

## EN BANC

[ G.R. No. 152375, December 13, 2011 ]

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS  
SANDIGANBAYAN (FOURTH DIVISION), JOSE L. AFRICA  
(SUBSTITUTED BY HIS HEIRS), MANUEL H. NIETO, JR.,  
FERDINAND E. MARCOS (SUBSTITUTED BY HIS HEIRS), IMELDA  
R. MARCOS, FERDINAND R. MARCOS, JR., JUAN PONCE ENRILE,  
AND POTENCIANO ILUSORIO (SUBSTITUTED BY HIS HEIRS),  
RESPONDENTS.

### D E C I S I O N

BRION, J.:

Before us is the petition for *certiorari*<sup>[1]</sup> filed by the Republic of the Philippines (*petitioner*) to set aside the February 7, 2002 resolution (*2002 resolution*)<sup>[2]</sup> of the Sandiganbayan<sup>[3]</sup> denying the petitioner's *Motion to Admit Supplemental Offer of Evidence (Re: Deposition of Maurice V. Bane)* (*3<sup>rd</sup> motion*).

### THE ANTECEDENTS

On July 22, 1987, the petitioner Republic of the Philippines, through the Presidential Commission on Good Government (PCGG), filed a complaint (**docketed as Civil Case No. 0009**) against Jose L. Africa, Manuel H. Nieto, Jr., Ferdinand E. Marcos, Imelda R. Marcos, Ferdinand R. Marcos, Jr., Juan Ponce Enrile, and Potenciano Ilusorio (collectively, *the respondents*) for **reconveyance, reversion, accounting, restitution, and damages** before the Sandiganbayan. The petitioner alleged, inter alia, that the respondents illegally manipulated the purchase of the major shareholdings of Cable and Wireless Limited in Eastern Telecommunications Philippines, Inc. (ETPI), which shareholdings respondents Jose Africa and Manuel Nieto, Jr. held for themselves and, through their holdings and the corporations they organized, beneficially for respondents Ferdinand E. Marcos and Imelda R. Marcos.<sup>[4]</sup>

Civil Case No. 0009 is the main case subject of the present petition. **Victor Africa (Africa), son of the late Jose L. Africa, was not impleaded in and so is plainly not a party to Civil Case No. 0009.**<sup>[5]</sup>

Civil Case No. 0009 spawned numerous incidental cases,<sup>[6]</sup> among them, Civil Case No. 0130.<sup>[7]</sup> **The present respondents were not made parties either in Civil Case No. 0130.**

#### **I. Civil Case No. 0130**

In the August 7, 1991 PCGG-conducted ETPI stockholders meeting, a PCGG-

controlled board of directors was elected. Later, the registered ETPI stockholders convened a special stockholders meeting wherein another set of board of directors was elected. As a result, two sets of ETPI board and officers were elected.<sup>[8]</sup>

Thereafter, Africa, as an ETPI stockholder, filed a petition for certiorari, with prayer for a temporary restraining order/preliminary injunction with the Sandiganbayan (**docketed as Civil Case No. 0130**), seeking to nullify the August 5, 1991 and August 9, 1991 Orders of the PCGG. These Orders directed Africa:

[T]o account for his sequestered shares in ETPI and to cease and desist from exercising voting rights on the sequestered shares in the special stockholders' meeting to be held on August 12, 1991, from representing himself as a director, officer, employee or agent of ETPI, and from participating, directly or indirectly[, ] in the management of ETPI.<sup>[9]</sup>

During the pendency of Africa's petition, Civil Case No. 0130, Africa filed a motion with the Sandiganbayan, alleging that since January 29, 1988 the PCGG had been "illegally 'exercising' the rights of stockholders of ETPI,"<sup>[10]</sup> especially in the election of the members of the board of directors. Africa prayed for the issuance of an order for the "calling and holding of [ETPI] annual stockholders meeting for 1992 under the [c]ourt's control and supervision and prescribed guidelines."<sup>[11]</sup>

In its November 13, 1992 resolution, the Sandiganbayan favored Africa's motion in this wise:

WHEREFORE, it is ordered that an annual stockholders meeting of the [ETPI], for 1992 be held on Friday, November 27, 1992, at 2:00 o'clock in the afternoon, at the ETPI Board Room, Telecoms Plaza, 7<sup>th</sup> Floor, 316 Gil J. Puyat Avenue, Makati, Metro Manila. x x x The stockholders meeting shall be conducted under the supervision and control of this Court, through Mr. Justice Sabino R. de Leon, Jr. [O]nly the registered owners, their duly authorized representatives or their proxies may vote their corresponding shares.

The following minimum safeguards must be set in place and carefully maintained until final judicial resolution of the question of whether or not the sequestered shares of stock (or in a proper case the underlying assets of the corporation concerned) constitute ill-gotten wealth[.]<sup>[12]</sup>

The PCGG assailed this resolution before this Court via a petition for *certiorari* docketed as **G.R. No. 107789**<sup>[13]</sup> (**PCGG's petition**), imputing grave abuse of discretion on the Sandiganbayan for holding, inter alia, that the registered stockholders of ETPI had the right to vote.<sup>[14]</sup> In our November 26, 1992 Resolution, we enjoined the Sandiganbayan from implementing its assailed resolution.

In the meantime, in an **April 12, 1993 resolution**, the Sandiganbayan ordered the

**consolidation of Civil Case No. 0130, among others, with Civil Case No. 0009**, with the latter as the main case and the former merely an incident.<sup>[15]</sup>

During the pendency of PCGG's petition (G.R. No. 107789), the PCGG filed with this Court a "Very Urgent Petition for Authority to Hold Special Stockholders' Meeting for [the] Sole Purpose of Increasing [ETPI's] Authorized Capital Stock" (*Urgent Petition*). In our May 7, 1996 Resolution, we referred this Urgent Petition to the Sandiganbayan for reception of evidence and *immediate* resolution.<sup>[16]</sup> **The Sandiganbayan included the Urgent Petition in Civil Case No. 0130.**<sup>[17]</sup>

In the proceedings to resolve the Urgent Petition, the testimony of Mr. Maurice V. Bane (former director and treasurer-in-trust of ETPI) was taken— at the petitioner's instance and after serving notice of the deposition-taking on the respondents<sup>[18]</sup> – on October 23 and 24, 1996 by way of deposition upon oral examination (*Bane deposition*) before Consul General Ernesto Castro of the Philippine Embassy in London, England.

Invoking Section 1, Rule 24 (of the old Rules of Court), purportedly allowing the petitioner to depose Bane **without leave of court, i.e., as a matter of right after the defendants have filed their answer**, the notice stated that "[t]he purpose of the deposition is for [Bane] to identify and testify on the facts set forth in his affidavit<sup>[19]</sup> x x x so as to prove the ownership issue in favor of [the petitioner] and/or establish the *prima facie* factual foundation for sequestration of [ETPI's] Class A stock in support of the [Urgent Petition]."<sup>[20]</sup> The notice also states that the petitioner shall use the Bane deposition "in evidence... in the main case of Civil Case No. 0009."<sup>[21]</sup> On the scheduled deposition date, only Africa was present and he cross-examined Bane.

On December 13, 1996, the Sandiganbayan resolved the Urgent Petition by granting authority to the PCGG (i) "to cause the holding of a special stockholders' meeting of ETPI for the sole purpose of increasing ETPI's authorized capital stock" and (ii) "to vote therein the sequestered Class 'A' shares of stock."<sup>[22]</sup> Thus, a special stockholders meeting was held, as previously scheduled, on March 17, 1997 and the increase in ETPI's authorized capital stock was "unanimously approved."<sup>[23]</sup> From this ruling, Africa went to this Court via a petition for *certiorari*<sup>[24]</sup> docketed as **G.R. No. 147214 (*Africa's petition*)**.

We jointly resolved the PCGG's and Africa's petitions, and ruled:

This Court notes that, like in Africa's motion to hold a stockholders meeting (to elect a board of directors), the Sandiganbayan, in the PCGG's petition to hold a stockholders meeting (to amend the articles of incorporation to increase the authorized capital stock), again failed to apply the two-tiered test. On such determination hinges the validity of the votes cast by the PCGG in the stockholders meeting of March 17, 1997. This lapse by the Sandiganbayan leaves this Court with no other choice but to remand these questions to it for proper determination.

WHEREFORE, this Court Resolved to REFER the petitions at bar to the Sandiganbayan for reception of evidence to determine whether there is a prima facie evidence showing that the sequestered shares in question are ill-gotten and there is an imminent danger of dissipation to entitle the PCGG to vote them in a stockholders meeting to elect the ETPI Board of Directors and to amend the ETPI Articles of Incorporation for the sole purpose of increasing the authorized capital stock of ETPI.

The Sandiganbayan shall render a decision thereon within sixty (60) days from receipt of this Resolution and in conformity herewith.

## **II. Civil Case No. 0009**

Although Civil Case No. 0009 was filed on July 22, 1987, it was only on November 29, 1996 and March 17, 1997 that the first pre-trial conference was scheduled and concluded.<sup>[25]</sup>

In its Pre-Trial Brief<sup>[26]</sup> dated August 30, 1996, the petitioner offered to present the following witnesses:

### WITNESSES TO BE PRESENTED AND A BRIEF DESCRIPTION OF THEIR TESTIMONIES

(1) Maurice V. Bane – representative of Cable and Wireless Limited (C & W) at the time ETPI was organized.

x x x x

(2) Mr. Manuel H. Nieto – x x x

(3) Ms. Evelyn Singson – x x x

(4) Mr. Severino P. Buan, Jr. – x x x

(5) Mr. Apolinario K. Medina - x x x

(6) Mr. Potenciano A. Roque – x x x

(7) Caesar Parlade - x x x

## **IIa. Motion to Admit the Bane Deposition**

At the trial of Civil Case No. 0009, the petitioner filed a Motion<sup>[27]</sup> (1<sup>st</sup> motion), stating that –

1. In the hearings of the incidents of [Civil Case No. 0009], i.e., Civil Case Nos. 0048, 0050, 0130, 0146<sup>[28]</sup> the following witnesses were

presented therein:

- a. Cesar O.V. Parlade
  - b. *Maurice Bane*
  - c. Evelyn Singson
  - d. Leonorio Martinez
  - e. Ricardo Castro; and
  - f. Rolando Gapud
2. [The petitioner] wishes to adopt in [Civil Case No. 0009] their testimonies and the documentary exhibits presented and identified by them, since their testimonies and the said documentary exhibits are very relevant to prove the case of the [petitioner] in [Civil Case No. 0009].
3. The adverse parties in the aforementioned incidents had the opportunity to cross-examine them.

The respondents filed their respective Oppositions to the 1st motion;<sup>[29]</sup> in turn, the petitioner filed a Common Reply<sup>[30]</sup> to these Oppositions.

On April 1, 1998, the Sandiganbayan<sup>[31]</sup> promulgated a resolution<sup>[32]</sup> (1998 resolution) denying the petitioner's 1st motion, as follows:

Wherefore, the [petitioner's] Motion x x x is –

1. **partly denied** insofar as [the petitioner] prays therein to adopt the testimonies on oral deposition of Maurice V. Bane and Rolando Gapud **as part of its evidence in Civil Case No. 0009 for the reason that said deponents according to the [petitioner] are not available for cross-examination in this Court by the [respondents]**. (emphasis added)
2. partly Granted, in the interest of speedy disposition of this long pending case, insofar as plaintiff prays therein to adopt certain/particular testimonies of Cesar O. Parlade, Evelyn Singson, Leoncio Martinez, and Ricardo Castro and documentary exhibits which said witnesses have identified in incident Civil Case Nos. xxx 0130 xxx, subject to the following conditions :
  1. xxx
  2. xxx
  3. That the said witnesses be presented in this Court so that they can be cross-examined on their particular testimonies in incident Civil Cases xxx [by the respondents].

## **IIb. Urgent Motion and/or Request for Judicial Notice**