

## THIRD DIVISION

[ **G.R. No. 170122, October 12, 2009** ]

**CLARITA DEPAKAKIBO GARCIA, PETITIONER, VS.  
SANDIGANBAYAN AND REPUBLIC OF THE PHILIPPINES,  
RESPONDENTS.**

[**G.R. NO. 171381**]

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SANDIGANBAYAN AND REPUBLIC OF THE PHILIPPINES,  
RESPONDENTS.**

### D E C I S I O N

**VELASCO JR., J.:**

#### The Case

Before us are these two (2) consolidated petitions under Rule 65, each interposed by petitioner Clarita D. Garcia, with application for injunctive relief. In the first petition for mandamus and/or certiorari, docketed as **G.R. No. 170122**, petitioner seeks to nullify and set aside the August 5, 2005 Order,<sup>[1]</sup> as reiterated in another Order dated August 26, 2005, both issued by the Sandiganbayan, Fourth Division, which effectively denied the petitioner's motion to dismiss and/or to quash **Civil Case No. 0193**, a suit for forfeiture commenced by the Republic of the Philippines against the petitioner and her immediate family. The second petition for certiorari, docketed as **G.R. No. 171381**, seeks to nullify and set aside the November 9, 2005 Resolution<sup>[2]</sup> of the Sandiganbayan, Fourth Division, insofar as it likewise denied the petitioner's motion to dismiss and/or quash **Civil Case No. 0196**, another forfeiture case involving the same parties but for different properties.

#### The Facts

To recover unlawfully acquired funds and properties in the aggregate amount of PhP 143,052,015.29 that retired Maj. Gen. Carlos F. Garcia, his wife, herein petitioner Clarita, children Ian Carl, Juan Paulo and Timothy Mark (collectively, the Garcias) had allegedly amassed and acquired, the Republic, through the Office of the Ombudsman (OMB), pursuant to Republic Act No. (RA) 1379,<sup>[3]</sup> filed with the Sandiganbayan (SB) on October 29, 2004 a petition for the forfeiture of those properties. This petition, docketed as **Civil Case No. 0193**, was eventually raffled to the Fourth Division of the anti-graft court.

Civil Case No. 0193 was followed by the filing on July 5, 2005 of another forfeiture case, docketed as Civil Case No. 0196, this time to recover funds and properties amounting to PhP 202,005,980.55. Civil Case No. 0196 would eventually be raffled also to the Fourth Division of the SB. For convenience and clarity, Civil Case No.

0193 shall hereinafter be also referred to as Forfeiture I and Civil Case No. 0196 as Forfeiture II.

Prior to the filing of Forfeiture II, but subsequent to the filing of Forfeiture I, the OMB charged the Garcias and three others with violation of RA 7080 (plunder) under an Information dated April 5, 2005 which placed the value of the property and funds plundered at PhP 303,272,005.99. Docketed as **Crim. Case No. 28107**, the Information was raffled off to the Second Division of the SB. The plunder charge, as the parties' pleadings seem to indicate, covered substantially the same properties identified in both forfeiture cases.

After the filing of Forfeiture I, the following events transpired in relation to the case:

(1) The **corresponding summons were issued and all served on Gen. Garcia at his place of detention**. Per the *Sheriff's Return*<sup>[4]</sup> dated November 2, 2005, the summons were duly served on respondent Garcias. Earlier, or on October 29, 2004, the SB issued a writ of attachment in favor of the Republic, an issuance which Gen. Garcia challenged before this Court, docketed as G.R. No. 165835.

Instead of an answer, the Garcias filed a motion to dismiss on the ground of the SB's lack of jurisdiction over separate civil actions for forfeiture. The OMB countered with a motion to expunge and to declare the Garcias in default. To the OMB's motion, the Garcias interposed an opposition in which they manifested that they have meanwhile repaired to the Court on *certiorari*, docketed as G.R. No. 165835 to nullify the writ of attachment SB issued in which case the SB should defer action on the forfeiture case as a matter of judicial courtesy.

(2) By Resolution<sup>[5]</sup> of **January 20, 2005**, the SB denied the motion to dismiss; declared the same motion as *pro forma* and hence without tolling effect on the period to answer. The same resolution **declared the Garcias in default**.

Another resolution<sup>[6]</sup> denied the Garcias' motion for reconsideration and/or to admit answer, and set a date for the ex-parte presentation of the Republic's evidence.

A second motion for reconsideration was also denied on February 23, 2005, pursuant to the prohibited pleading rule.

(3) Despite the standing default order, the Garcias moved for the transfer and consolidation of Forfeiture I with the plunder case which were respectively pending in different divisions of the SB, contending that such consolidation is mandatory under RA 8249.<sup>[7]</sup>

On May 20, 2005, the SB 4<sup>th</sup> Division denied the motion for the reason that the forfeiture case is not the corresponding civil action for the recovery of civil liability arising from the criminal case of plunder.

(4) On July 26, 2005, the Garcias filed another motion to dismiss and/or to quash Forfeiture I on, *inter alia*, the following grounds: (a) the filing of the plunder case ousted the SB 4<sup>th</sup> Division of jurisdiction over the forfeiture case; and (b) that the consolidation is imperative in order to avoid possible double jeopardy entanglements.

By Order<sup>[8]</sup> of August 5, 2005, the SB merely noted the motion in view of movants having been declared in default which has yet to be lifted.

It is upon the foregoing factual antecedents that petitioner Clarita has interposed her first special civil action for mandamus and/or certiorari docketed as **G.R. No. 170122**, raising the following issues:

I. Whether or not the [SB] 4<sup>th</sup> Division acted without or in excess of jurisdiction or with grave abuse of discretion x x x in issuing its challenged order of August 5, 2005 and August 26 2005 that merely "Noted without action," hence refused to resolve petitioner's motion to dismiss and/or to quash by virtue of petitioner's prior default in that:

A. For **lack of proper and valid service of summons**, the [SB] 4<sup>th</sup> Division could not have acquired jurisdiction over petitioner's, [and her children's] x x x persons, much less make them become the true "parties-litigants, contestants or legal adversaries" in forfeiture I. As the [SB] has not validly acquired jurisdiction over the petitioner's [and her children's] x x x persons, they could not possibly be declared in default, nor can a valid judgment by default be rendered against them.

B. Even then, mere declaration in default does not *per se* bar petitioner from challenging the [SB] 4<sup>th</sup> Division's lack of jurisdiction over the subject matter of forfeiture I as the same can be raised anytime, even after final judgment. In the absence of jurisdiction over the subject matter, any and all proceedings before the [SB] are null and void.

C. Contrary to its August 26, 2005 rejection of petitioner's motion for reconsideration of the first challenged order that the issue of jurisdiction raised therein had already been passed upon by [the SB 4<sup>th</sup> Division's] resolution of May 20, 2005, the records clearly show that the grounds relied upon by petitioner in her motion to dismiss and/or to quash dated July 26, 2005 were entirely different, separate and distinct from the grounds set forth in petitioner's manifestation and motion [to consolidate] dated April 15, 2005 that was denied by it per its resolution of May 20, 2005.

D. In any event, the [SB] 4<sup>th</sup> Division has been ousted of jurisdiction over the subject matter of forfeiture I upon the filing of the main plunder case against petitioner that

mandates the automatic forfeiture of the subject properties in forfeiture cases I & II as a function or adjunct of any conviction for plunder.

E. Being incompatible, the forfeiture law (RA No. 1379 [1955]) was impliedly repealed by the plunder law (RA No. 7080 [1991]) with automatic forfeiture mechanism.

F. Since the sought forfeiture includes properties purportedly located in the USA, any penal conviction for forfeiture in this case cannot be enforced outside of the Philippines x x x.

G. Based on orderly procedure and sound administration of justice, it is imperative that the matter of forfeiture be exclusively tried in the main plunder case to avoid possible double jeopardy entanglements, and to avoid possible conflicting decisions by 2 divisions of the [SB] on the matter of forfeiture as a penal sanction.<sup>[9]</sup> (Emphasis added.)

With respect to Forfeiture II, the following events and proceedings occurred or were taken after the petition for Forfeiture II was filed:

(1) On July 12, 2005, the SB sheriff served the corresponding summons. In his return of July 13, 2005, the sheriff stated **giving the copies of the summons to the OIC/Custodian of the PNP Detention Center who in turn handed them to Gen. Garcia**. The general signed his receipt of the summons, but as to those pertaining to the other respondents, Gen. Garcia acknowledged receiving the same, but with the following qualifying note: *"I'm receiving the copies of Clarita, Ian Carl, Juan Paolo & Timothy - but these copies will not guarantee it being served to the above-named (sic)."*

(2) On July 26, 2005, Clarita and her children, thru special appearance of counsel, filed a motion to dismiss and/or to quash Forfeiture II primarily for lack of jurisdiction over their persons and on the subject matter thereof which is now covered by the plunder case.

To the above motion, the Republic filed its opposition with a motion for alternative service of summons. The motion for alternative service would be repeated in another motion of August 25, 2005.

(3) By Joint Resolution of November 9, 2005, the SB denied both the petitioner's motion to dismiss and/or to quash and the Republic's motion for alternative service of summons.

On January 24, 2006, the SB denied petitioner's motion for partial reconsideration.<sup>[10]</sup>

From the last two issuances adverted to, Clarita has come to this Court via the

instant petition for certiorari, docketed as **GR No. 171381**. As there submitted, the SB 4<sup>th</sup> Division acted without or in excess of jurisdiction or with grave abuse of discretion in issuing its Joint Resolution dated November 9, 2005 and its Resolution of January 24, 2006 denying petitioner's motion to dismiss and/or to quash in that:

A. Based on its own finding that **summons was improperly served** on petitioner, the [SB] ought to have dismissed forfeiture II for lack of jurisdiction over petitioner's person x x x.

B. By virtue of the plunder case filed with the [SB] Second Division that mandates the automatic forfeiture of unlawfully acquired properties upon conviction, the [SB] Fourth Division has no jurisdiction over the subject matter of forfeiture.

C. Being incompatible, the forfeiture law (RA No. 1379 [1955]) was impliedly repealed by the plunder law (RA No. 7080 [1991]) with automatic forfeiture mechanism.

D. Based on orderly procedure and sound administration of justice, it is imperative that the matter of forfeiture be exclusively tried in the main plunder case to avoid possible double jeopardy entanglements and worse conflicting decisions by 2 divisions of the Sandiganbayan on the matter of forfeiture as a penal sanction.<sup>[11]</sup> (Emphasis added.)

Per Resolution of the Court dated March 13, 2006, **G.R. No. 170122** and **G.R. No. 171381** were consolidated.

### **The Court's Ruling**

The petitions are partly meritorious.

The core issue tendered in these consolidated cases ultimately boils down to the question of jurisdiction and may thusly be couched into whether the Fourth Division of the SB has acquired jurisdiction over the person of petitioner--and her three sons for that matter--considering that, *first, vis-à-vis* Civil Case Nos. 0193 (Forfeiture I) and 0196 (Forfeiture II), summons against her have been ineffectively or improperly served and, *second*, that the plunder case--Crim. Case No. 28107--has already been filed and pending with another division of the SB, *i.e.*, Second Division of the SB.

### **Plunder Case in Crim. Case No. 28107 Did Not Absorb the Forfeiture Cases in Civil Case Nos. 0193 and 0196**

Petitioner maintains that the SB 4<sup>th</sup> Division has no jurisdiction over the subject matter of Forfeitures I and II as both cases are now covered or included in the plunder case against the Garcias. Or as petitioner puts it a bit differently, the filing of the main plunder case (Crim. Case No. 28107), with its automatic forfeiture mechanism in the event of conviction, ousted the SB 4<sup>th</sup> Division of its jurisdiction over the subject matter of the forfeiture cases. The inclusion of the forfeiture cases