Republic of the Philippines
Supreme Court
Manila

EN BANC

REPUBLIC OF THE PHILIPPINES, **G.R. No. 195837**

Petitioner,

- versus -

HONORABLE SANDIGANBAYAN, 5TH DIVISION, DON FERRY, AND CESAR ZALAMEA,

Respondents.

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REPUBLIC OF THE PHILIPPINES, **G.R. No. 198221**

Petitioner,

- versus -

SANDIGANBAYAN, 5TH DIVISION, LUCIO C. 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.

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REPUBLIC OF THE PHILIPPINES, **G.R. No. 198974**

Petitioner,

- versus -

SANDIGANBAYAN 5TH DIVISION, LUCIO C. 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.

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REPUBLIC OF THE PHILIPPINES, **G.R. No. 203592**

Petitioner,

- versus -

SANDIGANBAYAN 5TH DIVISION, LUCIO C. 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.

Present:

GESMUNDO, C.*J.*,*
LEONEN,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,**
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO,***
MARQUEZ,
KHO, JR., and
SINGH, *JJ.*

Promulgated:

October 3, 2023

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DECISION

ZALAMEDA, *J.*:

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* No participation due to prior connection with OSG and PCGG.
** No participation due to prior connection with OSG and On Official Business Leave.
*** On Official Business Leave.

The recovery of ill-gotten wealth, with its laudable purpose initiated as it is "not only out of considerations of simple justice but also out of sheer necessity,"[1] places a heavy responsibility on the Republic and poses a demanding task for the Sandiganbayan and this Court. As the party seeking the recovery, the Republic has the burden of establishing its claim through admissible and relevant evidence. As vanguards of justice, the Sandiganbayan, and ultimately, this Court, have the obligation not only to meticulously analyze and weigh all the averments and pieces of evidence - separating the unsubstantiated from those proved, discarding the irrelevant and inadmissible - but also to ensure that issues already passed upon are not litigated anew.

It is in this light that We resolve these consolidated cases,[2] which originated from the complaint for recovery and reconveyance of ill-gotten wealth brought by the Presidential Commission on Good Government's (PCGG) before the Sandiganbayan.

Antecedents

On 17 July 1987, petitioner Republic of the Philippines (the Republic), through the PCGG, filed before the Sandiganbayan a Complaint for reversion, reconveyance, restitution, accounting, and damages (Complaint), docketed as SB Civil Case No. 0005, against respondent Lucio Tan (Tan), former President Ferdinand E. Marcos (Marcos), former First Lady and later Senator,

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[1] *Republic v. Sandiganbayan First Division*, 310 Phil. 402 (1995).

[2] In **G.R. No. 195837** – ***Republic of the Philippines v. Sandiganbayan, Don Ferry, and Cesar Zalamea*** (filed 16 March 2011), the Republic filed a Rule 45 Petition (with Prayer for Issuance of a TRO and/or Writ of Preliminary Injunction) assailing the Sandiganbayan's Resolution dated 22 December 2010 granting Don Ferry and Cesar Zalamea's Motion to Dismiss (Demurrer to Evidence) and Resolution dated 25 February 2011 denying the motion for reconsideration.

In **G.R. No. 198221** – ***Republic of the Philippines v. Sandiganbayan, Lucio Tan, Estate of Ferdinand E. Marcos, et. al.*** (filed 05 September 2011) – The Republic filed a Petition for *Certiorari* (with Reiteration of Prayer for the Issuance of a TRO and/or Writ of Preliminary Injunction) under Rule 65 seeking to nullify the following Sandiganbayan issuances: (1) Resolution dated 03 May 2011 denying the Republic's Motion for Voluntary Inhibition of the Chairman and Members of the Sandiganbayan 5th Division; (2) Resolution dated 04 July 2011 denying the motion for reconsideration; (3) Order dated 09 June 2011 denying the Republic's motion in open court to recall Mr. Joselito Z. Yujuico to the witness stand for continuation of his testimony; and (4) Resolution dated 02 August 2011 denying the motion for reconsideration.

In **G.R. No. 198974** – ***Republic of the Philippines v. Sandiganbayan, Lucio Tan, Estate of Ferdinand E. Marcos, et. al.*** (filed 02 November 2011) – The Republic filed a Petition for Certiorari (with Reiteration of Prayer for the Issuauce of a TRO and/or Writ of Preliminary Injunction) under Rule 65 seeking to nullify the Sandiganbayan's Resolution dated 18 July 2011 denying its Motion with Leave of Court to Admit Attached 3rd Amended Complaint, and Resolution dated 23 August 2011 denying the motion for reconsideration.

In **G.R. No. 203592** – ***Republic of the Philippines v. Lucio Tan, Estate of Ferdinand E. Marcos, et. al.*** (filed 29 October 2012) – The Republic filed a Petition for Review under Rule 45 seeking to reverse, nullify, and set aside the Sandiganbayan's Decision dated 11 June 2012 dismissing the Complaint for reversion, reconveyance, restitution, accounting and damages, and Resolution dated 26 September 2012 denying petitioner's motion for reconsideration.

respondent Imelda R. Marcos (Imelda), respondent Don Ferry (Ferry), and 22[3] other individuals (collectively, Tan, et al.).[4]

In its Complaint, the Republic sought to recover ill-gotten wealth allegedly acquired by Marcos respondent Imelda, and respondent Tan;[5] which was purportedly demonstrated in the following instances:

1. the liquidation of General Bank and Trust Company (GenBank) and respondent Tan's acquisition of its assets through Allied Banking Corporation (Allied Bank) without sufficient collateral and consideration;[6]

2. respondent Tan's delivery to Marcos and respondent 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;[7]

3. respondent Tan's delivery of improper gifts, bribes, concessions, and/or guaranteed "dividends" to Marcos and respondent Imelda, allegedly in consideration of their continued support for and/or their ownership of interests in his business ventures;[8]

4. the establishment of Shareholdings, Inc. to prevent the disclosure and recovery of their allegedly 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, Inc. (Himmel Industries), (5) Silangan Holdings, Inc. (Silangan Holdings), and (6) Allied Bank;

5. the sale of the controlling interest of Development Bank of the Philippines (DBP) in Century Park Sheraton Hotel (Century Park), owned by Maranaw Hotels and Resorts Corp. (Maranaw Hotels) to Sipalay Trading Corporation (Sipalay Trading), a company controlled by respondent Tan (hereinafter, the Sipalay Deal). The Republic alleged

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[3] The other impleaded individuals are 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, hung Poe Kee, Mariano Khoo, Manuel Khoo, Miguel Khoo, Jamie Khoo, Elizabeth Khoo, Celso C. Ranola, William T. Wong, Ernesto B. Lim, Benjamin T. Albacita, Willy Co, and Federico Moreno.

[4] *Rollo* (G.R. No. 203592), p. 15.

[5] Id. at 3670.

[6] Id. at 3671.

[7] Id. at 3671, 3676.

[8] Id. at 3674-3675.

[9] Id. at 3677.

that this sale caused losses to DBP amounting to millions of pesos because Sipalay Trading was grossly undercapitalized;[10]

6. the printing of Bureau of Internal Revenue strip stamps worth billions of pesos allegedly without legal authority, and affixing them on packs of cigarettes produced by Fortune Tobacco, in violation of Section 189 of the Internal Revenue Code of 1977, defrauding the Republic and the Filipino people of billions of pesos in tax receipts;[11] and

7. the establishment of Northern Redrying Co., Inc., a Virginia Tobacco Company, which on several instances, imported and purchased tobacco in excess of the ceilings allowed by law.[12]

On 13 September 1991, the Republic filed a Motion for Leave to Amend and for Admission of Second Amended Complaint (Second Amended Complaint),[13] which was granted on 02 April 1992.[14]

The Second Amended Complaint impleaded as additional defendants the following corporations: (1) Shareholdings, Inc.; (2) Asia Brewery; (3) Allied Bank; (4) Fortune Tobacco; (5) Maranaw Hotels; (6) Virginia Tobacco Redrying Plant; (7) Northern Tobacco Redrying Plant; (8) Foremost Farms; (9) Sipalay Trading; (10) Himmel Industries; (11) Grandspan Development Corp. (Grandspan); (12) Basic Holdings Corp. (Basic); (13) Progressive Farms, Inc.; (14) Manufacturing Services and Trade Corp.; (15) Allied Leasing & Finance Corp.; (16) Jewel Holdings, Inc.; (17) Iris Holdings and Development Corp.; and (18) Virgo Holdings and Development Corp. (collectively, respondent-corporations).[15]

The Republic also impleaded foreign corporations that were alleged to be respondent Tan's business ventures, and to which Marcos and respondent Imelda purportedly granted concessions to, or have interests or beneficial ownership.[16] Later, however, the Republic withdrew its complaint against the foreign corporations.[17]

The Republic also impleaded then Philippine National Bank (PNB) President Panfilo O. Domingo (Domingo), the heirs of former Central Bank Governor Gregorio Licaros (Licaros), and former DBP and Maranaw Hotels' Chairperson Cesar Zalamea (Zalamea), in connection with the alleged illegal liquidation of GenBank and sale of its assets to Allied Bank.[18]

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[10] Id. at 3678.
[11] Id. at 3681.
[12] Id. at 3681-3682.
[13] Id. at 22.
[14] Id.
[15] Id. at 3657.
[16] Id. at 3660-3663.
[17] Id. at 34; The Republic withdrew its Complaint on 06 November 2001.
[18] Id. at 3658-3659.

The properties that the Republic is seeking to recover includes two aircrafts and shares of stocks from the respondent-corporations and Century Park.[19]

On 06 September 1995, respondent Imelda filed her Answer with Counterclaim. [20] Respondent Tan, the other individual defendants, and respondent-corporations also filed their respective Answers.[21]

After more than six years, or on 20 November 2001, respondent Imelda filed her Motion for Leave to File Amended Answer with Counterclaim and Compulsory Cross-Claim (Amended Answer). [22] However, the Sandiganbayan denied the motion and not admit respondent Imelda's Amended Answer.[23] This ruling was affirmed by the Supreme Court in its Resolution dated 17 March 2003.[24]

It was only on 24 May 2006 when trial commenced with the Republic's presentation of its evidence.[25]

On 23 to 24 September 2008, the Republic presented Joselito Yujuico (Joselito) to testify on the allegations in the Second Amended Complaint pertaining to the liquidation of GenBank and the sale of its assets to Allied Bank.[26] The Sandiganbayan, however, subsequently disallowed the testimony of Joselito and ordered that the same be stricken off the records.[27] The Sandiganbayan explained that the liquidation and acquisition of GenBank had already been decided by the Supreme Court[28] in *General Bank & Trust Co. v. Central Bank of the Philippines* (GenBank Liquidation Case).[29] The Republic filed a motion for reconsideration, which was denied by the Sandiganbayan in its Resolution dated 29 June 2009.[30]

The Sandiganbayan terminated the Republic's presentation of evidence on 23 April 2009.[31] The Republic sought reconsideration of the termination on the ground that it still had witnesses to present and it was still waiting for the turn-over of several documentary exhibits from the previous PCGG

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19 Id. at 3400-3401.
20 Id. at 25.
21 Id. at 28.
22 Id. at 34.
23 Id.
24 Id. at 154.
25 Id. at 48; *Rollo* (G.R. No. 198221), p. 46.
26 Id. at 98; Found in paragraph 14(a) (1)-(3) of the Second Amended Complaint.
27 Id. at 103. Sandiganbayan Resolution dated December 22, 2008.
28 *Rollo* (G.R. No. 203592), pp. 151-52.
29 524 Phil. 232 (2006).
30 Id. at 143; *Rollo* (G.R. No. 198221), p. 17.
31 Id. at 107; Id. at 121.

Special Counsel.[32] The Sandiganbayan denied the Republic's motion for reconsideration.[33]

Thereafter, it was the respondents' turn to present their evidence.

Respondents Tan, et al., the heirs of Domingo, and the heirs of Licaros opted not to present testimonial evidence and, instead, proceeded to filing their respective Formal Offer of Evidence.[34] On the other hand, respondent Imelda was deemed to have waived her right to present evidence.[35]

On 23 August 2010, respondent Zalamea filed his Motion to Dismiss (Demurrer to Evidence).[36] Zalamea claimed that the Republic's evidence against him was irrelevant and did not sufficiently establish his participation in the alleged acquisition of ill-gotten wealth.[37] Thus, according to him, the Republic showed no right of relief against him.[38] He also argued that the case would be disposed quickly should the Sandiganbayan grant his motion to dismiss.[39]

Respondent Ferry also filed a Motion to Dismiss (on a Demurrer to Evidence).[40] He argued that the evidence against him only showed that his alleged wrongdoings were, in fact, committed in his official capacity as the Vice Chairperson of DBP.[41] Ferry further reasoned that these acts were made with the other officers also acting in their official capacities,[42] duly approved in accordance with established procedures, and, therefore, presumed to have been performed regularly.[43] He likewise asserted that the Republic neither presented the originals nor properly identified the documents against him.[44] He further maintained the validity of the transaction he participated in, as ruled by this Court in *Republic v. Desierto*[45] (*Desierto*).[46]

On 22 December 2010, the Sandiganbayan granted the motions to dismiss on demurrer to evidence of respondents Zalamea and Ferry.[47] The Sandiganbayan found no evidence that they participated in the acquisition of the subject assets and properties.[48] The graft court also took note of the

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[32] Id. at 108; Id. at 17-18.
[33] Id. at 109.
[34] *Rollo* (G.R. No. 198221), p. 18.
[35] Id.
[36] *Rollo* (G.R. No. 203592), p. 115.
[37] *Rollo* (G.R. No. 195837), pp. 224-225.
[38] Id.
[39] Id. at 225.
[40] *Rollo* (G.R. No. 203592), p. 116.
[41] *Rollo* (G.R. No. 195837), p. 228.
[42] Id. at 229.
[43] Id.
[44] Id.
[45] 516 Phil. 509 (2006).
[46] *Rollo* (G.R. No. 203592), p. 230.
[47] Id. at 119.
[48] *Rollo* (G.R. No. 195837), p. 21.

testimonies that confirmed respondent Zalamea's claim that his name did not appear in any of the documents presented in the Sandiganbayan.[49] On 25 February 2011, the Sandiganbayan denied the motion for reconsideration of the dismissal.[50]

Thus, on 16 March 2011, the Republic filed before this Court a Petition under Rule 45 of the Rules of Court[51] to assail the Sandiganbayan's Resolutions dated 22 December 2010 and 25 February 2011. It was docketed as **G.R. No. 195837** and entitled, *Republic of the Philippines v. Sandiganbayan, Don Ferry, and Cesar Zalamea.*[52]

Meanwhile, respondents Fortune Tobacco and Northern Tobacco Redrying Co. Inc. (Northern Tobacco) reportedly merged with Philip Morris. Philip Morris and Fortune Tobacco had agreed to transfer their respective assets and liabilities to a new company called PMFTC, Inc.[53] This report prompted the Republic to file, on 18 February 2011, a motion asking the Sandiganbayan to require respondents Tan, et al. to explain the merger and manifest whether the interests subject of this case have been conveyed. Further, the Republic sought the substitution of Fortune Tobacco with PMFTC, Inc. and suspension of the proceedings until substitution is implemented.[54]

In a Minute Resolution dated 03 March 2011,[55] the Sandiganbayan denied the motion, as well as the Republic's request to cancel the scheduled hearing for the presentation of its rebuttal evidence.[56] Consequently, the Republic filed a Motion for Voluntary Inhibition of the chairperson and the members of the Fifth Division of the Sandiganbayan.[57]

The Sandiganbayan denied the Republic's Motion for Voluntary Inhibition in its Resolution dated 3 May 2011.[58] The graft court denied acting with bias against the Republic, or that it was partial in favor of Atty. Estelito Mendoza, who was respondents Tan, et al.'s counsel.[59] It stressed that it granted the Republic's motions and requests for postponements, extensions, and cancellations.[60] It held that it did not rest the case for the Republic nor was the Republic coerced to terminate its presentation of evidence in chief upon solicitation of respondents Tan, et al.'s counsel.[61] Further, the Republic

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[49] Id.
[50] *Rollo* (G.R. No. 195837), pp. 23-24. Penned by Justice Roland B. Jurado, with Justices Teresita V. Diaz-Baldos and Napoleon E. Inoturan concurring.
[51] The petition included a *Prayer for Issuance of a TRO and/or Writ of Preliminary Injunction.*
[52] *Rollo* (G.R. No. 195837), p. 27.
[53] According to the Philip Morris 2010 Annual Report.
[54] *Rollo* (G.R No. 203592), p. 122.
[55] Id.
[56] *Rollo* (G.R. No. 198221), p. 25.
[57] *Rollo* (G.R. No. 203592), p. 123.
[58] Id. at 128.
[59] *Rollo* (G.R. No. 198221), p. 127.
[60] Id.
[61] Id. at 128, 131.

was not denied due process considering it was given years to prepare and present evidence and rebut respondents' defense.[62] The Sandiganbayan also noted that while delay in the proceedings could be attributed to all parties,[63] the Republic was the main culprit for the abeyance, and the court had been very tolerant to such length that it even allowed one of its witnesses to testify again even after the conclusion of the testimony.[64] It opined that four years of delay in the trial to accommodate the Republic was excessive.[65] The Sandiganbayan ruled that its objective was to resolve the case with dispatch and in consonance with A.M. No. 008-05-SC.[66] It also stated that on motion of the Republic, and as agreed by the parties, the Republic was allowed to present its evidence in chief with no further postponements.[67]

The Sandiganbayan also ruled that the Motion for Voluntary Inhibition was dilatory in nature, filed when the case was about to be submitted for decision.[68] Further, the Republic failed to impute any act of partiality that would compel the members of the division to inhibit.[69] The accusations of prejudgment was speculative and not among the valid grounds for the inhibition of a judge under Rule 137 of the Rules of Court.[70] Mere suspicion of bias was not enough;[71] and to allow this would open the floodgates to forum-shopping and result in further delay of the proceedings.[72]

Moreover, the Sandiganbayan noted that none of the instances under Rule 3.12 of the Code of Judicial Conduct was present to warrant inhibition.[73] Repeated rulings against a litigant are not basis for disqualification.[74] Besides, the Republic's remedy to question the Sandiganbayan's rulings, was to file a Petition for *Certiorari*.[75] The Sandiganbayan also pointed out that while it had granted reliefs to respondents, it ruled in favor of the Republic when it denied the separate motions to dismiss filed by respondents Zalamea, the heirs of Licaros, and respondents Tan, et al.[76] It emphasized that some of its resolutions have been affirmed by the Supreme Court, thus showing that these were issued with due and proper consideration of the parties' arguments and applicable law and jurisprudence.[77]

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62 Id. at 129-130.
63 Id. at 134.
64 Id. at 132.
65 Id.
66 Id. at 133.
67 Id.
68 Id. at 132.
69 Id. at 131.
70 Id. at 134.
71 Id.
72 Id.
73 Id. at 135.
74 Id. at 131.
75 Id.
76 Id. at 136.
77 Id.

The Sandiganbayan further noted that on 06 April 1994, the Republic had also filed a motion for voluntary inhibition of the chairperson of the Sandiganbayan division then hearing the case.[78] This was denied.[79] Likewise, its Orders dated 23 April 2009[80] and 20 July 2009[81] were supported by facts and law and were accepted by the Republic without complaints.[82]

The Republic moved for reconsideration of the 3 May 2011 ruling. Through a Resolution[83] dated 04 July 2011, the Sandiganbayan denied the same, holding that the Republic was not able to prove its allegations of bias and prejudice with clear and convincing evidence.[84]

On 06 June 2011, the Republic filed a Motion with Leave of Court to Admit Attached Third Amended Complaint (Third Amended Complaint) seeking to formally implead PMFTC, Inc. and several other individuals,[85] alleging that substantial capital and assets of respondents Fortune Tobacco and Northern Tobacco have been fraudulently transferred to PMFTC, Inc. pending litigation, to effectively place it beyond the reach of the court.[86] The Republic asserted that the additional defendants cooperated in the formation of PMFTC, Inc. despite being fully aware of the pendency of the ill-gotten wealth case.[87]

The Republic also filed a Motion with Memorandum of Authorities on 17 June 2011 in support of its move to recall Joselito to the witness stand for continuation of his testimony.[88] The Republic also moved for the presentation of Aderito Yujuico (Aderito), in lieu of Rolando Gapud (Gapud), who could not testify.[89] The Sandiganbayan, however, disallowed Aderito's presentation upon the Republic's own admission that his testimony would have the same

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78 Id. at 135.

79 Id.

80 Id. at 107-108 provides: "During the 23 April 2009 hearing, Solicitor Dinopol again failed to present any witness and presented to the Court the Plaintiff's two (2) 'Manifestation and Motions' and 'Motion for Production and Request for Admission' all dated 17 April 2009. Atty. Mendoza gave his verbal comments thereto on open court, to which Solicitor Dinopol replied also verbally. As regards plaintiff's Motion for Production and Request for Admission," the court denied the same considering the said motion is not accompanied by the copies of the documents which the plaintiff would like the defendants to produce and/or admit.

On the same date, the court terminated the plaintiff's presentation of evidence and was given a period of fifteen (15) days from said date within which to submit its formal offer of documentary exhibits and other pieces of evidence.

81 Id. at 109 provides: "On 20 July 2009, this Court promulgated a Resolution dated 13 July 2009, denying plaintiff's 'Motion for Reconsideration' of the 23 April 2009 verbal Order of this Court."

82 *Rollo* (G.R. No. 198221), p. 131.

83 Id. at 141; Penned by Justice Roland B. Jurado, with Justices Teresita V. Diaz-Baldos and Napoleon E. Inoturan concurring.

84 Id. at 140.

85 Lucio K. Tan, Jr., Michael G. Tan, Christopher Nelson, Douglas Werth, Mitchell Gault, Raymond Miranda, Varinia Elero, Vincent Nguyen, Domingo Chua, Juanita Tan Lee, Peter Y. Ong, Shirley L. Santillan, Myra Vida G. Jamora, and Henry N. Sitosta.

86 *Rollo* (G.R. No. 198221), p. 130; *Rollo* (G.R. No. 198974), pp. 85-86.

87 *Rollo* (G.R. No. 198974), p. 86.

88 *Rollo* (G.R. No. 198221), p. 131.

89 Id. at 32.

substance as that of Joselito.[90] The Republic was also declared to have waived its right to present Gapud as a witness.[91]

In its Resolution dated 13 July 2011, the Sandiganbayan denied the Third Amended Complaint.[92] It found that PMFTC, Inc. and the additional defendants were not indispensable or necessary parties.[93] It ruled that assuming Fortune Tobacco, Northern Tobacco, and PMFTC, Inc. were organized with ill-gotten wealth, there was no need to implead PMFTC, Inc. and the additional defendants because there was no cause of action against them.[94] The Republic's motion for reconsideration was denied in a Resolution dated 23 August 2011.[95]

Thus, on 02 November 2011, the Republic filed a Petition for *Certiorari* under Rule 65 to nullify the Sandiganbayan's Resolutions denying the motion to admit the Third Amended Complaint and the motion for reconsideration. It was docketed as **G.R. No. 198974** and entitled, *Republic of the Philippines v. Sandiganbayan, Lucio Tan, Estate of Ferdinand E. Marcos, et. al.*[96]

In a Resolution dated 18 July 2011, the Sandiganbayan denied the Republic's Motion with Memorandum of Authorities in support of its recall of Joselito on the witness stand for continuation of his testimony.[97] It held that it had already ruled on the propriety of offering Joselito's testimony in its Resolutions dated 22 December 2008 and 29 June 2009.[98] It also maintained that the GenBank Liquidation Case had already declared the validity of GenBank's liquidation and the transfer of its assets to Allied Bank.[99] Thus, the substance of Joselito's testimony had already been considered in the GenBank Liquidation Case.[100]

On 05 September 2011, the Republic filed another Petition for *Certiorari* under Rule 65, this time to nullify the following Sandiganbayan issuances: (1) Resolution dated 03 May 2011 denying the Republic's Motion for Voluntary Inhibition of the Chairman and Members of the 5th Division; (2) Resolution dated 04 July 2011 denying the motion for reconsideration; (3) Order dated 09 June 2011 denying the Republic's motion in open court to recall Joselito to the witness stand for continuation of his testimony; and (4) Resolution dated 02 August 2011 denying the Republic's Motion with

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[90] Id. at 132.
[91] Id. at 33.
[92] Id. at 130.
[93] *Rollo* (G.R. No. 198974), p. 88.
[94] Id. at 89-90.
[95] Id. at 93. Penned by Justice Roland B. Jurado, with Justices Teresita V. Diaz-Baldos and Alex L. Quiroz concurring.
[96] *Rollo* (G.R. No. 198974), pp. 3-77.
[97] *Rollo* (G.R. No. 198221), p. 131.
[98] Id. at 146.
[99] Id.
[100] *Rollo* (G.R. No. 198221), p. 146.

Memorandum of Authorities for the recall of Joselito to the witness stand.[101] The case was docketed as **G.R. No. 198221** entitled, *Republic of the Philippines v. Sandiganbayan, Lucio Tan, Estate of Ferdinand E. Marcos, et. al.*

More importantly, the Sandiganbayan, in its Decision dated 11 June 2012, dismissed the Republic's Complaint. The Sandiganbayan explained that the Republic failed to discharge its burden to prove that the subject assets and properties were ill-gotten wealth because it was not shown that the same originated from the government's resources.[102] It referred to the "whereas" clauses of Executive Order (EO) No. 1 and this Court's discussion of "ill-gotten wealth" in *Chavez v. Presidential Commission on Good Government (Chavez).*[103]

The Sandiganbayan also ruled that the Republic's reliance on respondent Imelda's Amended Answer was faulty because her statements controvert the Republic's position as to who owns the shares of stock.[104] It also noted that it had already disallowed respondent Imelda's Amended Answer because her cross-claims did not involve the same transactions or acts as that of the principal cause of action.[105]

Further, the Sandiganbayan found no proof that respondent Tan received concessions, or that his business ventures benefitted, from Marcos.[106] It held that the Republic failed to demonstrate how Marcos' grant of favors and privileges to a corporation resulted in the government's ownership of its shares, assets, and properties that may be recovered as ill-gotten wealth.[107]

Likewise, the Sandiganbayan held that the testimonies of now President Ferdinand Marcos, Jr. (Marcos, Jr.) were merely hearsay and only confirmed that the shares of stock in various corporations were privately owned by respondent Tan, not by the government.[108]

The Sandiganbayan also ruled that the pieces of documentary evidence of the Republic, being mere photocopies, did not comply with the requirements for admissibility of secondary evidence under the Rules of Court.[109] The documents collected by the PCGG in the course of its investigations were not public records *per se*,[110] and the records officer and the other witnesses who produced and presented documents from their offices

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[101] *Rollo* (G.R. No. 198221), p. 7.
[102] Id. at 149.
[103] *Chavez v. Presidential Commission on Good Government*, 360 Phil. 133 (1998).
[104] *Rollo* (G.R. No. 203592), p. 153.
[105] Id. at 154.
[106] Id. at 151.
[107] Id.
[108] Id. at 156-157.
[109] Id. at 163-164.
[110] Id. at 159.

were not competent to testify on the contents of the documents.[111] They can only testify as to the documents' existence and how they acquired possession of the same.[112]

It was also held that the affidavit of Gapud, the self-confessed financial executor of Marcos and who affirmed the business alliance between Marcos and respondent Tan, cannot be conclusive because Gapud did not take the witness stand and could not be cross-examined.[113] While affidavits are public documents if acknowledged by a notary public, these are still hearsay unless the affiant took the witness stand to testify on it.[114]

The Republic filed a motion for reconsideration, which was denied in a Resolution dated 26 September 2012.[115] Thus, on 29 October 2012, the Republic filed this Petition for Review under Rule 45, seeking to set aside the Sandiganbayan's Decision dated 11 June 2012 dismissing the Complaint and Resolution dated 26 September 2012 denying the Republic's motion for reconsideration. It was docketed as **G.R. No. 203592** and entitled, *Republic of the Philippines v. Lucio Tan, Estate of Ferdinand E. Marcos, et. al.*[116] The Court ordered the consolidation of the Republic's four (4) petitions in its Resolution dated 03 December 2012.[117]

Issues

G.R. No. 195837

In G.R. No. 195837, the Court is tasked to resolve the following issues:

1. whether respondents Ferry and Zalamea impliedly admitted the allegations in the Complaint when they filed their demurrer to evidence;

2. whether the Republic's claims against respondents Ferry and Zalamea are barred by *res judicata;*

3. whether the case against respondents Ferry and Zalamea was properly dismissed considering their alleged involvement in the

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[111] Id. at 159-161. As required under Sections 24 and 25, Rule 132 of the Rules of Court.
[112] Id. at 159, 161.
[113] Id. at 168.
[114] Id.
[115] *Rollo* (G.R. No. 203592), p. 169. Penned by Justice Roland B. Jurado, with Justices Teresita V. Diaz-Baldos and Alex L. Quiroz concurring.
[116] Id. at 261-540.
[117] Id. at 3130-3132.

conspiracy to acquire ill-gotten wealth, the evidence submitted against them, and their alleged failure to specifically deny the allegations in the Complaint;

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

5. whether the Republic is guilty of forum shopping.

The Republic principally argues three matters. First, the complaint against respondents Ferry and Zalamea should not have been dismissed considering that they acted in conspiracy with Marcos and respondent Tan in the Sipalay Deal.[118] In particular, the Republic alleged that the shares were supposed to be sold to PCI Management Consultants, Inc. for ₱350 Million but were sold instead to Sipalay Trading for only ₱150 Million without public bidding.[119] Second, respondents Ferry and Zalamea already impliedly admitted the truth of the allegations in the Complaint when they decided not to dispute the allegations by filing a demurrer to evidence.[120] Third, the Republic claims that the Sandiganbayan's grant of the demurrer through a minute resolution violated the Constitution and its own internal rules.[121]

In their defense, respondent Ferry primarily argues that in *Desierto,*[122] the Court had already ruled that the Sipalay Deal was legal and that the DBP officers acted in good faith and sound exercise of judgment.[123]

For his part, respondent Zalamea points out that in *Republic v. Sandiganbayan,*[124] the Court held that the allegations against him, as opposed to the other respondents, respondent Tan in particular, rest on entirely different facts, and made on entirely different occasions, which are separate and distinct from each other.[125] He maintains that there was no evidence of his participation in the acquisition of ill-gotten wealth.[126] Citing the Court's pronouncements in *Desierto,*[127] respondent Zalamea echoes respondent Ferry's defense of *res judicata.*[128] Finally, respondent Zalamea claims that the Republic is guilty of forum shopping because aside from the petition filed in G.R. No. 195837, the Republic impleaded him in other petitions that also

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[118] Id. at 4080-4087.
[119] Id. at 4111-4113.
[120] Id. at 4092.
[121] Id. at 4117.
[122] 516 Phil. 509 (2006).
[123] *Rollo* (G.R. No. 203592), p. 4222.
[124] 410 Phil. 536 (2001).
[125] *Rollo* (G.R. No. 203592), p. 4233.
[126] Id. at 4234.
[127] 516 Phil. 509 (2006).
[128] *Rollo* (G.R. No. 203592), pp. 4239-4241.

involve the other respondents.[129]

G.R. No. 198221

In G.R. No. 198221, the Republic raises the following issues:

1. whether the Sandiganbayan committed grave abuse of discretion in prohibiting the Republic from presenting Aderito Yujuico (Aderito) and Joselito Yujuico (collectively, the Yujuicos) on the ground of *res judicata,* and

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

The Republic claims that the Sandiganbayan's order to disallow the Yujuicos as witnesses amounts to grave abuse of discretion, and a denial of its right to due process.[130] According to the Republic, their testimonies are relevant and material to support the allegation that Marcos granted favors to respondent Tan, specifically with respect to the acquisition of GenBank.[131] The Republic likewise argues that the testimonies of the Yujuicos are not barred by *res judicata* in view of the Court's ruling in the GenBank Liquidation Case,[132] considering that said case was filed in 1977 and was a special proceeding.[133] Further, an ill-gotten wealth case is within the exclusive jurisdiction of the Sandiganbayan and could not have been entertained by the court hearing the said case.[134] The Republic also posits that there is no identity of parties and issues between the present petition and the GenBank Liquidation Case.[135] As to parties, the two (2) cases are different because the Marcoses, respondent Tan, and even the PCGG were not parties to the GenBank Liquidation Case.[136] The issues are also not the same since the validity of the liquidation in the GenBank Liquidation Case was premised on the meaning of insolvency,[137] while the issues in this case are whether Marcos had proprietary interests in respondent Tan's businesses and whether Marcos extended concessions and accommodations to respondent Tan and his businesses.[138]

The Republic also maintains that the members of the Fifth Division

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[129] Id. at 4237-4239.
[130] Id. at 4127, 4156.
[131] *Rollo* (G.R. No. 203592), p. 4155.
[132] 524 Phil. 232 (2006).
[133] *Rollo* (G.R. No. 203592), p. 4134.
[134] Id. at 4131.
[135] Id. at 4148, 4139.
[136] Id. at 4139.
[137] Id. at 4139.
[138] Id. at 4148.

should have inhibited from hearing the case because they do not appear to have the neutrality of an impartial judge.[139] In particular, the division rushed the Republic to finish its presentation of evidence despite its plea to present other witnesses and documentary evidence.[140] The members of the division also, allegedly, made unwarranted statements that undermined the court's credibility and integrity.[141]

Respondents Tan, et al., on the other hand, agrees with disallowing the Yujuicos to testify, arguing 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 since these issues are already barred by *res judicata*.[142]

As to motion for the justices of the Fifth Division to inhibit from the case, respondents Tan, et al. dispute the Republic's allegation that the Sandiganbayan rushed it to rest its case. They emphasized that the Sandiganbayan had granted the Republic's requests for postponements, cancellations, and extensions, and to adduce additional evidence.[143]

G.R. No. 198974

In G.R. No. 198974, the petition raises the issue of whether PMFTC, Inc. is an indispensable party, such that the Sandiganbayan should have admitted the Third Amended Complaint to implead the PMFTC, Inc.

The crux of the Republic's arguments is that PMFTC, Inc. was fraudulently created to remove the substantial capital and assets of Fortune Tobacco and Northern Tobacco and to place it beyond the reach of the court's authority and jurisdiction.[144] Further, the Republic claims that PMFTC, Inc. does not have a separate and distinct personality from Fortune Tobacco;[145] and nothing can be recovered from the latter should its assets be found to be ill-gotten wealth because it had already dissolved its entire business.[146]

Respondents Tan, et al. counter that PMFTC, Inc. is not a party-in-interest because the judgment in the case will not benefit or injure PMFTC, Inc.,[147] and that impleading its directors and officers as defendants will only

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[139] *Rollo* (G.R. No. 198221), p. 95.
[140] Id. at 78.
[141] Id. at 82.
[142] *Rollo* (G.R. No. 203592) pp. 3243-3244.
[143] *Rollo* (G.R. No. 203592), pp. 1099, 1100, 3246.
[144] Id. at 4159-4160.
[145] Id. at 4175.
[146] Id.
[147] Id. at 1117-1119.

delay the resolution of the case.[148] They insist that even if the assets and properties of Fortune Tobacco are later found to be ill-gotten, judgment may be entered against Fortune Tobacco, and PMFTC, Inc. will still be obliged to surrender the assets to the government.[149]

G.R. No. 203592

Finally, the sole issue for resolution in G.R. No. 203592, is whether the Republic sufficiently proved that the subject assets and properties are ill-gotten wealth.

The Republic argues that ill-gotten wealth is not limited to assets and property originally owned by the government.[150] It contends that assets are also considered ill-gotten wealth when they were acquired by taking undue advantage of their office, authority, influence, connections, or relationship, resulting in the unjust enrichment of the usurper, thereby causing grave damage and prejudice to the Republic and the Filipino people.[151]

Further, the Republic insists that the subject properties were ill-gotten because they were obtained through the collaboration between Marcos and respondents Tan, et al. by taking undue advantage of official position, relationship, and influence, which was allegedly demonstrated by the "60-40 business arrangement" between Marcos and respondent Tan.[152] This 60-40 business arrangement was allegedly proved by the following pieces of evidence: (1) respondent Tan's Written Disclosure dated 10 May 1986 (Written Disclosure); (2) respondent Imelda's Amended Answer; (3) Gapud's affidavit; and (4) Marcos, Jr.'s testimony.

According to the Republic, respondent Tan's Written Disclosure confirmed the 60-40 business arrangement, where corporations would allegedly be formed for Marcos and thereafter, respondent Tan and his associates would purportedly execute deeds of trust or deeds of assignment in favor of an unnamed beneficiary, and deliver the original copies of the deeds to Marcos.[153]

The Republic also contends that while respondent Tan's Written Disclosure also contains exculpatory statements, these lack factual basis and do not invalidate the 60-40 business arrangement.[154] Rather, said statements

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[148] Id. at 1117, 1119, 3320.
[149] Id. at 1122.
[150] Id. at 3891-3892.
[151] Id. at 3892, 3895-3896, 3899-3900.
[152] Id at 3915.
[153] Id. at 3950.
[154] Id. at 3940-3941, 3957.

exhibit the voluntariness of the execution of the Written Disclosure.[155] The Republic likewise insists that the Written Disclosure is admissible in evidence because it was presented and identified by former Senator Jovito Salonga (Senator Salonga), who was the first PCGG Chairman.

As regards respondent Imelda's Amended Answer, the Republic argues that it should not have been disallowed by the Sandiganbayan. It explains that respondent Imelda's claim that the Marcoses own at least 60% of respondent Tan's businesses validated the Republic's case. More importantly, these statements were made in a pleading and, therefore, should be considered as judicial admissions.[156] Respondent Imelda's statements should be treated as admissions made in the course of the proceeding, given voluntarily with the assistance of counsel.[157] The Amended Answer, according to the Republic, is also a public document, which forms part of its evidence and case record.[158] Finally, the Republic argues that Imelda's statements are a declaration against her interests under Section 38,[159] Rule 130 of the Rules of Court,[160] and are admissible against respondents Tan, et al. as admissions by a partner, privy, and conspirator.[161]

With respect to Marcos, Jr.'s testimony, the Republic disagrees with the Sandiganbayan that it is inadmissible for being hearsay. The Republic claims that Marcos, Jr.'s statements were based on his direct personal knowledge of the 60-40 business arrangement since he was present during the meetings attended by his father and the alleged collaborators, and he directly participated in their business as instructed by Marcos.[162] The Republic also notes that Marcos, Jr.'s testimony was straightforward, candid, categorical, positive, and, therefore, credible.[163]

The Republic also contends the Sandiganbayan should have taken judicial notice of Gapud's affidavit[164] since it was presented and identified in court by Senator Salonga.[165] However, the Sandiganbayan did not include the testimony of Senator Salonga in its narration of facts.[166] Further, the Republic claims that Gapud's affidavit is admissible for being a declaration of an agent against his principal.[167]

In sum, the Republic avers that respondent Imelda's Amended Answer,

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[155] Id. at 3940-3941, 3969.
[156] Id. at 3995-3996, 4000-4001.
[157] Id. at 4000.
[158] Id. at 3996.
[159] Now, 2019 REVISED RULES ON EVIDENCE. Rule 130, Sec. 40.
[160] *Rollo* (G.R. No. 203592), p. 4007.
[161] Id. at 4000-4003.
[162] Id. at 4012-4013.
[163] Id. at 4017.
[164] Id. at 4019.
[165] Id.
[166] Id.
[167] Id. at 4022.

respondent Tan's Written Disclosure, and Gapud's affidavit constitute interlocking confessions because they are identical in such a manner that they corroborate each other on material points, and there was no collusion. As such, said confessions are admissible against those implicated in them.[168] These pieces of evidence may also be considered 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.[169]

The Republic also avers that it was able to prove by preponderance of evidence its case through the documents it presented.[170] It disputes the Sandiganbayan's findings that the documents offered did not comply with the best evidence rule.[171] It maintains that the documents were either certified true copies of public documents or public records of private documents, presented and identified by their official custodians.[172] Further, secondary testimonial evidence are available to prove the execution and existence of the documents.[173] The Republic likewise harks back to respondent Tan's failure to specifically deny several of the Republic's documentary evidence, thus, amounting to an implied admission.[174] Even if the documents cannot be considered as impliedly admitted, the same were confirmed in respondent Tan's Written Disclosure, and their existence were proven by public and official records.[175] The Republic claims that during hearings, it presented original documents, compared them with photocopies, and marked them as documentary exhibits.[176]

Finally, the Republic contends that the Sandiganbayan's Decision dated 11 June 2012 violated Section 14, Article VIII of the 1987 Constitution for failing to state distinctly the facts and laws upon which it is based.[177]

For their part, respondents argue that to be categorized as ill-gotten wealth, the property allegedly obtained illegally must have formed part of government resources.[178] Thus, the Republic's case should be limited to those properties over which the Republic claims ownership.[179] As such, properties of private individuals, such as respondent Tan's shares of stocks, cannot be considered as ill-gotten wealth.[180]

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168 Id. at 4010-4011.
169 Id. at 4010.
170 Id. at 3979-3993.
171 Id. at 4027.
172 Id. at 4027, 4064.
173 Id. at 4065-4066.
174 Id. at 4066.
175 Id. at 4067-4074.
176 Id. at 4075.
177 Id. at 4077.
178 Id. at 3360, 3367, 3462-3463.
179 Id. at 3369.
180 Id. at 3462.

Respondents also claim that contrary to the Republic's view, respondent Tan's Written Disclosure is inadmissible because the direct examination of its presenter, Senator Salonga, was not completed, and he was not cross-examined. They also argue that the Republic, as the offeror of respondent Tan's Written Disclosure, should be bound by all the statements contained therein, whether inculpatory or exculpatory.[181]

As regards respondent Imelda's Amended Answer, the same contradicts the Republic's theory because the allegation that Marcos owns 60% of the subject business venture is not consistent with the allegation that the ill-gotten wealth amassed by Marcos were part of the vast resources of the government.[182] Respondent Imelda's allegations could also not qualify as a judicial admission because it was not admitted into the records of the Sandiganbayan.[183] Neither could it be considered as an extra-judicial admission because respondent Imelda was not presented as a witness and was not cross-examined. Her allegations are, therefore, hearsay and inadmissible.[184] The allegations, according to respondents, cannot be admitted as an admission of a co-conspirator because there is no evidence of conspiracy between and among respondents.[185]

Similarly, respondents claim that the testimony of Marcos, Jr. is inadmissible for being hearsay.[186] Further, by offering said testimony, the Republic should also be bound by the denials and exculpatory statements therein.[187] Marcos, Jr.'s testimony also belies Marcos' ownership of the shares because the former confirmed that the latter did not perform any specific act that shows the latter's stake in the corporations allegedly formed for his benefit.[188]

As to Gapud's affidavit, respondents argue that it is inadmissible for being hearsay and cannot be the subject of judicial notice because Gapud did not testify as a witness to identify or testify on the affidavit.[189]

Respondents also contend that the Republic failed to prove that the subject assets and properties were acquired in the manner described in its Complaint.[190] Among other things, respondents raise the following arguments:

1. Some documents offered by the Republic, particularly those seized in

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[181] Id. at 3495.
[182] Id. at 3518.
[183] Id. at 3389.
[184] Id. at 3519, 3521.
[185] Id. at 3522.
[186] Id. at 3524.
[187] Id. at 3524-3526.
[188] Id. at 3527-3528.
[189] Id. at 3534.
[190] Id. at 3441.

Malacañang, are not public documents.[191] They remain private if not required by law to be entered into public records.[192] Thus, their contents are hearsay because no one testified on these documents.[193]

2. The authenticity and due execution of the documents presented by the Republic as evidence were not established.[194] The documents were only certified true copies of photocopies on file with the PCGG. Furthermore, the documents collected by the PCGG by virtue of its investigations are not automatically public records.[195]

3. The allegations pertaining to respondent Tan's acquisition of GenBank's assets were not proven by evidence.[196] More importantly, respondent Tan's acquisition of assets and assumption of liabilities as an incident to GenBank's liquidation by the Central Bank have been ruled as valid in the GenBank Liquidation Case.[197]

4. The photocopy of respondent Tan's Written Disclosure presented by the Republic as evidence is inadmissible considering that no explanation was given as to why the original was not presented.[198]

5. There is no proof that the alleged favors extended by Marcos, if they were true, were implemented or that the corporations benefitted from the favors. No evidence was introduced to prove that the government suffered damage or injury. The alleged favor did not translate to assets and properties, and it did not result in Marcos' or the government's ownership of the shares of stock.[199]

6. The laws enacted by Marcos as supposed favors to respondents remain operative until amended, repealed, or revoked, pursuant to Section 3, Article XVIII of the 1987 Constitution.[200]

7. The Republic failed to sufficiently describe or identify the property it seeks to recover from respondents when it merely prayed for the return of "all funds and property impressed with constructive trust."[201] This shows that the Republic is uncertain which of respondent Tan's properties are allegedly ill-gotten.[202]

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[191] Id. at 3509.
[192] Id. at 3510.
[193] Id. at 3509-3510.
[194] Id. at 3260.
[195] Id. at 3252.
[196] Id. at 3443.
[197] Id. at 3362.
[198] Id. at 3264.
[199] Id. at 3442-3443.
[200] Id. at 3507.
[201] Id. at 3383.
[202] Id. at 3384.

8. The Republic is raising factual issues that are not permissible in a petition for review on *certiorari* under Rule 45 of the Rules of Court.[203] Worse, the Republic failed to describe how the Sandiganbayan erred in its factual findings and in ruling against the evidence of the Republic.[204]

9. The Sandiganbayan did not fail to distinctly state the facts and law on which its decision was based. It did not obscure the simple and straightforward reasons it gave for the dismissal of the Republic's Complaint.[205]

Ruling of the Court

I. G.R. No. 195837

The Sandiganbayan did not dismiss the case through a minute resolution

Section 14, Article VIII of the 1987 Constitution provides that "[n]o decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based."

Consistent with this constitutional mandate, Section 1, Rule 36 of the Rules of Court reads:

> 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 court.

The Court's disquisition in *Velarde v. Social Justice Society*[206] is likewise instructive:

> In general, the essential parts of a good decision consist of the following: (1) statement of the case; (2) statement of facts; (3) issues or assignment of errors; (4) court ruling, in which each issue, is, as a rule, separately considered and resolved; and, finally, (5) dispositive portion. The ponente may also opt to include an introduction or a prologue as well as an

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[203] Id. at 3451.
[204] Id. at 3452-3456.
[205] Id. at 3475-3478.
[206] 472 Phil. 285, 321-322 (2004).

> epilogue, especially in cases in which controversial or novels issues are involved.
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> An introduction may consist of a concise but comprehensive statement of the principal factual or legal issue/s of the case. In some cases – particularly those concerning public interest; or involving complicated commercial, scientific, technical or otherwise rare subject matters – a longer introduction or prologue may serve to acquaint readers with the specific nature of the controversy and the issues involved. An epilogue may be a summation of the important principles applied to the resolution of the issues of paramount public interest or significance. It may also lay down an enduring philosophy of law or guiding principle.
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> x x x x
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> The foregoing parts need not always be discussed in sequence. But they should all be present and plainly identifiable in the decision. Depending on the writer's character, genre and style, the language should be fresh and free-flowing, not necessarily stereotyped or in a fixed form; much less highfalutin, hackneyed and pretentious. At all times, however, the decision must be *clear, concise, complete and correct.*[207]

Minute resolutions are issued for the prompt dispatch of the actions of the Court. While they are the results of the deliberations by the Justices of the Court, they are promulgated by the Clerk of Court or his assistants whose duty is to inform the parties of the action taken on their cases by quoting verbatim the resolutions adopted by the Court.[208] Unlike a decision, it does not require the certification of the Chief Justice and is not published in the Philippine Reports. Further, the proviso of Section 4(3), Article VIII[209] of the 1987 Constitution speaks of a decision. Indeed, as a rule, this Court lays down doctrines or principles of law, which constitute binding precedent in a decision duly signed by the members of the court concerned and certified by the Chief Justice.[210]

Be that as it may, a perusal of the records reveals that the Sandiganbayan did not dismiss the case through a minute resolution, contrary to the Republic's claim. While the assailed resolution was not captioned as a decision or resolution, the same was signed by the Justices comprising the Fifth Division of the Sandiganbayan. It likewise contains the ultimate facts, issues and arguments of the parties, and the ruling of the court. From the

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[207] Id. at 325-326; Italics in the original

[208] *Agoy v. Araneta Center, Inc.*, G.R. No. 196358 (Resolution), 685 PHIL 246-252 (2012) [Per J. Abad]

[209] Section 4. x x x x

(3) Cases or matters heard by a Division shall be decided or resolved with the concurrence of a majority of the members who actually took part in the deliberation on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such members. When the required number is not obtained, the case shall be decided En Banc: Provided, **that no doctrine or principle of law laid down by the Court in a decision rendered *En Banc* or in Division may be modified or reversed except by the Court sitting *En Banc*.** (Emphasis supplied.)

[210] *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*, 616 Phil. 387, 394 (2009).

foregoing, the Sandiganbayan's dismissal complies with the requirements for a judgment on the merits.

The filing of a demurrer to evidence is not an implied admission of allegations in the complaint

Respondents Ferry and Zalamea's respective demurrers to evidence did not amount to an implied admission of the allegations in the Complaint.

Section 1, Rule 33 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 the 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.

A demurrer to evidence is "a motion to dismiss on the ground of insufficiency of evidence and is filed after the plaintiff rests his or her case. It is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced, is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The question in a demurrer to evidence is whether the plaintiff, by his evidence in chief, has been able to establish a *prima facie* case."[211]

The Court has held that "[a] motion to dismiss on the ground of failure to state a cause of action in the complaint hypothetically admits the truth of the facts alleged therein. However, the hypothetical admission is limited to the 'relevant and material facts well pleaded in the complaint and inference fairly deductible therefrom. The admission does not extend to conclusion or interpretations of law; nor does it cover all allegations of fact the falsity of which is subject to judicial notice.'"[212]

From the foregoing, it cannot be concluded that respondents Ferry and Zalamea impliedly admitted that they conspired with respondent Tan and Marcos to acquire the alleged ill-gotten wealth during their incumbency as members of the DBP Board Directors.

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[211] *Republic v. Sandiganbayan*, 830 Phil. 423, 450 (2018), citing *Spouses Condes v. Court of Appeals*, 555 Phil. 311, 323 (2007).

[212] *Drilon v. Court of Appeals*, 409 Phil. 14, 27-28 (2001); *De Dios v. Bristol Laboratories Phils., Inc.*, 154 Phil. 311 (1974).

The complaint against respondents Ferry and Zalamea is barred by res judicata

The complaint against respondents Ferry and Zalamea is already barred by *res judicata* by conclusiveness of judgment.

Case law elucidated on the concept of *res judicata* in this wise:

> *Res judicata* means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It lays the rule that an existing final judgment or decree rendered on the merits, without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal or concurrent jurisdiction on the points and matters in issue in the first suit.[213]

The doctrine of *res judicata* is embodied in Section 47, Rule 39 of the Rules of Court, which reads:

> Section 47. *Effect of Judgments or Final Orders.* – The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows
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> x x x x
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> (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 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.

The above-cited provision embraces two concepts of *res judicata*: (1) bar by prior judgment, as enunciated in Section 47 (b), Rule 39 of the Rules of Court; and (2) conclusiveness of judgment under Section 47 (c), Rule 39 of the same Rules.[214]

In *Yap v. Republic of the Philippines*,[215] this Court discussed the doctrine of conclusiveness of judgment, as a concept of *res judicata*:

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[213] *Monterona v. Coca-Cola Bottlers Philippines, Inc.*, 845 Phil. 556, 563 (2019), citing *Spouses Selga v. Brar*, 673 Phil. 581, 591 (2011).

[214] *Social Security Commission v. Rizal Poultry and Livestock Association Inc.*, 665 Phil 198, 199 (2011).

[215] 807 Phil. 456 (2017).

> The second concept – conclusiveness of judgment – states that **a fact or question which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned 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 different cause of action, while the judgment remains unreversed by proper authority.** 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 issue 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 or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit x x x. Identity of cause of action is not required but merely identity of issue.[216]

Respondents Ferry and Zalamea invoke the doctrine of *res judicata* by conclusiveness of judgment. They argue that *Desierto*[217] involves the same transaction, parties, and issues.[218] On the other hand, the Republic insists that *Desierto* is not applicable since, in that case, the Court only affirmed that there was no probable cause to hold respondents Tan, et al. liable under Section 3(e) of Republic Act (RA) No. 3019.[219]

In *Desierto*, the Republic, through the PCGG, filed a complaint for violation of Section 3(e) of RA No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, against several individuals, including respondents Tan and Ferry. The PCGG alleged that respondents Tan, et al. conspired and acted fraudulently to accumulate ill-gotten wealth to the prejudice of the government. They also effected the Sipalay Deal, or the sale of the ₱340.7 Million equity holding of DBP in Maranaw Hotels to Sipalay Trading, a newly organized and undercapitalized firm, for only ₱150 Million, a price grossly disadvantageous to the government.

The Ombudsman dismissed the complaint and found that the acts of the DBP Board of Governors should "not be condemned as a crime but should be lauded for their boldness in trying their very best to save not only the Century Park Sheraton Hotel but DBP itself, and ultimately protected the interests of the government."[220] Furthermore, the Ombudsman found no evidence of conspiracy among the private respondents therein and that the negotiations between Sipalay Trading and the DBP were aboveboard. Thus, the Republic filed a petition for *certiorari* before this Court.

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[216] Id. at 466; Emphasis in the original
[217] 516 Phil. 509 (2006).
[218] *Rollo* (G.R. No. 198974), pp.790-793.
[219] Id. at 105-108.
[220] 516 Phil. 509, 513 (2006).

This Court ruled that the sale between the DBP and Sipalay Trading in relation to DBP's equity holding in Maranaw Hotel was legal, and that under the circumstances then prevailing, the DBP officers acted in good faith and sound exercise of judgment. There was nothing in the record to show that the DBP officials were spurred by any corrupt motive or that they received any material benefit from the Sipalay Deal.

In the present case, respondents Ferry and Zalamea are being held liable as the former Vice Chairperson of DBP and President of Maranaw Hotels and the former Chairperson of Board of Governors of the DBP and Maranaw Hotels, respectively. The Republic alleges they acted in bad faith and in conspiracy with respondents Tan, et al. to acquire ill-gotten wealth in the Sipalay Deal.

Notably, all the elements of *res judicata* by conclusiveness of judgment are present here: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of the parties, but not identity of causes of action.[221]

First, *Desierto* attained finality in 2006. *Second*, the decision was rendered by a tribunal of competent jurisdiction, the Ombudsman, as affirmed by this Court. *Third*, the disposition of *Desierto* was a judgment on the merits. *Finally*, there is identity of parties or their privies and issues between *Desierto* and the present case. The parties in the *Desierto* case and the present case are the same, the Republic representing the PCGG and the DBP officials, including respondent Ferry, who participated in the Sipalay Deal. While respondent Zalamea was not impleaded in *Desierto*, he is being indicted in the present case as a former officer of DBP and Maranaw Hotels. As to the identity of the issue, "bad faith" was discussed in *Desierto* because it is an element of the offense of Section 3(e) of RA No. 3019. The same issue of bad faith was again raised by the Republic in the present case. Therefore, the existence of bad faith in the Sipalay Deal is barred by *res judicata* by conclusiveness of judgment.

The Republic failed to substantiate its claim that respondents Ferry and Zalamea participated in the acquisition of ill-gotten wealth

The Republic has the burden to prove the allegation in its Second Amended Complaint, *i.e.*, whether the Sipalay Deal was executed for

[221] *See Spouses Rosario v. Alvar*, 817 Phil. 994, 995, 1005 (2017).

respondent Tan and Marcos to acquire ill-gotten wealth.

Under Section 1, Rule 131 of the Rules of Court, burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his or her claim by the amount of evidence required by law. In civil cases, the burden of proof rests upon the plaintiff, who is required to establish his or her case by a preponderance of evidence.[222]

Section 1, Rule 133 of the Rules of Court provides:

> Section 1. Preponderance of evidence, how determined. – In civil cases, the party having the burden of proof must establish his case by preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term 'greater weight of evidence' or 'greater weight of credible evidence.' Succinctly put, it only requires that evidence be greater or more convincing than the opposing evidence.[223]

In this case, the Court affirms the Sandiganbayan's finding that the Republic failed to substantiate its claim that respondents Ferry and Zalamea participated in the acquisition of ill-gotten wealth.[224]

The pieces of evidence presented by the Republic reveal that their complaint is still anchored on their allegation that respondents Ferry and Zalamea, as DBP officers, acted in bad faith and in conspiracy with respondents Tan, et al. in entering the Sipalay Deal.

The Republic is not guilty of forum-shopping

There is forum shopping "when a party repetitively avails of several judicial remedies in courts, simultaneously or successively, all substantially

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[222] *See Heirs of Villanueva v. Heirs of Mendoza*, 810 Phil. 172, 182-183, 186 (2017).
[223] *See Bank of the Philippine Islands v. Mendoza*, 807 Phil. 640, 641, 648 (2017).
[224] *Rollo* (G.R. No. 198974), p. 21.

founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court."[225]

Forum shopping can be committed in three ways: (1) by 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) by filing multiple cases based on the same cause of action and with the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) by 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*).[226]

The elements of forum-shopping are: (a) identity of the parties or at least such parties that represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief founded on the same facts; and (c) any judgment rendered in one action will amount to *res judicata* in the other action.[227]

Based on the above-mentioned elements, the Republic did not commit forum-shopping. Clearly, the Republic did not institute two (2) suits in different courts, as all the petitions involved in this case emanated from the same case filed before the Sandiganbayan for the recovery of ill-gotten wealth. Moreover, these petitions involve different issues. Thus, there is no forum-shopping.

II. G.R. No. 198221

The testimonies of the Yujuicos relating to the validity of respondent Tan's acquisition of GenBank are barred by res judicata

The Sandiganbayan did not act with grave abuse of discretion in prohibiting the Republic from presenting the testimonies of the Yujuicos on the ground of *res judicata*.

The Republic insisted to present the Yujuicos to testify on the specific

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[225] *Asia United Bank v. Goodland Co., Inc.*, 660 Phil. 504, 514 (2011).
[226] See *Pentacapital Investment Corporation v. Mahinay*, 637 Phil. 283, 289, 309 (2010).
[227] *Santos Ventura Hocorma Foundation, Inc. V. Mabalacat Institute, Inc.*, G.R. No. 211563, 29 September 2021.

averments of the Second Amended Complaint, particularly paragraph 14, subparagraphs (a)(1), (2), and (3), which read:

> 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 strategems, including the use of Defendant Corporations, among others:
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> (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 Banking Corporation, through the manipulation of then Central Bank Governor [Licaros], and of then President [Domingo] of the [PNB], as shown by, but not limited to, the following circumstances:
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> (1) In 1976, the [GenBank] got into financial difficulties. The Central Bank then extended an emergency loan to GBTC reaching a total of P310-million. In extending this loan, the [Central Bank] 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.
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> (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 [Central Bank] emergency loan. On 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 started, [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.[228]

The Yujuicos cannot testify on, and the Republic cannot present evidence with respect to, the afore-quoted paragraphs, which mainly allege that respondent Tan "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]." This matter has been settled in the GenBank Liquidation Case, and therefore barred by *res judicata* under the concept of conclusiveness of judgment.

Res judicata by conclusiveness of judgment applies "when there is identity of parties in the first and second cases, but no identity of causes of action, and a fact or question has been squarely put in issue, judicially passed upon, and adjudged in a former suit by a court of competent jurisdiction. **The fact or question settled by final judgment or order binds the parties to that action**, and continues to bind them while the judgment or order remains standing and unreversed by proper authority on a timely motion or petition; **the conclusively-settled fact or question cannot again be litigated in any future or other action between the same parties or their privies and successors-in-interest, in the same or in any other court of concurrent jurisdiction, either for the same or for a different cause of action.**"[229] Thus, "a party is **barred** from presenting evidence on a fact or issue already judicially tried and decided."[230]

In applying *res judicata*, it is not required that there be absolute identity, as **only substantial identity of the parties is necessary.** "There is substantial identity of parties when there is **community of interest or privity of interest between a party in the first and a party in the second case even if the first case did not implead the latter.**"[231]

In this case, the GenBank Liquidation Case was invoked as having settled the facts sought to be established by the Republic through the testimonies of the Yujuicos.

The GenBank Liquidation Case involved the special proceedings for liquidation of GenBank filed by the liquidator designated by the Central Bank

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[228] *Rollo* (G.R. No. 198221), pp. 936-938.

[229] *Gonzaga v. Commission on Audit*, G.R. No. 244816, 29 June 2021; Emphasis supplied.

[230] See *Presidential Decree No. 1271 Committee v. De Guzman*, 801 Phil. 731, 733, 764 (2016); Emphasis supplied.

[231] *FELS Energy, Inc. v. Province of Batangas*, 545 Phil. 92, 110 (2007); Emphasis in the original.

(now, the Bangko Sentral ng Pilipinas). In that case, the Court of Appeals (CA) reversed and set aside the decision of the Court of First Instance (CFI) (now, Regional Trial Court), which annulled Monetary Board Resolution (MBR) Nos. 675 and 677 for being "plainly arbitrary and made in bad faith." MBR Nos. 675 and 677 ordered the closure of GenBank and approved the liquidation plan of GenBank, respectively. On petition for review before this Court, GenBank asserted that the Central Bank "maliciously and arbitrarily and in bad faith ordered its closure xxx and liquidation and bidding xxx."[232]

In resolving the petition, this Court found no reversible error in the CA's reversal of the CFI decision. This Court held that MBR Nos. 675 and 677 are valid and were issued in good faith. We ruled that in issuing said MBRs, the Central Bank neither acted with grave abuse of discretion nor violated any existing procedural or substantive law.

MBR No. 675 forbade GenBank to do business in the Philippines and designated a receiver in view of the report finding the bank insolvent and unable to comply with the directives of the Central Bank to address GenBank's financial difficulties. The Central Bank found that GenBank's continuance in business would involve losses to its depositors and creditors. In this regard, this Court held:

> It must be stressed that **petitioner Genbank's financial predicament did not crop up overnight, nor is it a product of a single financial indiscretion**, so to speak. **The root of its problem and eventual downfall is traceable to unsound banking practices employed by management.** Mentioned in this regard may be made of the all-out financial support given to Filcapital Development Corporation (a related interest of the Yujuico Family Group and directors and officers of Genbank) and the standing practice of extending DOSRI loans which, at one point, reached a peak of P172.3 million or 26% of the total loan portfolio of P666.78 million. Of the final figure, 59.4% thereof was classified as doubtful and P0.505 million as uncollectible. And 91.7% of such DOSRI accounts were unsecured leaving only 8% thereof secured. **All these unsound practices occurred way before their resulting crippling effects became manifest sometime in December 1976, further leading the bank to resort to other unsound banking practices, like incurring daily overdrafts. These problems,** as earlier narrated in the assailed CA decision, **were taken up by the then CB Governor with the Board of Directors of Genbank in a meeting held on December 27, 1976. Thus, when the crucial March 23, 1977 meeting was held, there can be no doubt that petitioner Genbank was totally aware of the predicament it has gotten itself into and the conditions which the CB had imposed to address the situation for the protection of the depositors and the banking public. It is not as if CB sprang a surprise on petitioner Genbank when Resolution 675 was issued on March 25, 1977 declaring Genbank insolvent.** Petitioner Genbank's posture that it was given only two (2) days to remedy the

[232] *General Bank & Trust Co. v. Central Bank of the Philippines*, 524 Phil. 232, 248-249 (2006).

situation is specious at best.[233]

MBR No. 677, on the other hand, confirmed that GenBank was insolvent and could not resume business with safety to its depositors, creditors, and the general public; ordered the liquidation of GenBank; and **approved "a liquidation plan whereby all the assets of Genbank should be purchased by the Lucio Tan Group which should also assume all the liabilities** under certain terms and conditions."[234] This Court noted that "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 x x x[,] a strong indication that the Central Bank performed its duty to maintain public confidence in the banking system."[235]

Thus, absent any "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,"[236] this Court sustained the validity of said MRBs.

Consequently, in upholding the validity of MBR No. 677, this Court likewise **upheld the validity of the approval of the liquidation plan, *i.e.*, the purchase by the Tan Group of all the assets of GenBank**.

In the present case, it is clear from the allegations in paragraph 14, subparagraphs (a)(1), (2), and (3) of the Second Amended Complaint and the purposes for which the testimonies of the Yujuicos were being offered, that the Republic seeks to relitigate an issue that was already settled in the GenBank Liquidation Case: the validity of the sale of GenBank's assets to the Tan Group.

However, as mentioned, the GenBank Liquidation Case ruled that MRB No. 677, which approved the liquidation plan involving the Tan Group purchase of all the assets of GenBank and the assumption of all the liabilities of the latter, was valid and issued in good faith. In doing so, this Court effectively upheld the sale of GenBank to the Tan Group.

Notably, while it appears that the parties in this case and in the GenBank Liquidation Case are different, the relevant parties herein are privies and/or successors-in-interest of the parties in the GenBank Liquidation Case.

The Marcoses, respondents Tan, Willy Co, Allied Bank, Licaros, and Domingo, while not parties in the GenBank Liquidation Case, were

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[233] Id. at 258-259; Emphasis supplied.
[234] Id. at 245; Emphasis supplied.
[235] Id. at 259.
[236] Id.

nonetheless privies and/or successors-in-interest of the parties therein. Domingo, as then PNB President, issued a letter of commitment for a letter of credit, which was submitted by the Tan Group to the Central Bank as part of their bid to purchase GenBank's assets. Licaros, as then Central Bank Governor, was likewise privy to the case as the Central Bank and its designated liquidator were the ones who facilitated the liquidation of GenBank. Respondents Tan, Willy Co, and Allied Bank were also privies and successors-in-interest of GenBank, the petitioner in the GenBank Liquidation Case. The Marcoses were also privies in view of their alleged involvement in the transfer of GenBank's assets to the Tan Group.

Thus, the Republic's attempt to relitigate the issue on the validity of the Tan Group's acquisition of GenBank is barred by *res judicata* by conclusiveness of judgment. The validity and legality of such sale is a conclusively settled fact or question in the GenBank Liquidation Case and cannot again be litigated in the present case, even if different causes of action are involved. The Republic, thus, cannot seek to present the testimonies of the Yujuicos to establish that the sale of all the assets of GenBank to the Tan Group was "arbitrarily and fraudulently" made or made in bad faith "through the manipulation of then Central Bank Governor [Licaros]."

Further, there appears to be nothing on record that the Yujuicos were supposed to be presented as witnesses to testify on matters other than paragraph 14, subparagraphs (a)(1), (2), and (3) of the Second Amended Complaint.

The substance of the testimonies of the Yujuicos relates only to the events that led to the sale of GenBank. Joselito's judicial affidavit narrated the events leading to the sale of GenBank. The same is true about the judicial affidavit of Aderito. They discussed Marcos' alleged undue favorable treatment of respondent Tan through then Central Bank Governor Licaros, and the alleged irregularities in the sale of GenBank's assets to the Tan Group.

There was no just or valid reason for the inhibition of the Members of the Sandiganbayan's Fifth Division

There is no grave abuse of discretion on the part of the Sandiganbayan when it denied the Republic's motion for voluntary inhibition.

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

> SECTION 1. *Disqualification of judges.* — No judge or judicial officer 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.

The inhibition of judges or justices may be mandatory or voluntary. The first paragraph pertains to mandatory inhibition. The second paragraph pertains to voluntary inhibition, which must be based on just or valid reasons.[237]

Mere allegation of bias or partiality does not constitute just or valid reason for voluntary inhibition of a judge or justice, thus:

> 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.[238]

In this case, the Republic, in attributing bias and partiality on the part of the members of the Sandiganbayan's Fifth Division, citing various adverse rulings of the Sandiganbayan, such as denying the recall or presentation of the testimonies of the Yujuicos, coercing the Republic to rest its case, considering the Republic to have waived the presentation of witnesses who were not present during their scheduled date of presentation, and refusing to suspend proceedings due to pending incidents.

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[237] *Barnes v. Reyes*, 614 Phil. 299 (2009).
[238] Id. at 304-305; Emphasis supplied.

However, as discussed above, the Republic cannot present the testimonies of Yujuicos, which pertain to matters already settled in the GenBank Liquidation Case. Meanwhile, the pendency of certain incidents was not a valid ground for the suspension of the proceedings that began in 1987. While all the parties were at fault for the delay of the proceedings due to repeated postponements, the Sandiganbayan pointed out that the Republic only utilized twenty-four (24) out of the sixty-four (64) trial dates that it gave the Republic to present its evidence.[239] The Sandiganbayan also noted respondents' motions which it denied, and the rulings it made that were favorable to the Republic.

In any case, the Court has ruled that the disqualification of a judge or justice cannot be predicated on the adverse or erroneous nature of the rulings towards the movant, to wit:

> To prove bias and prejudice on the part of respondent judge, petitioners harp on the alleged adverse and erroneous rulings of respondent judge on their various motions. By themselves, however, they do not sufficiently prove bias and prejudice to disqualify respondent judge. To be disqualifying, **the bias and prejudice must be shown to have stemmed from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case. Opinions formed in the course of judicial proceedings, although erroneous, as long as they are based on the evidence presented and conduct observed by the judge, do not prove personal bias or prejudice on the part of the judge.** As a general rule, **repeated rulings against a litigant, no matter how erroneous and vigorously and consistently expressed, are not a basis for disqualification of a judge on grounds of bias and prejudice.** Extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose, in addition to the palpable error which may be inferred from the decision or order itself. Although the decision may seem so erroneous as to raise doubts concerning a judge's integrity, absent extrinsic evidence, the decision itself would be insufficient to establish a case against the judge. The only exception to the rule is when the error is so gross and patent as to produce an ineluctable inference of bad faith or malice.[240]

Thus, the adverse or erroneous rulings of the Sandiganbayan against the Republic, without more, do not prove bias or partiality warranting the inhibition of the members of the Sandiganbayan's Fifth Division from this case. The Republic failed to adduce extrinsic evidence or any extrajudicial source of the Sandiganbayan's alleged bias, partiality, malice, or bad faith in making the cited adverse or erroneous rulings.

At most, the Sandiganbayan's acts merely show that it intended to expedite the disposition of the case, which has been pending for decades, and that the same were made after giving the Republic more than enough

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[239] *Rollo* (G.R. No. 198221), p. 134.

[240] *Republic v. Gingoyon*, 514 Phil. 657, 711-712 (2005); Emphasis supplied.

opportunity to prove its case. Clearly, these do not amount to malice or bad faith. Consequently, there is no just or valid reason for the members of the Sandiganbayan's Fifth Division to inhibit from this case.

III. G.R. No. 198974

PMFTC, Inc. is not an indispensable party

PMFTC, Inc. is not an indispensable party and need not be impleaded in this case.

An indispensable party is a party in interest without whom no final determination can be had of an action, and must therefore be joined as plaintiff or defendant.[241]

In this case, PMFTC, Inc. is not an indispensable party. There can be a final determination of this case even if PMFTC, Inc. is not joined as a defendant. PMFTC, Inc. is being impleaded because it was allegedly fraudulently formed and organized to remove the substantial capital and assets of Fortune Tobacco and Northern Tobacco placing these said capital and assets beyond the court's authority and jurisdiction.

Section 19, Rule 3 of the Rules of Court provides for the rule on the transfer of interest:

> Section 19. *Transfer of interest.* – In case of any transfer of interest, 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. (19)

A transferee *pendente lite* of the property in litigation "**stands exactly in the shoes of his predecessor-in-interest**, bound by the proceedings and judgment in the case before the rights were assigned to him. xxx Essentially, **the law already considers the transferee joined or substituted in the pending action, commencing at the exact moment when the transfer of interest is perfected** between the original party-transferor and the transferee pendente lite."[242]

Thus, in this case, assuming that PMFTC, Inc. is a transferee *pendente*

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[241] RULES OF COURT, Rule 3, Sec. 7.

[242] *Vda. de Santiago v. Suing*, 772 Phil. 107 (2015), citing *Natalia Realty, Inc. v. Court of Appeals*, 440 Phil. 1 (2002); Emphasis supplied.

lite of the properties sought to be recovered by the Republic, it is bound by the proceedings already had in this case, even those concluded before the transfer of the assets from Fortune Tobacco and Northern Tobacco sometime in 2010.

Consequently, PMFTC, Inc. need not be impleaded as it would, in any event, be bound by the judgment in this case against its predecessors-in-interest, Fortune Tobacco and Northern Tobacco.[243]

IV. G.R. No. 203592

Ill-gotten wealth is not limited to assets that originated from the government

Indeed, the concept of ill-gotten wealth had long been expanded. EO No. 1 and *Chavez*[244] did not limit ill-gotten wealth to assets and properties that originated from the government itself.

EO Nos. 1 and 2,[245] the PCGG Rules and Regulations,[246] and jurisprudence[247] consistently recognized that assets and properties may fall under the broad rubric of ill-gotten wealth even if they did not originate from the government. Private properties may likewise be considered ill-gotten if they were acquired by taking undue advantage of official position, authority, relationship, or influence.

In several cases,[248] the Court affirmed that ill-gotten wealth may be acquired in the following manner: (1) through or as a result of the improper or illegal use of or conversion of funds or properties owned by the

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[243] *Santiago Land Development Corp. v. Court of Appeals*, 334 Phil. 741 (1997).

[244] 360 Phil. 133 (1998).

[245] EO No. 1, s. 1986, *Creating the Presidential Commission on Good Government*, 28 February 1986; EO No. 2, s. 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*, 12 March 1986.

[246] Issued 11 April 1986.

[247] *See Bataan Shipyard & Engineering Co., Inc. (Baseco) v. Presidential Commission on Good Government*, 234 Phil. 180 (1987); *Chavez v. Presidential Commission on Good Government*, 360 Phil. 133 (1998); *Yuchengco v. Sandiganbayan*, 515 Phil. 1 (2006); *Republic v. Estate of Hans Menzi*, 512 Phil. 425 (2005); *Republic v. Sandiganbayan*, 663 Phil. 212 (2011).

[248] See *e.g. Chavez v. Presidential Commission on Good Government*, 360 Phil. 133 (1998) "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, influences or relationships, "resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines;" *Bataan Shipyard & Engineering Co., Inc. (Baseco) v. Presidential Commission on Good Government*, 234 Phil. 180 (1987).

Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions (first mode); or (2) by taking undue advantage of office, authority, influence, connections or relationship (second mode).

In *Disini v. Republic* (*Disini*),[249] the Court ruled that the source of the funds, *i.e.,* private corporations, does not divest the commissions of their public character:

> Evidently, the BNPP is a government project the construction of which was awarded to Westinghouse as the main contractor and B&R as the architect-engineer, allegedly through undue advantage of Disini's influence and close association with President Marcos. In exchange, Disini allegedly received substantial commissions based on 3% and 10% of the total contract price from Westinghouse and B&R, respectively. Obviously, the payment of the alleged commissions would be coming from Westinghouse and B&R, which are private corporations, and not directly from the government.
>
> However, contrary to the contention of Disini, ill-gotten wealth also encompasses those that are derived indirectly from government funds or properties through the use of power, influence, or relationship resulting in unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic.[250]

Relatedly, in *Republic v. Sandiganbayan,*[251] the Court laid down the elements that must be established before assets or properties may be considered ill-gotten: (1) they must have "originated from the government itself," and (2) they must have been taken by illegal means. Notably, the issue in that case was whether coco levy funds were used to acquire shares of stock. Thus, the allegations pertained to the first mode of acquiring ill-gotten wealth, *i.e.,* through or because of the improper or illegal use of or conversion of public funds. Our ruling in said case, therefore, should not be construed to diminish the concept of ill-gotten wealth. Rather, the doctrine in *Republic v. Sandiganbayan*[252] should be confined to ill-gotten wealth alleged to have been acquired through the first mode.

Review of the evidence offered to prove the elements of ill-gotten wealth

The elements of ill-gotten wealth based on EO Nos. 1 and 2, the PCGG Rules and Regulations, and relevant jurisprudence are the following:

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[249] G.R. No. 205172, 15 June 2021.
[250] Id. at 11.
[251] 663 Phil. 212 (2011).
[252] Id. at 300-301.

1. Assets and properties were acquired;

2. It was acquired by Marcos, respondent Imelda, their close relatives, subordinates, business associates, agents or nominees;

3. The manner of acquisition was either:

    a. through or because 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

4. The acquisition resulted in their unjust enrichment and caused grave damage and prejudice to the Filipino people and the Republic of the Philippines.

To determine whether these elements are present in this case, the Court should focus not only on the admissibility, but also on the probative value, of the evidence adduced by the Republic. Indeed, even if the Republic's pieces of evidence were admissible, the Court must still determine whether each element of ill-gotten wealth has evidentiary mooring.

Here, even if we apply the comprehensive definition of ill-gotten wealth, the pieces of evidence relied upon by the Republic failed to establish all its elements. Notably, some of these pieces of evidence are even of doubtful admissibility.

To recap, the following are the relevant pieces of evidence presented by the Republic in support of its case: (a) respondent Imelda's Amended Answer; (b) respondent Tan's Written Disclosure; (c) Marcos, Jr.'s testimony; (d) Gapud's affidavit; and (e) voluminous documentary evidence found by the PCGG in their investigations.

It appears, however, that none of the pieces of evidence relied upon by the Republic was successful in establishing the manner by which respondents allegedly acquired ill-gotten wealth. It was not shown, through these pieces of evidence, if and how respondents took undue advantage of their office, authority, influence, connections, or relationship. As regards Gapud's affidavit and Tan's Written Disclosure, they are inadmissible to prove any of the elements of ill-gotten wealth. Summarized below are the pertinent points supported by each piece of evidence, as alleged by the Republic, together with the admissibility and probative weight of each.

a) Respondent Imelda's Amended Answer

The Republic points out that in respondent Imelda's Amended Answer, she appeared to have alleged that Marcos had 60% beneficial ownership in several of respondent Tan's companies.[253]

As mentioned, the Sandiganbayan did not admit the Amended Answer because respondent Imelda's cross-claim was premised on independent and distinct claims against respondents Tan, et al., which did not involve the same transactions or acts as that of the Republic's principal cause of action. According to the Sandiganbayan, respondent Imelda may pursue her claims against respondents Tan, et al. in a separate proceeding before the trial court, not the Sandiganbayan.

Nevertheless, the Republic marked and formally offered the Amended Answer as its Exhibit M,[254] which the Sandiganbayan admitted as evidence for the Republic.[255] According to the Republic, the statements in the Amended Answer support the Republic's theory that Marcos – in collaboration with respondent Tan – concealed ill-gotten wealth by creating layers of corporations in which Marcos owned 60% beneficial ownership.

On the other hand, respondents contend that the Amended Answer contradicts the Republic's theory because the allegation that Marcos owned 60% of the subject business venture with respondent Tan is inconsistent with the allegation that ill-gotten wealth are properties amassed by Marcos that were part of the vast resources of the government.[256]

Considering that the Amended Answer was never admitted as a pleading, it cannot be considered as a judicial admission under Section 4, Rule 129 of the Rules of Court. In *Ching v. Court of Appeals*[257] (*Ching*), the Court held that a pleading which loses its status as such, either because it was superseded or amended, is no longer a judicial admission.

Further, the Amended Answer should not prejudice the other respondents under the *res inter alios acta* rule, which provides that "[a] party cannot be prejudiced by an act, declaration or omission of another...."[258] The allegations found in the Amended Answer is considered hearsay as against the other respondents.[259]

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[253] Himmel Industries, Fortune Tobacco, Foremost Farms, Asia Brewery, Grandspan, Silangan Holdings, and Dominium Realty and Construction Corp.
[254] *Rollo* (G.R. No. 203592), p. 4000.
[255] Id. at 141.
[256] Id. at 3517-3518.
[257] 387 Phil. 28 (2000).
[258] *See* RULES OF COURT, Rule 130, Sec. 28.
[259] *See People v. Enero*, 863 Phil. 680 (2019).

In *Salapuddin v. Court of Appeals*,[260] the Court explained the rationale behind the *res inter alios acta* rule:

> 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.[261]

As exceptions to the *res inter alios acta* rule, the following admissions may be allowed under Sections 29, 30, and 31,[262] Rule 130 of the Rules of Court:

> **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.
>
> **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 of declaration.
>
> **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.

None of these exceptions, however, apply to the Amended Answer.

First, Section 29, Rule 130 of the Rules of Court cannot apply because it has not been established that there is a partnership or agency between respondents Imelda and Tan, et al. The alleged business relationship at issue here is that between Marcos and respondents Tan, et al.

Second, Section 30, Rule 130 of the Rules of Court cannot apply because respondent Imelda did not make the declarations while engaged in carrying out the conspiracy – assuming such conspiracy even exists. In *Estrada v. Office of the Ombudsman*,[263] the Court laid down the requisites for a statement to be treated as an admission by a conspirator:

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[260] 704 Phil. 577 (2013), citing *Tamargo v. Awingan*, 624 Phil. 312 (2010).
[261] Id. at 601.
[262] Now, 2019 REVISED RULES OF COURT, Rule 130, Secs. 30, 31, and 32.
[263] 837 Phil. 913 (2018).

> 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**.[264]

Even if the Court assumes that the first and second requisites are present, the third requisite cannot be established in this case. Respondent Imelda made the statements in 2001 when her Amended Answer was filed, while the alleged schemes happened approximately within the years of 1975 to 1986. Therefore, her statements cannot be used against respondents Tan, et al. as admissions of a conspirator.

Third, Section 31, Rule 130 of the Rules of Court does not apply because it was not established that there is privity of estate, denoting a succession in rights,[265] between respondents Imelda and Tan, et al.

Moreover, the Amended Answer cannot be utilized as corroborative evidence against the other respondents because they were not able to cross-examine respondent Imelda on her statements in her Amended Answer. In *People v. Raquel*,[266] the Court held that:

> The extrajudicial statements of an accused implicating a co-accused may not be utilized against the latter, unless these are repeated in open court. If the accused never had the opportunity to cross-examine his co-accused on the latter's extrajudicial statements, it is elementary that the same are hearsay as against said accused. That is exactly the situation, and the disadvantaged plight of appellants, in the case at bar.
>
> Extreme caution should be exercised by the courts in dealing with the confession of an accused which implicates his co-accused. A distinction, obviously, should be made between extrajudicial and judicial confessions. The former deprives the other accused of the opportunity to cross-examine the confessant, while in the latter his confession is thrown wide open for cross-examination and rebuttal.[267]

Assuming the Amended Answer falls under any of the exceptions to the *res inter alios acta* rule and can be used against the other respondents without them having to cross-examine respondent Imelda, it still fails to prove the Republic's theory that the alleged 60% beneficial ownership of Marcos in respondent Tan's companies are ill-gotten wealth.

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[264] Id. at 1008-1009; Emphasis supplied.
[265] *See Republic v. Sandiganbayan*, 453 Phil. 1059 (2003).
[266] 333 Phil. 72 (1996), citing *People v. Ola*, 236 Phil. 1 (1987) and *People v. Flores*, 272-A Phil. 264 (1991); *See* also *People v. Janson*, 448 Phil. 726 (2003).
[267] Id. at 79-80.

To be sure, respondent Imelda merely stated in her Amended Answer that "[Marcos] had sixty percent (60%) beneficial ownership in [Tan's] companies, which beneficial interests were held in trust by [Tan] personally and through his family members and business associates who appeared as the recorded stockholders of said companies." There is nothing, however, in said Amended Answer that would even suggest that undue advantage of office, authority, influence, connections, or relationship was employed to facilitate the acquisition by Marcos of his 60% beneficial ownership in respondent Tan's companies.

All told, respondent Imelda's Amended Answer cannot be used against the other respondents under the *res inter alios acta* rule, and her statements do not fall under any of the exceptions. Respondent Imelda should have been cross-examined by the other respondents before her Amended Answer can be used against them, otherwise, it is hearsay. In any case, said Amended Answer merely alleged that Marcos has 60% beneficial ownership in respondent Tan's companies without allegation, much less an admission, that undue advantage of office, authority, influence, connections, or relationship was employed.

b) Respondent Tan's Written Disclosure

The Republic relies on respondent Tan's Written Disclosure to prove the 60-40 business arrangement between Marcos and respondent Tan, including the supposed incorporation of holding companies for Marcos' benefit and the supposed delivery of deeds of trust or assignment signed in blank.[268] The Written Disclosure was allegedly executed and submitted by respondent Tan in 1986 to Senator Salonga, as Chairman of the PCGG, during the investigation on the alleged Marcos-Tan partnership.[269]

Before the Sandiganbayan, Senator Salonga testified and attested to the document's genuineness and due execution.[270] Both the original and certified true copy of the Written Disclosure were presented in court.[271] The Republic also presented in evidence excerpts from Senator Salonga's book, "Presidential Plunder," to narrate the circumstances surrounding the execution of the Written Disclosure.[272] The Republic claims that Senator Salonga's testimony suffices to admit into evidence the Written Disclosure.[273]

Respondents Tan, et al., argue that Senator Salonga's direct examination was not completed and he was not cross-examined by the defense.

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[268] *Rollo* (G.R. No. 203592), pp. 3941-3951.
[269] Id. at 3940.
[270] Id. at 3950.
[271] Id. at 3940.
[272] Id. at 73.
[273] Id. at 4058.

As such, his testimony is worthless and may be stricken off the record.[274] Also, the testimony of Senator Salonga, who relied on his book "Presidential Plunder" to prove the alleged favors, is unconvincing because Senator Salonga only testified on the execution of the written exhibits, and not on the facts stated therein.[275] They further claim that since the Republic is relying on the document, the latter is bound by the statements in the Written Disclosure, including the exculpatory statements therein.[276] Specifically, respondent Tan narrates in the Written Disclosure that he acceded to Marcos' demands because of undue pressure put on him. He mentions that the share transfers to Marcos were actually ineffective, and only fake stock certificates were sent to Marcos.[277]

Meanwhile, the Republic counters that respondent Tan's inculpatory statements evince his guilt, while the exculpatory statements merely show the document's voluntary execution. Thus, the exculpatory statements must have factual support before they may be admitted.[278] Also, the exculpatory statements do not invalidate the 60-40 business arrangement between Marcos and respondent Tan.[279]

Respondents Tan, et al.'s claims must be sustained. The Written Disclosure is inadmissible in evidence. Even assuming otherwise, the Written Disclosure is still insufficient to prove the Republic's claims.

As a rule, before a private document is admitted in evidence, it must be authenticated either by the person who executed it, the person before whom its execution was acknowledged, any person who was present and saw it executed, or who after its execution, saw it and recognized the signatures, or the person to whom the parties to the instruments had previously confessed execution thereof.[280]

Here, the Written Disclosure cannot be admitted as evidence of the truth of its contents. The Republic did not present respondent Tan, the one who executed the document, as a witness. As such, respondent Tan was not cross-examined on the statements he made in the Written Disclosure. The hearsay rule excludes evidence that cannot be tested by cross-examination.[281] Indeed, absent cross-examination, both the court and the opposing counsel would not be able to test the credibility of the witness and his or her statements:

> A witness can testify only to those facts which he knows of his personal knowledge, which means those facts which are derived from his

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[274] Id. at 3491.
[275] Id. at 3505-3506.
[276] Id. at 3495.
[277] Id. at 3495.
[278] Id. at 3969, 3940-3941.
[279] Id. at 3957.
[280] *Cercado-Siga v. Cercado, Jr.*, 755 Phil. 583, 593 (2015).
[281] *People v. Gueron*, 206 Phil. 93, 100 (1983).

> perception. Consequently, a witness may not testify as to what he merely learned from others either because he was told or read or heard the same. Such testimony is considered hearsay and may not be received as proof of the truth of what he has learned. Such is the hearsay rule which applies not only to oral testimony or statements but also to written evidence as well.
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> The hearsay rule is based upon serious concerns about the trustworthiness and reliability of hearsay evidence inasmuch as such evidence are not given under oath or solemn affirmation and, more importantly, have not been subjected to cross-examination by opposing counsel to test the perception, memory, veracity and articulateness of the out-of-court declarant or actor upon whose reliability on which the worth of the out-of-court statement depends.
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> Thus, the Sworn Statements of Jose Lomocso and Ernesto Urbiztondo are inadmissible in evidence, for being hearsay, inasmuch as they did not take the witness stand and could not therefore be cross-examined.[282]

Since respondent Tan did not take the witness stand to testify on the contents of his Written Disclosure, the statements therein are considered hearsay and inadmissible in evidence. To stress, only Senator Salonga identified the Written Disclosure in court. He claimed that the Written Disclosure was signed in his presence.[283]

On this point, another view was forwarded during the Court's deliberation that Tan and the other respondents did not deny that the Written Disclosure was properly presented as documentary evidence.[284] They also failed to deny its execution.[285] It was pointed out that these circumstances affirm the genuineness and authenticity of the Written Disclosure and except said evidence from the authentication requirement.[286] Also, Tan, in particular, should be estopped from discrediting his Written Disclosure or from excluding it as evidence.[287]

However, it is well-established that, when cross-examination is not and cannot be done or completed due to causes attributable to the party offering the witness, the uncompleted testimony is thereby rendered incompetent and inadmissible in evidence.[288] Thus, as correctly pointed out by respondents Tan, et al., the incomplete testimony of Senator Salonga renders the Written Disclosure inadmissible as evidence. Senator Salonga's failure to complete his cross-examination was attributable to the Republic, considering it was due to the witness' schedule conflicting with the hearing dates. The Republic

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[282] *Country Bankers Insurance Corp. v. Lianga Bay & Community Multi-Purpose Cooperative, Inc.*, 425 Phil. 511, 520 (2002).
[283] TSN, 16 October 2007, p. 82 (*Rollo* [G.R. No. 203592], p. 1580).
[284] Concurring and Dissenting Opinion of J. Caguioa, p. 25.
[285] Id.
[286] Id.
[287] Id. at 26.
[288] *Arriola v. People*, 871 Phil. 585 (2020).

failed to present Senator Salonga on any of the remaining hearing dates.

In effect, the Written Disclosure was not authenticated by any competent witness, Senator Salonga's testimony being inadmissible in evidence. Respondents need not deny the Written Disclosure's authenticity or due execution because the testimony for which it was offered, i.e., Senator Salonga's, is in itself inadmissible.

More importantly, as clarified during Senator Salonga's direct examination, his testimony only deals with the circumstances surrounding the execution of the document, and does not purport to prove the facts stated in the Written Disclosure.[289] Thus, even if the Court were to exempt the Written Disclosure from the authentication requirement, the testimony of Senator Salonga could not cure the hearsay character of the document. Such testimony does not prove the claims made in the Written Disclosure.

Even assuming that the Written Disclosure is admissible in evidence, the same has little probative weight. While the Written Disclosure involves extrajudicial admissions, the rule on judicial admissions may be applied by analogy. In this regard, the Court's ruling in *Bitong v. Court of Appeals (Fifth Division)*[290] on admissions is instructive:

> Every alleged admission is taken as an entirety of the fact which makes for the one side with the qualifications which limit, modify or destroy its effect on the other side. The reason for this is, **where part of a statement of a party is used against him as an admission, the court should weigh any other portion connected with the statement, which tends to neutralize or explain the portion which is against interest.**
>
> In other words, while the admission is admissible in evidence, its probative value is to be determined from the whole statement and others intimately related or connected therewith as an integrated unit. Although acts or facts admitted do not require proof and cannot be contradicted, however, evidence *aliunde* can be presented to show that the admission was made through palpable mistake. The rule is always in favor of liberality in construction of pleadings so that the real matter in dispute may be submitted to the judgment of the court.[291]

Thus, where part of a statement of a party is used against him as an admission, the court must necessarily consider the other portions connected that may tend to explain the portion against that party's interest. Therefore, the Court may not limit its review to the inculpatory statements in the Written Disclosure.

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[289] TSN, 16 October 2007, pp. 85-87 (*Rollo* [G.R. No. 203592], pp. 1583-1585).
[290] 354 Phil. 516 (1998).
[291] Id.; Emphasis supplied.

Respondent Tan correctly claims that, in admitting the Written Disclosure in evidence, the exculpatory statements in the said document must also be duly considered. After all, the Court must strive to appreciate evidence in a holistic and impartial manner.

While portions of the Written Disclosure appear to support the Republic's theory, there are also various statements that may negate elements of ill-gotten wealth, particularly the acquisition of assets and properties by Marcos, respondent Imelda, their close relatives, and other associates. In the same document, respondent Tan asserts legitimate ownership over his business ventures, claiming that the share transfers to Marcos were ineffectual.[292] These statements evidently weaken the Republic's claim of ownership by the Marcoses.

Verily, the Written Disclosure is hearsay and lacks probative weight. It cannot sustain the Republic's allegations.

c) Marcos, Jr.'s Testimony

The Republic relies on the testimony of Marcos, Jr. on 21 August 2007 and 13 February 2018[293] to prove its allegations of ill-gotten wealth by Marcos in relation to respondent Tan. The salient portions of Marcos, Jr.'s testimony cited by the Republic relate to the supposed meetings with his father and respondent Tan regarding the alleged interest of the Marcoses in the businesses of respondent Tan. In addition, the Republic argues that Marcos, Jr.'s testimony elaborated on the complex formation of the respondent companies, and dovetailed with the affidavit of Gapud.[294]

The Republic thus concludes that the testimony of Marcos, Jr. is not hearsay because they were based on his direct personal knowledge of his meeting with his father, respondent Tan, and Gapud.[295]

On the other hand, respondents argue that since the Republic concedes that the testimony of Marcos, Jr. was derived from his meetings with his father, respondent Tan, and Gapud, then the testimony as to the facts subject of the meeting is hearsay.[296] Respondents also highlight that Marcos, Jr. denied that the subject assets were ill-gotten wealth.[297]

After due consideration of the foregoing, it is clear that Marcos, Jr. does

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[292] *Rollo* (G.R. No. 203592), pp. 846-847.
[293] Id. at 4013-4017.
[294] Id. at 4017.
[295] Id. at 4017-4018.
[296] Id. at 3593-3594.
[297] Id. at 3594-3596.

not have personal knowledge of the alleged 60-40 business arrangement or the share transfers between and among the various corporations. It does not appear that he was privy to any of these transactions.

It is well entrenched that a witness may only testify on facts derived from his own perception and not on what he has merely learned or heard from others.[298] Hearsay evidence, or those derived outside of a witness' personal knowledge, are generally inadmissible due to serious concerns on their trustworthiness and reliability; such evidence, by their nature, are not given under oath or solemn affirmation and likewise have not undergone the benefit of cross-examination to test the reliability of the out-of-court declarant on which the relative weight of the out-of-court statement depends.[299]

The lack of personal knowledge of Marcos, Jr., insofar as the actual transactions which led to the alleged 60-40 business arrangement, is clear in this case. Marcos, Jr. has no personal knowledge of the details of the arrangement and the manner of the transfers of shares since he was not privy to said transactions.

Thus, the Court finds that Marcos, Jr.'s testimony is hearsay and may not be used to prove the truth of the facts asserted. Hearsay evidence, whether objected to or not, cannot be given credence for it has no probative value.[300] Notably, respondents' counsel has consistently objected to Marcos, Jr.'s testimony on this ground.

At best, Marcos, Jr. can only testify on the fact that he conferred with his father, respondent Tan, and Gapud regarding the Marcos family's interest in the respondent-corporations. This is without regard to the truth or falsity of the underlying basis of such claims. Thus, Marcos, Jr.'s testimony can be considered as independently relevant statements.

In *Buenaflor Car Services, Inc. v. David, Jr.*,[301] the Court explained the doctrine of independently relevant statements, thus:

> Under the doctrine of independently relevant statements, regardless of their truth or falsity, the fact that such statements have been made is relevant. The hearsay rule does not apply, and the statements are admissible as evidence. Evidence as to the making of such statement is not secondary but primary, for the statement itself may constitute a fact in issue or be circumstantially relevant as to the existence of such a fact.[302]

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[298] *People v. XXX*, 839 Phil. 252 (2018), citing *Miro v. Vda. De Erederos*, 721 Phil. 772, 790 (2013).
[299] Id. at 265, citing *Country Bankers Insurance Corp. v. Lianga Bay & Community Multi-Purpose Cooperative, Inc.*, 425 Phil. 511, 520 (2002).
[300] *People v. Parungao*, 332 Phil. 917-927 (1996).
[301] 798 Phil. 195 (2016).
[302] Id. at 207, citing *People v. Estibal y Calungsag*, 748 Phil. 850 (2014).

However, without more, Marcos, Jr.'s testimony cannot be taken to prove the ill-gotten wealth since it can only be taken as an assertion without due regard to the truth or falsity of the subject transactions. This remains to be far removed from the burden of the prosecution to prove ill-gotten wealth.

Marcos, Jr.'s testimony, in and of itself, does not show that his father and the respondents took undue advantage of their office, authority, influence, connections, or relationship to obtain ownership of these business interests.

d) Gapud's affidavit

The Republic relies on Gapud's affidavit because it purportedly narrates the detail of the dealings of Marcos and his associates.[303] In his statement, Gapud claimed to be the financial executor of Marcos and respondent Imelda, and that he was often carrying out instructions given by them.[304]

Before the Court, the Republic insists that Gapud's affidavit was presented and identified in court by Senator Salonga.[305] Senator Salonga testified that he personally typed Gapud's statement after interviewing him in Hong Kong.[306] He claimed that he signed it as a witness and thus identified his own signature thereon.[307] Moreover, the Republic points out that the Court has invariably utilized the testimony of Gapud in a plethora of cases.[308] On the other hand, respondents Tan, et al. maintain that Gapud's affidavit is not admissible for being hearsay.[309]

We agree with respondents Tan, et al.

It is settled that while notarized affidavits are considered as public documents, they may still be deemed as hearsay evidence.[310] Affidavits are generally prepared not by the affiant himself, but by another who uses his or her own language in transcribing or writing the statements.[311] If the affiant is not presented, the opposing party is deprived of the chance to cross-examine him or her.[312] In such situations, the opposing party cannot test the "perception, memory, veracity, and articulateness of the out-of-court declarant or actor

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[303] *Rollo* (G.R. No. 203592), pp. 1492-1498.
[304] Id. at 1493.
[305] Id. at 484-491.
[306] Id. at 1606-1607.
[307] Id. at 485.
[308] Id. at 490.
[309] Id. at 3533-3537.
[310] *Republic v. Marcos-Manotok*, 681 Phil. 380 (2012).
[311] Id.
[312] Id.

upon whose reliability the worth of the out-of-court statement depends."[313] Thus, an affidavit should be rejected for being hearsay unless the affiant testifies and confirms his or her declarations thereon.[314] This proceeds from the basic rationale of fairness.[315]

Here, Gapud was not presented in court to identify his affidavit. Relative to this, in the case of *Republic v. Sandiganbayan*,[316] the Court dealt with a motion for leave filed by the Republic to take the deposition of Gapud, also for SB Civil Case No. 0005.[317] The Sandiganbayan denied the Republic's motion, due to, among others, the absence of special circumstances that would justify the taking of Gapud's deposition before the service of answers.[318] When it reached the Court, the denial of the motion was affirmed since it was not established that there existed a real threat to Gapud's life should he choose to return to the Philippines.[319] On this matter, the Court explained:

> In the case at bar, petitioner alleges that the taking of Mr. Gapud's 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 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 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.[320]

To stress, the denial of the Republic's motion for leave to take Gapud's deposition in *Republic v. Sandiganbayan* was not absolute.[321] The Court merely pronounced that the Republic failed to show the urgency and necessity to allow the taking of Gapud's deposition at that point in time, considering that there was no joinder of issues yet.[322] However, even after the issues were

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[313] *Patula v. People*, 685 Phil. 376, 396 (2012).
[314] *People's Bank and Trust Company (now Bank of the Philippine Islands) v. Leonidas*, 283 Phil. 991 (1992).
[315] *DST Movers Corp. v. People's General Insurance Corp.*, 778 Phil. 235 (2016).
[316] 410 Phil. 536 (2001).
[317] Id. at 547.
[318] Id.
[319] Id.
[320] Id.
[321] Id.
[322] Id.

joined, the Republic still failed to present Gapud, or avail of any other means at its disposal to enable the Sandiganbayan to properly consider the contents of the affidavit. At the same time, the Republic failed to prove the existence of any of the exceptions to the hearsay rule under Rule 130(C)(6) of the Rules on Evidence.[323]

The Republic asserts that Senator Salonga's identification of Gapud's affidavit should be sufficient. Yet, during trial, it clarified that the purpose of the presentation of Senator Salonga's testimony is limited to elicit the facts and circumstances surrounding the execution of Gapud's affidavit:

> Atty. Generillo:
>
> > Your Honor please, if I may, perhaps for the enlightenment of all 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.[324]

While the testimony of a witness regarding a statement made by another person to establish the truth thereof is clearly hearsay, it is otherwise if the objective is merely to establish the fact that the statement, or the tenor of such statement, was made.[325] To reiterate, this is known as the doctrine of independently relevant statements.[326] Under this doctrine, only the fact that the statements were made is relevant, and the truth or falsity thereof is immaterial.[327]

However, even if the doctrine of independently relevant statements is applicable, this merely establishes the execution of the document. Still, Gapud

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[323] *Fuentes, Jr. v. Court of Appeals*, 323 Phil. 508 (1996).
[324] TSN, 16 October 2007, pp. 71-73.
[325] *Espineli v. People*, 735 Phil. 530 (2014).
[326] Id.
[327] *XXX v. People*, G.R. No. 241390, 13 January 2021.

was not able to appear before the Sandiganbayan to confirm the truthfulness of his declarations. Senator Salonga could not have testified on the truth of Gapud's statements, and he could not have been cross-examined by respondents on this matter. As mentioned, Senator Salonga's examination was not completed since he no longer appeared before the Sandiganbayan for cross-examination.[328]

As such, Gapud's affidavit remains devoid of probative value for purposes of establishing the truth of Gapud's claims on the alleged 60-40 business arrangement between Marcos and respondent Tan.

e) Other Documentary Evidence

Additionally, the Republic presented voluminous documentary evidence in support of its allegations. The pertinent documents may be summarized as follows:

1. *Documents relating to Fortune Tobacco*. There are documents that show numerous requests for import quotas were made to the Philippine Virginia Tobacco Administration or directly to Marcos, bearing the latter's signature with the word "approved."[329] There are also those showing that respondent Tan, as chairperson of Fortune Tobacco, wrote requests to Marcos, which were favorably acted upon by the latter.[330] Likewise, several documents issued by the Office of the President granting Fortune Tobacco's requests for import quotas were submitted, showing that Marcos approved the request for the import quota.[331]

2. *Documents relating to Allied Bank.* The Republic presented documents that show respondent Tan wrote direct requests to Marcos on behalf of Allied Bank. These were likewise approved or granted by Marcos, as shown by notations or issuances by the Office of the President.[332]

3. *Documents pertaining to transfer of shares.* Deeds of sale of shares of stock were presented to show that the stockholders of Himmel Industries, Grandspan, Asia Brewery, Silangan Holdings, and Foremost Farms sold their shares to Shareholdings, Inc.[333] There are

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[328] *Rollo* (G.R. No. 203592), pp. 1618-1619; TSN, 16 October 2007, pp. 120-121.
[329] Id. at 853-865.
[330] Id. at 882-884, 886-888, 893-910.
[331] Id. at 858, 860, 862-864.
[332] Id. at 1244-1247, 1249-1251, 1253-1265.
[333] Id. at 1313-1333.

> also deeds of assignment issued by the stockholders of Shareholdings, Inc. transferring their shares to Basic, Falcon Holdings Corp. (Falcon), and Supreme Holdings, Inc. (Supreme), and uniform deeds of assignment signed in blank issued by the stockholders of Falcon, Supreme, and Shareholdings, Inc.[334]

Unfortunately, however, most of these documents are merely copies of private documents, thus, not meeting the requirement for the presentation of the original under Section 3, Rule 130 of the Rules on Evidence. Neither did the Republic establish the existence of any of the exceptions under Sections 5 to 8, Rule 130 of the Rules on Evidence, which would justify its resort to secondary evidence.

The Republic presented officers from the PCGG and other government offices who purportedly had custody of a number of the documents.[335] However, it failed to present witnesses who could testify not only on the genuineness and due execution of the documents, but also on the facts stated therein. That most of the documents were in the custody of the PCGG does not make them public in character. As clarified in *Republic v. Marcos-Manotoc, et al.*:[336]

> **The fact that these documents were collected by the PCGG in the course of its investigations does not make them *per se* public records referred to in the quoted rule.**
>
> Petitioner presented as witness its records officer, Maria Lourdes Magno, who testified that these public and private documents had been gathered by and taken into the custody of the PCGG in the course of the Commission's investigation of the alleged ill-gotten wealth of the Marcoses. However, given the purposes for which these documents were submitted, Magno was not a credible witness who could testify as to their contents. To reiterate, "[i]f the writings have subscribing witnesses to them, they must be proved by those witnesses." **Witnesses can testify only to those facts which are of their personal knowledge; that is, those derived from their own perception. Thus, Magno could only testify as to how she obtained custody of these documents, but not as to the contents of the documents themselves.**[337]

Thus, without the testimony of persons who have personal knowledge on the contents of these documents, the enumerated documents do not have any evidentiary value.

Application of the Evidence to the Elements of Ill-Gotten Wealth;

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[334] Id. at 1404-1406, 1411-1413, 1414-1416, 1421-1434.
[335] Id. at 159-161, 4074.
[336] 681 Phil. 380 (2012).
[337] Id. at 404. Emphasis supplied.

Preponderance of Evidence

As provided in EO No. 14-A, allegations in civil cases filed to recover unlawfully acquired property or ill-gotten wealth must be proven through preponderance of evidence, *viz*:

> SEC. 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 preponderance of evidence.*

It is established that when preponderance of evidence is required, the courts must necessarily weigh the evidence presented by the parties and determine who was able to adduce evidence more conclusive and credible than that of the other.[338]

Accordingly, this procedure must be followed in this case, through a comparison of the evidence presented by the Republic as against those submitted by respondents Tan, et al. Below is a discussion of each element of ill-gotten wealth together with the evidence in support of the same.

The first and second elements should be jointly tackled because they are related. The first element requires the Republic to show that assets and properties were acquired, while the second element specifies the persons involved in the acquisition. Even without considering the documentary evidence adduced by the Republic, the other pieces of evidence on record, particularly respondent Imelda's Amended Answer and Marcos, Jr.'s testimony, seem to only suggest the acquisition of assets by Marcos.

Notably, the only evidence that may negate the element of acquisition is respondent Tan's Written Disclosure. However, as discussed, the Written Disclosure is inadmissible in evidence and has no probative weight.

As to the third element, it must be shown that the assets and properties were acquired: (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. Since it does not appear that the shares of stock were acquired through public funds, the relevant mode of acquisition is the second one.

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[338] *Republic v. Estate of Hans Menzi*, 512 Phil. 425 (2005) [Per J. Tinga].

The phrase "undue advantage" is neither defined in the pertinent EOs nor in the PCGG Rules and Regulations. The ordinary meaning of the words should thus be observed. Undue means "to a level that is more than is necessary, acceptable, or reasonable."[339] To take advantage means "to use [one's] skills, resources, etc. or a particular situation in order to get an opportunity for [oneself]."[340] Thus, the element of taking undue advantage connotes abuse of public office, authority, influence, connections or relationship, in order to amass assets or properties for one's own benefit.

In this case, the third element was not proven by the Republic. Respondent Imelda's Amended Answer and Marcos, Jr.'s testimony, at most, merely provide unproven allegation of acquisition or ownership, while respondent Tan's Written Disclosure and Gapud's affidavit are inadmissible to prove any of the elements of ill-gotten wealth. With the dearth of evidence presented to prove "undue advantage," the existence of this element remains speculative at this point. Merely assuming its existence may lead to perpetuating an injustice where private property would now be transferred to the Republic.

As to the fourth element, *i.e.*, unjust enrichment, grave damage, and prejudice, the same may be inferred from the third element. The acquisition of ill-gotten wealth necessarily results in pecuniary loss to the whole nation.[341] Considering that the third element was not proven, it follows that no unjust enrichment, damage, or prejudice suffered by the people or the government could be hypothesized from the acquisitions in question.

Considering the foregoing, the petition in G.R. No. 203592 should also be denied for the Republic's failure to prove the third and fourth elements of ill-gotten wealth.

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

(1) In **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

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[339] "Undue", Cambridge Dictionary, *available at* https://dictionary.cambridge.org/us/dictionary/english/undue (last accessed 2 November 2021).
[340] "Advantage", Cambridge Dictionary, *available* at https://dictionary.cambridge.org/us/dictionary/english/advantage?q=take+advantage (last accessed 2 November 2021).
[341] *Supra* note 250.

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

SO ORDERED.

RODIL V. ZALAMEDA
Associate Justice

WE CONCUR:

No participation due to prior connection with OSG and PCGG

ALEXANDER G. GESMUNDO
Chief Justice

See separate concurring and dissenting opinion

MARVIC M. V. F. LEONEN
Associate Justice

See Separate Concurring & Dissenting

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

(No part and on Official Business Leave)
AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

MARIO V. LOPEZ
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

(On Official Business Leave)
JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

See Separate Concurring Opinion

ANTONIO T. KHO, JR.
Associate Justice

See Separate Opinion

MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court.

ALEXANDER G. GESMUNDO
Chief Justice