



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

REPUBLIC OF THE PHILIPPINES,
Petitioner,

G.R. No. 180418

Present:

- versus -

SERENO, C.J.,
BERSAMIN,
* ABAD,
** MENDOZA, and
REYES, JJ.

**LUZ REYES-BAKUNAWA,
MANUEL BAKUNAWA, JR.,
MANUEL BAKUNAWA III,
FERDINAND E. MARCOS
AND IMELDA R. MARCOS,**
Respondents.

Promulgated:

AUG 28 2013

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DECISION

BERSAMIN, J.:

Assets or properties, to be considered as ill-gotten wealth, must be shown to have originated from the Government itself, and should have been taken by former President Marcos, the members of his immediate family, relatives, close subordinates and close associates by illegal means. That one served as a government official or employee during the Marcos administration did not immediately make her a close subordinate or close associate of former President Marcos.¹

* Vice Associate Justice Teresita J. Leonardo De Castro, who took part in the Sandiganbayan, per the raffle of July 8, 2013.

** Vice Associate Justice Martin S. Villarama, Jr., who is on leave, per Special Order No. 1502 dated August 8, 2013.

¹ *Republic v. Sandiganbayan (First Division)*, G.R. No. 166859, G.R. No. 169203, and G.R. No. 180702, April 12, 2011, 648 SCRA 47, 132-133.

The Case

The Republic appeals the adverse decision rendered on April 10, 2002,² and the resolution issued on November 8, 2007,³ whereby the Sandiganbayan respectively dismissed the complaint for reconveyance, reversion, accounting, restitution and damages filed against respondents in Civil Case No. 0023, and denied the Republic's motion for reconsideration.

Antecedents

Civil Case No. 0023 is an action for reconveyance, reversion, accounting, restitution and damages brought by the Republic against respondents Luz Reyes-Bakunawa, Manuel Bakunawa, Jr., Manuel Bakunawa III, President Marcos and First Lady Imelda R. Marcos for having allegedly acquired and accumulated ill-gotten wealth consisting of funds and other property "in unlawful concert with one another" and "in flagrant breach of trust and of their fiduciary obligations as public officers, with grave abuse of right and power and in brazen violation of the Constitution and laws of the Republic of the Philippines, thus resulting in their unjust enrichment." ⁴

The complaint alleged that respondent Luz Reyes-Bakunawa (Luz Bakunawa) had served as Imelda Marcos' Social Secretary during the Marcos administration; that it was during that period of her incumbency in that position that Luz Bakunawa and her husband Manuel Bakunawa had acquired assets, funds and other property grossly and manifestly disproportionate to her salaries and their other lawful income;⁵ and that Luz Bakunawa, "by herself and/or in unlawful concert with Defendants Ferdinand E. Marcos and Imelda R. Marcos, taking undue advantage of her position, influence and connection with the latter Defendant spouses, for their benefit and unjust enrichment and in order to prevent disclosure and recovery of assets illegally obtained, engaged in devices, schemes and stratagems,"⁶ particularly:

1) acted as dummies, nominees, and/or agents of the Marcos spouses and, with the active collaboration, knowledge and willing participation of the other defendants, established several corporations engaged in a wide range of economic activities, such as construction and cattle ranching;

² *Rollo*, pp. 35-68; penned by Presiding Justice Francis E. Garchitorena (deceased), with Associate Justice Catalino Castañeda, Jr. (retired) and Associate Justice Gregory Ong concurring.

³ *Id.* at 69-81; penned by Associate Justice Diosdado M. Peralta (later Presiding Justice, and presently a Member of the Court), with Justices Teresita J. Leonardo De Castro (later Presiding Justice, and presently a Member of the Court) and Associate Justice Efren N. Dela Cruz concurring.

⁴ *Id.* at 83-105.

⁵ *Id.* at 95-96.

⁶ *Id.* at 93.

- 2) secured favorable contracts with the Department of Public Works and Communications for the construction of government projects through grossly undercapitalized corporations and without complying with such usual requirements as public bidding, notice and publication of contractors;
- 3) unlawfully acquired heads of cattle from the government dispersal program and raised them on ranch lands encroaching on forest zones;
- 4) unlawfully encroached upon a mangrove-forested section in Masbate, Masbate and converted it into a fishpond;
- 5) unlawfully amassed funds by obtaining huge credit lines from government financial institutions, and incorporating into their contracts a cost-escalation adjustment provision to justify collection of grossly arbitrary and unconscionable amounts unsupported by evidence of increase in prices;
- 6) unlawfully imported hundreds of brand-new units of heavy equipment without paying customs duties and other allied taxes amounting to millions of pesos, by falsely representing said heavy equipment to be for official government use and selling them at very low prices to avoid paying the required taxes.⁷

The Republic prayed for: (a) the reconveyance to itself of all funds and other property impressed with constructive trust, as well as funds and other property acquired by respondents' abuse of right and power and through unjust enrichment, plus interests; (b) accounting of all beneficial interests in funds, properties and assets in excess of their unlawful earnings; and (c) payment of actual damages to be proved during the trial, moral damages of ₱50,000,000,000.00, temperate, nominal and exemplary damages, attorney's fees, litigation expenses and treble judicial costs.⁸

In their amended answer, the Bakunawas alleged that Luz Bakunawa was never the Social Secretary of Imelda Marcos, but only an employee in the office of the Social Secretary; that the properties acquired while Luz Bakunawa was employed in the Government were purchased with honestly earned money and their acquisition was well within their legitimate income; that their family owned and controlled five closed family corporations, namely: (1) Hi-Tri Development Corporation; (2) 7-R Development Corporation; (3) 7-R Heavy Equipment, Inc.; (4) 7-R Sales Company, Inc.; and (5) 7-R Ranch, Inc.; that their public works contracts were awarded to them in accordance with law; that their acquisition of the heads of cattle were legal;⁹ and that they did not commit any breach of trust while in public office, and did not possess illegally acquired funds that rendered them liable under constructive trust in favor of the Republic.¹⁰

⁷ Id. at 93- 95 (Annex A of the complaint enumerated respondents' parcels of land, shares of stocks, bank accounts, receivables and other personal properties).

⁸ Id. at 101-103.

⁹ Id. at 139-141.

¹⁰ Id. at 138-151.

During the pre-trial on August 26, 1999, the Bakunawas admitted that: (a) the properties enumerated in Annex A of the complaint¹¹ belonged to or were connected to them, except three corporations, namely: 7-R International Trading, 7-R Enterprise, Inc., and 7-R Group of Companies; and (b) two parcels of land that belonged to one of their children.¹²

Also during the pre-trial, the parties agreed on the following statement of the issues, to wit:

[t]he fundamental issue in this case is whether or not defendant Luz Bakunawa, considering her position in Malacañang during the incumbency of President Ferdinand E. Marcos from 1970 up to 1986, occupied a confidential position in Malacañang, and was able to obtain contracts, run businesses and acquire real properties as enumerated in the Complaint, using her office and the influence of either or both of the [s]pouses Ferdinand and Imelda Marcos. The parties agreed that it is the use of the influence of the Spouses Marcos that constitutes the essence of the case, and not the failure to report the Statement of Assets and Liabilities or any other impropriety in the acquisition of the properties herein, this case having been filed under the authority given to the Presidential Commission on Good Government under Executive Orders No. 1,2, 14 and 14-a.¹³

After the Republic rested its case, respondents filed their motion to dismiss,¹⁴ insisting that the Republic “has failed to establish even *prima facie*, its case and/or charges against them.”¹⁵

Ruling of the Sandiganbayan

On April 10, 2002, the Sandiganbayan rendered its decision in favor of respondents, to wit:¹⁶

x x x x

As the evidence stands, neither the presence of the link with the Marcoses, nor the irrefutability of the evidence against the Bakunawas for their misuse of that connection exists to justify the instant action by the PCGG.

In view of all the above, this Court is constrained to grant the Motion to Dismiss, as it hereby dismisses, the Complaint of the plaintiff for its failure to prove the essential allegations thereof.

The writs of sequestration issued and in force against the properties of the Bakunawas as enumerated in Annex A of the Complaint (page 24

¹¹ Id. at 106-113.

¹² Records, Vol. VII, pp. 79-81.

¹³ Id.

¹⁴ *Rollo*, pp. 152-166.

¹⁵ Id. at 152.

¹⁶ *Supra* note 2.

and p. 34, Vol. I, Record) are lifted, set aside and declared of no further force and effect.

SO ORDERED.

The Sandiganbayan justified its decision in the following manner:

X X X X

Many of the plaintiff's allegations in its specific averments (Article V) in the complaint are alluded to in the evidence in a general fashion: engaging in cattle ranching and construction [para. 12 (a)], entering into public works contracts [para. 12 (b)], acquisition of mangrove areas [para. 12 (c)]. Nothing exists in the record, however, with respect to undercapitalization of the corporation, non-compliance with bidding requirements, encroachment of ranches into forest zones, huge credit lines, unjustified claims of cost escalation adjustment, and importation of heavy equipment.

Properties have been shown in the name of the spouses Bakunawa or either of them; testimonies have been rendered about eviction, official documents presented with respect to public works contracts, and finally, a Statement of Assets and Liabilities for the year 1985. Indeed, to hear some of the witnesses, acts of oppression appear to have been committed if not by the wife then by the husband Manuel Bakunawa. There is no indication however, that the acts of oppression involved the improper use of influence on the part of the defendant Luz Bakunawa by reason of her having been employed in the office of the Social Secretary of Imelda Marcos when the latter was the First Lady.

X X X X

An examination of the testimonial evidence for the Plaintiff, as summarized in the first part of this decision, shows its concentration in the alleged dispossession of some landowners of their occupied land in the province of Masbate by the defendants Bakunawa and the allegedly (sic) inaction by the Bureau of Forestry and the police agencies thereon. Thus, the almost uniform allegation of witnesses is that they were dispossessed of pasture lands which they believed they were entitled to possess. There were documents presented to prove that, indeed, the witnesses had claims to these pieces of property or had occupied them and had introduced improvements thereon.

The tenor of the testimony of the said witnesses is that while there was no force directly applied in the dispossession of their properties, their lands, however, were fenced in, and occupied by, other people, allegedly the Bakunawas and secured by armed and uniformed men.

There is likewise the contention of the plaintiff's witnesses that they did not know who these men were, although it has been said that one or two of the men who helped in fencing off these properties were employees of the Bakunawas.

What is clear is that with the evidence thus far, the Bakunawas, or more specifically, Manuel Bakunawa, ignored the Bureau of Forestry

summons, and caused the unceremonious exclusion of people who had apparently occupied rather large tracts of land under permits for the Bureau or those with pending applications.

There also seems to be evidence that defendant Luz Bakunawa did quite a bit of work in her capacity as a member of the staff of the Social Secretary of Imelda Marcos. While the influence of Luz Bakunawa may be assumed or conjectured, there has been no evidence which would categorically show that the position of defendant Luz Bakunawa in Malacañang “in concert with the spouses Marcos” or either of them was the explanation for the absence of the law enforcement officers or the inaction of the administrative officers of the government.

X X X X

The influence may be assumed and in common parlance, it might be reasonably made. But to conclude that there was abuse of office by Luz Bakunawa or her utilization of the influence of her office or of the spouses Marcos cannot be assumed or stated in any certainty.

And since, as aforesaid, the action herein is confiscatory in character, assumptions will not do to obtain judgment against the defendants Bakunawa.¹⁷

The Sandiganbayan ruled that in civil suits initiated by the Presidential Commission on Good Government (PCGG) for the recovery of illegally acquired property pursuant to Republic Act No. 1379,¹⁸ the Republic must show not only that defendant was a subordinate of the Marcos spouses or of either of them, but also that the relationship was similar to that of an immediate member of the Marcos family or a dummy of the Marcoses.¹⁹ It concluded that no proof established the link between the alleged acts of the Bakunawas and those of the Marcoses, or even the proximity of Luz Bakunawa as a Marcos relative or Marcos dummy.

The Republic sought the reconsideration of the decision, arguing that the Sandiganbayan erred in holding that it did not show the Bakunawas’ link with the Marcoses, and in ruling that it did not prove that the Bakunawas had abused their connections or close association with the Marcoses.²⁰

On November 8, 2007, the Sandiganbayan denied the Republic’s motion for reconsideration,²¹ reiterating its ruling that the Republic did not discharge its burden of proving the close links between the Bakunawas and the Marcoses, and of proving how the Bakunawas had abused said links, assuming that the links existed.

¹⁷ *Rollo*, pp. 60-63.

¹⁸ *An Act Declaring Forfeiture In Favor Of The State Any Property Found To Have Been Unlawfully Acquired By Any Public Officer Or Employee And Providing For The Proceedings Therefor* (June 18, 1955).

¹⁹ *Rollo*, pp. 64-65.

²⁰ *Id.* at 179-201.

²¹ *Supra* note 3.

Hence, this appeal.

Issues

The Republic ascribes the following errors, to wit:

I.

THE QUANTUM OF PROOF REQUIRED TO PROVE PETITIONER'S CASE AGAINST THE BAKUNAWAS IS MERE PREPONDERANCE OF EVIDENCE.

II.

THE LINK BETWEEN AND/OR AMONG THE BAKUNAWAS AND THE MARCOSES WAS SATISFACTORILY ESTABLISHED BY PETITIONER.

III.

PETITIONER WAS ABLE TO ESTABLISH THAT THE BAKUNAWAS AMASSED ASSETS, FUNDS AND PROPERTIES GROSSLY AND MANIFESTLY DISPROPORTIONATE TO THEIR SALARIES AND OTHER LAWFUL INCOME BECAUSE OF THEIR POSITION IN THE GOVERNMENT AND/OR CLOSE ASSOCIATION AND CONNECTION WITH THE MARCOSES TO THE PREJUDICE OF PETITIONER AND THE FILIPINO PEOPLE.²²

In their comment,²³ respondents mainly submit that the Republic failed to present a justiciable issue to warrant the reversal of the Sandiganbayan's decision; and that the April 10, 2002 decision already become final and could no longer be reviewed and modified because of the belated filing of the petition for review.

On her part, First Lady Marcos opted not to file her comment.²⁴

Ruling

The appeal lacks merit.

1.

Appeal of the Republic was timely

The Bakunawas contend that the April 10, 2002 decision already became final because of the Republic's failure to file the petition for review on time.

²² *Rollo*, pp. 15-16.

²³ *Id.* at 325-346

²⁴ *Id.* at 389-392.

We cannot sustain the contention.

The Republic had until November 24, 2007 within which to file the petition for review. It filed a motion seeking an extension of 30 days of its period to file, or until December 24, 2007. Although it did not file the petition within the requested extension period, the Court directed it on June 30, 2008 to file the petition for review within 15 days from notice. Considering that it received the resolution of June 30, 2008 on August 11, 2008,²⁵ its filing of the petition for review on August 26, 2008 was timely.

2.

Preponderance of evidence is required in actions brought to recover ill-gotten wealth

In its decision of April 10, 2002, the Sandiganbayan stated as follows:

Considering the confiscatory character of proceedings described in E.O. No. 14 in actions for recovery of alleged unlawfully acquired property such as the instant case, evidence must be substantial, if not beyond reasonable doubt, akin to the actions for forfeiture under Republic Act. No. 1379; this, notwithstanding the statements in Sec. 3 of the Executive Order which states the adequacy of mere preponderance of evidence.²⁶

The Republic argues that the Sandiganbayan thereby erred in seemingly requiring a degree of proof greater than that required by Executive Order (E.O.) No. 14-A.²⁷ This was also its submission in the motion for reconsideration vis-à-vis the decision of April 10, 2002.

In denying the Republic's motion for reconsideration through the November 8, 2007 resolution, the Sandiganbayan agreed with the Republic's submission to the effect that preponderance of evidence was all that was required for this case. However, the Sandiganbayan pointed out that even on that basis the Republic still did not satisfy its quantum of proof because the facts it established were not sufficient to prove its case against respondents.²⁸

We uphold the Sandiganbayan.

We first clarify that the Republic correctly submits that only a preponderance of evidence was needed to prove its demand for

²⁵ Id. at 82.

²⁶ Id. at 62.

²⁷ Amending Executive Order No. 14, August 18, 1986. Executive Order No. 14 is entitled *Defining The Jurisdiction Over Cases Involving The Ill-Gotten Wealth Of Former President Ferdinand E. Marcos, Mrs. Imelda R. Marcos, Members Of Their Immediate Family, Close Relatives, Subordinates, Close And/Or Business Associates, Dummies, Agents And Nominees*.

²⁸ *Rollo*, p. 70.

reconveyance or recovery of ill-gotten wealth. That is quite clear from Section 1 of E.O. No. 14-A, which provides:

Section 1. Section 3 of Executive Order No. 14 dated May 7, 1986 is hereby amended to read as follows:

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 a preponderance of evidence.

By preponderance of evidence is meant that the evidence adduced by one side is, as a whole, superior to that of the other side. Essentially, preponderance of evidence refers to the comparative weight of the evidence presented by the opposing parties. As such, it has been defined as “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 the evidence* or *greater weight of the credible evidence*. It is proof that is more convincing to the court as worthy of belief than that which is offered in opposition thereto.²⁹

Here, the Bakunawas filed a motion to dismiss, by which they specifically demurred to the evidence adduced against them. A demurrer to evidence is an objection by one of the parties in an action to the effect that the evidence that his adversary produced, whether true or not, is insufficient in point of law to make out a case or to sustain the issue. The demurring party thereby challenges the sufficiency of the whole evidence to sustain a judgment. The court, in passing upon the sufficiency of the evidence, is required merely to ascertain whether there is competent or sufficient evidence to sustain the indictment or claim, or to support a verdict of guilt or liability.³⁰

Under the rule on preponderance of evidence, the court is instructed to find for and to dismiss the case against the defendant should the scales hang in equipoise and there is nothing in the evidence that tilts the scales to one or the other side. The plaintiff who had the burden of proof has failed to establish its case, and the parties are no better off than before they proceeded upon their litigation. In that situation, the court should leave the parties as they are.³¹

²⁹ *Encinas v. National Bookstore, Inc.*, G.R. No. 162704, November 19, 2004, 443 SCRA 293, 302.

³⁰ *Sorriquez v. Sandiganbayan*, G.R. No. 153526, October 25, 2005, 474 SCRA 222, 228, citing *Gutib v. Court of Appeals*, G.R. No. 131209, August 13, 1999, 312 SCRA 365, 371.

³¹ *Rivera v. Court of Appeals*, G.R. No. 115625, January 23, 1998, 284 SCRA 673, 682.

Moreover, although the evidence of the plaintiff may be stronger than that of the defendant, there is no preponderance of evidence on the plaintiff's side if its evidence alone is insufficient to establish its cause of action.³² Similarly, when only one side is able to present its evidence, and the other side demurs to the evidence, a preponderance of evidence can result only if the plaintiff's evidence is sufficient to establish the cause of action. For this purpose, the sheer volume of the evidence presented by one party cannot tip the scales in its favor. Quality, not quantity, is the primordial consideration in evaluating evidence.

3.

The evidence of the Republic did not preponderantly establish the ill-gotten nature of the Bakunawas' wealth

The decisive query is whether the Republic preponderantly showed that the Bakunawas had acquired ill-gotten wealth during Luz Bakunawa's employment during the Marcos administration.

In *Republic v. Sandiganbayan (First Division)*, decided on April 12, 2011,³³ the Court settled not only the meaning of ill-gotten wealth but also who were the persons liable to illegally acquire or amass such wealth, viz:

X X X X

II

The Concept and Genesis of Ill-Gotten Wealth in the Philippine Setting

A brief review of the Philippine law and jurisprudence pertinent to *ill-gotten wealth* should furnish an illuminating backdrop for further discussion.

In the immediate aftermath of the peaceful 1986 EDSA Revolution, the administration of President Corazon C. Aquino saw to it, among others, that rules defining the authority of the government and its instrumentalities were promptly put in place. It is significant to point out, however, that the administration likewise defined the limitations of the authority.

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

³² *Sapu-an v. Court of Appeals*, G.R. No. 91869, October 19, 1992, 214 SCRA 701, 705-706.

³³ *Supra* note 1, at 129-136.

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

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

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

Paragraph (4) of E.O. No. 2³⁴ further required that the wealth, to be ill-gotten, must be “acquired by them through or as a result of improper or illegal use of or the conversion of funds belonging to the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their official position, authority, relationship, connection or influence to unjustly enrich themselves at the expense and to the grave damage and prejudice of the Filipino people and the Republic of the Philippines.”

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

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

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

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

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

On this point, we find it relevant to define “ill-gotten wealth.” In *Bataan Shipyard and Engineering Co., Inc.*, this Court described “ill-gotten wealth” as follows:

“Ill-gotten wealth is that acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State. And this, too, is the sense in which the term is commonly understood in other jurisdiction.”

Concerning respondents’ shares of stock here, there is no evidence presented by petitioner that they belong to the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions. Nor is there evidence that respondents, taking undue advantage of their connections or relationship with former President Marcos or his family, relatives and close associates, were able to acquire those shares of stock.

Incidentally, in its 1998 ruling in *Chavez v. Presidential Commission on Good Government*, the Court rendered an identical definition of *ill-gotten wealth*, viz:

x x x. We may also add that ‘ill-gotten wealth’, by its very nature, assumes a public character. Based on the aforementioned Executive Orders, ‘ill-gotten wealth’ refers to assets and properties purportedly acquired, directly or indirectly, by former President Marcos, his immediate family, relatives and close associates through **or as a result of their improper or illegal use of government funds or properties; or their having taken undue advantage of their public office; or their use of powers, influence or relationships**, “resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines.” **Clearly, the assets and properties referred to supposedly originated from the government itself. To all intents and purposes, therefore, they belong to the people. As such, upon reconveyance they will be returned to the public treasury**, subject only to the satisfaction of positive claims of certain persons as may be adjudged by competent courts. Another declared overriding consideration for the expeditious recovery of ill-gotten wealth is that it may be used for national economic recovery.

All these judicial pronouncements demand two concurring elements to be present before assets or properties were considered as *ill-*

gotten wealth, namely: (a) they must have “originated from the government itself,” and (b) they must have been taken by former President Marcos, his immediate family, relatives, and close associates *by illegal means*.

But settling the sources and the kinds of assets and property covered by E.O. No. 1 and related issuances did not complete the definition of *ill-gotten wealth*. The further requirement was that the assets and property should have been amassed by former President Marcos, his immediate family, relatives, and close associates both here and abroad. In this regard, identifying former President Marcos, his immediate family, and relatives was not difficult, but identifying other persons who *might be* the *close associates* of former President Marcos presented an *inherent difficulty*, because it was not fair and just to include within the term *close associates* everyone who had had any association with President Marcos, his immediate family, and relatives.

Again, through several rulings, the Court became the arbiter to determine who were the close associates within the coverage of E.O. No. 1.

In *Republic v. Migriño*, the Court held that respondents Migriño, *et al.* were not necessarily among the persons covered by the term *close subordinate* or *close associate* of former President Marcos by reason alone of their having served as government officials or employees during the Marcos administration, *viz*:

It does not suffice, as in this case, that the respondent is or was a government official or employee during the administration of former Pres. Marcos. There must be a *prima facie* showing that the respondent unlawfully accumulated wealth by virtue of his close association or relation with former Pres. Marcos and/or his wife. This is so because otherwise the respondent’s case will fall under existing general laws and procedures on the matter. x x x

In *Cruz, Jr. v. Sandiganbayan*, the Court declared that the petitioner was not a *close associate* as the term was used in E.O. No. 1 just because he had served as the President and General Manager of the GSIS during the Marcos administration.

In *Republic v. Sandiganbayan*, the Court stated that respondent Maj. Gen. Josephus Q. Ramas’ having been a Commanding General of the Philippine Army during the Marcos administration “d[id] not automatically make him a subordinate of former President Ferdinand Marcos as this term is used in Executive Order Nos. 1, 2, 14 and 14-A absent a showing that he enjoyed close association with former President Marcos.”

It is well to point out, consequently, that the distinction laid down by E.O. No. 1 and its related issuances, and expounded by relevant judicial pronouncements unavoidably required *competent evidentiary substantiation* made in *appropriate judicial proceedings* to determine: (a) whether the assets or properties involved had come from the vast resources of government, and (b) whether the individuals owning or holding such assets or properties were close associates of President Marcos. The

requirement of *competent evidentiary substantiation* made in *appropriate judicial proceedings* was imposed because the factual premises for the reconveyance of the assets or properties in favor of the government due to their being ill-gotten wealth could not be simply assumed. Indeed, in *BASECO*, the Court made this clear enough by emphatically observing:

6. *Government's Right and Duty to Recover All Ill-gotten Wealth*

There can be no debate about the validity and eminent propriety of the Government's plan "to recover all ill-gotten wealth."

Neither can there be any debate about the proposition that assuming the above described factual premises of the Executive Orders and Proclamation No. 3 to be true, to be demonstrable by competent evidence, the recovery from Marcos, his family and his minions of the assets and properties involved, is not only a right but a duty on the part of Government.

But however plain and valid that right and duty may be, still a balance must be sought with the equally compelling necessity that a proper respect be accorded and adequate protection assured, the fundamental rights of private property and free enterprise which are deemed pillars of a free society such as ours, and to which all members of that society may without exception lay claim.

x x x Democracy, as a way of life enshrined in the Constitution, embraces as its necessary components freedom of conscience, freedom of expression, and freedom in the pursuit of happiness. *Along with these freedoms are included economic freedom and freedom of enterprise* within reasonable bounds and under proper control. x x x Evincing much concern for the protection of property, the Constitution distinctly recognizes the preferred position which real estate has occupied in law for ages. *Property is bound up with every aspect of social life in a democracy as democracy is conceived in the Constitution.* The Constitution realizes the indispensable role which property, owned in reasonable quantities and used legitimately, plays in the stimulation to economic effort and the formation and growth of a solid social middle class that is said to be the bulwark of democracy and the backbone of every progressive and happy country.

a. *Need of Evidentiary Substantiation in Proper Suit*

Consequently, **the factual premises of the Executive Orders cannot simply be assumed. They will have to be duly established by adequate proof in each case, in a proper judicial proceeding, so that the recovery of the ill-gotten wealth may be validly and properly adjudged and consummated;** although there are some who maintain that the fact — that an immense fortune, and "vast resources of the government have been amassed by former President

Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad,” and they have resorted to all sorts of clever schemes and manipulations to disguise and hide their illicit acquisitions — is within the realm of judicial notice, being of so extensive notoriety as to dispense with proof thereof. **Be this as it may, the requirement of evidentiary substantiation has been expressly acknowledged, and the procedure to be followed explicitly laid down, in Executive Order No. 14.**

Accordingly, the Republic should furnish to the Sandiganbayan in proper judicial proceedings the competent evidence proving who were the close associates of President Marcos who had amassed assets and properties that would be rightly considered as *ill-gotten wealth*.

X X X X

As can be gleaned from the foregoing pronouncement, evidentiary substantiation of the allegations of how the wealth was illegally acquired and by whom was necessary. For that purpose, the mere holding of a position in the Marcos administration did not necessarily make the holder a close associate within the context of E.O. No.1. According to *Republic v. Migriño*,³⁵ the term *subordinate* as used in E.O. No. 1³⁶ and E.O. No. 2³⁷ referred to a person who enjoyed a close association with President Marcos and/or his wife similar to that of an immediate family member, relative, and close associate, or to that of a close relative, business associate, dummy, agent, or nominee. Indeed, a *prima facie* showing must be made to show that one unlawfully accumulated wealth by virtue of a close association or relation with President Marcos and/or his wife.³⁸ It would not suffice, then, that one served during the administration of President Marcos as a government official or employee.

The Republic particularly insists that Luz Bakunawa served as the Social Secretary or the Assistant Social Secretary of First Lady Marcos; and mentions several other circumstances that indicated her close relationship with the Marcoses, such as her assumption of office in the early part of the Marcos administration,³⁹ the accommodations extended to her during her various travels,⁴⁰ the fact that her close relationship with the Marcoses was of common knowledge among the Masbateños,⁴¹ and the negotiated contracts the Bakunawas entered into during the Marcos administration.⁴²

³⁵ G.R. No. 89483, August 30, 1990, 189 SCRA 289, 297-298.

³⁶ *Creating the Presidential Commission on Good Government* (February 28, 1986).

³⁷ *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* (March 12, 1986).

³⁸ *Supra* note 35.

³⁹ *Rollo*, p. 18.

⁴⁰ *Id.*

⁴¹ *Id.* at 19.

⁴² *Id.* at 21.

However, Luz Bakunawa maintains that she was not First Lady Marcos' Social Secretary but a mere member of the staff of the Social Secretary; and that the assets of the Bakunawas were honestly earned and acquired well within the legitimate income of their businesses.

We hold that the Sandiganbayan correctly ruled that the evidence of the Republic was able to establish, at best, that Luz Bakunawa had been an employee in Malacañang Palace during the Marcos administration, and did not establish her having a close relationship with the Marcoses, or her having abused her position or employment in order to amass the assets subject of this case. Consequently, Luz Bakunawa could not be considered a close associate or subordinate of the Marcoses within the context of E.O. No. 1 and E.O. No. 2.

The determination by the Sandiganbayan of the equiponderance or insufficiency of evidence involved its appreciation of the evidence. We cannot undo such determination unless the Republic makes a strong demonstration to us that the determination was whimsical or capricious.⁴³ Alas, the Republic did not make such demonstration. Its evidence could not sustain the belief that the Bakunawas had used their influence, or the Marcoses' influence in acquiring their properties. Nor did it prove that the ties or relationship between the Bakunawas and the Marcoses had been "similar to that of an immediate member of the family or a dummy."

On another important aspect, the evidence of the Republic was likewise wanting. The Sandiganbayan enumerated in its decision five activities in which the Bakunawas had acquired their ill-gotten wealth, namely: (a) land-grabbing and cattle-ranching; (b) engaging in government construction projects; (c) operating fishponds; (d) obtaining credit lines from government financial institutions; and (e) importing heavy equipment.⁴⁴ However, the decision dwelt only on land-grabbing and the construction projects for the reason that the Republic attempted to substantiate only those two activities. The Court is thus limited to the review of the findings on the two activities.

Anent land-grabbing, the records show that although the Bakunawas had ignored the summons from the Bureau of Forestry, and that the several persons occupying large tracts of land under permits from the Bureau of Forestry or under still-pending applications had been dispossessed thereof, the dispossessed persons whom the Republic presented as witnesses could not tell in court that the Bakunawas had employed the people who had fenced or occupied the lands in question. Such witnesses admitted that they did not put up much resistance against their forcible dispossession because

⁴³ *Municipality of Candijay, Bohol v. Court of Appeals*, G.R. No. 116702, December 28, 1995, 251 SCRA 530, 534.

⁴⁴ *Rollo*, pp. 75-76.

of their belief that the Bakunawas had been very influential and had enjoyed very close ties with the Marcoses. However, they did not show that they had at the time any direct contact or communication with the Bakunawas, which could only mean that they only surmised and suspected the participation of the Bakunawas in their dispossession. As such, the Republic's evidence in that regard could not be sufficient, for surmises and suspicions could not support any conclusion either that the Bakunawas had taken advantage of their close ties with the Marcoses in order to dispossess the affected witnesses, or that Luz Bakunawa had abused her influence arising from her close association with the Marcoses.

The Republic presented documents tending to prove that the dispossessed witnesses had retained claims to the affected properties,⁴⁵ and that the Bakunawas themselves had been issued pasture leases over the same areas.⁴⁶ Given that both the dispossessed witnesses and the Bakunawas held legal rights of possession respecting the same areas independently of each other, the Sandiganbayan did not err in ruling that "the plaintiff's evidence is not conclusive proof of the ill-gotten character of the lands in the possession of the defendants Bakunawas."⁴⁷ This is really a good reason for the Sandiganbayan to hold that the Republic had not preponderantly shown that the acts of dispossession and oppression had involved the improper use of her influence by Luz Bakunawa on account of her close association with the Marcoses.⁴⁸

Concerning the negotiated construction contracts, the Republic posits that the contracts had been entered into when Luz Bakunawa was a member of the Presidential Staff during the Marcos administration, laying heavy emphasis on the notations and handwritten instructions by President Marcos found on the written communications from Manuel Bakunawa to then DPWH Secretary Baltazar Aquino.

Yet, the Republic offered the negotiated contracts solely to prove that the Bakunawas had been incorporators or owners, or had held key positions in the corporations that entered into the contracts.⁴⁹ The Sandiganbayan correctly ruled, therefore, that the contracts could be considered and appreciated only for those stated purposes, not for the purpose of proving the irregularity of the contracts, opining as follows:

x x x. The documents appear to be public documents and are, therefore, considered *prima facie* evidence of the fact of their issuance and that they were signed by the persons whose signatures appear therein. It is, indeed, apparent on the face of the documents that government projects were awarded to the defendants Bakunawas through negotiated contracts,

⁴⁵ Id. at 61.

⁴⁶ Id. at 77.

⁴⁷ Id.

⁴⁸ Id. at 62.

⁴⁹ Id. at 79.

and that at least one was approved by then President Marcos himself. Outside of these, however, there can be no other facts that can be inferred from the aforesaid documents.⁵⁰

The Court upholds the Sandiganbayan. It was basic enough that the Sandiganbayan could not consider any evidence that was not formally offered; and could consider evidence only for the purposes it was specifically offered. Section 34, Rule 132 of the *Rules of Court* explicitly states:

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

The need to formally offer evidence by specifying the purpose of the offer cannot be overemphasized. This need is designed to meet the demand for due process by apprising the adverse party as well as the trial court on what evidence the court would soon be called upon to decide the litigation. The offer and purpose will also put the trial court in the position to determine which rules of evidence it shall apply in admitting or denying admission to the evidence being offered. According to *Union Bank of the Philippines v. Tiu*:⁵¹

x x x a formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. It has several functions: (1) to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence; (2) to allow opposing parties to examine the evidence and object to its admissibility; and (3) to facilitate review by the appellate court, which will not be required to review documents not previously scrutinized by the trial court. x x x.

Expounding on the office of the offer and statement of the purposes, the Court has cogently said in *Candido v. Court of Appeals*:⁵²

A document, or any article for that matter, is not evidence when it is simply marked for identification; it must be formally offered, and the opposing counsel given an opportunity to object to it or cross-examine the witness called upon to prove or identify it. A formal offer is necessary since judges are required to base their findings of fact and judgment only - and strictly - upon the evidence offered by the parties at the trial. To allow a party to attach any document to his pleading and then expect the court to consider it as evidence may draw unwarranted consequences. The opposing party will be deprived of his chance to examine the document and object to its admissibility. The appellate court will have difficulty

⁵⁰ Id. at 78.

⁵¹ G.R. No. 173090-91, September 7, 2011, 657 SCRA 86, 110-111, citing *Heirs of Pedro Pasag v. Parocha*, G.R. No. 155483, April 27, 2007, 522 SCRA 410, 416.

⁵² G.R. No. 107493, February 1, 1996, 253 SCRA 78, 82-83.

reviewing documents not previously scrutinized by the court below. The pertinent provisions of the Revised Rules of Court on the inclusion on appeal of documentary evidence or exhibits in the records cannot be stretched as to include such pleadings or documents not offered at the hearing of the case.

At any rate, the Court must point out that negotiated contracts are not *per se* illegal. A negotiated contract is one that is awarded on the basis of a direct agreement between the Government and the contractor, without going through the normal procurement process, like obtaining the prior approval from another authority, or a competitive bidding process. It is generally resorted to for convenience, or “when time is of the essence, or where there is a lack of qualified bidders or contractors, or where there is conclusive evidence that *greater economy* and *efficiency* would be achieved.”⁵³ The Court has upheld the validity of a negotiated contract made pursuant to law, like a negotiated contract entered into by a City Mayor pursuant to the then existing Local Government Code,⁵⁴ or a negotiated contract that eventually redounded to the benefit of the general public, even if there was no specific covering appropriation pursuant to COA rules,⁵⁵ or a negotiated contract that was made due to an emergency in the health sector,⁵⁶ or a negotiated contract for long overdue repair and renovation needed to provide better health services.⁵⁷

Absent evidence proving that the negotiated construction contracts had been irregularly entered into by the Bakunawas, or that the public had been thereby prejudiced, it is pointless for the Court to declare their invalidity. On the contrary, the Sandiganbayan correctly observed that the presumption of the validity of the contracts prevailed.⁵⁸

It is true that the recovery of ill-gotten wealth should be relentlessly pursued. But the pursuit should not be mindless as to be oppressive towards anyone. Due process requires that there be sufficient competent evidence of the asset being ill-gotten wealth, and of the person or persons charged with the illegal acquisition of ill-gotten wealth being a close associate or subordinate of the Marcoses who took advantage of such ties with the Marcoses to enrich themselves. In that effort, the Republic carries the heavy burden of proof, and must discharge such burden fully; otherwise, the effort would fail and fall.

⁵³ Section 4 of P.D. No. 1594 entitled *Prescribing Policies, Guidelines, Rules And Regulations For Government Infrastructure Contracts* (June 11, 1978).

⁵⁴ *City of Quezon v. Lexber Incorporated*, G.R. No. 141616, March 15, 2001, 354 SCRA 493.

⁵⁵ *Royal Trust Construction v. COA*, G.R. No. 84202, November 23, 1988 (Resolution of the Court *en banc*), per *Eslao v. Commission on Audit*, G.R. No. 89745 April 8, 1991, 195 SCRA 730, 738.

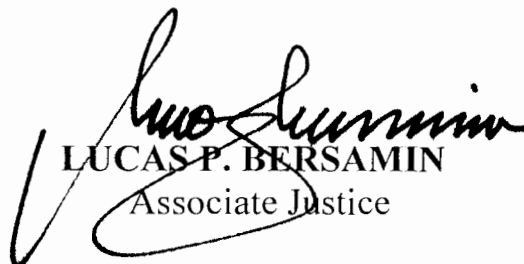
⁵⁶ *Baylon v. Ombudsman*, G.R. No. 142738, December 14, 2001, 372 SCRA 437.

⁵⁷ *National Center for Mental Health Management v. Commission on Audit*, G.R. No. 114864, December 6, 1996, 265 SCRA 390.

⁵⁸ *Rollo*, p. 80.


WHEREFORE, we **DENY** the petition for review on *certiorari* for its lack of merit; and **AFFIRM** the decision rendered on April 10, 2002, without pronouncements on costs of suit.

SO ORDERED.




LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice



ROBERTO A. ABAD
Associate Justice




JOSE CATRAL MENDOZA
Associate Justice



BIENVENIDO L. REYES
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 case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice