Company		Certified True Copy	Public Record
Withholding Statement and Official Receipt of Tax Payment ⁹³²	February 24, 1975	Statement of Income Tax Withheld from Harry by Fortune Tobacco for the Calendar Year 1974 and payment of Income Tax to the Bureau of Internal Revenue Indicates annual income of PHP 31,525.00 from Fortune Tobacco.		Certified True Copy	Public Record
Income Tax Return ⁹³³	February 24, 1975	Harry's Income Tax Return for the Calendar Year 1974 Indicates annual income of PHP 31,525.00 from Fortune Tobacco, PHP 85.31 from Lepanto Consolidated Mining, and PHP 5,422.63 from China Banking Corp.		Certified True Copy	Public Record
Income Tax Return ⁹³⁴	March 15, 1974	Tan Eng Chan's Income Tax Return for the Calendar Year 1973 Indicates annual income of PHP 10,000.00 from Fortune Tobacco.		Certified True Copy	Public Record

⁹²⁸ *Id.* at 826-827.⁹²⁹ *Id.* at 828.⁹³⁰ *Id.* at 829.⁹³¹ *Id.* at 830.⁹³² *Id.* at 831.⁹³³ *Id.* at 832.⁹³⁴ *Id.* at 833.

Income Tax Return ⁹³⁵	March 3, 1975	Tan Eng Chan's Income Tax Return for the Calendar Year 1974 Indicates annual income of PHP 12,700.00 from Fortune Tobacco.		Certified True Copy	Public Record
Affidavit of Character Witness ⁹³⁶	April 28, 1975	General Ordoñez's attestation of Harry's good moral character and qualifications for naturalization Also contains General Ordoñez's bio data and circumstance of acquaintanceship with Harry		Certified True Copy	Public Record
(No title) ⁹³⁷	May 10, 1986	Narration of the institution of Allied Bank and Asia Brewery Shows Marcos, Sr.'s financial stake and involvement in these corporations	Evidence of the ill-gotten nature of Tan's wealth	Certified True Copy	Public Record
Immigrant Certificate of Residence ⁹³⁸	November 12, 1973	Certification of Tan Eng Chan's status as immigrant. Indicates his residential address in the Philippines		Certified True Copy	Public Record
Withholding Statement and Official Receipt of Tax Payment ⁹³⁹	March 3, 1975	Statement of Income Tax Withheld from Tan Eng Chan by Fortune Tobacco for the Calendar Year 1974 and payment of Income Tax to the Bureau of Internal Revenue Indicates annual income of PHP 12,700.00 from Fortune Tobacco.		Certified True Copy	Public Record
Tax Payment Acceptance Order ⁹⁴⁰	March 15, 1974	Receipt of Tan Eng Chan's Income Tax Payment for Calendar Year 1973		Certified True Copy	Public Record
Fortune Tobacco Letter ⁹⁴¹	February 5, 1974	Requested authority from the Philippine Virginia Tobacco Administration to import 1 million kilograms of blending tobacco Includes a handwritten	Shows Marcos, Sr.'s grant of exclusive concessions to Fortune Tobacco	Copy	None

⁹³⁵ *Id.* at 834.⁹³⁶ *Id.* at 835-838.⁹³⁷ *Id.* at 839-848. Certified true copy from the Library and Records Division of the Presidential Commission on Good Government.⁹³⁸ *Id.* at 850.⁹³⁹ *Id.* at 851.⁹⁴⁰ *Id.* at 852.⁹⁴¹ *Id.* at 853.

		note by Marcos, Sr. referring the matter to Moreno, the Chairman of the Philippine Virginia Tobacco Administration		
Fortune Tobacco Letter ⁹⁴²	October 1, 1979	Requested authority from the Philippine Virginia Tobacco Administration to import 4 million kilograms of foreign leaf tobacco Includes a handwritten note by Marcos, Sr. approving the request	Copy	None
Philippine Virginia Tobacco Administration Letter ⁹⁴³	July 9, 1980	Informed Marcos, Sr. of Fortune Tobacco's request for an import quota of 4 million kilograms of foreign leaf tobacco Includes a handwritten note by Marcos, Sr. approving the request	Copy	None
Philippine Virginia Tobacco Administration Letter ⁹⁴⁴	March 31, 1981	Informed Marcos, Sr. of Fortune Tobacco's request for an import quota of 4 million kilograms of foreign leaf tobacco Includes a handwritten note by Marcos, Sr. approving the request	Certified True Copy	Public Record
Letter from Philippine Virginia Tobacco Administration Chairman Federico Moreno ⁹⁴⁵	September 7, 1981	Informed Marcos, Sr. of Fortune Tobacco's request for an import quota of 4 million kilograms of foreign leaf tobacco Includes a handwritten note by Marcos, Sr. approving the request	Certified True Copy	Public Record
Letter from the Office of the President ⁹⁴⁶	April 22, 1983	Granted Fortune Tobacco's request for an import quota of 4 million kilograms of foreign leaf tobacco	Copy	None
Philippine Virginia Tobacco Administration Letter ⁹⁴⁷	April 14, 1983	Informed Marcos, Sr. of Fortune Tobacco's request for an import quota of 4 million kilograms of foreign leaf tobacco Includes a handwritten note by Marcos, Sr.	Copy	None

⁹⁴² *Id.* at 854.

⁹⁴³ *Id.* at 855.

⁹⁴⁴ *Id.* at 856.

⁹⁴⁵ *Id.* at 857. No official letterhead.

⁹⁴⁶ *Id.* at 858, 860.

⁹⁴⁷ *Id.* at 859, 861.

		approving the request			
Office of the President Letter ⁹⁴⁸	April 28, 1981	Granted Fortune Tobacco's request for an import quota of 4 million kilograms of foreign leaf tobacco		Copy	None
Office of the President Letter ⁹⁴⁹	December 14, 1983	Addressed to Central Bank Governor Jaime C. Laya to "extend [Allied Bank and Fortune Tobacco] help." This is in response to Allied Bank's request for a special rediscounting facility worth PHP 300 million to finance tobacco production for Fortune Tobacco		Copy	None
Office of the President Letter ⁹⁵⁰	April 14, 1984	Granted Fortune Tobacco's request for an import quota of 5 million kilograms of foreign leaf tobacco		Certified True Copy	None
Fortune Tobacco Letter ⁹⁵¹	October 30, 1985	Requested authority from the Philippine Virginia Tobacco Administration to import 2 million kilograms of flue-cured tobacco		Copy	None
Memorandum ⁹⁵²	January 2, 1987	Prepared by Carlitos Encarnacion for Presidential Commission on Good Government Deputy Minister Ramon A. Diaz Discussed Fortune Tobacco's illegal over-importation of tobacco and irregularities in the approval process		Certified True Copy	Public Record
National Tobacco Importation Records ⁹⁵³	(No date)	Philippine Virginia Tobacco Administration's record of the total annual tobacco imports from 1978 to 1984	Shows the Philippine Virginia Tobacco Administration's violations of the 6 million kilogram-limit provided by law for annual tobacco imports	Certified Photocopy	Public Record

⁹⁴⁸ *Id.* at 862.

⁹⁴⁹ *Id.* at 863.

⁹⁵⁰ *Id.* at 864.

⁹⁵¹ *Id.* at 865.

⁹⁵² *Id.* at 866-871. Certified true copy from the Library and Records Division of the Presidential Commission on Good Government.

⁹⁵³ *Id.* at 872-876. Certified photocopy from the Library and Records Division of the Presidential Commission on Good Government.

Fortune Tobacco Export and Import Records ⁹⁵⁴	(No date)	Indicates Fortune Tobacco's annual exports for 1974 and 1976 to 1986 Also indicates Fortune Tobacco's annual imports for 1981 to 1986	Shows the Fortune Tobacco's violations of the 6 million kilogram-limit provided by law for tobacco imports in 1981 and 1983	Certified Photocopy	Public Record
Check Payments ⁹⁵⁵	July 31, 1986; August 31, 1986; August 16, 1986; September 13, 1986; September 30, 1986; October 18, 1986; and October 31, 1986	Drawer: Fortune Tobacco Drawee: Allied Bank Payee: Republic of the Philippines Amount Paid: PHP 5 million per check		Certified Photocopy	Public Record
Fortune Tobacco Letter ⁹⁵⁶	April 5, 1983	Requested from Marcos, Sr. for a special rediscounting facility worth PHP 500 million Includes a handwritten note by Marcos, Sr. referring the letter to Central Bank Governor Jaime C. Laya for "favorable action"	Shows exclusive favors granted to Fortune Tobacco	Certified Photocopy	Public Record
Fortune Tobacco Letter ⁹⁵⁷	December 9, 1983	Requested from Marcos, Sr. for a 180-day credit arrangement for the importation of raw materials Includes a handwritten note by Marcos, Sr. referring the letter to Central Bank Governor Jaime C. Laya to "give [Fortune Tobacco] the support they may need."	Shows exclusive favors granted to Fortune Tobacco	Copy	None
Allied Bank Letter ⁹⁵⁸	December 10, 1983	Requested from Marcos, Sr. a special rediscounting facility worth PHP 300 million "in behalf of the various tobacco dealers," from whom Fortune	Shows exclusive favors granted to Fortune Tobacco	Copy	None

⁹⁵⁴ *Id.* at 877. Certified photocopy from the Library and Records Division of the Presidential Commission on Good Government.

⁹⁵⁵ *Id.* at 878-880. Certified photocopy from the Library and Records Division of the Presidential Commission on Good Government.

⁹⁵⁶ *Id.* at 881. Certified Photocopy from the Library and Records Division of the Presidential Commission on Good Government.

⁹⁵⁷ *Id.* at 882-883.

⁹⁵⁸ *Id.* at 884.

		Tobacco was committed to buy tobacco harvest Includes a handwritten note by Marcos, Sr. referring the letter to Central Bank Governor Jaime C. Laya to "extend them help"			
Office of the President Letter ⁹⁵⁹	December 29, 1983	Instructs Central Bank Governor Jaime C. Laya to accommodate the request of Asia Brewery to allow it to import raw materials and equipment on a no-dollar basis	Shows exclusive favors granted to Asia Brewery	Copy	None
Fortune Tobacco Letter ⁹⁶⁰	April 5, 1983	Requested from Marcos, Sr. a rediscounting facility worth PHP 500 million	Shows exclusive favors granted to Fortune Tobacco	Certified Photocopy	Public Record
Fortune Tobacco Letter ⁹⁶¹	December 9, 1983	Requested from Marcos, Sr. for a 180-day credit arrangement for the importation of raw materials Includes a handwritten note by Marcos, Sr. referring the letter to Central Bank Governor Jaime C. Laya to "give [Fortune Tobacco] the support they may need."	Shows exclusive favors granted to Fortune Tobacco	Copy	None
Fortune Tobacco Letter ⁹⁶²	April 28, 1976	Requested a short-term loan of PHP 50 million from the Philippine National Bank for the purchase of tobacco from local farmers		Copy	None
Fortune Tobacco Letter ⁹⁶³	April 28, 1976	Requested a short-term loan of PHP 50 million from the Philippine Veterans Bank for the purchase of tobacco from local farmers		Certified Copy	Public Record
Letter from Tan ⁹⁶⁴	June 25, 1978	Requested from Marcos, Sr. for the increase in specific taxes on cigarettes be delayed for one year Reason for request: for Fortune Tobacco to have more time to settle its loans and liabilities		Copy	None

⁹⁵⁹ *Id.* at 885.⁹⁶⁰ *Id.* at 886. Certified photocopy from the Library and Records Division of the Presidential Commission on Good Government.⁹⁶¹ *Id.* at 887-888.⁹⁶² *Id.* at 889, 891.⁹⁶³ *Id.* at 890, 892.⁹⁶⁴ *Id.* at 893.

Fortune Tobacco Letter ⁹⁶⁵	October 22, 1982	Requested from Marcos, Sr. an exemption in customs duties and compensating taxes on machineries and equipment for Fortune Tobacco's modernization program Includes a handwritten note by Marcos, Sr. approving the request	Shows exclusive favors granted to Fortune Tobacco	Copy	None
Fortune Tobacco Letter ⁹⁶⁶	December 21, 1983	Requested from Marcos, Sr. for an exception from Central Bank Circular No. 984's provisions. This allows Fortune Tobacco to import raw materials and equipment on a no-dollar basis. It also requested for an exemption from all pre-importation clearances and requirements of other government agencies. Includes a handwritten note by Marcos, Sr. referring the letter to Central Bank Governor Jaime C. Laya to "accommodate [Fortune Tobacco]."	Shows exclusive favors granted to Fortune Tobacco	Copy	None
Letter from Tan ⁹⁶⁷	July 18, 1978	Requested from Marcos, Sr. an upward adjustment of the retail price of cigarettes by PHP 0.30 per pack	Batas Pambansa Blg. 23 was later enacted, which incorporated Tan's request. This shows the grant of exclusive favors to him and Fortune Tobacco	Copy	None
Letter from Mariano ⁹⁶⁸	January 8, 1985	Sent a Draft Executive Order to Marcos, Sr. for his approval		Copy	None
Draft Executive Order ⁹⁶⁹	January 8, 1985	Provides for a new intermediate specific tax bracket which will encourage the use of locally-grown tobacco. Also provides for a higher ad valorem tax rate on high-priced cigarettes	The proposed executive order was adopted in Presidential Decree No. 1994, which shows the grant of exclusive favors to Fortune Tobacco	Copy	None
Fortune	February	Addressed to Chairman	Shows exclusive	Copy	None

⁹⁶⁵ *Id.* at 894-895.⁹⁶⁶ *Id.* at 896-897.⁹⁶⁷ *Id.* at 898.⁹⁶⁸ *Id.* at 899.⁹⁶⁹ *Id.* at 900-903.

Tobacco Letter ⁹⁷⁰	14, 1977	Placido L. Mapa, Jr. of the Development Bank of the Philippines, concerning the approval of the Lease Purchase Agreement with Sylvanna Tobacco Corp. for PHP 45 million. Includes a handwritten note by Marcos, Sr. referring the matter to Chairman Placido L. Mapa, Jr. for favorable action	favors granted to Fortune Tobacco		
Fortune Tobacco Letter ⁹⁷¹	April 2, 1979	Sought the approval of the Insurance Commission for the formation and operation of a new insurance company by Fortune Tobacco's principal stockholders		Copy	None
Fortune Tobacco Letter ⁹⁷²	January 16, 1975	Recommended to the Central Bank the phasing out of commercial cigarette importation Includes a handwritten note by Marcos, Sr. referring the recommendation to the Bureau of Internal Revenue, the National Economic and Development Authority, and the Secretary of Trade for their comments.		Copy	None
Foremost Farms Letter ⁹⁷³	June 21, 1976	Requested from the Secretary of Public Highways the diversion of part of the Infanta Highway crossing the property of Foremost Farms Includes a handwritten note by Marcos, Sr. approving the request	Shows exclusive favors granted to Foremost Farms	Certified True Copy	Public Record
Tender of Excluded Evidence by the Republic, through the Presidential Commission on Good Government ⁹⁷⁴	April 3, 2012	Indicated the procedural antecedents of the exclusion of Joselito Yujuico's and Aderito Yujuico's testimonies as evidence Prayed that the affidavits of the said witnesses be allowed to form part of the		Original	N/A

⁹⁷⁰ *Id.* at 904.

⁹⁷¹ *Id.* at 905.

⁹⁷² *Id.* at 906-908.

⁹⁷³ *Id.* at 909-910.

⁹⁷⁴ *Id.* at 911-920.

		records of the case			
Judicial Affidavit of Joselito Yujuico ⁹⁷⁵	November 10, 2011	Narrated the events that led to the sale of GenBank Shows undue favorable treatment by Central Bank Governor Gregorio Licaros in favor of Tan's group	Evidence of the irregularities in the sale of GenBank to Tan's group	Original	N/A
Central Bank Memorandum ⁹⁷⁶	March 29, 1977	Summary of the Central Bank's meeting with prospective buyers of GenBank. In the meeting, the conditions for the sale were relayed. It was also noted that after the meeting, Governor Gregorio Licaros imposed the additional requirement of a firm commitment from a bank for the issuance of a stand-by letter of credit. Only Tan's group was able to comply with this as of March 28, 1977.		Copy	None
Regional Trial Court Decision ⁹⁷⁷	December 2, 1992	A petition for assistance in the liquidation of GenBank Annulled and set aside the closure of GenBank and the adoption of the bid of Tan's group for "being plainly arbitrary and made in bad faith" ⁹⁷⁸ Ordered the Central Bank to restore the license of GenBank to operate and conduct business as a commercial bank and trust corporation Directed the Central Bank to pay GenBank its capital account (excess of its assets over its liabilities prior to the sale) and damages		Copy	Public Record
Resolution No. 677 of the Monetary Board of the Central	March 29, 1977	Adopted the bid of Tan's group for the sale of GenBank		Copy	None

⁹⁷⁵ *Id.* at 921-951.

⁹⁷⁶ *Id.* at 952-954.

⁹⁷⁷ *Id.* at 955-1049.

⁹⁷⁸ *Id.* at 1049.

Bank ⁹⁷⁹					
Resolution No. 1245 of the Monetary Board of the Central Bank ⁹⁸⁰	July 1, 1977	Dispensation from the requirement that Tan's group submit a standby irrevocable credit to secure the emergency advances assumed by Allied Bank The Resolution also extends the period of payment of the balance of the emergency advances assumed by Allied Bank from two to five years	Shows special and extraordinary concessions or benefits given to defendants Allied Bank and Tan.	Copy	Public Record
Judicial Affidavit of Aderito Yujuico ⁹⁸¹	June 16, 2011	Narrated the events that led to the sale of GenBank Shows that Paramount Finance Corp. should have been the buyer, but Tan's group unexpectedly received Central Bank approval as the buyer		Original	N/A
Minutes of GenBank Board Meeting ⁹⁸²	January 10, 1977	Seven new directors, representing various government entities and instrumentalities, were elected to the Board of GenBank		Copy	None
GenBank Letter ⁹⁸³	December 19, 1976	Discussed the equity participation of Land Bank of the Philippines in GenBank		Copy	None
Deed of Assignment with Undertaking ⁹⁸⁴	December 23, 1976	Served as security for the advances and credit accommodations made by the Central Bank to GenBank		Notarized Copy	Public Record
Central Bank Letter ⁹⁸⁵	December 27, 1976	Addressed to the Board of GenBank instructing it to take certain steps in relation to the loans and credit accommodations from the Central Bank		Copy	None
Schedule of Loans by GenBank ⁹⁸⁶	As of December 20, 1976	Total Loans: PHP 117,144,542.87 Total Credit		Copy	None

⁹⁷⁹ *Id.* at 1050–1053.

⁹⁸⁰ *Id.* at 1054–1055. Copy from the Library and Records Division of the Presidential Commission on Good Government.

⁹⁸¹ *Id.* at 1056–1069.

⁹⁸² *Id.* at 1070–1072.

⁹⁸³ *Id.* at 1073–1075.

⁹⁸⁴ *Id.* at 1076–1077.

⁹⁸⁵ *Id.* at 1078.

⁹⁸⁶ *Id.* at 1079–1081.

		Accommodations: PHP 167,282,776.51			
Undertaking by GenBank ⁹⁸⁷	N/A	<i>Pro forma</i> undertaking for a borrower of GenBank to collateralize the borrower's loan/s		Copy	None
Schedule of Sureties ⁹⁸⁸	N/A	Total Credit Accommodations: PHP 167,282,776.51		Copy	None
Surety Agreement ⁹⁸⁹	N/A	<i>Pro forma</i> surety agreement		Copy	None
Philippine Bank of Communications Letter ⁹⁹⁰	February 10, 1977	Offer to buy GenBank		Copy	None
Paramount Finance Corp. Letter ⁹⁹¹	February 8, 1977	Offer to buy GenBank		Copy	None
Letter from Tan, Willy Co, Ramon Lee, Florencio Santos, and Sixto L. Orosa, Jr., represented by Ramon S. Orosa ⁹⁹²	February 10, 1977	Offer to buy GenBank		Copy	None
Family Savings Bank Letter ⁹⁹³	February 4, 1977	Clarification of the offer to buy GenBank		Copy	None
Family Savings Bank Letter ⁹⁹⁴	February 3, 1977	Offer to buy GenBank		Copy	None
Legaspi Towers Development Corporation Letter ⁹⁹⁵	February 7, 1977	Offer to buy GenBank		Copy	None
GenBank Letter ⁹⁹⁶	February 10, 1977	Updated the Central Bank of the offers it received		Copy	None
Resolution No. 449 of the Monetary Board of the	February 25, 1977	Recommended to GenBank the offer of Tan's group as the most favorable offer		Copy	None

⁹⁸⁷ *Id.* at 1082.⁹⁸⁸ *Id.* at 1083–1086.⁹⁸⁹ *Id.* at 1087.⁹⁹⁰ *Id.* at 1088–1093.⁹⁹¹ *Id.* at 1094–1095.⁹⁹² *Id.* at 1096–1099.⁹⁹³ *Id.* at 1100–1101.⁹⁹⁴ *Id.* at 1102–1105.⁹⁹⁵ *Id.* at 1106–1107.⁹⁹⁶ *Id.* at 1108–1109.

Central Bank ⁹⁹⁷		Also prescribed minimum conditions for the approval of the sale			
Central Bank Letter ⁹⁹⁸	February 28, 1977	Recommended to GenBank the offer of Tan's group as the most favorable offer		Copy	None
Letter from Joselito Yujuico and Rodolfo B. Santiago ⁹⁹⁹	March 7, 1977	Narration of the negotiations of GenBank with Tan's group		Copy	None
Central Bank Letter ¹⁰⁰⁰	March 8, 1977	Instructed GenBank to negotiate with Paramount Finance Corp., it having offered the best price among the interested buyers, subject to certain conditions		Copy	None
Letter from Central Bank Governor Gregorio Licaros ¹⁰⁰¹	March 10, 1977	Instructed GenBank to collateralize its previous loans and credit accommodations from Central Bank		Copy	None
GenBank Letter ¹⁰⁰²	March 14, 1977	Submitted to the Central Bank for its approval the Agreement to Buy and Sell with Paramount Finance Corp.		Copy	None
Agreement to Buy and Sell ¹⁰⁰³	March 14, 1977	GenBank will sell 700,000 shares of stock, representing at least 67% of the outstanding voting shares, to Paramount Finance Corp.		Copy	None
Philippine National Bank Consolidated Statement of Condition ¹⁰⁰⁴	As of December 31, 1977	Shows the values of the assets, liabilities, capital accounts, and contingent accounts of Philippine National Bank		Copy	None
Central Bank (Department of Commercial and Savings Banks) Memorandum ¹⁰⁰⁵	March 29, 1977	Determined that GenBank cannot resume its business and recommended that Tan's group be allowed to purchase it		Copy	None

⁹⁹⁷ *Id.* at 1110-1112.⁹⁹⁸ *Id.* at 1113-1115.⁹⁹⁹ *Id.* at 1116-1119.¹⁰⁰⁰ *Id.* at 1120-1121.¹⁰⁰¹ *Id.* at 1122. No official letterhead.¹⁰⁰² *Id.* at 1123.¹⁰⁰³ *Id.* at 1124-1128.¹⁰⁰⁴ *Id.* at 1129-1131.¹⁰⁰⁵ *Id.* at 1132-1140.

Letter from Tan's group, represented by Ramon S. Orosa, to Central Bank ¹⁰⁰⁶	March 28, 1977	Signified the group's intention to purchase GenBank and contained the terms and conditions of the purchase		Copy	None
Philippine National Bank Letter ¹⁰⁰⁷	March 28, 1977	Sent to the Central Bank. Contained the Philippine National Bank's grant of a letter of credit in favor of the Tan's group for its purchase of GenBank		Copy	None
Fortune Tobacco Letter/Letter from Tan ¹⁰⁰⁸	March 26, 1977	Requested from Marcos, Sr. assistance in persuading the Philippine National Bank to issue a letter of credit for the purchase of GenBank		Copy	None
Transcript of Stenographic Notes ¹⁰⁰⁹	January 31, 2011	Deposition of witness Jaime C. Laya	Evidence of the irregularities in the sale of GenBank to the Tan's group	Original	N/A
Resolution No. 1245 of the Monetary Board of the Central Bank of the Philippines ¹⁰¹⁰	July 1, 1977	Dispensation from the requirement that Tan's group submit a standby irrevocable credit to secure the emergency advances assumed by Allied Bank The Resolution also extends the period of payment of the balance of the emergency advances assumed by Allied Bank from two to five years	Shows special and extraordinary concessions or benefits given to defendants Allied Bank and Tan.	Copy	Public Record
Allied Bank Letter ¹⁰¹¹	May 17, 1979	Tan as Chairman of Allied Bank requested to incorporate and organize Allied Bank as a non-life insurance and surety company.		Copy	None
Office of the President Memorandum to National Food Authority ¹⁰¹²	April 14, 1984	Marcos, Sr. approved the request of Tan, as Chairman of Allied Bank, that the National Food Authority be authorized to bank with the Allied Bank as an exception to existing regulations.	Shows exclusive concessions granted to Allied Bank	Certified Copy	Public Record

¹⁰⁰⁶ *Id.* at 1141–1142.¹⁰⁰⁷ *Id.* at 1143.¹⁰⁰⁸ *Id.* at 1144.¹⁰⁰⁹ *Id.* at 1145–1241.¹⁰¹⁰ *Id.* at 1242–1243. Certified copy from the Library and Records Division of the Presidential Commission on Good Government.¹⁰¹¹ *Id.* at 1244.¹⁰¹² *Id.* at 1245–1246. Certified copy from the Presidential Library.

		Allied Bank offered to provide a credit line from PHP 300 million to PHP 500 million to the National Food Authority.			
Allied Bank Letter ¹⁰¹³	April 12, 1984	Allied Bank offered to provide a credit line from PHP 300 million to PHP 500 million to the National Food Authority through the Office of the President. The Credit Line was claimed to be in line with the Food and Sariling Sikap Programs.		Copy	None
Allied Bank Letter ¹⁰¹⁴	April 12, 1984	Allied Bank requested that it be issued all the necessary permits to purchase, import, possess, install, maintain, and operate the network and that the required radio frequencies be directly assigned to Allied Bank. It claimed in the letter that the request is due to the untenability of PLDT's Subscriber's Financing Agreement.		Copy	None
Office of the President Memorandum to the National Telecommunications Commission ¹⁰¹⁵	June 11, 1984	Marcos, Sr. approved the request of Allied Bank: (1) to own, operate, manage, and maintain a communications network for its exclusive use and its affiliate companies; (2) to be directly issued and assigned frequencies required for the operation of the communications network; and (3) to be authorized to enter into an "Interconnect Agreement" with PLDT to facilitate the operations of the communications network.	Shows special and extraordinary concessions or benefits given to Allied Bank	Copy	None
Allied Bank Letter ¹⁰¹⁶	June 4, 1984	Allied Bank sent a letter request to Marcos, Sr.: (1) to own, operate, manage, and maintain a communications network for its exclusive use and its affiliate companies; (2) to be directly issued and assigned frequencies required for the operation of the communications		Copy	None

¹⁰¹³ *Id.* at 1247-1248.¹⁰¹⁴ *Id.* at 1249-1252.¹⁰¹⁵ *Id.* at 1253-1254.¹⁰¹⁶ *Id.* at 1255.

		network; and (3) to be authorized to enter into an "Interconnect Agreement" with PLDT to facilitate the operations of the communications network.			
Office of the President Letter ¹⁰¹⁷	April 15, 1985	The Office of the President furnished Tan a copy of his letter to Marcos, Sr. concerning the terms of agreement between Allied Bank and PLDT in the establishment of a communications system. The letter bears the handwritten instructions of Marcos, Sr.		Copy	None
Office of the President Memorandum to the Central Bank of the Philippines ¹⁰¹⁸	June 5, 1984	Marcos, Sr. instructed the Central Bank of the Philippines to sell to Allied Bank for USD 25 million so that they can settle their obligations in Bahrain and the guarantee given by the Philippines can be withdrawn.	Shows exclusive favors granted to Allied Bank	Certified Copy	Public Record
Allied Bank Letter ¹⁰¹⁹	April 19, 1985	Allied Banking Corp wrote a letter to Marcos, Sr. requesting that the Central Bank of the Philippines place with it a deposit of USD 50 million to be able to satisfy its dollar loans.		Certified Copy	Public Record
Office of the President Memorandum to the Central Bank of the Philippines ¹⁰²⁰	December 14, 1983	Marcos, Sr. instructed the Central Bank to "help" Allied Bank in their request for a Special Rediscounting Facility in the amount of PHP 300 million to finance the production and deliveries of tobacco crops which Fortune Tobacco is committed to buy from dealers.	Shows exclusive favors granted to Allied Bank	Copy	None
Allied Bank Letter ¹⁰²¹	October 20, 1983	Letter of Tan to the Ministry of Transportation and Communication seeking a favorable endorsement for the approval of their applications for the microwave frequencies.		Certified True Copy	Public Record
Allied Bank	February	Letter of Tan to the		Copy	None

¹⁰¹⁷ *Id.* at 1256.

¹⁰¹⁸ *Id.* at 1257. Certified copy from the Presidential Library.

¹⁰¹⁹ *Id.* at 1258. Certified copy from the Presidential Library.

¹⁰²⁰ *Id.* at 1259.

¹⁰²¹ *Id.* at 1260-1261. Certified true copy from the Presidential Library.

Letter ¹⁰²²	17, 1983	National Telecommunications Commission relaying their requests for the requirements needed for them to set up an integrated communications network.			
Office of the President Memorandum to the National Food Authority ¹⁰²³	April 14, 1984	Marcos, Sr. approved the request of Tan, as Chairman of Allied Bank, that the National Food Authority be authorized to bank with the Allied Bank as an exception to existing regulations. Allied Bank offered to provide a credit line from PHP 300 million to PHP 500 million to the National Food Authority.	Shows exclusive concessions granted to Allied Bank	Certified Copy	Public Record
Office of the President Memorandum to the Central Bank of the Philippines ¹⁰²⁴	May 10, 1984	The Office of the President furnished the Central Bank a copy of the Allied Bank's letter which bears the comment of Marcos, Sr. on the proposed financial exposure of the Central Bank with the Allied Bank		Copy	None
(No heading) ¹⁰²⁵	N/A	A letter detailing the benefits of going into a brewery business in the Philippines.		Copy	None
Statement of Assets and Net Worth ¹⁰²⁶	June 21, 1983	A certificate from the Securities and Exchange Commission stating that Basic Holdings has PHP 1 million in assets and a PPH 1 million net worth as of June 21, 1983.			
Articles of Incorporation of Basic Holdings Corp. ¹⁰²⁷	June 15, 1983	Provides the Articles of Incorporation of Basic Holdings		Copy	None
Pan-Philippines Industries Inc. Letter ¹⁰²⁸	May 17, 1979	Tan as president of Pan-Philippines requested for a free dollar allocation amounting to USD 6,934,500.00 to enable it to open the letters of credit for the importation of the		Copy	None

¹⁰²² *Id.* at 1262.¹⁰²³ *Id.* at 1263-1264. Certified copy from the Presidential Library.¹⁰²⁴ *Id.* at 1265.¹⁰²⁵ *Id.* at 1266.¹⁰²⁶ *Id.* at 1267.¹⁰²⁷ *Id.* at 1268-1276.¹⁰²⁸ *Id.* at 1277-1278.

		machinery set up of the proposed brewery plants.			
Letter from Tan ¹⁰²⁹	July 6, 1979	The letter states Pan-Philippines's scheduled dates for start of manufacturing and their projected market share.		Copy	None
Purchase Agreement ¹⁰³⁰	March 1, 1985	Sipalay Trading, represented by Tan as its Chairman, purchased Development Bank's shareholdings in Maranaw Hotels		Copy	None
Pledge ¹⁰³¹	April 22, 1985	As stated in the Purchase Agreement, the shares under purchase were released to Sipalay Trading upon completion of the 20% down-payment of the total purchase price. As security for the payment of the balance of the purchase price for the shares in Maranaw Hotels, Sipalay Trading transferred and assigned to Development Bank the subject shares of stock as stated in the Purchase Agreement.		Copy	None
Amended Answer with Counterclaim and Compulsory Cross-claim in relation to Civil Case No. 0005 ¹⁰³²	November 19, 2001	Prayer to dismiss the Complaint and claim of damages from the Plaintiff. It also included a prayer for Tan and defendant record stockholders to deliver to the defendant Marcoses 60% of Shareholdings, Inc.'s outstanding capital stock.		Copy	N/A
Deed of Sale of Shares of Stock ¹⁰³³	December 19, 1980	Stockholders of Hummel Industries, including Tan, sold their shares of stock to Shareholdings, Inc., for PHP 15 million.		Copy	None
Deed of Sale of Shares of Stock ¹⁰³⁴	December 19, 1980	Stockholders of Grandspan Development Corp., including Tan, sold their shares of stock to Shareholdings, Inc., for PHP 5 million.		Copy	None
Deed of Sale of	December	Stockholders of Asia		Copy	None

¹⁰²⁹ *Id.* at 1279.¹⁰³⁰ *Id.* at 1280-1284.¹⁰³¹ *Id.* at 1285-1288.¹⁰³² *Id.* at 1289-1312.¹⁰³³ *Id.* at 1313-1317.¹⁰³⁴ *Id.* at 1318-1319.

Shares of Stock ¹⁰³⁵	24, 1980	Brewery, including Tan, sold their shares of stock to Shareholdings, Inc. for PHP 250.5 million			
Deed Sale ¹⁰³⁶	December 22, 1980	Silangan Holdings sold its shares of stock in Asia Brewery to Shareholdings, Inc. for PHP 49.5 million		Copy	None
Deed of Sale of Shares of Stock ¹⁰³⁷	December 19, 1980	Stockholders of Silangan Holdings sold their shares of stock to Shareholdings, Inc. for PHP 1 million.		Copy	None
Deed of Sale of Shares of Stock ¹⁰³⁸	December 19, 1980	Stockholders of Fortune Tobacco sold their shares of stock to Shareholdings, Inc.		Copy	None
Deed of Sale of Shares of Stock ¹⁰³⁹	December 19, 1980	Stockholders of Foremost Farms, including Tan, sold their shares of stock to Shareholdings, Inc. for PHP 120 million.		Copy	None
Shareholdings, Inc. Capital Stock Transfer Transactions ¹⁰⁴⁰	N/A	Shows records of the capital stock transfer transactions of Shareholdings, Inc.		Copy	None
RE: Shareholdings Inc./ Lucio Tan Group ¹⁰⁴¹	N/A	Summary of information from library files and other available records on Shareholdings, Inc. prepared by the Presidential Commission on Good Government.	Evidence of anomalous transactions of Shareholdings, Inc.	Copy	N/A
A Brief History of Shareholdings, Inc. ¹⁰⁴²	N/A	History of Shareholdings, Inc. specifically its initial incorporators and its eventual purchase of shares of stock of other existing corporations.		Copy	N/A
Handwriting of Marcos ¹⁰⁴³	1984	Notes on shares of stock of Shareholdings, Inc.	Evidence of Marcos, Sr.'s interest and involvement in Shareholdings, Inc.	Copy	None
SEC Registration No.	July 20, 1983	Certification that the Articles of Incorporation of Supreme Holdings is in		Copy	Public Record

¹⁰³⁵ *Id.* at 1320–1323.¹⁰³⁶ *Id.* at 1324.¹⁰³⁷ *Id.* at 1325–1327.¹⁰³⁸ *Id.* at 1328–1329. The copy of the document is missing two out of four pages.¹⁰³⁹ *Id.* at 1330–1333.¹⁰⁴⁰ *Id.* at 1334–1335.¹⁰⁴¹ *Id.* at 1336–1346.¹⁰⁴² *Id.* at 1347–1348.¹⁰⁴³ *Id.* at 1349–1351.

114418 ¹⁰⁴⁴		accordance with the law.			
SEC Registration No. 114419 ¹⁰⁴⁵	July 20, 1983	Certification that the Articles of Incorporation of Falcon Holdings is in accordance with the law.		Copy	Public Record
SEC Registration No. 114420 ¹⁰⁴⁶	July 20, 1983	Certification that the Articles of Incorporation of Basic Holdings is in accordance with the law.		Copy	Public Record
Deed of Assignment ¹⁰⁴⁷	July 16, 1984	Stockholders of Shareholdings, Inc., including Tan, transferred their shares of stock to Basic Holdings for PHP 61,617,500.00		Copy	None
Deed of Assignment ¹⁰⁴⁸	July 16, 1984	Stockholders of Shareholdings, Inc., including Tan, transferred their shares of stock to Falcon Holdings for PHP 31,437,500.00		Copy	None
Deed of Assignment ¹⁰⁴⁹	July 16, 1984	Stockholders of Shareholdings, Inc., including Lucio Tan, transferred their shares of stock to Supreme Holdings for PHP 31,437,500.00		Copy	None
Shareholdings, Inc. Capital Stock Transfer Transactions ¹⁰⁵⁰	N/A	Shows records of the capital stock transfer transactions of Shareholdings Inc.		Copy	None
Deed of Sale of Shares of Stock ¹⁰⁵¹	February 28, 1985	Stockholders of Basic Holdings, including Lucio Tan, sold their shares to Supreme Holdings		Copy	None
Shareholdings, Inc. Capital Stock Transfer Transactions ¹⁰⁵²	N/A	Shows records of the capital stock transfer transactions of Shareholdings, Inc.		Copy	None
Deed of Assignment ¹⁰⁵³	No date indicated	Signed but undated Deed of Assignment of Soolim Co of shares of stock in Falcon Holdings without an Acknowledgement		Copy	None

¹⁰⁴⁴ *Id.* at 1364–1378.¹⁰⁴⁵ *Id.* at 1379–1392.¹⁰⁴⁶ *Id.* at 1393–1404.¹⁰⁴⁷ *Id.* at 1405–1410.¹⁰⁴⁸ *Id.* at 1411–1413.¹⁰⁴⁹ *Id.* at 1414–1416.¹⁰⁵⁰ *Id.* at 1417.¹⁰⁵¹ *Id.* at 1418–1419.¹⁰⁵² *Id.* at 1420.¹⁰⁵³ *Id.* at 1421.

Deed of Assignment 1054	No date indicated	Signed but undated Deed of Assignment of William C. Lee of shares of stock in Falcon Holdings without an Acknowledgement		Copy	None
Deed of Assignment 1055	No date indicated	Signed but undated Deed of Assignment of Andy Y. Li of shares of stock in Falcon Holdings without an Acknowledgement		Copy	None
Deed of Assignment 1056	No date indicated	Signed but undated Deed of Assignment of Jimmy C. Chua of shares of stock in Falcon Holdings without an Acknowledgement		Copy	None
Deed of Assignment 1057	No date indicated	Signed but undated Deed of Assignment of Antonio Choa of shares of stock in Falcon Holdings without an Acknowledgement		Copy	None
Deed of Assignment 1058	No date indicated	Signed but undated Deed of Assignment of Florentina Tan of shares of stock in Supreme Holdings without an Acknowledgement		Copy	None
Deed of Assignment 1059	No date indicated	Signed but undated Deed of Assignment of Eduardo C. Chua of shares of stock in Supreme Holdings without an Acknowledgement		Copy	None
Deed of Assignment 1060	No date indicated	Signed but undated Deed of Assignment of William T. Wong of shares of stock in Supreme Holdings without an Acknowledgement		Copy	None
Deed of Assignment 1061	No date indicated	Signed but undated Deed of Assignment of Nelson C. Tan of shares of stock in Supreme Holdings without an Acknowledgement		Copy	None
Deed of Assignment 1062	No date indicated	Signed but undated Deed of Assignment of Peter Soo of shares of stock in Supreme Holdings		Copy	None

¹⁰⁵⁴ *Id.* at 1422.

¹⁰⁵⁵ *Id.* at 1423.

¹⁰⁵⁶ *Id.* at 1424.

¹⁰⁵⁷ *Id.* at 1425.

¹⁰⁵⁸ *Id.* at 1426.

¹⁰⁵⁹ *Id.* at 1427.

¹⁰⁶⁰ *Id.* at 1428.

¹⁰⁶¹ *Id.* at 1429.

¹⁰⁶² *Id.* at 1430.

		without an Acknowledgement			
Deed of Sale of Shares of Stock ¹⁰⁶³	No date indicated	Signed but undated Deed of Sale of Tan of his shares of stock in Shareholdings, Inc. without an Acknowledgement		Copy	None
Deed of Sale of Shares of Stock ¹⁰⁶⁴	No date indicated	Signed but undated Deed of Sale of Mariano of shares of stock in Shareholdings, Inc. without an Acknowledgement		Copy	None
Stenographic Notes ¹⁰⁶⁵	No date indicated	Handwritten notes of cash receipts		Copy	None
Security Bank and Trust Company Handwritten Note ¹⁰⁶⁶	December 17, 1983	List of post-dated checks received from Allied Bank		Copy	None
Security Bank and Trust Company Handwritten Note ¹⁰⁶⁷	May 10, 1984	List of checks received from Allied Bank, DCIB, Consolidated Bank, and Family Bank		Copy	None
Sworn Statement ¹⁰⁶⁸	January 14, 1987	Sworn Statement of Gapud who claimed to have been consulted by the Marcoses regarding financial matters. He stated that Marcos, Sr. and Tan had an understanding that Marcos, Sr. owns 60% of Shareholdings, Inc., Fortune Tobacco, Asia Brewery, Allied Bank, and Foremost Farms. Tan was identified as one of the sources of funds that went into the accounts of Marcos, Sr. in Security Bank.	Evidence of Marcos, Sr.'s interest and involvement in the Tan Group of Companies	Copy	None
Transcript of Stenographic Notes ¹⁰⁶⁹	October 16, 2007	Deposition of witnesses Senator Salonga and Magno (Records Custodian of the Library and Records Section of the Presidential Commission on Good Government)	Evidence showing Marcos, Sr.'s interest in the Tan Group of Companies and the special favors and concessions granted by	Original	N/A

¹⁰⁶³ *Id.* at 1431-1432.

¹⁰⁶⁴ *Id.* at 1433-1434.

¹⁰⁶⁵ *Id.* at 1435-1489.

¹⁰⁶⁶ *Id.* at 1490.

¹⁰⁶⁷ *Id.* at 1491.

¹⁰⁶⁸ *Id.* at 1492-1498.

¹⁰⁶⁹ *Id.* at 1499-1619.

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			Marcos, Sr. in relation thereto.		
Transcript of Stenographic Notes ¹⁰⁷⁰	February 13, 2008	Deposition of witness Marcos, Jr.	Evidence showing Marcos, Sr.'s interest in Shareholdings, Inc.	Original	N/A
Securities and Exchange Commission Document ¹⁰⁷¹	December 29, 1978	Certification of registration of the Articles of Incorporation of Allied Leasing and Finance Corp.		Certified Machine Copy	Public Record
Fortune Tobacco Letter ¹⁰⁷²	September 17, 1979	Requested authority from the Philippine Virginia Tobacco Administration to import 3.7 million kilograms of leaf tobacco		Copy	None
Fortune Tobacco Letter ¹⁰⁷³	March 30, 1981	Requested authority from the Philippine Virginia Tobacco Administration to import 4 million kilograms of flue-cured tobacco		Certified True Copy	Public Record
Office of the President Letter ¹⁰⁷⁴	April 28, 1981	Granted Fortune Tobacco's request for an import quota of 4 million kilograms of foreign leaf tobacco		Certified True Copy	Public Record
Fortune Tobacco Letter ¹⁰⁷⁵	September 5, 1981	Requested authority from the Philippine Virginia Tobacco Administration to import additional 4 million kilograms of flue-cured tobacco		Certified True Copy	Public Record
Fortune Tobacco Letter ¹⁰⁷⁶	April 9, 1983	Requested authority from the Philippine Virginia Tobacco Administration to import 4 million kilograms of flue-cured tobacco		Copy	None
Office of the President Letter ¹⁰⁷⁷	April 5, 1984	Granted Fortune Tobacco's request for an import quota of 3 million kilograms of foreign leaf tobacco		Certified True Copy	Public Record
Fortune Tobacco Letter ¹⁰⁷⁸	April 11, 1984	Requested authority from the Philippine Virginia Tobacco Administration to import 5 million kilograms of flue-cured tobacco		Certified True Copy	Public Record

¹⁰⁷⁰ *Id.* at 1620–1707.¹⁰⁷¹ *Id.* at 1708.¹⁰⁷² *Id.* at 1709.¹⁰⁷³ *Id.* at 1710.¹⁰⁷⁴ *Id.* at 1711–1712.¹⁰⁷⁵ *Id.* at 1713.¹⁰⁷⁶ *Id.* at 1714.¹⁰⁷⁷ *Id.* at 1715–1716.¹⁰⁷⁸ *Id.* at 1717.

Office of the President Letter ¹⁰⁷⁹	November 5, 1985	Granted Fortune Tobacco's request for an import quota of 2 million kilos of foreign leaf tobacco		Copy	None
Fortune Tobacco Letter ¹⁰⁸⁰	August 1, 1984	Letter to Marcos, Sr. where Fortune Tobacco (1) clarified the issue raised in a newspaper article, which concerned farmers protesting low tobacco prices, and (2) explained why it stopped buying tobacco from Vigan.		Copy	None
Office of the President Memorandum 1081	December 29, 1983	Addressed to Central Bank Governor Jaime C. Laya Marcos, Sr. instructed Laya to "try and accommodate [Fortune Tobacco]" on its request to be exempted from Central Bank Circular No. 984, which would allow it to import on a no-dollar basis raw materials and equipment other than those listed in the circular's attachment.			
Office of the President Memorandum 1082	December 14, 1983	Addressed to Central Bank Governor Jaime C. Laya Marcos, Sr. instructed Laya to "give them [Fortune Tobacco] the support they may need" on its request to have authority to import raw materials to be utilized for its operation in 1984.	Evidence of favors and special concessions granted by Marcos, Sr. to Tan as Chairman of Fortune Tobacco	Copy	None
Draft Executive Order ¹⁰⁸³	January 8, 1985	Draft Executive Order submitted by Mariano The Draft Executive Order provided the following: a) a new intermediate specific tax bracket between the tax brackets for highest-priced native tobacco cigarettes and the lowest-priced virginia tobacco cigarettes; and b) a higher <i>ad valorem</i> tax rate on high-		Copy	None

¹⁰⁷⁹ *Id.* at 1718.

¹⁰⁸⁰ *Id.* at 1719-1720.

¹⁰⁸¹ *Id.* at 1721-1723.

¹⁰⁸² *Id.* at 1724-1727.

¹⁰⁸³ *Id.* at 1728-1737.

		priced cigarettes.			
Executive Order No. 977 ¹⁰⁸⁴	August 22, 1984	Amended Executive Order No. 960. The Executive Order provides that the Minister of Finance shall promulgate the necessary rules and regulations to effectively implement the provisions of the Executive Order subject to the approval of the President.		Certified Photocopy	Public Record
Executive Order No. 978 ¹⁰⁸⁵		Imposed <i>ad valorem</i> tax and revised the specific tax rates and maximum retail prices of cigarettes.		Certified Photocopy	Public Record
Fortune Tobacco Letter ¹⁰⁸⁶	January 16, 1975	Addressed to the Central Bank Governor Recommendation of Fortune Tobacco to phase out commercial cigarette importations into the Philippines.		Copy	None
Handwritten Notes ¹⁰⁸⁷	October 1979	List of cash receipts and a note stating that such is inclusive of a check from Tan with number ABC #202523 dated 10/03/1979. The note states that it was received 10/09/1979.		Certified True Copy	Public Record
Handwritten Notes ¹⁰⁸⁸	1984	Handwritten notes stating expenses and check payments from February to March 1984.		Copy	None
Handwritten Notes ¹⁰⁸⁹		List of cash receipts. The first item in the list indicates "Exchange of P500,000 by Lucio Tan, remitted"		Certified True Copy	Public Record
Office of the President Acknowledgement of Receipt of Original Documents ¹⁰⁹⁰	November 11, 1992	Acknowledging receipt of original documents on Tan from the Presidential Library. The list includes letters of Tan to Marcos, Sr. and the corresponding memoranda issued by Marcos, Sr. to grant the requests of Tan and his corporations.	Proof of authenticity of some documents presented by the Republic as evidence	Copy	

¹⁰⁸⁴ *Id.* at 1738. Certified photocopy from the Official Gazette.

¹⁰⁸⁵ *Id.* at 1738-1741. Certified photocopy from the Official Gazette.

¹⁰⁸⁶ *Id.* at 1742-1744.

¹⁰⁸⁷ *Id.* at 1745. Certified true copy of the original from the Presidential Commission on Good Government.

¹⁰⁸⁸ *Id.* at 1749-1792.

¹⁰⁸⁹ *Id.* at 1793.

¹⁰⁹⁰ *Id.* at 1794-1795.

On the other hand, respondents appended the following documents:

<i>Title</i>	<i>Date</i>	<i>Contents</i>	<i>Nature of Document (Original or Copy)</i>	<i>Best Evidence Rule exception</i>
Minutes of the Sandiganbayan Proceedings ¹⁰⁹¹	December 22, 2010	Granted the motions to dismiss (demurrer to evidence) of Zalamea and Ferry	Certified Photocopy	Public Record
Minutes of the Sandiganbayan Proceedings ¹⁰⁹²	February 25, 2011	Denied the Republic's Motion for Reconsideration assailing the dismissal of the cases against Zalamea and Ferry	Certified Photocopy	Public Record
Sandiganbayan Decision (Civil Case Nos. 0096-0099) ¹⁰⁹³	March 2, 2006	The Sandiganbayan declared null and void the writs of sequestration issued by the Presidential Commission on Good Government on the shares of stock of Tan et al. in Allied Bank, Foremost Farms, Fortune Tobacco, and Shareholdings, Inc.	Certified Photocopy	Public Record
Motion for Leave to File Amended Answer with Counter[-]claim and Compulsory Cross-claim ¹⁰⁹⁴	November 19, 2001	Procedural matter before the Sandiganbayan (Civil Case No. 0005)	Copy	None
Amended Answer with Counter[-]claim and Compulsory Cross-claim ¹⁰⁹⁵	November 19, 2001	Contains the defenses of defendant Imelda	Copy	None
Minutes of the Sandiganbayan Proceedings ¹⁰⁹⁶	June 20, 2002	The Sandiganbayan denied the Motion for Leave to File Amended Answer with Counter[-]claim and Compulsory Cross-claim of Imelda	Certified Photocopy	Public Record
Supreme Court Resolution ¹⁰⁹⁷	March 17, 2003	The Supreme Court denied Imelda's petition for <i>certiorari</i> assailing the Sandiganbayan's denial of her Motion for Leave to File Amended Answer with Counter[-]claim and Compulsory Cross-claim	Copy	Public Record
Second Amended Complaint ¹⁰⁹⁸	September 5, 1991	Contains general and specific averments of defendants' illegal acts	Certified Photocopy	Public Record

¹⁰⁹¹ *Id.* at 2684–2697.

¹⁰⁹² *Id.* at 2698–2699.

¹⁰⁹³ *Id.* at 3559–3617.

¹⁰⁹⁴ *Id.* at 3618–3621.

¹⁰⁹⁵ *Id.* at 3622–3645.

¹⁰⁹⁶ *Id.* at 3646–3650.

¹⁰⁹⁷ *Id.* at 3651–3652.

¹⁰⁹⁸ *Id.* at 3653–3696.

Answer of Tan ¹⁰⁹⁹	May 8, 2000	Contains the denials, affirmative defenses, and counter-claims of the defendants	Copy	None
Answer of defendant corporations ¹¹⁰⁰	May 8, 2000		Copy	None
Answer of other individual defendants ¹¹⁰¹	May 8, 2000		Copy	None
Answer with Counter[-]claims of Imelda R. Marcos ¹¹⁰²	August 28, 1995		Copy	None
Table of Contents of Sandiganbayan Decision ¹¹⁰³	June 11, 2012		Copy	Public Record
Offer of Exhibits by defendants ¹¹⁰⁴	August 24, 2010	Contains a table of the titles and descriptions of the exhibits offered by the defendants	Copy	None

Indicated in the rightmost columns is whether the documents are originals or copies, and whether they might fall within the exceptions to the “original document rule.”

While several of the documents presented by the Republic tend to support its allegations against Marcos, Sr. and Tan, et al., this Court is constrained not to consider those inadmissible in evidence, especially those not compliant with the original document rule.

As discussed, the original document rule states that if what is sought to be proven is the contents of a document, the original of the document must be presented during trial.¹¹⁰⁵ The rule allows for but a few exceptions, enumerated under Rule 130, Section 3 of the Rules of Court:

SECTION 3. *Original Document Must be Produced; Exceptions.*

— When the subject of inquiry is the contents of a document, writing, recording, photograph or other record, no evidence is admissible other than the original document itself, except in the following cases:

- (a) When the original is lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
- (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the

¹⁰⁹⁹ *Id.* at 3697–3710.

¹¹⁰⁰ *Id.* at 3711–3726.

¹¹⁰¹ *Id.* at 3727–3743.

¹¹⁰² *Id.* at 3744–3766.

¹¹⁰³ *Id.* at 3767–3773.

¹¹⁰⁴ *Id.* at 3774–3801.

¹¹⁰⁵ RULES OF COURT, Rule 130, sec. 3. *See also Republic v. Sps. Gimenez*, 776 Phil. 233 (2016) [Per J. Leonen, Second Division].

latter fails to produce it after reasonable notice, or the original cannot be obtained by local judicial processes or procedures;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole;

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

(e) When the original is not closely-related to a controlling issue.

Thus, the original document need not be presented in case if it has been lost or destroyed, or cannot be produced in court, so long as the party offering, proves its existence or execution and the cause of unavailability. A copy of the document may also be considered if the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice. Likewise, the same rule applies if the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole. Secondary evidence may also be presented if the original is a public record in the custody of a public officer or is recorded in a public office.¹¹⁰⁶

The party presenting the secondary evidence has the burden to show that the documents fall under the exceptions to the original document rule. To do so, they must lay the basis for presenting secondary evidence.

If the document is lost or unavailable, the party must prove: first, that the document exists; second, that it was duly executed; and third, that there are circumstances that excuse the presentation of the original document.¹¹⁰⁷

¹¹⁰⁶ RULES OF COURT, Rule 130, secs. 5, 6, 7, 8 provides:

SECTION 5. *When Original Document is Unavailable.* — When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his or her part, may prove its contents by a copy, or by recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

SECTION 6. *When Original Document is in Adverse Party's Custody or Control.* — If the document is in the custody or under the control of the adverse party, he or she must have reasonable notice to produce it. If after such notice and after satisfactory proof of its existence, he or she fails to produce the document, secondary evidence may be presented as in the case of its loss.

SECTION 7. *Summaries.* — When the contents of documents, records, photographs, or numerous accounts are voluminous and cannot be examined in court without great loss of time, and the fact sought to be established is only the general result of the whole, the contents of such evidence may be presented in the form of a chart, summary, or calculation.

The originals shall be available for examination or copying, or both, by the adverse party at a reasonable time and place. The court may order that they be produced in court.

SECTION 8. *Evidence Admissible When Original Document is a Public Record.* — When the original of a document is in the custody of a public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof.

¹¹⁰⁷ *Citibank v. Teodoro*, 458 Phil. 480 (2003) [Per J. Panganiban, Third Division].

. . . [B]efore a party is allowed to adduce secondary evidence to prove the contents of the original sales invoices, the offeror must prove the following: (1) the existence or due execution of the original; (2) the loss and destruction of the original or the reason for its nonproduction in court; and (3) on the part of the offeror, the absence of bad faith to which the unavailability of the original can be attributed. The correct order of proof is as follows: *existence, execution, loss, and contents*. At the sound discretion of the court, this order may be changed if necessary.¹¹⁰⁸

Establishing the execution and authenticity of documents is particularly important for private documents. As earlier discussed, a private document's due execution and authenticity must be proved by anyone who saw the document executed or written, or by evidence of the genuineness of the signature or handwriting of the person who made the document.¹¹⁰⁹ This Court further discussed how a document's execution may be established in *Ong Ching Po v. Court of Appeals*,¹¹¹⁰

The due execution of the document may be established by the person or persons who executed it; by the person before whom its execution was acknowledged; or by any person who was present and saw it executed or who after its execution, saw it and recognized the signatures; or *by a person to whom the parties to the instrument had previously confessed the execution thereof*.¹¹¹¹ (Emphasis supplied, citations omitted)

The proof needed to establish the authenticity of public documents is different. Documents that are entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts stated in the document. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of its execution.¹¹¹² Particular attestations are needed to present copies of public documents as evidence.¹¹¹³

In *Spouses Gimenez*:¹¹¹⁴

The distinction as to the kind of public document under Rule 132, Section 19 of the Rules of Court is material with regard to the fact the evidence proves. In *Philippine Trust Company v. Hon. Court of Appeals, et al.*, this court ruled that:

. . . not all types of public documents are deemed *prima facie* evidence of the facts therein stated;

¹¹⁰⁸ *Id.* at 489.

¹¹⁰⁹ RULES OF COURT, Rule 130, sec. 20.

¹¹¹⁰ *Ong Ching Po v. Court of Appeals*, 309 Phil. 313 (1994) [Per J. Quiason, First Division].

¹¹¹¹ *Id.* at 320-321.

¹¹¹² RULES OF COURT, Rule 130, sec. 23.

¹¹¹³ See RULES OF COURT, Rule 130, secs. 24, 25, 27, 30.

¹¹¹⁴ *Republic v. Sps. Gimenez*, 776 Phil. 233 (2015) [Per J. Leonen, Second Division].

“Public records made in the performance of a duty by a public officer” include those specified as public documents under Section 19(a), Rule 132 of the Rules of Court and the acknowledgement, affirmation or oath, or jurat portion of public documents under Section 19(c). *Hence, under Section 23, notarized documents are merely proof of the fact which gave rise to their execution (e.g., the notarized Answer to Interrogatories . . . is proof that Philtrust had been served with Written Interrogatories), and of the date of the latter (e.g., the notarized Answer to Interrogatories is proof that the same was executed on October 12, 1992, the date stated thereon), but is not prima facie evidence of the facts therein stated.* Additionally, under Section 30 of the same Rule, the acknowledgement in notarized documents is *prima facie* evidence of the execution of the instrument or document involved (e.g., the notarized Answer to Interrogatories is *prima facie* proof that petitioner executed the same).

The reason for the distinction lies with the respective official duties 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. . .

In *Salas v. Sta. Mesa Market Corporation*, this court discussed the difference between mere copies of audited financial statements submitted to the Bureau of Internal Revenue (BIR) and Securities and Exchange Commission (SEC), and certified true copies of audited financial statements obtained or secured from the BIR or the SEC which are public documents under Rule 132, Section 19(c) of the Revised Rules of Evidence:

The documents in question were supposedly copies of the audited financial statements of SMMC. Financial statements (which include the balance sheet, income statement and statement of cash flow) show the fiscal condition of a particular entity within a specified period. The financial statements prepared by external auditors who are certified public accountants (like those presented by petitioner) are audited financial statements. Financial statements, whether audited or not, are, as [a] general rule, private documents. However, once financial statements are filed with a government office pursuant to a provision of law, they become public documents.

Whether a document is public or private is relevant in determining its admissibility as evidence. Public documents are admissible in evidence even without further proof of their due execution and genuineness. On the other hand,

private documents are inadmissible in evidence unless they are properly authenticated. Section 20, Rule 132 of the Rules of Court provides:

.....

Petitioner and respondents agree that the documents presented as evidence were mere copies of the audited financial statements submitted to the BIR and SEC. Neither party claimed that copies presented were certified true copies of audited financial statements obtained or secured from the BIR or the SEC which under Section 19(c), Rule 132 would have been public documents. Thus, the statements presented were private documents. Consequently, authentication was a precondition to their admissibility in evidence.

During authentication in court, a witness positively testifies that a document presented as evidence is genuine and has been duly executed or that the document is neither spurious nor counterfeit nor executed by mistake or under duress. In this case, petitioner merely presented a memorandum attesting to the increase in the corporation's monthly market revenue, prepared by a member of his management team. While there is no fixed criterion as to what constitutes competent evidence to establish the authenticity of a private document, the best proof available must be presented. The best proof available, in this instance, would have been the testimony of a representative of SMMC's external auditor who prepared the audited financial statements. Inasmuch as there was none, the audited financial statements were never authenticated.¹¹¹⁵ (Emphasis in the original, citations omitted)

In this case, the following are the relevant documents that tend to prove the close association between Tan and Marcos, Sr., and the taking of undue advantage of office thus resulting in unjust enrichment and damage and prejudice to the Filipino people and Republic:

(1) The documents showing that Fortune Tobacco¹¹¹⁶ made numerous requests for import quotas to the Philippine Virginia Tobacco Administration or directly to Marcos, Sr. These documents bear what appears to be Marcos, Sr.'s signature with the words "approved."¹¹¹⁷ There are also documents showing that Tan himself, as Chairman of Fortune Tobacco, wrote several requests to Marcos, Sr., and these bear Marcos, Sr.'s notes favorably acting on the requests.¹¹¹⁸ There are also several documents issued by the Office of the President granting Fortune Tobacco's requests for import quotas. The issuances state that Marcos, Sr. has approved the particular request of Fortune Tobacco for

¹¹¹⁵ *Id.* at 272-274.

¹¹¹⁶ Through its President Florencio T. Santos, or through its Chairman, Federico B. Moreno.

¹¹¹⁷ *Rollo* (G.R. No. 203592), pp. 853-865.

¹¹¹⁸ *Id.* at 882-884, 886-888, 893-910.

the import quota;¹¹¹⁹

(2) Documents showing that Tan wrote several direct requests to Marcos, Sr. on behalf of Allied Bank. There are again handwritten notations or issuances by the Office of the President that reveal Marcos, Sr.'s approval or grant of Tan's requests;¹¹²⁰ and

(3) Deeds of Sale of Shares of Stock showing that the stockholders of Himmel Industries, Grandspan Development, Asia Brewery, Silangan Holdings, and Foremost Farms sold their shares of stock to Shareholdings, Inc.¹¹²¹ There are also Deeds of Assignment issued by the stockholders of Shareholdings, Inc. transferring their shares of stock to Basic Holdings,¹¹²² Falcon Holdings,¹¹²³ and Supreme Holdings.¹¹²⁴ There were likewise uniform Deeds of Assignment signed in blank,¹¹²⁵ issued by the stockholders of Falcon Holdings,¹¹²⁶ Supreme Holdings,¹¹²⁷ and Shareholdings, Inc.¹¹²⁸ A sample reads:

KNOW ALL MEN BY THESE PRESENTS:

I, JIMMY CHUA, of legal age, Filipino, with residence at ____, for value received, do hereby assign, convey and transfer to ____, of legal age, Filipino, with residence at ____, his heirs and assigns, my fully paid subscription for ____ shares to the capital stock of FALCON HOLDINGS CORPORATION, a corporation organized and existing under the laws of the Philippines, with a par value pf P1.00 per share for a total part value of P____.

I herewith irrevocable constitute and appoint the corporate secretary to transfer the said shares of stock unto the name and for the account of __ - on the proper books of the corporation.¹¹²⁹

The Sandiganbayan correctly ruled that these documents are inadmissible.

While the contents of the documents tend to establish the close association between Marcos, Sr. and Tan, most of the presented documents are copies of private documents. There was thus a necessity to establish their due execution, and to prove their loss and unavailability. This, the Republic failed to do.

¹¹¹⁹ *Id.* at 858, 860, 862-864.

¹¹²⁰ *Id.* at 1244-1247, 1249-1251, 1253-1265.

¹¹²¹ *Id.* at 1313-1333.

¹¹²² *Id.* at 1404-1406.

¹¹²³ *Id.* at 1411-1413.

¹¹²⁴ *Id.* at 1414-1416.

¹¹²⁵ *Id.* at 1421-1434.

¹¹²⁶ *Id.* at 1421-1425.

¹¹²⁷ *Id.* at 1426-1430.

¹¹²⁸ *Id.* at 1431-1434.

¹¹²⁹ *Id.* at 3532. The only thing that varies in the Deeds of Assignment are the names and signatures of the persons executing it, and the corporation from which their shares are.

This Court notes several documentary evidence in the custody of the Library and Records Division of the Presidential Commission on Good Government, and the Presidential Library, stamped as certified true copies or photocopies:

<i>Title</i>	<i>Date</i>	<i>Contents</i>	<i>Purpose of Presentation</i>	<i>Nature of Document (Original or Copy)</i>	<i>Original Document Rule exception</i>
Philippine Virginia Tobacco Administration Letter ¹¹³⁰	March 31, 1981	Informed Marcos, Sr. of Fortune Tobacco's request for an import quota of 4 million kilos of tobacco Includes a handwritten note by Marcos, Sr. approving the request		Certified True Copy	Public Record
Letter from Philippine Virginia Tobacco Administration Chairman Federico Moreno ¹¹³¹	September 7, 1981	Informed Marcos, Sr. of Fortune Tobacco's request for an import quota of 4 million kilos of tobacco Includes a handwritten note by Marcos, Sr. approving the request		Certified True Copy	Public Record
Office of the President Letter ¹¹³²	April 14, 1984	Granted Fortune Tobacco's request for an import quota of 5 million kilos of tobacco		Certified True Copy	None
Memorandum ¹¹³³	January 2, 1987	Prepared by Carlitos Encarnacion for Presidential Commission on Good Government Deputy Minister Ramon A. Diaz Discussed Fortune Tobacco's illegal over-importation of tobacco and irregularities in the approval process		Certified True Copy Note: from the Library and Records Division of the Presidential Commission on Good Government	Public Record
National Tobacco Importation Records ¹¹³⁴	N/A	Philippine Virginia Tobacco Administration's record of the total annual tobacco imports from 1978 to 1984	Shows the Philippine Virginia Tobacco Administration's violations of the 6 million kilo-limit provided by law for annual	Certified Photocopy Note: from the Library and Records Division of the Presidential Commission on Good	Public Record

¹¹³⁰ *Id.* at 856.

¹¹³¹ *Id.* at 857. No official letterhead.

¹¹³² *Id.* at 864.

¹¹³³ *Id.* at 866-871.

¹¹³⁴ *Id.* at 872-876.

			tobacco imports	Government	
Fortune Tobacco Export and Import Records ¹¹³⁵	N/A	Indicates Fortune Tobacco's annual exports for 1974 and 1976 to 1986 Also indicates Fortune Tobacco's annual imports for 1981 to 1986	Shows the Fortune Tobacco's violations of the 6 million kilo-limit provided by law for tobacco imports in 1981 and 1983	Certified Photocopy Note: from the Library and Records Division of the Presidential Commission on Good Government	Public Record
Check Payments ¹¹³⁶	July 31, 1986; August 31, 1986; August 16, 1986; September 13, 1986; September 30, 1986; October 18, 1986; and October 31, 1986	Drawer: Fortune Tobacco Drawee: Allied Bank Payee: Republic of the Philippines Amount Paid: PHP 5 million per check		Certified Photocopy Note: from the Library and Records Division of the Presidential Commission on Good Government	Public Record
Fortune Tobacco Letter ¹¹³⁷	April 5, 1983	Requested from Philippine Virginia Tobacco Administration for a special rediscounting facility worth PHP 500 million Includes a handwritten note by Marcos, Sr. referring the letter to Central Bank Governor Jaime C. Laya for "favorable action"	Shows exclusive favors granted to Fortune Tobacco	Certified Photocopy Note: from the Library and Records Division of the Presidential Commission on Good Government	Public Record
Fortune Tobacco Letter ¹¹³⁸	April 5, 1983	Requested from Marcos, Sr. a rediscounting facility worth PHP 500 million	Shows exclusive favors granted to Fortune Tobacco	Certified Photocopy Note: from the Library and Records Division of the Presidential Commission on Good Government	Public Record
Fortune Tobacco Letter ¹¹³⁹	April 28, 1976	Requested a short-term loan of PHP 50 million from the Philippine Veterans Bank for		Certified Copy	Public Record

¹¹³⁵ *Id.* at 877.

¹¹³⁶ *Id.* at 878-880.

¹¹³⁷ *Id.* at 881.

¹¹³⁸ *Id.* at 886.

¹¹³⁹ *Id.* at 890, 892.

		the purchase of tobacco from local farmers			
Foremost Farms Letter ¹¹⁴⁰	June 21, 1976	Requested from the Secretary of Public Highways the diversion of part of the Infanta Highway crossing the property of Foremost Farms Includes a handwritten note by Marcos, Sr. approving the request	Shows exclusive favors granted to Foremost Farms	Certified True Copy	Public Record
Fortune Tobacco Letter ¹¹⁴¹	March 30, 1981	Requested authority from Philippine Virginia Tobacco Administration to import 4 million kilos of tobacco		Certified True Copy	Public Record
Office of the President Letter ¹¹⁴²	April 28, 1981	Granted Fortune Tobacco's request for an import quota of 4 million kilos of tobacco		Certified True Copy	Public Record
Fortune Tobacco Letter ¹¹⁴³	September 5, 1981	Requested authority from Philippine Virginia Tobacco Administration to import 4 million kilos of tobacco		Certified True Copy	Public Record
Office of the President Letter ¹¹⁴⁴	April 5, 1984	Granted Fortune Tobacco's request for an import quota of 3 million kilos of tobacco		Certified True Copy	Public Record
Fortune Tobacco Letter ¹¹⁴⁵	April 11, 1984	Requested authority from Philippine Virginia Tobacco Administration to import 5 million kilos of tobacco		Certified True Copy	Public Record
Executive Order No. 977 ¹¹⁴⁶	August 22, 1984	Amended Executive Order No. 960. The Executive Order provides that the Minister of Finance shall promulgate the necessary rules and regulations to effectively implement the provisions of the Executive Order subject to the approval of the President.		Certified Photocopy (Official Gazette)	Public Record
Executive Order No. 978 ¹¹⁴⁷	August 22, 1984	Imposed <i>ad valorem</i> tax and revised the specific tax rates and maximum retail prices of cigarettes.		Certified Photocopy (Official Gazette)	Public Record
Handwritten Notes ¹¹⁴⁸	October 1979	List of cash receipts and a note stating that such is inclusive of a check from Tan with number ABC #202523 dated 10/03/1979. The note		Certified True Copy of Original from Presidential	Public Record

¹¹⁴⁰ *Id.* at 909–910.¹¹⁴¹ *Id.* at 1710.¹¹⁴² *Id.* at 1711–1712.¹¹⁴³ *Id.* at 1713.¹¹⁴⁴ *Id.* at 1715–1716.¹¹⁴⁵ *Id.* at 1717.¹¹⁴⁶ *Id.* at 1738.¹¹⁴⁷ *Id.* at 1738–1741.¹¹⁴⁸ *Id.* at 1745.

		states that it was received 10/09/1979.		Commission on Good Government Library	
Handwritten Notes ¹¹⁴⁹		List of cash receipts. The first item in the list indicates "Exchange of [PHP] 500,000 by Tan, remitted"		Certified True Copy of Original from Presidential Commission on Good Government Library	Public Record
Tender of Excluded Evidence by the Republic to the Sandiganbayan ¹¹⁵⁰	April 3, 2012	Indicated the procedural antecedents of the exclusion of Joselito and Aderito's testimonies as evidence Prayed that the affidavits of the said witnesses be allowed to form part of the records of the case		Original	N/A
Judicial Affidavit of Joselito ¹¹⁵¹	November 10, 2011	Narrated the events that led to the sale of GenBank Shows undue favorable treatment by Central Bank Governor Licaros in favor of Tan's group	Evidence of the irregularities in the sale of GenBank to the Tan's group	Original	N/A
Regional Trial Court Decision ¹¹⁵²	December 2, 1992	A petition for assistance in the liquidation of GenBank Annulled and set aside the closure of GenBank and the adoption of the bid of Tan's group for "being plainly arbitrary and made in bad faith." ¹¹⁵³ Ordered the Central Bank to restore the license of GenBank to operate and conduct business as a commercial bank and trust corporation. Directed the Central Bank to pay GenBank capital account (excess of its assets over its liabilities prior to the sale) and damages.		Copy	Public Record
Judicial Affidavit of Aderito ¹¹⁵⁴	June 16, 2011	Narrated the events that led to the sale of GenBank Shows that Paramount		Original	N/A

¹¹⁴⁹ *Id.* at 1793.

¹¹⁵⁰ *Id.* at 911-920.

¹¹⁵¹ *Id.* at 921-951.

¹¹⁵² *Id.* at 955-1049.

¹¹⁵³ *Id.* at 1049.

¹¹⁵⁴ *Id.* at 1056-1069.

		Finance should have been the buyer, but Tan's group unexpectedly received Central Bank approval as the buyer.			
Deed of Assignment with Undertaking ¹¹⁵⁵	December 23, 1976	Served as security for the advances and credit accommodations made by the Central Bank to GenBank		Notarized Copy	Public Record
Transcript of Stenographic Notes ¹¹⁵⁶	January 31, 2011	Deposition of witness Jaime C. Laya	Evidence of the irregularities in the sale of GenBank to Tan's group	Original	N/A
Resolution No. 1245 of the Monetary Board of the Central Bank ¹¹⁵⁷	July 1, 1977	Dispensation from the requirement that Tan's group submit a standby irrevocable credit to secure the emergency advances assumed by Allied Bank The Resolution also extends from two to five years the period of payment of the balance of the emergency advances assumed by Allied Bank	Shows special and extraordinary concessions or benefits given to defendants Allied Bank and Tan.	Copy Note: from the Library and Records Division of the Presidential Commission on Good Government	Public Record
Office of the President Memorandum to National Food Authority ¹¹⁵⁸	April 14, 1984	Marcos, Sr. approved the request of Tan as Chairman of Allied Bank that the National Food Authority be authorized to bank with the Allied Bank as an exception to existing regulations. Allied Bank offered to provide a credit line from PHP 300 million to PHP 500 million to the National Food Authority.	Shows exclusive concessions granted to Allied Bank	Certified Copy from the Presidential Library	Public Record
Office of the President Memorandum to the Central Bank ¹¹⁵⁹	June 5, 1984	Marcos, Sr. instructed the Central Bank of the Philippines to sell to Allied Bank USD 25 million so that they can settle their obligations in Bahrain and the guarantee given by the Philippines can be withdrawn.	Shows exclusive favors granted to Allied Bank	Certified Copy from Presidential Library	Public Record
Allied Bank Letter ¹¹⁶⁰	April 19, 1985	Allied Bank wrote a letter to Marcos, Sr. requesting that the Central Bank place with		Certified Copy from Presidential	Public Record

¹¹⁵⁵ *Id.* at 1076–1077.¹¹⁵⁶ *Id.* at 1145–1241.¹¹⁵⁷ *Id.* at 1242–1243.¹¹⁵⁸ *Id.* at 1246.¹¹⁵⁹ *Id.* at 1257.¹¹⁶⁰ *Id.* at 1258.

		it a deposit of USD 50 million to be able to satisfy its dollar loans.		Library	
Allied Bank Letter ¹¹⁶¹	October 20, 1983	Letter of Tan to the Ministry of Transportation and Communication seeking a favorable endorsement for the approval of their applications for the microwave frequencies.		Certified True Copy from the Presidential Library	Public Record
SEC Registration No. 114418 ¹¹⁶²	July 20, 1983	Certification that the Articles of Incorporation of Supreme Holdings is in accordance with the law.		Copy	Public Record
SEC Registration No. 114419 ¹¹⁶³	July 20, 1983	Certification that the Articles of Incorporation of Falcon Holdings is in accordance with the law.		Copy	Public Record
SEC Registration No. 114420 ¹¹⁶⁴	July 20, 1983	Certification that the Articles of Incorporation of Basic Holdings is in accordance with the law.		Copy	Public Record
Transcript of Stenographic Notes ¹¹⁶⁵	October 16, 2007	Deposition of witnesses former Senator Salonga and Magno (Records Custodian of the Library and Records Section of the Presidential Commission on Good Government)	Evidence showing Marcos, Sr.'s interest in the Tan Group of Companies and the special favors and concessions granted by Marcos, Sr. in relation thereto.	Original	N/A
Transcript of Stenographic Notes ¹¹⁶⁶	February 13, 2008	Deposition of witness Marcos, Jr.	Evidence showing Marcos, Sr.'s interest in Shareholdings, Inc.	Original	N/A
Securities and Exchange Commission Document ¹¹⁶⁷	December 29, 1978	Certification of registration of the Articles of Incorporation of Allied Leasing and Finance Corp.		Certified Machine Copy	Public Record

This Court notes that several officers testified on these documents:¹¹⁶⁸

¹¹⁶¹ *Id.* at 1260–1261.

¹¹⁶² *Id.* at 1364–1378.

¹¹⁶³ *Id.* at 1379–1392.

¹¹⁶⁴ *Id.* at 1393–1404.

¹¹⁶⁵ *Id.* at 1499–1519.

¹¹⁶⁶ *Id.* at 1620–1707.

¹¹⁶⁷ *Id.* at 1708.

¹¹⁶⁸ *Id.* at 159–161, 330–336, 4074.

(1) Magno is the records custodian of the Presidential Commission on Good Government, and it is her principal duty and function to supervise the Library and Records Division, safekeep the documents turned over to the library, and issue and certify as authentic the documents needed in Court. She testified to prove that the Presidential Commission on Good Government has custody and possession of the documents she presented and identified in court;

(2) Atty. Napalan is the counsel of the Securities and Exchange Commission tasked to process the Articles of Incorporation, By-Laws, and corporation reviews. She monitors compliance with reportorial requirements and appears in court regarding the filing of cases. She submitted the Articles of Incorporation, By-laws, General Information Sheets, and other documents submitted by Tan Group of Companies. She was presented to prove the existence of Sabales Corp.'s documents, the articles of incorporation of Allied Bank and Fortune Tobacco, and other documents previously marked as exhibits;

(3) Orias is a bank officer in the Bangko Sentral ng Pilipinas and he supervises and controls the records handled in his department. He was presented to prove the existence of the documents in relation to Tan et al.'s acquisition of GenBank;

(4) Buban is the presidential staff officer and officer-in-charge of the Malacañang Library, in charge of technical services in processing books and safekeeping of materials like presidential issuances in the Malacañang Compound. The Malacañang Library has custody of the files and documents that were previously kept in the Presidential Library. She was presented to establish the documents which were kept in the Presidential Library. These documents showed the participation of and relationship between Tan and Marcos, Sr.;

(5) Castillo is a records officer of the Presidential Commission on Good Government. He was presented to testify that he obtained from the Malacañang Presidential Library documents pertaining to Marcos, Sr. and his friends and turned it over to the Presidential Commission on Good Government. He signed an acknowledgement receipt which states he received the original of documents from Tan found in the Presidential Library;

(6) Inacay is a record officer in the Court of Appeals. He was presented to identify certified true copies of Court of Appeals documents in relation to Special Proceedings No. 107812, docketed in the Court of Appeals as CA-G.R. No. CV No. 39939, entitled *Central Bank of the Philippines vs. Banker's Worldwide Insurance and Surety Company, et al.* He attested several Exhibits as duplicate originals;

(7) Arrojado is from the Bureau of Internal Revenue who testified that the Bureau does not have in its custody the subpoenaed income tax

returns;

(8) Nakpil is from the Supervision and Examination Department of Bangko Sentral ng Pilipinas who brought duplicate memorandum, carbon copies and duplicate original of documents in the custody of Bangko Sentral ng Pilipinas;

(9) Martinez and Sarmiento who testified and brought the documents in the custody of Bangko Sentral ng Pilipinas before the Sandiganbayan;

(10) Trias from the Bangko Sentral ng Pilipinas who presented a fact book based on the reports of the banks submitted to the Supervision and Examination Department of Bangko Sentral ng Pilipinas;

(11) Barns is a director of the Malacañang Museum who presented to the Sandiganbayan two documents in the custody of the museum; and

(12) Camacho of the National Archives of the Philippines who confirmed the signatures of the officer-in-charge of the Archives Division of the National Archives, appearing at the back pages of several exhibits.

Under the original document rule, "when the original of a document is in the custody of a public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof."¹¹⁶⁹

However, the relevant documents that tend to prove the close association of Marcos, Sr. and Tan (i.e., Tan's letters to Marcos, Sr. on behalf of Fortune Tobacco and Allied Bank), are still private documents, even if certified as true copies by the Library and Records Division of the Presidential Commission on Good Government and the Presidential Library. They are not public records in the custody of a public officer or those recorded in a public office.

To reiterate, the documents collected by the Presidential Commission on Good Government are not public documents per se. The private documents in its custody still need to be authenticated in accordance with the rules of evidence. The persons who executed it, the person before whom its execution was acknowledged, or a person who was present and saw it executed or who after its execution, saw it and recognized the signatures, or a person to whom the parties to the instrument had previously confessed the execution thereof, must still authenticate these documents. A Presidential Commission on Good Government records officer does not fall under any of these categories. A Presidential Commission on Good Government records officer is competent

¹¹⁶⁹ RULES OF COURT, Rule 130, sec. 8.

to testify only as to how the Presidential Commission on Good Government obtained custody over these documents, but not on the contents of the documents.¹¹⁷⁰

The Republic asserts that in hearings, it presented originals, compared it with photocopies, and marked them as documentary exhibits. It also appended the originals of the following documents for the Sandiganbayan to appreciate that it was Marcos, Sr. or Tan's signature and writing in the documents.¹¹⁷¹ Tan's Written Disclosure is one of the original documents marked and offered. The Republic also appended originals of the following Exhibits:¹¹⁷²

B6	Letter to Ferdinand Marcos from Lucio Tan dated December 26[,] 1978 re: request for the government to grant the balance in the allocation for importation of 250,000 cases of sardines in favor of Himmel Industries Inc.
E5	Letter dated May 17, 1979 to the Hon. Governor Gregorio Licaros of Central Bank of the Philippines from Lucio Tan
J	Memo dated March 26, 1977 for His Excellency from Lucio Tan Re: General Bank and Trust Company
S20 & series	Letter dated May 17, 1979 from Lucio Tan to Ferdinand Marcos
T20 & series	Letter dated April 5, 1983 from Lucio Tan to Ferdinand Marcos
U20	Letter dated December 9, 1983 from Lucio Tan to Ferdinand Marcos
W20	Letter dated December 21, 1983 from Lucio Tan to Ferdinand Marcos
X20	Letter dated April 10, 1985 from Lucio Tan to Ferdinand Marcos
Y20 to Y20-1 [originals of U8 and series (see: TSN, Sept. 15, 2011, page 55)]	First page of memorandum executed by Lucio Tan addressed to President Corazon Aquino
Z20	Undated letter on Allied Bank Letterhead signed by Lucio Tan addressed to "Sir"

However, as discussed, these letters are required to be authenticated to be admissible in evidence. There is no showing that these documents' authenticity were sufficiently established. Tan, the person who wrote the letters, did not testify in Court.

The Republic relies on Marcos, Jr.'s testimony to confirm the existence and due execution of several of the documentary evidence because he saw it after its execution, and Marcos, Sr. and Tan had informed him of their execution.¹¹⁷³ Marcos, Jr. also testified on their unavailability. He stated that the originals are in the custody of the United States Customs Service because it was part of the documents brought to Hawaii and seized by the United States

¹¹⁷⁰ *Republic v. Marcos-Manotoc*, 681 Phil. 380, 404 (2012) [Per J. Sereno, Second Division].

¹¹⁷¹ *Rollo* (G.R. No. 205392), p. 4075. As concluded by Document Examiner of the National Bureau of Investigation Caroline Moldez-Pitoy.

¹¹⁷² *Id.* at 4074-4075.

¹¹⁷³ *Id.* at 4034.

Customs officials.¹¹⁷⁴ Marcos, Jr. likewise explained the steps he took to acquire the originals in the custody of the United States Customs Service.¹¹⁷⁵ The Republic thus argues that his testimony is admissible to prove the execution, existence, and unavailability of the documents.¹¹⁷⁶

However, this Court finds that Marcos, Jr.'s testimony is not sufficient to prove the execution, existence, and unavailability of these documents. Marcos, Jr. did not have personal knowledge of the contents of the documents. Furthermore, his testimony is not sufficient to adequately prove the unavailability of the original documents. The Republic could have shown the diplomatic route. In any case, the Deeds of Assignment are again private documents that need to be authenticated by the persons who executed it, by the person before whom its execution was acknowledged, by any person who was present and saw it executed or who after its execution, saw it and recognized the signatures, or by a person to whom the parties to the instrument had previously confessed the execution thereof.¹¹⁷⁷ Marcos, Jr. still does not fall under any of these categories considering the Deeds of Assignment were not executed by Marcos, Sr. and Tan themselves.

As to the testimonies of Joselito and Aderito, the Republic filed a Tender of Excluded Evidence praying that their judicial affidavits¹¹⁷⁸ be allowed to form part of the records of the case. Their affidavits elaborate on the undue favorable treatment extended by Marcos, Sr. to Tan through then Central Bank Governor Licaros. They narrate the irregularities in the sale of GenBank to the Tan's group. As discussed, their testimonies are not barred by *res judicata*.

However, considering the inadmissibility of the other supporting documents and other evidence in this case, this Court finds that even if allowed to form part of the records, allowing Joselito's and Aderito's testimonies would be moot and academic. They are not sufficient to show that there was an improper use of illegal funds or taking undue advantage of office that resulted in unjust enrichment and damage and prejudice to the Filipino people and the Republic.

As it is, Tan's Written Disclosure may be the sole proof of the undue advantage granted by the Marcos, Sr., to Tan, et al.

IV(B)

The foregoing show that the third element for determining ill-gotten

¹¹⁷⁴ *Id.* at 4027.

¹¹⁷⁵ *Id.* at 4036.

¹¹⁷⁶ *Id.* at 4065–4066.

¹¹⁷⁷ *Ong Ching Po v. Court of Appeals*, 309 Phil. 313, 320–321 (1994) [Per J. Quiason, First Division].

¹¹⁷⁸ *Rollo* (G.R. No. 203592), pp. 921–951, 1056–1069.

wealth was not satisfactorily established. Most of the evidence presented by the Republic do not sufficiently prove that the assets and properties of Tan et al. were acquired by their taking advantage of Marcos, Sr.'s power and influence.

Consequently, we cannot infer the fourth element, i.e., damage and prejudice to the Filipino people and the Republic. If at all, the evidence shows that Tan enriched himself at the expense of the Marcos family.

There is truth that we want to believe, and there is truth proven in a court of law. The truth could very well be what the Republic paints it to be—that respondents amassed ill-gotten wealth by taking advantage of their close connections with the Marcoses. However, in a judicial proceeding, truth is that which is supported by admissible evidence, evidence that the Republic failed to adduce in this case. As a court of law and the last bulwark of facts, this Court must follow the Rules of Evidence as process to make proof. This Court cannot disregard its own rules of procedure, lest it undermine public confidence in its ability to dispense justice.

ACCORDINGLY, I vote that this Court:

In **G.R. No. 195837**, **AFFIRM** the December 22, 2010 and February 25, 2011 Resolutions of the Sandiganbayan in Civil Case No. 0005, and hold as valid the dismissal of the Complaint against Don Ferry and Cesar Zalamea.

In **G.R. No. 198221**, **AFFIRM** the May 3, 2011 and July 4, 2011 Resolutions of the Sandiganbayan in Civil Case No. 0005, dismissing the Republic's Motion for Voluntary Inhibition, but **REVERSE** the June 9, 2011 Order and August 2, 2011 Resolution of the Sandiganbayan in Civil Case No. 0005, and hold that the testimony of Joselito and Aderito Yujuico should have been admitted in evidence.

In **G.R. No. 198974**, **AFFIRM** the July 8, 2011 and August 23, 2011 Resolutions of the Sandiganbayan in Civil Case No. 0005, which denied the Republic's Motion to Admit Third Amended Complaint.

In **G.R. No. 203592**, **AFFIRM** the June 11, 2012 Decision and September 26, 2012 Resolution of the Sandiganbayan in Civil Case No. 0005, dismissing the Republic's Second Amended Complaint for Reversion, Reconveyance, Restitution, Accounting and Damages.



MARVIC M.V.F. LEONEN

Senior Associate Justice