



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

HERNANDO B. PEREZ, G.R. No. 229394
ROSARIO S. PEREZ AND
RAMON C. ARCEO, JR.,
Petitioners,

-versus-

SANDIGANBAYAN AND
REPUBLIC OF THE
PHILIPPINES,
Respondents.

X-----X
ERNEST DE LEON ESCALER,
Petitioner,

X-----X
G.R. No. 230186

Present:

-versus-

LEONEN, J., Chairperson,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., JJ.

SANDIGANBAYAN [SPECIAL
THIRD DIVISION] AND
REPUBLIC OF THE
PHILIPPINES,
Respondents.

Promulgated:

JAN 23 2023

X-----X

DECISION

LEONEN, J.:

Delay, with respect to the constitutional right to the speedy disposition

of cases, is not determined merely through mathematical reckoning. It requires scrutiny of the attendant facts and circumstances of the case.¹

We resolve two consolidated Petitions under Rule 65 with applications for injunctive relief filed by Hernando B. Perez, Rosario S. Perez, and Ramon C. Arceo, Jr. (collectively, "Perez et al.") in G.R. No. 229394,² and Ernest De Leon Escaler (Escaler) in G.R. No. 230186.³ They seek to nullify pertinent issuances of the Sandiganbayan relative to the Petition for Forfeiture of Properties under Republic Act No. 1379 filed against them by the Republic of the Philippines through the Office of the Ombudsman.⁴

In *G.R. No. 229394*, Perez et al. claims that the Sandiganbayan gravely abused its discretion in issuing the following Order and Resolutions in SB-14-CVL-0002:

- (1) The November 25, 2014 Order⁵ of the Third Division which, among others, required Perez et al. and Escaler to file their Answer to the Petition for Forfeiture of Properties under Republic Act No. 1379 filed by the Republic.
- (2) The July 8, 2015 Resolution⁶ of the Special Third Division which remanded the case to the Office of the Ombudsman for the conduct of the necessary proceedings in conformity with the January 5, 2007 directive of Ombudsman Ma. Merceditas N. Gutierrez with regard to the November 6, 2006 Joint Resolution.
- (3) The April 18, 2016 Resolution⁷ of the Special Third Division which granted all the parties' motions for reconsideration of the July 8, 2015 Resolution but denied the *Motion to Dismiss with Opposition to the Application for Issuance of a Writ of Preliminary Attachment* filed by Escaler and adopted by Perez et al.
- (4) The January 17, 2017 Resolution⁸ of the Special Third Division

¹ *Cagang v. Sandiganbayan, Fifth Division*, 837 Phil. 815 (2018) [Per J. Leonen, *En Banc*].

² *Rollo* (G.R. No. 229394), pp. 3–65.

³ *Rollo* (G.R. No. 230186), pp. 3–84.

⁴ 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 therefore.

⁵ *Rollo* (G.R. No. 229394), p. 67. The November 25, 2014 Order was issued by the Third Division of the Sandiganbayan composed of Presiding Justice Amparo M. Cabotaje-Tang (Chair) and Associate Justices Samuel R. Martires and Ma. Theresa Dolores C. Gomez-Estoesta.

⁶ *Id.* at 69–75. The July 8, 2015 Resolution was penned by Presiding Justice Amparo M. Cabotaje-Tang (Chair) and concurred in by Associate Justices Alex L. Quiroz and Maria Cristina J. Cornejo of the Special Third Division of the Sandiganbayan.

⁷ *Id.* at 78–111. The April 18, 2016 Resolution was penned by Presiding Justice Amparo M. Cabotaje-Tang (Chair) and concurred in by Associate Justices Maria Cristina J. Cornejo and Ma. Theresa Dolores C. Gomez-Estoesta of the Special Third Division of the Sandiganbayan. Associate Justices Alex L. Quiroz and Geraldine Faith A. Econg dissented.

⁸ *Id.* at 130–180. The January 17, 2017 Resolution was penned by Presiding Justice Amparo M. Cabotaje-Tang (Chair) and concurred in by Associate Justices Ma. Theresa Dolores C. Gomez-Estoesta and Karl

which denied Perez et al.'s *Motion for Issuance of Resolution Nunc Pro Tunc, Motion to Reconsider the April 18, 2016 Resolution, and Urgent Manifestation and Motion*, as well as Escaler's reconsideration of the denial of his Motion to Dismiss.

- (5) The May 22, 2018 Resolution⁹ of the Special Third Division which, among others, denied Perez et al.'s motion for reconsideration of the December 4, 2017 Resolution granting the Republic's motion to set the case for pre-trial.

In G.R. No. 230186, Escaler assails the Resolutions of the Sandiganbayan dated July 8, 2015, April 18, 2016, and January 17, 2017.

This case is an offshoot of *People v. Sandiganbayan*,¹⁰ decided by this Court on December 11, 2013. Thus, we adopt the pertinent facts therein as summarized below.

In response to Bulacan Congressman Wilfrido Villarama's (Villarama) privilege speech on November 12, 2002 about acts of bribery committed by a high-ranking public official whom he referred to as the "2 Million Dollar Man,"¹¹ the Office of the President ordered the Presidential Anti-Graft Commission to conduct an inquiry on the controversy.

The Commission invited Villarama, Congressman Mark Jimenez (Jimenez), Senator Panfilo Lacson, and then Secretary of Justice Hernando Perez (Perez) to provide information on the issue. On November 25, 2002, through a privilege speech delivered in the House of Representatives, Jimenez confirmed Villarama's disclosure and accused Perez of extorting from him US\$ 2 million in February 2001.¹²

Acting on the exposè, then Ombudsman Simeon Marcelo (Ombudsman Marcelo) asked the Commission to submit pertinent documents and Jimenez to submit a sworn statement. On December 23, 2002, Jimenez submitted his complaint-affidavit which was initially docketed as CPL-C-02-1992. On the same day, the Office of the Ombudsman's Special Action Team of the Fact Finding and Intelligence Research Office referred the complaint to the Evaluation and Preliminary Investigation Bureau, and the Administrative Adjudication Board.¹³

B. Miranda of the Special Third Division of the Sandiganbayan. Associate Justices Alex L. Quiroz and Geraldine Faith A. Econg dissented.

⁹ Id. at 1747-1757. The May 22, 2018 Resolution was penned by Presiding Justice Amparo M. Cabotaje-Tang (Chair) and concurred into by Associate Justices Bernelito R. Fernandez and Sarah Jane T. Fernandez of the Special Third Division of the Sandiganbayan.

¹⁰ 723 Phil. 444 (2013) [Per J. Bersamin, First Division].

¹¹ Id. at 448.

¹² Id.

¹³ Id. at 449.

The criminal case pertinent to Jimenez's complaint-affidavit was re-docketed as OMB-C-C-02-0857L in which the respondents were Perez, Escaler, and Ramon C. Arceo, Jr. (Arceo). The administrative case where Perez is the only respondent was re-docketed as OMB-C-A-02-0631-L.¹⁴

On January 2, 2003, a Special Panel was created to assess and investigate on CPL-C-02-1992. It recommended referring the complaint to the Fact Finding and Intelligence Research Office for a complete investigation which was approved by Ombudsman Marcelo on January 15, 2003.¹⁵

On June 4, 2003, the Office of the Ombudsman received the supplemental affidavit of Jimenez. On July 3, 2003, Perez sought the dismissal of the complaint for lack of probable cause.¹⁶

On August 22, 2005, Ombudsman Marcelo formed a new Special Panel to evaluate CPL-C-02-1992 replacing the Special Panel created on January 2, 2003.¹⁷

On November 14, 2005, the Field Investigation Office completed its fact-finding investigation and filed complaints against the following:

- A. Former Justice Secretary Hernando B. Perez, Rosario S. Perez, Ernesto L. Escaler, Ramon C. Arceo and John Does for violation of Section 3 (b) of [Republic Act No. 3019];
- B. Former Justice Secretary Hernando B. Perez for violation of the following: Section 8 in relation to Section 11 of [Republic Act No. 6713], Article 183 (Perjury) of the Revised Penal Code and Article 171, par. 4 (Falsification) of the [Revised Penal Code]; and
- C. *Former Justice Secretary Hernando B. Perez, Rosario S. Perez, Ernest L. Escaler, Ramon C. Arceo and John Does for violation of the provisions of [Republic Act No. 1379].*¹⁸ (Emphasis supplied, citation omitted)

On November 23, 2005, the Special Panel directed Perez et al. and Escaler to submit their counter-affidavits in the following criminal cases:¹⁹ (1) OMB-C-C-02-0857-L;²⁰ (2) OMB-C-C-05-0633-K;²¹ (3) OMB-C-C-05-

¹⁴ Id.

¹⁵ Id. at 449.

¹⁶ Id. at 450.

¹⁷ Id.

¹⁸ Id. at 450-4511.

¹⁹ Id.

²⁰ Entitled *Mario B. Crespo a.k.a. Mark Jimenez v. Hernando B. Perez, Ernest L. Escaler, Ramon Arceo.*

²¹ Entitled *Field Investigation Office v. Hernando B. Perez, Ernest L. Escaler, Ramon Arceo* for Violation of Section 8 in relation to Section 11 of Republic Act No. 6713, Perjury (Art. 183, Revised Penal Code), and Falsification (Art. 171, par. 4, Revised Penal Code).

0634-K;²² and (4) OMB-C-C-05-0635-K.²³ In a separate Order, the Special Panel asked Perez to file his counter-affidavit in the administrative case.²⁴

On December 7, 2005, PAMO²⁵ Office Order No. 01-2003, series of 2003, was superseded by PAMO Office Order No. 22, series of 2005 issued by Assistant Ombudsman Pelagio Apostol (Assistant Ombudsman Apostol) which formed a new set of investigators to aid in the preliminary investigation and administrative adjudication of the cases.²⁶

On December 13, 2005, Perez et al. submitted their joint counter-affidavit. Escaler, instead of filing his counter-affidavit, moved to disqualify the Office of the Ombudsman from the conduct of preliminary investigation and to direct the Special Panel to transfer the investigation to the Department of Justice.²⁷

On December 29, 2005, the Special Panel denied Escaler's motion to disqualify the Office of the Ombudsman and ordered him to file his counter-affidavit.²⁸

On May 25, 2006, the Special Panel denied Escaler's move to reconsider its December 29, 2005 Order and gave him five days within which to submit his counter-affidavit. After Escaler failed to do so, the preliminary investigation was deemed terminated.²⁹

On November 6, 2006, the Special Panel issued a Joint Resolution³⁰ finding probable cause against Perez et al. and Escaler, the dispositive portion of which reads:

WHEREFORE, finding probable cause, let criminal Informations be filed against the following respondents:

- 1) Former Secretary Hernando Benito Perez; Rosario Salvador Perez, Ernest L. Escaler; Ramon Antonio C. Arceo, Jr., for Extortion (Robbery), defined and punishable under paragraph 5 of Article 294 in relation to Article 293 of the Revised Penal Code;
- 2) Former Secretary Hernando Benito Perez; Rosario Salvador Perez,

²² Entitled *Field Investigation Office v. Hernando B. Perez, Rosario S. Perez, Ernest L. Escaler, Ramon Arceo* for Violation of Section 3(b) of Republic Act No. 3019.

²³ Entitled *Field Investigation Office v. Hernando B. Perez, Rosario S. Perez* for Forfeiture (Republic Act No. 1379).

²⁴ *People v. Sandiganbayan*, 723 Phil. 444, 451 (2013) [Per J. Bersamin, First Division].

²⁵ Preliminary Investigation, Administrative Adjudication and Monitoring Office.

²⁶ *People v. Sandiganbayan*, 723 Phil. 444, 451 (2013) [Per J. Bersamin, First Division].

²⁷ Id. at 452.

²⁸ Id.

²⁹ Id. at 453.

³⁰ *Rollo* (G.R. No. 229394), pp. 821–881. The Joint Resolution was signed by the Members of the Special Panel namely ASP III Orlando I. Ines, PIAB-D Acting Director Adoracion Agbada, PIAB-B Director Mary Susan Guillermo, and its Chair, PIAB-A Director Jose T. De Jesus, Jr.

Ernest L. Escaler; Ramon Antonio C. Arceo, Jr., for violation of Section 3 (b) of Republic Act [No.] 3019 (Anti-Graft and Corrupt Practices Act, as amended);

- 3) Former Secretary Hernando Benito Perez for Falsification of Public Documents defined and punishable under paragraph (4), Article 171 of the Revised Penal Code;
- 4) Former Secretary Hernando Benito Perez for violation of Section 7 of Republic Act [No.] 3019 in relation to Section 8 of Republic Act [No.] 6713.

Additionally, in consonance with Section 2 of Republic Act [No.] 1379, let a Petition for Forfeiture of Unlawfully Acquired Property under Republic Act [No.] 1379 be filed against Former Secretary Hernando Benito Perez; Rosario Salvador Perez, Ernest L. Escaler and Ramon Antonio C. Arceo, Jr. after the conduct of the general elections in May 2007.

SO RESOLVED.³¹ (Emphasis supplied)

On November 7, 2006, Assistant Ombudsman Apostol recommended the approval of the Joint Resolution.³²

On January 5, 2007, Ombudsman Ma. Merceditas Gutierrez (Ombudsman Gutierrez) approved the Special Panel's recommendations with specific notations:

Approved: Except the recommendation on the institution of forfeiture proceedings which should be referred to another panel for further study.³³

On April 18, 2008, the Office of the Ombudsman filed the following Informations³⁴ before the Sandiganbayan:

1. *for violation of Section 3 (b) of [Republic Act No. 3019], as amended,*³⁵
2. *for Robbery (Art. 293, in relation to Art. 294, Revised Penal Code);*

³¹ Id. at 877–878.

³² Id. at 880.

³³ Id.

³⁴ *People v. Sandiganbayan*, 723 Phil. 444, 456 (2013) [Per J. Bersamin, First Division]. See also *Rollo* (G.R. No. 229394), pp. 450–458. The charge for falsification was docketed as SB-08-CRM-0267 while the charge for violation of Republic Act No. 6713 was docketed as SB-08-CRM-0268 (*rollo*, p. 455). The Sandiganbayan, on June 15, 2011, dismissed SB-08-CRM-0268 while the other case was directed to proceed. On May 16, 2014, the Fifth Division of the Sandiganbayan granted the Demurrer to Evidence filed by Perez and dismissed the case in SB-08-CRM-0267 (*Rollo*, (G.R. No.229394) pp. 1494–1513).

³⁵ Republic Act No. 3019 (1960), Anti-Graft and Corrupt Practices Act, sec. 3(b) provides:
SECTION 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law.

3. for Falsification of Public/Official Document under Art. 171 of the Revised Penal Code; and
4. for violation of Section 7, [Republic Act No. 3019],³⁶ as amended in relation to Section 8,³⁷ [Republic Act No. 6713]. (Emphasis supplied, citation omitted)

The Information pertinent to the violation of Section 3(b) of Republic Act No. 3019 was docketed as Criminal Case No. SB-08-CRM-0265. The charging portion of the Information reads:

That during the month of February, 2001 and sometime prior or subsequent thereto in the City of Makati, Philippines, and within the jurisdiction of this Honorable Court, accused Hernando B. Perez, a high ranking public officer, being then the Secretary of the Department of Justice, while in the performance of his official function, committing the offense in relation to his office and taking advantage thereof, conspiring, confabulating and confederating with accused Ernest L. Escaler, Rosario S. Perez and Ramon C. Arceo, all private individuals, did then and there wilfully, unlawfully and criminally request and demand the amount of US TWO MILLION DOLLARS (\$2,000,000.00) for himself and/or other persons from Mark Jimenez a.k.a. Mario B. Crespo, and thereafter succeeded in receiving from the latter the sum of US\$1,999,965.00 in consideration of accused Hernando S. Perez's desisting from pressuring Mark Jimenez to execute affidavits implicating target personalities involved in the plunder case against former President Joseph 'Erap' Estrada and in connection with the pending application of Mark Jimenez for admission into the Witness Protection Program of the government, over which transaction accused Hernando S. Perez had to intervene in his official capacity under the law, to the damage and prejudice of Mark Jimenez.

CONTRARY TO LAW.³⁸ (Citation omitted)

³⁶ Republic Act No. 3019 (1960), sec. 7 provides:

SECTION 7. *Statement of assets and liabilities.* — Every public officer, within thirty days after the approval of this Act or after assuming office, and within the month of January of every other year thereafter, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of a Head of Department or chief of an independent office, with the Office of the President, or in the case of members of the Congress and the officials and employees thereof, with the Office of the Secretary of the corresponding House, a true detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year: *Provided*, That public officers assuming office less than two months before the end of the calendar year, may file their first statements in the following months of January.

³⁷ Republic Act No. 6713 (1989), *Code of Conduct and Ethical Standards for Public Officials and Employees*, sec. 8 provides:

SECTION 8. *Statements and Disclosure.* — Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

(A) *Statements of Assets and Liabilities and Financial Disclosure.* — All public officials and employees, except those who serve in an honorary capacity, laborers and casual or temporary workers, shall file under oath their Statement of Assets, Liabilities and Net Worth and a Disclosure of Business Interests and Financial Connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households.

³⁸ *People v. Sandiganbayan*, 723 Phil. 444, 456–457 (2013) [Per J. Bersamin, First Division].

On the other hand, the Information for robbery under Article 293 in relation to Article 294 of the Revised Penal Code was docketed as Criminal Case No. SB-08-CRM-0266.³⁹

On November 13, 2008, the First Division of the Sandiganbayan granted Perez et al. and Escaler's motions for reconsideration of its earlier Resolution denying their motions to quash the Information in Criminal Case No. SB-08-CRM-0265. In ruling for Perez et al. and Escaler, it held that "[i]f the facts in the Information do not constitute an offense, the complaint or information should be quashed[.]"⁴⁰ It held that Section 3(b) of Republic Act No. 3019 is limited to contracts "involving monetary consideration where the public officer has authority to intervene under the law."⁴¹ Applying pertinent jurisprudence, it ruled that the supposed desistance of Perez and even Jimenez's application to the Witness Protection Program cannot be considered as the "contract" or "transaction" referred to under Section 3(b). The dispositive portion of the ruling reads:

WHEREFORE, the instant Motions for Reconsideration of the herein accused are resolved accordingly and the subject Information for violation of Section 3 (b) of R.A. 3019, as amended, is hereby **QUASHED**.

SO ORDERED.⁴² (Emphasis in the original)

With the denial of the State's motion for reconsideration, the Office of the Special Prosecutor filed a Petition for *Certiorari* before this Court questioning the Sandiganbayan's quashal of the Information in Criminal Case No. SB-08-CRM-0265.⁴³

Meanwhile, on November 20, 2008, the Second Division of the Sandiganbayan also granted Perez et al. and Escaler's motions for reconsideration of its earlier Resolution denying their motions to quash in Criminal Case No. SB-08-CRM-0266⁴⁴ on the ground that their right to speedy disposition of the case was violated.⁴⁵ With the similar denial of its reconsideration on the charge of robbery, the State also assailed the Sandiganbayan's quashal of the Information in Criminal Case No. SB-08-CRM-0266 before this Court.⁴⁶

The petitions instituted by the State assailing the dismissal of Criminal Case Nos. SB-08-CRM-0265 and SB-08-CRM-0266 were consolidated and

³⁹ Id. at 467.

⁴⁰ Id. at 458.

⁴¹ Id.

⁴² Id. at 461.

⁴³ Id. at 466.

⁴⁴ Id. at 467.

⁴⁵ Id. at 469.

⁴⁶ Id. at 477.

resolved by this Court in *People v. Sandiganbayan*⁴⁷ on December 11, 2013.

In *People v. Sandiganbayan*, this Court dismissed the petitions for failing to show grave abuse of discretion.⁴⁸ Aside from affirming the restrictive interpretation of the term “*transaction*” under Section 3(b) of Republic Act No. 3019,⁴⁹ this Court also upheld that there was inordinate delay on the part of the Ombudsman as to the case for robbery in SB-08-CRM-0266.⁵⁰ This Court explained that the delay of more than five years in investigating the allegations and ascertaining whether a criminal charge will be filed with the Sandiganbayan constitutes an outright violation of the rights of the accused to the speedy disposition of the case.⁵¹

Pertinently, while *People v. Sandiganbayan* was pending, the Field Investigation Office filed a complaint⁵² against Perez and Rosario Perez (Rosario) on September 16, 2013⁵³ before the Preliminary Investigation and Monitoring Office, Office of the Ombudsman for forfeiture of unlawfully acquired properties under Republic Act No. 1379⁵⁴ in relation to Section 8⁵⁵ of Republic Act No. 3019.⁵⁶ Docketed as OMB-C-F-13-0013,⁵⁷ the controversy emanated from their acquired properties in 1995 to 1997 and 2001 which, allegedly, were beyond Perez’s annual income⁵⁸ as Congressman and eventually as Secretary of Justice.⁵⁹ Perez served as a congressman from July 1, 1987 to February 9, 1998 and was later appointed as the Secretary of the Department of Justice on July 1, 2001 until his resignation on January 1, 2003. Meanwhile, Rosario worked as the Treasurer of the University of Batangas.⁶⁰

On the assumption that the properties were unlawfully acquired, the

⁴⁷ 723 Phil. 444 (2013) [Per J. Bersamin, First Division].

⁴⁸ Id. at 482.

⁴⁹ Id. at 485.

⁵⁰ Id. at 488.

⁵¹ Id. at 490-491.

⁵² *Rollo* (G.R. No. 229394), pp. 197–201 & 222–223. The April 24, 2013 complaint in OMB-C-F-13-0013 was signed by Graft Investigation and Prosecution Officer I Marie Beth S. Almero (for the General Investigation Bureau B Field Investigation Office).

⁵³ Id. at 197.

⁵⁴ 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.

⁵⁵ Republic Act No. 3019, sec. 8 provides:

SECTION 8. *Dismissal due to unexplained wealth.* — If in accordance with the provisions of Republic Act Numbered One thousand three hundred seventy-nine, a public official has been found to have acquired during his incumbency, whether in his name or in the name of other persons, an amount of property and/or money manifestly out of proportion to his salary and to his other lawful income, that fact shall be a ground for dismissal or removal. Properties in the name of the spouse and unmarried children of such public official may be taken into consideration, when their acquisition through legitimate means cannot be satisfactorily shown. Bank deposits shall be taken into consideration in the enforcement of this section, notwithstanding any provision of law to the contrary.

⁵⁶ *Rollo* (G.R. No. 229394), p. 197.

⁵⁷ Id. at 424.

⁵⁸ Id. at 201.

⁵⁹ Id. at 197.

⁶⁰ However, in the complaint filed by the Republic, docketed as SB-14-CVL-0002, for forfeiture of Unlawfully Acquired Properties under Republic Act No. 1379 before the Sandiganbayan, Third Division, Perez was appointed as Secretary of Justice on January 21, 2001, and had assumed his duties on January 23, 2001 until his resignation on January 2, 2003 (See *rollo* (G.R. No. 229394), p. 526).

Field Investigation Office sought the conduct of the necessary preliminary forfeiture proceedings insofar as their unexplained wealth of PHP 35, 835,392.67 in the years 1995 to 2001 are concerned.⁶¹ The pertinent portions of the Complaint provide:

15. Section 2 of Republic Act No. 1379 provides that “(w)henever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his [or her] salary as such public officer or employee and to his [or her] other lawful income and the income from legitimately acquired property, said property shall be presumed prima facie to have been unlawfully acquired.”⁶²
17. The first element has been established. Perez served in the government as Congressman and subsequently as Justice Secretary during the years covered in this investigation.
18. On the second requirement, Perez acquired considerable amount of properties during his incumbency . . . comprising of a house built in 1995 and other personal properties. It must be noted that the ownership of these properties was declared by Perez himself in his SALNs.
19. Likewise, the third element has been established as can be gleaned from Table 8 showing Perez’s acquired properties being manifestly out of proportion to his respective income in the following years: CY 1995 in the amount of ₱22,719,397.31 and in CY 2001 amounting to ₱13,115,995.36.
20. *Having met the legal requirements for [Republic Act No. 1379], the prima facie presumption that the total amount of ₱ 35, 835,392.67 worth of properties had been unlawfully acquired in the years 1995 and 2001 was established. The burden of proof is on Perez to dispute this presumption and to show by clear and convincing evidence that the amount of ₱ 35, 835,392.67 was lawfully acquired and that he and his wife had other legitimate sources of income.*⁶³ (Emphasis supplied)

Pursuant to the Order of the Ombudsman dated October 9, 2013,⁶⁴ Perez and Rosario filed their Joint Counter-Affidavit⁶⁵ on May 6, 2014. Aside from answering the specific allegations in the complaint relating to their supposed unexplained wealth,⁶⁶ they also associated this action with the cases previously filed against them but eventually dismissed by the Sandiganbayan, as affirmed by this Court in *People v. Sandiganbayan*.⁶⁷

⁶¹ Rollo (G.R. No. 229394), pp. 222–223.

⁶² Id. at 201.

⁶³ Id. at 222.

⁶⁴ Id. at 424–425. The case is captioned as: *Field Investigation Office v. Hernando Benito Perez and Rosario Salvador Perez*.

⁶⁵ Id. at 426–449.

⁶⁶ Id. at 441–447.

⁶⁷ Id. at 433.

On October 27, 2014, the Office of the Ombudsman issued a Resolution⁶⁸ dismissing the complaint in OMB-C-F-13-0013 and ruling that the *prima facie* presumption of unlawful acquisition under Republic Act No. 1379 was plausibly overthrown by Perez and Rosario.⁶⁹ However, it explained that Perez and Rosario were mistaken in associating the action with the Sandiganbayan cases as those originating from the Sworn Statement of Jimenez, while the current complaint revolves on their Statements of Assets, Liabilities and Net worth from 1995 to 2000. The Ombudsman held that the conclusiveness of judgment in the Sandiganbayan cases cannot be applied because “nowhere can it be deduced that the allegations of the complaint refer in any manner to the alleged extorted amount.”⁷⁰ Moreover, the issue raised as to inordinate delay lacks merit as it was based on a misplaced assumption that the complaint was an offshoot of the Sandiganbayan cases.⁷¹

On November 14, 2014, the Republic, represented by the Office of the Ombudsman, filed a Petition⁷² for Forfeiture of Unlawfully Acquired Properties under Republic Act No. 1379 (with Verified Urgent Ex Parte Application for the Issuance of a Writ of a Preliminary Attachment) against Perez et al. and Escaler before the Sandiganbayan. After conducting the necessary inquiry analogous to a preliminary investigation in criminal cases, the Ombudsman found a *prima facie* case on the existence of acquisitions manifestly disproportionate to Perez’s salary as a public officer and to his legitimate income. This case, docketed as SB-14-CVL-0002, emanated from their supposed extortion of US\$ 2 million from Jimenez.⁷³

The Republic alleged that after heeding Escaler’s instructions on how the money will be transferred, the Trade and Commerce Bank based in Cayman Islands issued a confirmation receipt of US\$ 1,999,965.00 (net of bank charges) by Coutts Bank, Hongkong, on February 23, 2001, in favor of beneficiary Account No. H013706, later found to be under Escaler’s name.⁷⁴ A series of money transfers from that account made in favor of Perez et. al followed:⁷⁵

24. Account No. H013706 transferred funds in the total amount of US\$ 1.7 [m]illion to Account Nos 338 118 and/or 348 118 at EFG Private Bank AG; US\$200,000.00 to Account 243-69772 at Citi Bank Manila; and [i]ssued/funded US\$ 250,000.00 Bank Draft in favor of responent Ramon C. Arceo, Jr.:

⁶⁸ *Rollo* (G.R. No. 229394), pp. 510–523.

⁶⁹ *Id.* at 522.

⁷⁰ *Id.* at 514.

⁷¹ *Id.* at 513–514.

⁷² *Id.* at 524–563.

Signed by then Ombudsman Conchita Carpio-Morales and Officer-in-Charge of the Prosecution, Information, Evaluation and Monitoring Services Mary Susan S. Guillermo for the Republic of the Philippines.

⁷³ *Id.* at 526–527.

⁷⁴ *Id.* at 527–528.

⁷⁵ *Id.* at 528–529.

- a. On March 06, 2001, the amount of US\$ 1,000,000.00 was debited from Account No. H013706 and was transferred to Account No. 338 118. This transaction is supported by an instruction letter of respondent Ernest DL. Escaler ordering the bank to transfer US\$ 1,000,000.00 to Account No. 348 118[.]
 - b. On 23 May 2001, the following transactions involving Account No. H013706 based on instructions of respondent Ernest DL. Escaler . . . occurred:
 - b.1 US\$ 250,000.00 were debited by the issuance of a Bank Draft in favor of respondent Ramon C. Arceo, Jr.[:;]
 - b.2 US\$ 200,000.00 were debited and the same was transferred to Account 243-69772 maintained by respondent Ernest DL. Escaler at Citibank, Manila[:;]
 - b.3 US\$ 700,000.00 were debited and transferred to Account No. 348 118 at EFG Private Bank, Geneva, Switzerland[.]
25. Respondent Hernando B. Perez, Rosario S. Perez and Ramon Antonio Arceo, Jr. are identified as the owners of Account Nos. []338 118 and/or 348 118, the recipient of a total amount of US\$1.7 Million . . . from respondent Ernest DL[.] Escaler's Account No. H013706 in Coutts Bank, Hongkong[.]⁷⁶

The Republic argued that Perez failed to disclose his financial interest in the US\$ 1,700,000.00 transferred to their foreign accounts in his 2001 and 2002 Statements of Assets, Liabilities, and Net Worth. Since the acquired monies or properties were manifestly disproportionate to Perez's salary and other lawful income during his incumbency as a public officer, the Republic claimed that such properties, amounting to approximately US\$ 2 million, must be subjected to forfeiture in favor of the government.⁷⁷

On November 25, 2014, the Sandiganbayan directed Perez et al. and Escaler to file their Answer and "to show cause why the amounts and properties described in the petition should not be confiscated and declared properties of the State."⁷⁸

On February 3, 2015, Perez et al. filed their Answer.⁷⁹ Among other things, they claimed that they were never informed of the constitution of a special panel or of any proceedings relevant to the forfeiture charge. The Perez spouses claim that the inquiry for forfeiture was OMB-C-F-13-0013 and since its validity is still in question, the present petition is allegedly barred by *litis pendencia*,⁸⁰ and the principle against multiplicity of suits.⁸¹ Moreover, they claim that the Republic's narration of antecedents was baseless and barred by *res judicata* in view of *People v. Sandiganbayan*.⁸²

⁷⁶ Id. at 529-530.

⁷⁷ Id. at 534-535.

⁷⁸ Id. at 67.

⁷⁹ Id. at 1116-1136.

⁸⁰ Id. at 1119.

⁸¹ Id. at 1127.

⁸² Id. at 1119.

As special defense, Perez et al. claimed that the petition for forfeiture did not state any cause of action. Even if it did, it is still barred for violating their constitutional right to the speedy disposition of their case⁸³ following *People v. Sandiganbayan*:

- (a) The filing of a case of forfeiture against the answering respondents was initially recommended by the Special Panel to the Ombudsman in its Joint Resolution in OMB-C-C-02-0857-L, OMB-C-C-05-0633-K, OMB-C-C-05-064-K and OMB-C-C-05635-K . . . on November 6, 2006[.]
- (b) The then Ombudsman Merceditas-Gutierrez approved the resolution on January 5, 2007, but with respect to the filing of a case for forfeiture ruled:

“Approved: Except the recommendation on the institution of forfeiture proceedings which should be referred to another panel for further study.”

- (c) From January 5, 2007, until the filing of the instant petition, the answering respondent never heard from either the Office of the Ombudsman or the “other panel” ordered constituted by Ombudsman Gutierrez until service upon them of the summons and copy of the petition on January 23, 2015 or for the period of eight (8) years. Reckoned from the filing of the complaint by Mark Jimenez on December 23, 2002 until January 23, 2015 which is a span of twelve (12) years.

The aggregate time spent for filing of the instant petition at this time constitutes inordinate and oppressive delay, offensive to Article III, Section 16 of the Constitution, hence, in light of *People of the Philippines vs. Sandiganbayan, et al.* and thus the petition does not state a valid cause of action against the answering respondents.⁸⁴ (Citation omitted)

They insist that the petition for forfeiture should be dismissed due to the developments in the cases that emanated from Jimenez’s Complaint filed on December 23, 2002 which did not mention any forfeiture. As a civil proceeding which originated from the alleged crimes, “the non-assertion thereof in all and any of the dismissed criminal cases would now bar the [Republic] from instituting the instant petition.”⁸⁵

On February 6, 2015, Escaler filed a Motion to Dismiss with Opposition to the Application for Issuance of a Writ of Preliminary Attachment.⁸⁶ Escaler argued that the petition failed to state a cause of action against him as there existed no allegation that he unlawfully acquired properties as a public officer.

⁸³ Id. at 1120.

⁸⁴ Id. at 1123–1124.

⁸⁵ Id. at 1131.

⁸⁶ Id. at 1141–1168.

He also pointed out that the conditions precedent for filing a petition for forfeiture under Republic Act No. 1379 have not been complied with.⁸⁷

Moreover, he claimed that the petition was barred by a prior judgment. He alleged that “the criminal action and the corresponding civil action for the recovery of civil liability arising from the offense charged shall at all times be simultaneously instituted with, and jointly determined in, the same proceeding by the Sandiganbayan, the dismissal of the [r]obbery [c]ase naturally and necessarily carried with it the dismissal of the civil aspect for the recovery of the amount of US\$ 2 million.”⁸⁸ He added that the inordinate delay in filing the petition warranted dismissal for violating his right to due process and to speedy disposition of the case.⁸⁹

On February 17, 2015, the Special Prosecutor opposed Escaler’s motion to dismiss, raising the following counter-arguments:

1. Respondent Escaler is an indispensable party to this case under Section 7, Rule 3 of the Rules of Court; hence, he should be impleaded as a respondent so that a final determination can be had on this action.
2. The Office of the Ombudsman is empowered to investigate and initiate the proper action for the recovery of ill-gotten and/or unexplained wealth amassed after February 25, 1986 and the prosecution of the parties involved therein pursuant to Section 15 of Republic Act No. 6770;
3. Contrary to respondent Escaler’s assertion, the Office of the Ombudsman conducted an inquiry similar to a preliminary investigation where the issue of the forfeiture of the subject property was passed upon prior to the filing of the present petition in Court;
4. The dismissal of the criminal case for robbery against the herein respondents does not carry with it the dismissal of the civil aspect for the recovery of the [US\$ 2,000,000.00] because this petition is directed against the property of the respondents and not a civil action arising out of a criminal action; and
5. Respondent Escaler’s invocation of a violation of his right to speedy disposition of his cases does not warrant the dismissal of this case because the “1987 Constitution [which] specifically provides that the right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches or estoppel.”⁹⁰

On February 20, 2015, Escaler filed his Reply to the Office of the Special Prosecutor’s Comment/Opposition.⁹¹ On March 30, 2015, Perez et al.

⁸⁷ Id. at 1146.

⁸⁸ Id. at 1158.

⁸⁹ Id. at 1158.

⁹⁰ Id. at 70–71.

⁹¹ Id. at 1235–1250

filed a Manifestation that they were adopting Escaler's Motion to Dismiss.⁹²

On July 8, 2015, the Special Third Division of the Sandiganbayan issued a Resolution⁹³ penned by Presiding Justice Amparo Cabotaje-Tang and concurred in by Associate Justices Alex Quiroz and Maria Cristina Cornejo.⁹⁴

The Sandiganbayan explained that before a petition for forfeiture of illegally acquired properties is filed in court, Section 2 of Republic Act No. 1379 requires that a prior inquiry analogous to a preliminary investigation in criminal cases be first conducted. Records reveal that the Office of the Ombudsman's Field Investigation Office already filed a complaint for forfeiture against Perez et al. and Escaler on November 14, 2005.⁹⁵ Apart from finding probable cause against them on the relevant criminal charges, the Special Panel on November 6, 2006 also recommended the filing of a Petition for Forfeiture of Unlawfully Acquired Property under Republic Act No. 1379.⁹⁶ Then Ombudsman Gutierrez approved the recommendation of the Special Panel on January 5, 2007 with the following marginal note: "[e]xcept the recommendation on the institution of forfeiture proceedings which should be referred to another panel for study."⁹⁷

The Special Third Division of the Sandiganbayan after reviewing the case found that there was no compliance with the directive of Ombudsman Gutierrez.⁹⁸ Pursuant to this Court's ruling in *Perez v. Sandiganbayan*⁹⁹ that marginal notes are "judicially considered sufficient dispositions by the Ombudsm[a]n concerned[.]"¹⁰⁰ the Sandiganbayan deemed it imperative to remand the case to the Office of the Ombudsman:

WHEREFORE, premises considered, this case is **REMANDED** to the Office of the Ombudsman for the conduct of the necessary proceedings conformably with the directive of then Ombudsman Ma. Mercedes N. Gutierrez in the Joint Resolution dated November 6, 2006. The said office is given a **NON-EXTENDIBLE** period of sixty (60) days within which to finish the said proceedings. The Office of the Ombudsman is likewise directed to immediately report the result of the said proceeding to the Court within five (5) days from its termination.

SO ORDERED.¹⁰¹

⁹² Id. at 71–72.

⁹³ Id. at 69–75.

⁹⁴ Id. at 75.

⁹⁵ Id. at 72.

⁹⁶ Id. at 72–73, Sandiganbayan Resolution dated July 8, 2015.

⁹⁷ Id. at 73.

⁹⁸ Id. at 74.

⁹⁹ 534 Phil. 357 (2006) [Per J. Chico-Nazario, First Division].

¹⁰⁰ *Rollo*, (G.R. No. 229394), p. 73.

¹⁰¹ Id. at 75.

Perez et al.,¹⁰² Escaler,¹⁰³ and the Republic¹⁰⁴ separately moved for reconsideration of the July 8, 2015 Resolution. Meanwhile, the Republic claimed that trial should already proceed since it already took action on the directive of Ombudsman Gutierrez, the details of which are as follows:

3. On 03 May 2012, the Honorable Ombudsman Conchita Carpio Morales, issued *Office Order No. 177 series of 2012* . . . constituting a Special Panel of Reviewers tasked to review the Joint Resolution dated 06 November 2006, specifically including the review of the initiation of forfeiture proceedings;
4. The aforementioned special panel submitted a *Memorandum Review* dated 28 January 2013. . . containing a finding that “there appears to be a reasonable ground to believe that a violation of Republic Act No. 1379 has been committed by Respondents Hernando B. Perez, Ernest L. Escaler, Ramon Antonio C. Arceo, Jr. and Rosario S. Perez, and that they are probably guilty thereof.”;
5. Further, the special panel submitted the following recommendation:

“In accordance with Section 2 of Republic Act No. 1379, the requisite Petition for Forfeiture of Unlawfully Acquired Property be filed against respondents Hernando B. Perez, Rosario S. Perez, Ernest L. Escaler and Ramon Antonio C. Arceo, Jr., relative to the case docketed as OMB-C-C-05-0653-K (F) entitled “Field Investigation Office vs. Hernando B. Perez, et al.”¹⁰⁵ (Emphasis supplied, citation omitted)

On April 18, 2016, the Sandiganbayan Special Third Division issued a Resolution¹⁰⁶ reconsidering its earlier directive of remanding the case to the Ombudsman.¹⁰⁷ The Resolution was penned by Presiding Justice Amparo Cabotaje-Tang and concurred in by Associate Justices Maria Cristina Cornejo and Ma. Theresa Gomez-Estoesta.¹⁰⁸ Associate Justices Alex Quiroz¹⁰⁹ and Geraldine Faith Econg¹¹⁰ dissented.

Addressing the grounds for dismissal by Escaler, which was adopted by Perez et al., the Sandiganbayan ruled that their right to speedy disposition of their case was not violated and that their invocation of *People v. Sandiganbayan* was misplaced.¹¹¹ Moreover, it pointed out that Article XI,

¹⁰² Id. at 1251–1262.

¹⁰³ Id. at 1275–1294.

¹⁰⁴ Id. at 1263–1266.

¹⁰⁵ Id. at 1264. See rollo (G.R. No. 229394), p. 1267 for Office Order No. 177, series of 2012; and pp. 1268–1274 for the Memorandum Review submitted by the Special Panel of Reviewers created pursuant to Office Order No. 177 dated May 3, 2012 composed of Marilou B. Ancheta-Mejica, Joselito P. Fangon and John I.C. Turalba (Chair).

¹⁰⁶ Id. at 78–111.

¹⁰⁷ Id. at 81.

¹⁰⁸ Id.

¹⁰⁹ Id. at 112–122.

¹¹⁰ Id. at 123–128.

¹¹¹ Id. at 84.

Section 15 of the 1987 Constitution explicitly provides that the right of the State to recover unlawfully acquired properties is imprescriptible. It also held that since a forfeiture proceeding under Republic Act No. 1379 is civil in nature, its commencement is reckoned from the time the original complaint was filed, which is on November 14, 2014.¹¹² Pertinently, the preliminary inquiry conducted before such date “cannot be considered the initiation of the petition for forfeiture against the respondents thereby negating a proper invocation of their right to a speedy disposition of cases with respect thereto.”¹¹³

Assuming that Perez et al. and Escaler may rightly invoke their right during preliminary inquiry, the Sandiganbayan maintained that there was no violation thereof. Based on relevant incidents, it held that “there [was] no showing that [the] delay was deliberately employed by the said office in order to hamper or prejudice the defense of the herein respondents and/or to gain some tactical advantage over them.”¹¹⁴ It also noted that equally telling was Perez et al. and Escaler’s failure to take any positive action to assert their right during the preliminary inquiry which constitutes a waiver.¹¹⁵

The Sandiganbayan also ruled that the petition stated a cause of action against Escaler.¹¹⁶ It held that Republic Act No. 1379 contemplates a situation where “a public officer or employee conceals and/or transfers the ownership of his/her unlawfully acquired property to his/her spouse, relatives or any other person[.]”¹¹⁷ In order for the Republic to forfeit the properties involved, the other person to whom the properties were transferred or concealed should be impleaded for a complete resolution of the case. Furthermore, this would provide them the opportunity to prove their legitimate ownership over the contested properties.¹¹⁸ It also held that in filing a motion to dismiss, the “defendant hypothetically admits the truth of the material allegations of the ultimate facts contained in the plaintiff’s complaint.”¹¹⁹ Based on Escaler’s supposed hypothetical admission that he benefited from a portion of the unlawfully acquired property, it ruled that his inclusion in the forfeiture case was all the more called for.¹²⁰

The Sandiganbayan also ruled that there was compliance with the conditions precedent in filing the forfeiture petition pursuant to Republic Act No. 1379. That a taxpayer did not initiate the case before the Ombudsman was deemed immaterial since Republic Act No. 3019 explicitly empowers the Ombudsman to recover ill-gotten wealth amassed after February 25, 1986.¹²¹

¹¹² Id. at 85.

¹¹³ Id. at 86.

¹¹⁴ Id. at 88.

¹¹⁵ Id. at 89.

¹¹⁶ Id. at 92.

¹¹⁷ Id. at 86.

¹¹⁸ Id. at 96.

¹¹⁹ Id.

¹²⁰ Id. at 100.

¹²¹ Id. at 102.

Apart from the existence of a previous inquiry analogous to a preliminary investigation before filing the petition,¹²² the Sandiganbayan noted that the Ombudsman issued a Certification that there is reasonable ground to believe that there was a violation of Republic Act No. 1379.¹²³ It also held that the period to file a petition for forfeiture does not prescribe.¹²⁴

Finally, the Sandiganbayan held that the forfeiture proceeding was not barred by prior judgment of the criminal cases in *People v. Sandiganbayan* as there existed no identity of subject matter and causes of action between the actions. The subject matter of the criminal cases was whether the crimes were committed. Petition for forfeiture, on the other hand, ascertains whether the acquisitions involved were illegally acquired based on the parameters set under Republic Act No. 1379. With this, it held that the petition for forfeiture was “entirely separate and distinct from the criminal cases involving the same act or omission.”¹²⁵ The dispositive portion of the Resolution reads:

WHEREFORE, the parties’ respective motions for reconsideration are **GRANTED**. Respondent Ernest DL. Escaler’s *Motion to Dismiss with Opposition to the Application for Issuance of a Writ of Preliminary Attachment* dated February 5, 2015 which was adopted by respondent Hernando B. Perez, *et al.* as their own in their *Manifestation* dated March 27, 2015, is **DENIED** for lack of merit.

SO ORDERED. ¹²⁶ (Emphasis in the original)

On April 29, 2016, Perez et al. filed a Motion for Issuance of Resolution *Nunc Pro Tunc*¹²⁷ assailing the dispositive portion of the April 18, 2016 Resolution which “granted” their motion for reconsideration,¹²⁸ arguing that they not only questioned the remand of the case to the Ombudsman but also prayed for its dismissal.¹²⁹ On May 5, 2016, Perez et al. filed a Motion to Reconsider the Resolution dated April 18, 2016.¹³⁰ Escaler similarly moved for a reconsideration of the same resolution.¹³¹

An exchange of pleadings between the parties followed.¹³²

¹²² Id.

¹²³ Id. at 106.

¹²⁴ Id. at 107.

¹²⁵ Id. at 108.

¹²⁶ Id. at 110.

¹²⁷ Id. at 1303–1316.

¹²⁸ Id. at 1303.

¹²⁹ Id. at 1313.

¹³⁰ Id. at 1317–1333.

¹³¹ Id. at 131. *See also rollo* (G.R. No. 230186) pp. 220–251.

¹³² *Rollo* (G.R. No. 229394), pp.1348–1357; on May 25, 2016, the Republic filed its Consolidated Comment/Opposition to the Motions for Reconsideration and Motion for Issuance of a Resolution *Nunc Pro Tunc*. Id. at 1358–1366; on June 2, 2016, Perez, et al. Filed their Reply to the Republic’s Consolidated Comment. Id. at 1367–1370; on June 15, 2016, the Republic filed a Rejoinder to the Reply. Id. at 1371–1374; on July 11, 2016, Perez, et al. filed a Reply to which the Republic filed a Rebutter (*id.* at 1375–1380). Id. at 1399; Escaler also filed a Reply (*see rollo* (G.R. No. 230186) pp. 813-833) to the Republic’s Consolidated Comment/Opposition, to which the Republic filed a Rejoinder (*see rollo* (G.R. No. 230186) pp. 834–837).

On July 19, 2016, Perez et al. filed an Urgent Manifestation and Motion¹³³ praying that the April 18, 2016 Resolution be declared void in order for their motions to be re-raffled back to the original Third Division composed of Presiding Justice Amparo Cabotaje-Tang, and Associate Justices Samuel Martires and Sarah Jane Fernandez¹³⁴ for the following reasons:

8. On July 8, 2015, a Special Third Division composed of Presiding Justice Amparo M. Cabotaje-Tang as Chairperson and with Justices Alex L. Quiroz and Ma. Christina J. Cornejo as members, Justice Quiroz signing “as per Administrative Order No. 099-2015 dated March 18, 2015” and Justice Cornejo “as per Administrative Order No. 098-2015 dated March 18, 2015”. By this resolution, the Special Third Division “*REMANDED*” to the Office of the Ombudsman for the conduct of the necessary proceedings conformably with the directive of then Ombudsman Ma. Mercedes N. Gutierrez in the *Joint Resolution* dated November 6, 2006. . . .
9. *On July 24, 2015, the Third Division with Presiding Justice Amparo M. Cabotaje-Tang as Chairperson and with Justices Samuel R. Martires and Sarah Jane T. Fernandez as members, issued an order granting the petitioner ten (10) days from the said date to file a comment/opposition on the respondents-movants Motion for Reconsideration and, “(t)hereafter, the said motion shall be deemed submitted for resolution.” In the same order, the Third Division granted respondent Escaler a ten (10) day period to file his own motion for reconsideration.*
10. On August 14, 2015, the Third Division composed of Presiding Justice Amparo M. Cabotaje-Tang and Justices Samuel R. Martires and Sarah Jane T. Fernandez as members, ordered that the following motions be considered submitted for resolution:
 1. Motion for Reconsideration filed before the Court by respondents Hernando B. Perez, Rosario Salvador Pere[z] and Ramon C. Arceo, Jr., through counsel, on July 21, 2015 . . .
 2. The Motion for Reconsideration (to the resolution dated 08 July 2015) filed before the Court by petitioner Republic on July 22, 2015 . . . and
 3. The Motion for Reconsideration (Of this Honorable Court’s 08 July 2015 Resolution) filed before the Court by respondent Ernest De Leon Escaler, through counsel[;]

. . . .
13. On April 18, 2016, a Resolution was rendered by the Third Division with Presiding Justice Amparo M. Cabotaje-Tang as Chairperson and with Justices Ma. Christina J. Cornejo and Ma. Theresa Dolores C. Gomez-Estoesta as members. . . .

¹³³ Id. at 1381–1387.

¹³⁴ Id. at 1386.

Justices Alex L. Quiros and Geraldine Faith L. Econg issued their dissents.

*There is no indication on the face of the order as to why Justices Ma. Christina J. Cornejo of the First Division, and Ma. Theresa Dolores C. Gomez-Estoesta of the Seventh Division, participated in the rendition of the order. There is likewise no indication why Justices Samuel R. Martires and Sarah Jane T. Fernandez who participated in the deliberation of the Third Division on July 24, 2015 when the Motion for Reconsideration of respondents-movants was considered submitted for resolution did not participate in the rendition and issuance of the resolution.*¹³⁵ (Emphasis supplied)

On January 17, 2017, the Sandiganbayan Special Third Division issued a Resolution¹³⁶ denying all motions for lack of merit.¹³⁷ The Resolution was penned by Presiding Justice Amparo Cabotaje-Tang and concurred in by Associate Justices Ma. Theresa Dolores Gomez-Estoesta and Karl Miranda.¹³⁸ Associate Justices Alex Quiroz and Geraldine Faith Econg issued their dissenting opinions.¹³⁹

The Sandiganbayan ruled that Perez et al.'s prayer for the issuance of a resolution *nunc pro tunc*¹⁴⁰ lacks basis in the absence of "judicial action which needs to be carried into the assailed Resolution to make the record speak the truth."¹⁴¹

Citing relevant provisions of its Revised Internal Rules, the Sandiganbayan also frowned upon Perez et al.'s claim that the case must be raffled back to the Third Division. The July 8, 2015 Resolution ordering the remand of the case to the Office of the Ombudsman was issued by the Special Third Division composed of Presiding Justice Cabotaje-Tang as the *ponente*, with Associate Justices Quiroz and Cornejo as special members who signed pursuant to the relevant administrative order. In the succeeding April 18, 2016 Resolution of the Special Third Division which granted the separate motions for reconsideration of the parties, Associate Justices Quiroz and Cornejo joined due to their prior participation in the Resolution sought to be reconsidered, pursuant to Rule IX, Section 2(a) of the Internal Rules. Considering the dissent of Associate Justice Quiroz, Associate Justices Gomez-Estoesta and Econg, were designated as special members in view of Rule VIII, Section 1(b) of the Internal Rules stating that "when the unanimous vote of the three (3) justices cannot be obtained, the Presiding Justice shall designate two (2) justices to sit temporarily forming a special division of five

¹³⁵ Id. at 1383–1385. The Republic filed an Opposition to the Urgent Motion and Manifestation (Id. at 1388–1396) to which Perez, et al. filed a Reply (*id.* at 1394–1396)

¹³⁶ *Rollo* (G.R. No. 229394) pp. 130–180.

¹³⁷ Id. at 179.

¹³⁸ Id. at 180.

¹³⁹ Id. at 181–196.

¹⁴⁰ Id. at 138.

¹⁴¹ Id. at 141.

(5) justices.”¹⁴²

The Sandiganbayan maintained that the rights of the accused to the speedy disposition of their case was not violated. Aside from quoting relevant refutations of the Republic that the cases cited by Escaler were not all fours,¹⁴³ it emphasized that such issue was already extensively passed upon.¹⁴⁴ It held that the same goes with the other issues raised by Escaler which, as to the Sandiganbayan, were mere rehash of previous submissions.¹⁴⁵ There was also no forum shopping in the absence of identity in the causes of action between the present forfeiture proceeding and the forfeiture case previously dismissed by the Ombudsman.¹⁴⁶ The dispositive portion of the Resolution provides:

WHEREFORE, the Court **DENIES** the following motions for lack of merit:

1. Respondents Hernando B. Perez, Rosario S. Perez and Ramon Antonio C. Arceo, Jr.’s *Motion for Issuance of Resolution Nunc Pro Tunc* dated April 28, 2016;
2. Respondents Perez, et al.’s *Motion to Reconsider Resolution dated April 18, 2016 denying the Motion to Dismiss of Respondent Escaler* dated May 3, 2016;
3. Respondent Ernest De Leon Escaler’s *Motion for Reconsideration (of the Resolution promulgated on April 18, 2016)* dated May 3, 2016; and
4. Respondents Perez, et al.’s *Urgent Manifestation and Motion* dated July 18, 2016.

SO ORDERED. ¹⁴⁷ (Emphasis supplied)

On February 7, 2017, Perez et. al filed a Petition for *Certiorari* and Prohibition¹⁴⁸ before this Court against the Sandiganbayan and the Republic docketed as G.R. No. 229394 assailing the following issuances of the Sandiganbayan in SB-14-CVL-0002: (1) November 25, 2014 Order; (2) July 8, 2015 Resolution; (3) April 18, 2016 Resolution; and (4) January 17, 2017 Resolution.¹⁴⁹ They pray that the issuances be nullified and that a temporary restraining order be issued to enjoin the Sandiganbayan from proceeding with the forfeiture case until such time that this Court shall have ruled on the merits.¹⁵⁰

¹⁴² Id. at 142.

¹⁴³ Id. at 143–145.

¹⁴⁴ Id. at 146–153.

¹⁴⁵ Id. at 159–179.

¹⁴⁶ Id. at 157–159.

¹⁴⁷ Id. at 179–180.

¹⁴⁸ Id. at 3–65.

¹⁴⁹ Id. at 3–5.

¹⁵⁰ Id. at 59.

Perez et al. allege that the Sandiganbayan, through its Third Division, gravely abused its discretion and acted in excess or lack of jurisdiction:

[1] [W]hen it issued its Resolution dated April 18, 2016 . . . without the participation of the Division's regular members who participated in the deliberations when the petitioners' Motion for Reconsideration were considered submitted for resolution[;]

[2] [W]hen it refused to make its grant of the petitioners' Motion for Reconsideration effective by having the said motion remanded to the Division composed of Presiding Justice Amparo M. Cabotaje-Tang as Chairman and Justice[s] Samuel R. Martires and Sarah Jane T. Fernandez as members[;]

[3] [W]hen, despite the final judgment of this Honorable Court in *People of the Philippines vs. Sandiganbayan, et al.*, 712 SCRA 359, it gave due course to the complaint filed by the Republic and considered the petitioners' right to due process was not violated [;]

[4] [W]hen it considered that the Republic did not commit forum shopping or did not consider the previous dismissal by the Ombudsman of the Complaint for forfeiture in OMB-C-F-13-0013 as a bar to the Complaint filed before it in SB-14-CVL-0002[;] [and]

[5] [W]hen it considered the complaint filed by the Republic as not affected by inordinate delay simply because "the period to file a petition for forfeiture does not prescribe[.]"¹⁵¹

Perez et al. argue that the exclusion of Sandiganbayan Justices Martires and Fernandez in the composition of the Third Division which rendered the April 18, 2016 and January 17, 2017 Resolutions "was irregular and not compliant with the rules of the Sandiganbayan and constituted grave abuse of discretion amounting to excess or lack of jurisdiction."¹⁵² They allege that the cited provisions of the Internal Rules of the Sandiganbayan are inapplicable to the assailed April 18, 2016 and January 17, 2017 Resolutions because these are not final orders.¹⁵³

Perez et al. also insist that their right to substantive and procedural due process has been violated¹⁵⁴ when the Sandiganbayan gave due course to the Republic's complaint despite the finality of the related criminal cases¹⁵⁵ and the undue delay of the Republic in filing the forfeiture case.¹⁵⁶ They point out that *People v. Sandiganbayan* should have been considered as the law of the case after the Republic admitted that the forfeiture case is an offshoot of the criminal cases.¹⁵⁷

¹⁵¹ Id. at 37-38.

¹⁵² Id. at 40.

¹⁵³ Id. at 42.

¹⁵⁴ Id. at 52.

¹⁵⁵ Id. at 43.

¹⁵⁶ Id. at 44.

¹⁵⁷ Id. at 44-45.

Furthermore, unlike the forfeiture proceedings in OMB-C-F-13-0013 where they were made to file their counter affidavits, they assert that the absence of a preliminary inquiry in this forfeiture case is “fatal to the validity of the proceedings.”¹⁵⁸ They also claim that the Republic committed forum shopping when it instituted the petition for forfeiture on November 14, 2014, or less than two months after the Ombudsman dismissed OMB-C-F-13-0013.¹⁵⁹

In its Comment,¹⁶⁰ the Republic, through the Office of the Solicitor General, maintains that the constitutional right of Perez et al. to the speedy disposition of their case was not violated. Although the inquiry before the Ombudsman took nine years, there was allegedly no showing that the delay was purposely sought “to prejudice [their] defense or to gain tactical advantage over them.”¹⁶¹ It points out that Perez et al. were never precluded from defending their case before the Ombudsman. Between December 13, 2005 and November 14, 2014, Perez et al. also did not initiate any action to resolve or terminate the Ombudsman’s preliminary inquiry on the forfeiture proceeding.¹⁶²

Besides, the Republic claims that the length of time it took for it to institute the forfeiture proceeding is justified since the case includes “various transactions from different foreign banks in different countries.”¹⁶³ Thus, Perez et al.’s invocation of estoppel lacks merit in view of Article XI, Section 15 of the Constitution stating that the recovery of illicitly acquired properties by public officers is not barred by prescription, laches, or estoppel.¹⁶⁴ It asserts that Perez et al.’s right to due process was not violated because the Ombudsman conducted a preliminary investigation before it filed the petition for forfeiture against them.¹⁶⁵

The Republic also claims that *People v. Sandiganbayan* is not a bar to the filing of the forfeiture case since their subject matters and causes of action are different.¹⁶⁶ There is also no forum shopping since the subject matter in the present forfeiture case is the ill-gotten wealth from the extortion while OMB-C-F-13-0013 delves on the Perezes’ unlawfully acquired properties in their Statement of Assets and Liabilities for the years 1995 to 2000.¹⁶⁷

Furthermore, it claims that the issuance of the April 18, 2016 and

¹⁵⁸ Id. at 51.

¹⁵⁹ Id. at 52.

¹⁶⁰ Id. at 1428–1454.

¹⁶¹ Id. at 1438.

¹⁶² Id.

¹⁶³ Id. at 1439.

¹⁶⁴ Id.

¹⁶⁵ Id. at 1440.

¹⁶⁶ Id. at 1141–1142.

¹⁶⁷ Id. at 1444.

January 17, 2017 Resolutions of the Sandiganbayan through the Special Third Division is sanctioned under the Internal Rules. To determine conformity with the rules, it emphasizes that the April 8, 2016 Resolution sought to resolve the reconsideration of the July 8, 2015 ruling remanding the case to the Ombudsman which was also rendered by the Special Third Division composed of Presiding Justice Cabotaje-Tang and Associate Justices Quiroz and Cornejo. Nonetheless, with the dissent of Justice Quiroz, Associate Justices Estoesta and Econg were designated as special members pursuant to Rule VIII, Section 2 of the Internal Rules.¹⁶⁸ The Republic then opposes Perez et al.'s prayer for injunction in the absence of any violation of their rights.¹⁶⁹

In their Reply *ad cautelam*,¹⁷⁰ Perez, et al. attached a Sandiganbayan Decision dated May 16, 2014 in another case to support its claim that Account No. 338 118, where the US\$ 1,700,000.00 was allegedly transferred, was already closed as early as October 31, 2001. They claim that the account "being inexistent at the time of the filing of [the Statement of Assets and Liabilities] as of 31 December 2001, [means that they] could have no unexplained wealth that could be subjected to forfeiture."¹⁷¹

Perez et al. add that the failure of the Republic to simultaneously or jointly file this action with the first forfeiture case indicates that it is a mere afterthought.¹⁷² They claim that the Republic's assertion that the delay was not deliberate does not justify the failure of the Ombudsman to discharge its constitutional duty to act on complaints promptly. Further, they assert that they cannot be faulted for not invoking their right to speedy disposition of their case as they were preoccupied with defending themselves in the other criminal charges.¹⁷³ Also, Ombudsman Gutierrez's directive to refer the matter to another panel for further study allegedly prevented them from urging for the early resolution of their case. They claim that at that moment, they did not know whether the investigation against them for the initiation of forfeiture proceedings was still continuing. To support their contentions, Perez et al. cite *Coscullela v. Sandiganbayan*¹⁷⁴ and *Duterte v. Sandiganbayan*.¹⁷⁵

Perez et al. claim that it is equally telling how the Republic failed to explain the delay in constituting the special panel to review the action for forfeiture which was only done on May 3, 2012.¹⁷⁶ They also restate their arguments on the non-inclusion of Associate Justices Martires and Fernandez in the relevant Resolutions¹⁷⁷ and insist on the Republic's act of forum

¹⁶⁸ Id. at 1445–1447. In view of the Republic's Motions for Extension to file Comment, Perez et al. filed an Urgent Motion to Strike their Comment (Id. at 1455–1462). The OSG also filed its Comment thereto (Id. at 1526–1535). Perez, et al. also filed their Reply to the Comment (Id. at 1539–1545)

¹⁶⁹ Id. at 1149.

¹⁷⁰ Id. at 1471–1492.

¹⁷¹ Id. at 1472.

¹⁷² Id. at 1474.

¹⁷³ Id. at 1477–1478.

¹⁷⁴ 714 Phil. 55 (2013) [Per J. Perlas-Bernabe, Second Division].

¹⁷⁵ 352 Phil. 557 (1998) [Per J. Kapunan, Third Division].

¹⁷⁶ *Rollo* (G.R. No. 229394), p. 1483.

¹⁷⁷ Id. at 1485–1487.

shopping.¹⁷⁸

Meanwhile, on March 17, 2017, Escaler filed a Petition for *Certiorari*¹⁷⁹ before this Court against the Republic and the Special Third Division of the Sandiganbayan assailing the following issuances: (1) July 8, 2015 Resolution; (2) April 18, 2016 Resolution; and (3) January 17, 2017 Resolution.¹⁸⁰ He prays that the Resolutions be nullified and that a temporary restraining order be issued to enjoin the Sandiganbayan from proceeding with the forfeiture case.¹⁸¹ Escaler alleges that the Sandiganbayan gravely abused its discretion when it declined to dismiss the petition for forfeiture despite the inordinate delay in its filing. He points out that the petition failed to state a cause of action against him and that the conditions precedent before commencing the action were not complied with.¹⁸²

Compared to *People v. Sandiganbayan*, Escaler claims that the delay in filing the petition for forfeiture is worse in this case as it was filed 12 years after the complaint was initiated on November 25, 2002.¹⁸³ Even if a petition for forfeiture is civil in form, he claims that “the guarantee of the speedy disposition of cases applies to all cases pending before all judicial, quasi-judicial or administrative bodies.”¹⁸⁴

As to the Sandiganbayan’s reliance on the imprescriptible nature of the right of the State to recover ill-gotten wealth, Escaler insists on the primacy of the rights to due process and speedy disposition of cases over the property rights of the State.¹⁸⁵ He claims that “[w]hile it is true that the right of the State to recover unlawfully acquired properties does not prescribe, it does not follow that [it] can hold hostage and render nugatory an individual’s constitutional rights to due process and speedy disposition of cases.”¹⁸⁶

Moreover, Escaler posits that Republic Act No. 1379 only applies to public officers or employees. Since he is a private individual, Escaler argues that the Republic cannot recover from him any property alleged to be unlawfully acquired.¹⁸⁷ Assuming that he could be validly impleaded in the forfeiture proceeding, he argues that there is no basis to grant the Republic’s prayer for forfeiture of assets or monies amounting to US\$ 2 million when the Republic explicitly stated in its own allegations that only US\$ 49,965.00 remained in his bank account.¹⁸⁸

¹⁷⁸ Id. at 1487.

¹⁷⁹ *Rollo* (G.R. No. 230186), pp. 3–81.

¹⁸⁰ Id. at 3–4.

¹⁸¹ Id. at 79.

¹⁸² Id. at 20.

¹⁸³ Id. at 30.

¹⁸⁴ Id. at 46.

¹⁸⁵ Id. at 49.

¹⁸⁶ Id. at 50.

¹⁸⁷ Id. at 53.

¹⁸⁸ Id. at 58–59.

Escaler also insists that the Field Investigation Office of the Ombudsman lacks authority to initiate the action for forfeiture since Republic Act No. 1379 requires that there must be a taxpayer's complaint.¹⁸⁹ Moreover, he points out that there was no previous inquiry similar to a preliminary investigation conducted before the action for forfeiture was filed,¹⁹⁰ as well as a corresponding certification¹⁹¹ from the investigating officer that there exists a reasonable ground to believe that there has been a violation of Republic Act No. 1379 and that the accused are probably guilty of the offense.¹⁹² He adds that he was not even named as a respondent in the caption for the charge of forfeiture in the Joint Resolution.¹⁹³

On July 24, 2017, this Court consolidated Escaler's Petition in G.R. No. 230186 with the Petition filed by Perez et al. in G.R. No. 229394.¹⁹⁴

Respondent Republic of the Philippines, as represented by the Office of the Ombudsman through the Office of the Special Prosecutor, filed its Comment to the consolidated Petitions.¹⁹⁵ It reiterates that the April 18, 2016 Resolution which sought to reconsider the July 8, 2015 Resolution previously penned by Presiding Justice Cabotaje-Tang and concurred in by Associate Justices Quiroz and Cornejo, was issued in accordance with the Internal Rules.¹⁹⁶ As Associate Justice Quiroz dissented in the April 18, 2016 Resolution, Associate Justices Gomez-Estoesta and Econg sat as special members pursuant to Rule VIII, Section 1(b) of the Internal Rules of the Sandiganbayan.¹⁹⁷

Moreover, it claims that the Sandiganbayan was correct in not dismissing the case on the ground of *res judicata* since *People v. Sandiganbayan* is separate and distinct from the forfeiture case.¹⁹⁸ As a civil proceeding, it asserts that the forfeiture case has a different cause of action. Also, the subject matter of the criminal cases was whether the crimes were committed whereas the forfeiture proceeding revolves on the issue of whether the object of the action was illegally acquired pursuant to Republic Act No. 1379.¹⁹⁹

As to the issue of inordinate delay, respondent argues that since the present action is for forfeiture of ill-gotten wealth, the same is imprescriptible

¹⁸⁹ Id. at 64.

¹⁹⁰ Id. at 72.

¹⁹¹ Id. at 74.

¹⁹² Id. at 64.

¹⁹³ Id. at 74.

¹⁹⁴ Id. at 892-897.

¹⁹⁵ *Rollo* (G.R. No. 229394), pp.1617-1657.

¹⁹⁶ Id. at 1645.

¹⁹⁷ Id. at 1646.

¹⁹⁸ Id. at 1647.

¹⁹⁹ Id. at 1650.

under the Constitution. It emphasizes that in dismissing cases for violation of the right of the accused to speedy disposition, courts are called upon to meticulously evaluate the attendant incidents.²⁰⁰ It claims that unlike in *People v. Sandiganbayan* and other cases with similar issue, the petition for forfeiture here involves foreign banking transactions which entails the “complexity of tracing and establishing the existence of this ill-gotten wealth[.]”²⁰¹ Besides, it claims that nothing in the records show that the Ombudsman or the prosecution committed oppressive delay in dealing with the case.²⁰²

Respondent also counters that under Republic Act No. 1379, all properties acquired by a public officer outside their legitimate sources of income, including those with ownership concealed under another person’s name, are subject to forfeiture. It claims that by reason of his involvement in the transfer of the US\$ 2 million, Escaler is an indispensable party which must be impleaded. Moreover, it has long been established that the Office of the Ombudsman has the power to initiate forfeiture proceedings of unlawfully acquired properties amassed after February 25, 1986. Pursuant to its mandate, the Ombudsman created the Field Investigation Office which is primarily tasked to investigate and initiate a complaint before the Ombudsman. Therefore, the Field Investigation Office “is a recognized office instituted by the Office of the Ombudsman to accomplish its constitutional mandate.”²⁰³ Contrary to the claim of petitioners, respondent stresses that there was a preliminary investigation conducted prior to the filing of the petition for forfeiture.²⁰⁴

In their Reply,²⁰⁵ petitioners Perez et al. insist that the April 18, 2016 Resolution was issued by an irregularly constituted Third Division.²⁰⁶ Moreover, they bank on this Court’s ruling in *People v. Sandiganbayan* as a bar to the present action for forfeiture and explain that:

What is decisive, therefore, as far as the instant case is concerned is that the issue of inordinate delay has been duly found by this Honorable Court as available to petitioners. Accordingly, [s]ince the basis facts in the instant case are substantially the same as those which obtained in *People [v. Sandiganbayan]*, the respondent Republic should now be held precluded from further proceeding against the petitioners because of “the principle of bar by prior judgment, an aspect of *res judicata*, and even under the doctrine of ‘law of the case’ (or) the re-litigation of the same issue in another action.”²⁰⁷

²⁰⁰ Id. at 1652–1653.

²⁰¹ Id. at 1653.

²⁰² Id.

²⁰³ Id. at 1656.

²⁰⁴ Id.

²⁰⁵ Id. at 1765–1775.

²⁰⁶ Id. at 1766.

²⁰⁷ Id. at 1769.

They add that the inordinate delay on the part of the Republic cannot be justified by the supposed imprescriptibility of forfeiture proceedings²⁰⁸ and maintain that their right to due process was denied in the absence of a preliminary investigation before the action for forfeiture was filed.²⁰⁹

For his part, petitioner Escaler²¹⁰ again assails his non-inclusion as respondent in the forfeiture charge being investigated by the Ombudsman docketed as OMB-C-C-05-0635-K-(F). He alleges that the Field Investigation Office maliciously included his name in the baseless complaint in violation of his right to due process. He also restates his prior arguments relating to the supposed inordinate delay of the Ombudsman in the course of the proceedings which violated his right to the speedy disposition of the case.²¹¹ Referring to this Court's ruling in *People v. Sandiganbayan*, he argues that if "a delay of five and a half years in the filing of Information for the criminal cases [is found] as inordinate, vexatious and oppressive, adding almost nine (9) more years of delay makes it doubly vexatious and oppressive."²¹²

Petitioner Escaler also repeats his arguments on the supposed failure of the Republic to state a cause of action against him and its non-compliance with the conditions precedent in filing the petition.²¹³ He adds that the Republic might have been confused as to what a "complaint" is *vis-à-vis* an "action." While the Ombudsman can file a petition for forfeiture, he claims that it cannot, on its own, through the Field Investigation Office, be the *taxpayer* to file a complaint which will form the basis of its petition.²¹⁴

In the course of the proceedings, this Court granted²¹⁵ the Office of the Solicitor General's Manifestation and Motion praying that it be excused from participating in these consolidated Petitions due to the Office of the Special Prosecutor's appearance on behalf of the People of the Philippines.²¹⁶

On June 6, 2018, petitioners Perez et al. filed a Supplemental Petition.²¹⁷ On December 4, 2017, the Sandiganbayan issued a Resolution granting respondent's motion to set the forfeiture case for pre-trial.²¹⁸ In their Supplemental Petition, Perez et al. assail the Sandiganbayan's May 22, 2018 Resolution²¹⁹ which, among other things, denied their reconsideration of the December 4, 2017 Resolution on the following grounds: (1) "OMB-C-F-13-

²⁰⁸ Id. at 1171.

²⁰⁹ Id. at 1773.

²¹⁰ Id. at 1787-1830.

²¹¹ Id. at 1797.

²¹² Id. at 1802.

²¹³ Id. at 1806.

²¹⁴ Id. at 1818-1819.

²¹⁵ Id. at 2037.

²¹⁶ Id. at 1852-1849.

²¹⁷ Id. at 1735-1745.

²¹⁸ Id. at 1747(A).

²¹⁹ Id. at 1746-1756.

0013 does not constitute *res judicata* as a ground to dismiss the case”;²²⁰ (2) “[t]he principle of judicial courtesy and judicial prudence finds no application in this case”;²²¹ and (3) “[t]he issue on the alleged delay in this case has been exhaustively passed upon by the Court in its Resolution promulgated April 18, 2016.”²²²

Perez et al. argue that the Sandiganbayan gravely abused its discretion when it allowed the re-litigation of the issue of forfeiture against them. Since this forfeiture case is filed while OMB-C-F-13-0013 was pending, they claim that the latter action was only “filed in anticipation of an adverse decision on the first case.”²²³ They also claim that the Sandiganbayan “condoned and abetted forum-shopping.”²²⁴ Citing *Sara Lee Philippines, Inc. v. Macatlang*,²²⁵ Perez et al. also call for judicial courtesy since they claim that the continuation of the proceedings before the Sandiganbayan could render moot the action they filed before this Court, as well as other related cases.²²⁶

In its Comment to the Supplemental Petition, respondent argues that OMB-C-F-13-0013 “refer to a completely different and unrelated subject matter.”²²⁷ It counters that since judicial courtesy is more of an exception, Perez et al. failed to establish that there is a high probability that the issues before the higher court would be rendered moot by the continuation of the proceedings in the lower court.²²⁸ Moreover it claims that Perez et al. have no basis in invoking *res judicata* in view of the differences in the causes of action between the criminal cases in *People v. Sandiganbayan* and the petition for forfeiture.²²⁹

In their Reply, Perez et al. asserts that inordinate delay is now the law of the case in view of *People v. Sandiganbayan*.²³⁰ They also insist on the similarity of this forfeiture case with OMB-C-F-13-0013 which also rests on Perez’s supposed unlawful acquisition of properties during his incumbency as a public officer.²³¹ They insist on judicial courtesy due to the intimacy of the issues raised before this Court and the Sandiganbayan.²³²

The main issue to be resolved by this Court is whether the Sandiganbayan committed grave abuse of discretion in issuing the assailed Order and Resolutions. Subsumed in the resolution of this issue are the

²²⁰ Id. at 1749.

²²¹ Id. at 1751.

²²² Id. at 1752.

²²³ Id. at 1738.

²²⁴ Id.

²²⁵ 750 Phil. 646 (2015) [Per J. Perez, Special Second Division].

²²⁶ *Rollo* (G.R. No. 229394), p. 1740.

²²⁷ Id. at 1916.

²²⁸ Id. at 1918.

²²⁹ Id. at 1921.

²³⁰ Id. at 2024.

²³¹ Id. at 2028–2029.

²³² Id. at 2031.

following:

first, whether there was a violation of the Internal Rules when Sandiganbayan Justices Samuel Martires and Sarah Jane Fernandez were excluded in the composition of the Division which issued the April 18, 2016 and January 17, 2017 Resolutions;

second, whether respondent Republic of the Philippines, in relation to OMB-C-F-13-0013, committed forum shopping in filing the present petition for forfeiture;

third, whether *People v. Sandiganbayan* bars the filing of the petition for forfeiture on account of *res judicata*;

fourth, whether petitioners' right to the speedy disposition of their case was violated;

fifth, whether the petition for forfeiture states a cause of action against petitioner Ernest Escaler who is neither a public officer nor a public employee;

sixth, whether the petition for forfeiture was proper; and,

lastly, whether judicial courtesy is warranted under the attendant circumstances.

We dismiss the consolidated Petitions.

I

Based on the ensuing chronology of its issuances, this Court finds that the Sandiganbayan complied with its Internal Rules. Hence, it did not gravely abuse its discretion in rendering the assailed Resolutions dated April 18, 2016 and January 17, 2017.

On *July 8, 2015*, the *Special Third Division*, composed of Presiding Justice Amparo Cabotaje-Tang as *ponente* and Chair, with Associate Justices Alex Quiroz and Maria Cristina Cornejo as members, remanded the case to the Office of the Ombudsman after finding that there was no compliance with Ombudsman Gutierrez's January 5, 2007 directive to refer the forfeiture proceedings to another panel for further study.²³³

²³³ Id. at 69-75.

On July 24, 2015, the *Third Division*, composed of Presiding Justice Amparo Cabotaje-Tang as Chair, with Associate Justices Samuel Martires and Sarah Jane Fernandez as members, issued an Order which, among other things, granted the Republic 10 days within which to file its Comment/Opposition to Perez et al.'s reconsideration of the July 8, 2015 Resolution. Thereafter, the motion shall be deemed submitted for resolution.²³⁴

On August 14, 2015, the *Third Division*, with similar members as to the preceding Order, directed all motions for reconsideration of the July 8, 2015 Resolution, as well as the relevant comments/oppositions and reply thereto, submitted for resolution.²³⁵

On April 18, 2016, the *Special Third Division*, with Presiding Justice Amparo Cabotaje-Tang as *ponente* and Chair, reconsidered its prior remand of the case to the Ombudsman,²³⁶ thereby granting the parties' motions for reconsideration. The Resolution also denied Escaler's *Motion to Dismiss with Opposition to the Application for the Issuance of a Writ for Preliminary Attachment*.²³⁷ Associate Justices Maria Cristina Cornejo and Ma. Theresa Dolores Gomez-Estoesta concurred, while Associate Justices Alex Quiroz and Geraldine Faith Econg dissented.²³⁸

On January 17, 2017, the *Special Third Division*, with Presiding Justice Amparo Cabotaje-Tang as *ponente* and Chair, issued a Resolution denying Perez et al.'s *Motion for Issuance of Resolution Nunc Pro Tunc, Motion to Reconsider the April 18, 2016 Resolution and Urgent Manifestation and Motion*, as well as Escaler's reconsideration. Associate Justices Ma. Theresa Gomez-Estoesta and Karl Miranda concurred while Associate Justices Alex Quiroz and Geraldine Faith Econg dissented.²³⁹

Perez et al. insist that Sandiganbayan Associate Justices Samuel Martires and Sarah Jane Fernandez should have been included in the composition of the *Special Third Division* which rendered the April 18, 2016 and January 17, 2017 Resolutions as they were already members of the *Third Division* when Perez et al. moved for reconsideration of the July 8, 2015 Resolution and had actually participated in the proceedings leading to the April 18, 2016 Resolution.²⁴⁰

The contention lacks merit.

²³⁴ Id. at 1297.

²³⁵ Id. at 1300-1301.

²³⁶ Id. at 81.

²³⁷ Id. at 110.

²³⁸ Id. at 78-111.

²³⁹ Id. at 130-180.

²⁴⁰ Id. at 40.

Rule IX, Section 2(a) of the Revised Internal Rules of the Sandiganbayan states:

RULE IX
Motion for New Trial or Reconsideration

.....

SECTION 2. *The Justices Who Shall Act on a Motion for New Trial or Reconsideration.* —

(a) *Motions for New Trial or Reconsideration of a decision or resolution shall be acted upon by the Ponente and the other members of the Division who participated in the decision or resolution sought to be reconsidered, irrespective of whether or not such members are already in other divisions at the time the said motions were filed. They shall be deemed constituted as a Special Division of the Division to which the Ponente belonged at the time of the promulgation of the decision or resolution.*²⁴¹ (Emphasis supplied)

The rule provides that all members of the Division who participated in the assailed decision or resolution should also act on the motion for reconsideration of that disposition.

The Special Third Division which rendered the July 8, 2015 Resolution was composed of Presiding Justice Amparo Cabotaje-Tang and Associate Justices Alex Quiroz and Maria Cristina Cornejo. On the other hand, the Special Third Division which rendered the April 18, 2016 Resolution was composed of Presiding Justice Amparo Cabotaje-Tang and Associate Justices Alex Quiroz, Maria Cristina Cornejo, Ma. Theresa Dolores Gomez-Estoesta, and Geraldine Faith Econg.

The April 18, 2016 Resolution resolved petitioners' Motion for Reconsideration of the July 8, 2015 Resolution. Since the members who rendered the July 8, 2015 Resolution also participated in the April 18, 2016 Resolution, the Sandiganbayan Special Third Division complied with its Internal Rules.

The same holds true for the January 17, 2017 Resolution which resolved petitioners' Motion for Reconsideration of the April 18, 2016 Resolution. Aside from Associate Justice Karl Miranda, who was designated as a Special Member in lieu of Associate Justice Maria Cristina Cornejo who was then temporarily incapacitated,²⁴² the remaining members constitute the Special Third Division that rendered the April 18, 2016 Resolution.

²⁴¹ A.M. No. 02-6-07-SB (2002).

²⁴² *Rollo* (G.R. No. 229394), p. 130.

II

Respondent did not commit forum shopping.

In *City of Taguig v. City of Makati*,²⁴³ this Court explained the concept of forum shopping and the tests to be applied in determining its violation:

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

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

....

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

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

Similarly, it has been recognized that forum shopping exists “where a party attempts to obtain a preliminary injunction in another court after failing to obtain the same from the original court.”

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

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

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

For its part, *litis pendentia* “refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious.” For *litis pendentia* to exist, three (3) requisites must concur:

The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.

On the other hand, *res judicata* or prior judgment bars a subsequent case when the following requisites are satisfied:

(1) the former judgment is final; (2) it is rendered by a court having jurisdiction over the subject matter and the parties; (3) it is a judgment or an order on the merits; (4) there is — between the first and the second actions — identity of parties, of subject matter, and of causes of action.

These settled tests notwithstanding:

Ultimately, what is truly important to consider in determining whether forum-shopping exists or not is the vexation caused the courts and parties-litigant by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or to grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issue.²⁴⁴ (Emphasis supplied, citations omitted)

Hence, this Court finds that respondent did not commit forum shopping when it filed the present petition for forfeiture notwithstanding the prior dismissal of OMB-C-F-13-0013 by the Ombudsman.

Records reveal that OMB-C-F-13-0013 and SB-14-CVL-0002 involve different respondents. Respondent instituted the complaint in OMB-C-F-13-0013 against Perez and Rosario only,²⁴⁵ whereas the petition for forfeiture in SB-14-CVL-0002 was against Perez, Rosario, Arceo, and Escaler.²⁴⁶

Besides, while both cases are for forfeiture under Republic Act No. 1379, they have nonetheless different causes of action. OMB-C-F-13-0013 centered around the Perez spouses’ acquired properties in the years 1995 to 1997 and 2001 which were found disproportionate to Perez’s known annual

²⁴⁴ Id. at 383–388.

²⁴⁵ *Rollo*, (G.R. No. 229394), p. 197.

²⁴⁶ Id. at 524.

income²⁴⁷ as a congressman, and later, as the secretary of justice.²⁴⁸ On the other hand, SB-14-CVL-0002 emanated from Perez's alleged failure to declare in his 2001 and 2002 Statements of Assets, Liabilities, and Net Worth his and his wife's financial interest in the money supposedly extorted from Jimenez which was transferred by Escaler into their bank accounts.²⁴⁹ The following elucidations of the Sandiganbayan in its January 17, 2017 Resolution are on point:

The subject of this forfeiture case is the respondents' alleged ill-gotten wealth in the amount of US\$2,000,000.00 which they purportedly extorted from Jimenez sometime in 2001. On the other hand, the subject of the forfeiture case which was dismissed by the Office of the Ombudsman in its Resolution dated October 27, 2014 refers to respondent spouses Perez's properties stated in their Statements of Assets and Liabilities for the years 1995 to 2000. In fact, the Office of the Ombudsman made the following clarification in the said Resolution:

Before going any further, it is well to state that respondents have mistakenly associated the present case with the Sandiganbayan cases. It should be noted that the Sandiganbayan cases emanated from the sworn statement of former Congressman Mark Jimenez stating that respondent Hernando allegedly extorted from him US\$2,000,000.00 and that US\$1,999,965.00 was already transferred to the latter's foreign bank account. On the other hand, the present complaint was primarily based on the Statement of Assets, Liabilities and Net Worth (SALN) of respondents as of years ending 1995, 1996, 1997, 1998, 1999 and 2000. The Sandiganbayan cases have no bearing in the issues of the present complaint.

The alleged notation disapproving in part of [sic] the Resolution issued relative to the Sandiganbayan cases fails to convince. Even assuming that there was indeed such a notation, it should be read in its context. The recommendation was for the forfeiture of the alleged extorted amount of US\$1,999,965[.00] by respondent Hernando [Perez] from Mr. Jimenez. In the present case, however, nowhere can it be deduced that the allegations of the complaint refer in any manner to the alleged extorted amount. Hence, notwithstanding the dismissal of the Sandiganbayan cases, the rule on conclusiveness of judgment cannot be applied in this case.

*Unquestionably, there is no forum-shopping to speak of because there is no identity of the cause of action between this case and the forfeiture that was earlier dismissed by the Office of the Ombudsman.*²⁵⁰ (Emphasis supplied, citations omitted)

²⁴⁷ Id. at 201.

²⁴⁸ Id. at 197.

²⁴⁹ Id. at 534.

²⁵⁰ Id. at 158-159.

III

The Sandiganbayan did not gravely abuse its discretion in not dismissing the petition for forfeiture despite *People v. Sandiganbayan*.²⁵¹

Hinging on respondent's supposed admission that the petition for forfeiture is an offshoot of the criminal cases, Perez et al. claims that the finality of this Court's ruling in *People v. Sandiganbayan* constitutes a bar to the re-litigation of any matter connected therewith, such being the law of the case.²⁵² The inordinate delay, as found in *People v. Sandiganbayan*, allegedly binds the petition for forfeiture²⁵³ and cannot be justified by the petition's imprescriptible nature.²⁵⁴

Escaler insists that it should have been mandatory for the Sandiganbayan to dismiss the petition for forfeiture as the inordinate delay in its filing violated his right to the speedy disposition of the case.²⁵⁵ Compared to *People v. Sandiganbayan* where the information in the criminal cases were filed more than five years after the preliminary investigation, he points out that the delay in filing the petition for forfeiture in this case is far worse as it was filed 12 years after the complaint was initiated on November 25, 2002.²⁵⁶

Respondent counters that there is no *res judicata*.²⁵⁷ It reinforces the finding of the Sandiganbayan that there exists no identity of subject matter and causes of action between the criminal cases in *People v. Sandiganbayan* and the petition for forfeiture. It posits that as a civil proceeding, the forfeiture case has a separate cause of action from the criminal cases. What is sought to be determined in the criminal cases was the commission of robbery and violation of Section 3(b) of Republic Act No. 3019. The forfeiture proceeding, on the other hand, resolves whether the subject properties were illegally acquired by virtue of Republic Act No. 1379.²⁵⁸ It claims that under Republic Act No. 1379, it is needless "to prove how [the public officer] acquired said properties because the forfeitable nature of the properties under the provision of [Republic Act No. 1379] does not proceed from a determination of a specific overt act . . . leading to the acquisition of the illegal wealth."²⁵⁹

Res judicata "bars the re-litigation of facts or issues that have once been settled by a court of law upon a final judgment on the merits."²⁶⁰ The two aspects of *res judicata* namely "*bar by former judgment*" and "*conclusiveness*"

²⁵¹ 723 Phil. 444 (2013) [Per J. Bersamin, First Division].

²⁵² *Rollo* (G.R. No. 229394), p 44.

²⁵³ *Id.* at 1773.

²⁵⁴ *Id.* at 1771.

²⁵⁵ *Rollo* (G.R. No. 230186), p. 21.

²⁵⁶ *Id.* at 30.

²⁵⁷ *Rollo* (G.R. No. 229394), p. 1651.

²⁵⁸ *Id.* at 1650.

²⁵⁹ *Id.* at 1650-1651.

²⁶⁰ *Cruz v. Sandiganbayan*, 626 Phil. 398, 407 (2010) [Per J. Abad, Second Division].

of judgment” are differentiated as follows:

The first is bar by prior judgment that precludes the prosecution of a second action upon the same claim, demand or cause of action. *The second aspect is conclusiveness of judgment, which states that “issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties involving a different cause of action.”*²⁶¹ (Emphasis supplied, citations omitted)

Pertinent here is conclusiveness of judgment which finds application when there is identity of issues, but not essentially identity of causes of action.²⁶²

Although the criminal cases in *People v. Sandiganbayan* and the forfeiture proceeding involve similar parties, it bears stressing that their causes of action and respective issues are different.

Forfeiture proceedings are actions in *rem*, and thus, civil in nature.²⁶³ While the forfeiture proceeding here emanated from the same set of facts as the criminal cases in *People v. Sandiganbayan*, it is nevertheless separate and distinct. The causes of action in the criminal cases are premised on petitioners’ supposed violations of Section 3(b) of Republic Act No. 3019 and commission of robbery under the Revised Penal Code. Meanwhile, the cause of action in the forfeiture proceeding emanated from Perez’s supposed unlawfully acquired properties which are disproportionate to his salary and legitimate income during his incumbency. Contrary to petitioners’ assertions, the civil liability therefrom does not arise from the commission of the criminal charges but emanates from the provisions of Republic Act No. 1379, a law which protects the right of the State to recover properties illicitly acquired.²⁶⁴

Petitioners therefore are under the wrong impression that the finding of inordinate delay in *People v. Sandiganbayan* should also be controlling in the forfeiture proceeding.

Besides, in the recent case of *Cagang v. Sandiganbayan*,²⁶⁵ this Court already abandoned the pronouncement in *People v. Sandiganbayan* that the Ombudsman’s fact-finding investigation should not be deemed separate from the preliminary investigation for purposes of determining the existence of inordinate delay in the disposition of a case. In excluding the period taken for fact-finding investigations prior to the filing of the formal complaint, this Court, in *Cagang*, explained:

²⁶¹ *Club Filipino, Inc. v. Bautista*, 750 Phil. 599, 618 (2015) [Per J. Leonen, Second Division].

²⁶² *Cruz v. Sandiganbayan*, 626 Phil. 398, 407 (2010) [Per J. Abad, Second Division].

²⁶³ *Republic v. Sandiganbayan*, 277 Phil. 759, 775 (1991) [Per J. Regalado, *En Banc*].

²⁶⁴ *See Garcia v. Sandiganbayan*, 618 Phil. 346, 262 (2009) [Per J. Velasco Jr., Third Division].

²⁶⁵ 837 Phil. 815 (2018) [Per J. Leonen, *En Banc*].

People v. Sandiganbayan, Fifth Division must be re-examined.

When an anonymous complaint is filed or the Office of the Ombudsman conducts a motu proprio fact-finding investigation, the proceedings are not yet adversarial. Even if the accused is invited to attend these investigations, this period cannot be counted since these are merely preparatory to the filing of a formal complaint. At this point, the Office of the Ombudsman will not yet determine if there is probable cause to charge the accused.

This period for case build-up cannot likewise be used by the Office of the Ombudsman as unbridled license to delay proceedings. If its investigation takes too long, it can result in the extinction of criminal liability through the prescription of the offense.

*Considering that fact-finding investigations are not yet adversarial proceedings against the accused, the period of investigation will not be counted in the determination of whether the right to speedy disposition of cases was violated. Thus, this Court now holds that for the purpose of determining whether inordinate delay exists, a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation. In *People v. Sandiganbayan, Fifth Division*, the ruling that fact-finding investigations are included in the period for determination of inordinate delay is abandoned.*

With respect to fact-finding at the level of the Ombudsman, the Ombudsman must provide for reasonable periods based upon its experience with specific types of cases, compounded with the number of accused and the complexity of the evidence required. He or she must likewise make clear when cases are deemed submitted for decision. The Ombudsman has the power to provide for these rules and it is recommended that he or she amend these rules at the soonest possible time.²⁶⁶ (Emphasis supplied, citation omitted)

Pertinently, *Cagang* laid down the manner of analysis in determining whether there exists a violation of the constitutional right to the speedy disposition of a case:

First, the right to speedy disposition of cases is different from the right to speedy trial. While the rationale for both rights is the same, the right to speedy trial may only be invoked in criminal prosecutions against courts of law. The right to speedy disposition of cases, however, may be invoked before any tribunal, whether judicial or quasi-judicial. What is important is that the accused may already be prejudiced by the proceeding for the right to speedy disposition of cases to be invoked.

Second, a case is deemed initiated upon the filing of a formal complaint prior to a conduct of a preliminary investigation. This Court acknowledges, however, that the Ombudsman should set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case.²⁶⁷ Delays beyond this period will be taken against the

²⁶⁶ Id. at 867–868

²⁶⁷ On August 15, 2020, recognizing this Court's disquisition in *Cagang*, the Office of the Ombudsman issued *Administrative Order No. 1, series of 2020* prescribing the periods in the conduct of their investigations, the notable portions of which provide:

prosecution. *The period taken for fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay.*

Third, courts must first determine which party carries the burden of proof. If the right is invoked within the given time periods contained in current Supreme Court resolutions and circulars, and the time periods that will be promulgated by the Office of the Ombudsman, the defense has the burden of proving that the right was justifiably invoked. If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay.

If the defense has the burden of proof, it must prove *first*, whether the case is motivated by malice or clearly only politically motivated and is attended by utter lack of evidence, and *second*, that the defense did not contribute to the delay.

Once the burden of proof shifts to the prosecution, the prosecution must prove *first*, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; *second*, that the complexity of the issues and the volume of evidence made the delay inevitable; and *third*, that no prejudice was suffered by the accused as a result of the delay.

Fourth, determination of the length of delay is never mechanical. Courts must consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised.

An exception to this rule is if there is an allegation that the prosecution of the case was solely motivated by malice, such as when the case is politically motivated or when there is continued prosecution despite utter lack of evidence. Malicious intent may be gauged from the behavior of the prosecution throughout the proceedings. If malicious prosecution

.....
 Section 3. Period for the conduct of Fact-Finding Investigation. - Unless otherwise provided for in a separate issuance, such as an Office Order creating a special panel of investigators and prescribing therein the period for the completion of an investigation, the period for completion of the investigation shall not exceed six (6) months for simple cases and twelve (12) months for complex cases, subject to the following considerations:

- (a) The complexity of the case shall be determined on the basis of factors such as, but not limited to, the number of respondents, the number of offenses charged, the volume of documents, the geographical coverage, and the amount of public funds involved.
- (b) The period herein prescribed may be extended by written authority of the Ombudsman or the Overall Deputy Ombudsman/Deputy Ombudsman concerned for justifiable reasons, which extension shall not exceed one (1) year

.....
 Section 8. Period for the conduct of Preliminary Investigation. - Unless otherwise provided for in a separate issuance, such as an Office Order creating a special panel of investigators/prosecutors and prescribing the period for completion of the preliminary investigation, the proceedings therein shall not exceed twelve months for simple cases or twenty-four months (24) months for complex cases, subject to the following considerations:

- (a) The complexity of the case shall be determined on the basis of factors such as, but not limited to, the number of respondents, the number of offenses charged, the volume of documents, the geographical coverage, and the amount of public funds involved.
- (b) Any delay incurred in the proceedings, whenever attributable to the respondent, shall suspend the running of the period for purposes of completing the preliminary investigation.
- (c) The period herein prescribed may be extended by written authority of the Ombudsman, or the Overall Deputy Ombudsman/Special Prosecutor/Deputy Ombudsman concerned for justifiable reasons, which extension shall not exceed one (1) year.

is properly alleged and substantially proven, the case would automatically be dismissed without need of further analysis of the delay.

Another exception would be the waiver of the accused to the right to speedy disposition of cases or the right to speedy trial. If it can be proven that the accused acquiesced to the delay, the constitutional right can no longer be invoked.

In all cases of dismissals due to inordinate delay, the causes of the delays must be properly laid out and discussed by the relevant court.

Fifth, the right to speedy disposition of cases or the right to speedy trial must be timely raised. The respondent or the accused must file the appropriate motion upon the lapse of the statutory or procedural periods. Otherwise, they are deemed to have waived their right to speedy disposition of cases.²⁶⁸ (Emphasis supplied, citation omitted)

IV

Applying *Cagang*, this Court finds that petitioners' right to the speedy disposition of their case was not violated.

In the absence of adequate substantiation, Perez et al.'s insistence that the action is merely an afterthought²⁶⁹ does not persuade. Further, the record is bereft of any showing that the filing of the petition for forfeiture was attended by malice or politically motivated. Still, we determine the presence and cause of delay on account of the attendant circumstances.²⁷⁰

On *November 14, 2005* the Field Investigation Office *completed* its fact-finding investigation and filed, among other things, a complaint against petitioners for violation of Republic Act No. 1379.²⁷¹

On November 23, 2005, the Special Panel directed petitioners to file their counter-affidavits.²⁷² On December 13, 2005, Perez et al. submitted their joint counter-affidavit. On December 29, 2005, instead of filing his counter-affidavit, Escaler moved to disqualify the Ombudsman. On December 29, 2005, the Special Panel denied Escaler's motion for disqualification and ordered him to file his counter-affidavit.²⁷³

On January 4, 2006, Jimenez filed an urgent motion for extension of period to file his opposition to Escaler's motion. He also prayed that a new period be granted for him to reply to Perez et al.'s joint counter-affidavit. Between January 9, 2006 and February 10, 2006, he filed motions seeking for

²⁶⁸ *Cagang v. Sandiganbayan, Fifth Division*, 837 Phil. 815, 880–882 (2018) [Per J. Leonen, *En Banc*].

²⁶⁹ *Rollo* (G.R. No. 229394), p. 1474.

²⁷⁰ *See Cagang v. Sandiganbayan, Fifth Division*, 837 Phil. 815 (2018) [Per J. Leonen, *En Banc*].

²⁷¹ *People v. Sandiganbayan* 723 Phil. 444, 450 (2013) [Per J. Bersamin, First Division].

²⁷² *Id.* at 451.

²⁷³ *Id.* at 452.

time to file his opposition, the last of them praying for an extension until February 10, 2006.²⁷⁴

When Jimenez filed his opposition to Escaler's motion on February 22, 2006, an exchange of replies and rejoinders between the parties followed. On May 15, 2006, Escaler moved to reconsider the December 29, 2005 Order of the Special Panel. On May 25, 2006, the Special Panel denied Escaler's motion for reconsideration and directed him to file his counter-affidavit within five days, which he failed to do. Thereafter, the preliminary investigation was deemed terminated, prompting Escaler to seek relief before this Court which is the subject of another case.²⁷⁵

On *November 6, 2006*, the Special Panel issued a Joint Resolution²⁷⁶ finding probable cause against petitioners for the relevant criminal charges, which included a recommendation to file a Petition for Forfeiture of Unlawfully Acquired Property under Republic Act No. 1379 after the conduct of the May 2007 general elections.²⁷⁷

On *November 7, 2006*, Assistant Ombudsman Pelagio Apostol recommended the approval of the Joint Resolution. On *January 25, 2007*, Ombudsman Gutierrez approved the Special Panel's Joint Resolution "except the recommendation on the institution of forfeiture proceedings which should be referred to another panel for further study."²⁷⁸

On *May 3, 2012*, Ombudsman Gutierrez issued Office Order No. 177, series of 2012 constituting a Special Panel to review the Joint Resolution, specifically as to the matter of the initiation of forfeiture proceedings.²⁷⁹

On *January 28, 2013*, the Special Panel of Reviewers issued a Memorandum Review²⁸⁰ which took note of the November 6, 2006 Joint Resolution where a "previous inquiry similar to preliminary investigations in criminal cases" was conducted based on Republic Act No. 1379.²⁸¹ It has been established that Perez, in conspiracy with Escaler, demanded money from Jimenez.²⁸² In turn, petitioners were allegedly able to receive approximately US\$ 2 million as shown in the following transactions:

- 1) The transfer of US\$ 1,999,965 to Coutt's Bank Account H0133706 upon the instruction of Escaler, one of the companions of [Perez] in a meeting with Jimenez on February 13, 2001 where the act of extortion was

²⁷⁴ Id. at 452-453.

²⁷⁵ Id. at 453.

²⁷⁶ *Rollo* (Vol. II, G.R. No. 229394), pp. 822-881.

²⁷⁷ Id. at 880.

²⁷⁸ Id.

²⁷⁹ *Rollo* (Vol. III, G.R. No. 229394), p. 1267.

²⁸⁰ Id. at 1269-1274.

²⁸¹ Id. at 1270.

²⁸² Id. at 1271.

committed, is evidenced by the confirmation of credit issued by the Trade and Commerce Bank, Cayman Island.

- 2) The ownership by Escaler of said account is further shown by other bank documents and the affirmation executed by Wendy Lee Wing Tak, manager of regulatory risk of Coutt's Bank von Ernst.
- 3) The subsequent transfer of money from E[s]caler to [Perez] and his wife is evidenced by bank statements showing that on March 3 and May 23, 2001[,] the amounts of one million United States dollars (US\$ 1,000,000.00) and seven hundred thousand United States dollars (\$700,000.00), respectively, were transferred to Account No. 338 118 and 348 118 at EFG Private Bank AG.
- 4) The bank records from EFG Private Bank, Geneva which confirmed that account 338 118 was opened by [Rosario] and Arceo on March 3, 2001 and [Perez] was designated as their attorney-in-fact.²⁸³

Based on the foregoing, the Special Panel of Reviewers recommended:

With regard to the filing of the Petition for Forfeiture, note should be made, however of the following provision in Republic Act No. 1379:

“Provided, [t]hat no such petition shall be filed within one year before any general election or within three months before any special election.”

Hence, such Petition should be filed only after the May 13, 2013 synchronized local elections.

WHEREFORE, FOREGOING PREMISES CONSIDERED, it is respectfully recommended, that:

1. In accordance with Section 2 of Republic Act No. 1379, the requisite Petition for Forfeiture of Unlawfully Acquired Property be filed against respondents Hernando B. Perez, Rosario S. Perez, Ernest L. Escaler and Ramon Antonio C. Arceo, Jr. relative to the case docketed as OMB-C-C-05-0653-K (F) entitled “Field Investigation Office v. Hernando B. Perez, et al.[”]
2. The records of OMB-C-C-05-0635-K(F) entitled Field Investigation Office v. Hernando B. Perez, et al., be referred to the *Special Panel* which conducted the previous inquiry for the preparation and filing of the requisite Petition for Forfeiture under Republic Act No. 1379.²⁸⁴

On *January 30, 2013*, Ombudsman Conchita Carpio Morales approved the recommendation of the Special Panel of Reviewers.²⁸⁵



²⁸³ Id. at 1272.

²⁸⁴ Id. at 1273–1274.

²⁸⁵ Id.

On *November 14, 2014*, as represented by the Office of the Ombudsman, respondent filed the pertinent Petition for Forfeiture of Unlawfully Acquired Properties under Republic Act No. 1379 with Verified Urgent Ex Parte Application for the Issuance of a Writ of a Preliminary Attachment before the Sandiganbayan.²⁸⁶

The apparent delay here lies in the constitution of the Special Panel of Reviewers on May 3, 2012, which is more than five years from the time Ombudsman Gutierrez issued her directive on January 25, 2007. Despite the presence of delay, however, we find nothing in the records to indicate that petitioners asserted their right to the speedy disposition of their case during the interim. It was only when the petition for forfeiture in SB-14-CVL-0002 was already filed with the Sandiganbayan that they invoked an alleged violation of their constitutional right through Perez et al.'s *Answer* on February 3, 2015²⁸⁷ and Escaler's *Motion to Dismiss* on February 6, 2016.²⁸⁸

We cannot subscribe to Perez et al.'s claim that cannot be faulted for failing to invoke their right, from the time they filed their counter-affidavits until the filing of the petition, as they were preoccupied with attending to the other four criminal complaints.²⁸⁹ Their inaction constitutes as a waiver on their part. Additionally, unlike the petitioners in the cited cases of *Coscolluela v. Sandiganbayan*²⁹⁰ and *Duterte v. Sandiganbayan*²⁹¹ who were justified in their failure to invoke their right to speedy disposition of their cases, as they were completely unaware whether the preliminary investigation against them were still on-going, petitioners in this case are not. They ought to know that the preliminary investigation against them has not yet completely terminated because it was explicit in the notation of Ombudsman Gutierrez that the Special Panel's recommendation as to the filing of a petition for forfeiture is still subject for further study.

Furthermore, petitioners cannot just insist on a supposed inordinate delay of 12 years counted from the time the complaints were initiated in 2002²⁹² since *Cagang* made it clear that delay "is not determined through mere mathematical reckoning but through the examination of the facts and circumstances surrounding each case."²⁹³

V

We also find that the Sandiganbayan did not gravely abuse its discretion in not dismissing the forfeiture case as against Escaler since the petition states

²⁸⁶ Id. at 524–563.

²⁸⁷ Id. at 1120.

²⁸⁸ Id. at 1142.

²⁸⁹ *Rollo* (Vol. III, G.R. No. 229394), p. 1481.

²⁹⁰ 714 Phil. 55 (2013) [Per J. Perlas-Bernabe, Second Division].

²⁹¹ 352 Phil. 557 (1998) [Per J. Kapunan, Third Division].

²⁹² *Rollo* (G.R. No. 229394), p. 1481 & *Rollo* (G.R. No. 230186), p. 30.

²⁹³ *Cagang v. Sandiganbayan, Fifth Division*, 837 Phil. 815 (2018) [Per J. Leonen, *En Banc*].

a cause of action against him. The Ombudsman has authority to file the petition for forfeiture and had conducted a previous inquiry similar to a preliminary investigation in criminal proceedings before commencing the action with the Sandiganbayan.

A complaint states a cause of action if it adequately raises the existence of the following elements: “(1) the plaintiff’s legal right; (2) the defendant’s correlative obligation; and (3) the act or omission of the defendant in violation of plaintiff’s legal right.”²⁹⁴

As grounds for dismissal of an action, *failure to state a cause of action* is different from *lack of cause of action*. *Department of Public Works and Highways v. Manalo*²⁹⁵ explains:

While often interchanged, *failure to state a cause of action* and *lack of cause of action* are distinct grounds to dismiss an action. ***Failure to state a cause of action, on one hand, “refers to the insufficiency of allegations in the pleading,” and is a ground for a motion to dismiss.*** On the other hand, *lack of cause of action* refers to a situation where the evidence does not prove the cause of action alleged in the pleading, or there is “insufficiency of the factual basis for the action.”

Moreover, *failure to state a cause of action* “may be raised at the earliest stages” of an action, but *lack of cause of action* “may be raised any time after the questions of fact have been resolved on the basis of stipulations, admissions[,] or evidence presented[.]”

In *Heirs of Pamaran v. Bank of Commerce*, this Court held that the respondent's motion to dismiss by way of affirmative defense falls within the *failure to state a cause of action* as a ground for dismissal. This is because there had been no presentation of evidence yet, and the complaint sufficiently stated a cause of action. This Court further distinguished between *failure to state a cause of action* and *lack of cause of action*:

[A] distinction must be made between a motion to dismiss for *failure to state a cause of action* under Section 1(g) of Rule 16, and the one under Rule 33 of the Rules of Court.

In the first situation, the motion must be made before a responsive pleading is filed; and it can be resolved only on the basis of the allegations in the initiatory pleading. On the other hand, in the second instance, the motion to dismiss must be filed after the plaintiff rested his case; and it can be determined only on the basis of the evidence adduced by the plaintiff. ***In the first case, it is immaterial if the allegations in the complaint are true or false;*** however, in the second situation, the judge must

²⁹⁴ *Department of Public Works and Highways v. Manalo*, G.R. No. 217656 (2020) [Per J. Leonen, Third Division] at 7. This pinpoint citation refers to a copy of the Decision uploaded to the Supreme Court website.

²⁹⁵ *Id.*

determine the truth or falsity of the allegations based on the evidence presented.

Stated differently, a motion to dismiss under Section 1(g) of Rule 16 is based on preliminary objections made before the trial while the motion to dismiss under Rule 33 is a demurrer to evidence on the ground of insufficiency of evidence, and is made only after the plaintiff rested his case[.]

Thus, in cases of dismissal for failure to state a cause of action, as in this case, "the inquiry is into the sufficiency, not the veracity, of the material allegations" in the complaint. It delves into "whether the material allegations, assuming these to be true, state ultimate facts which constitute plaintiff's cause of action[.]" The test for determining whether a complaint states a cause of action is "whether or not, admitting hypothetically the truth of the allegations of fact made in the complaint, the judge may validly grant the relief demanded in the complaint."

There are, however, exceptions to the rule that the allegations are hypothetically admitted as true, namely: (a) if the falsity of the allegations "is subject to judicial notice"; (b) "if such allegations are legally impossible"; or (c) "if these refer to facts which are inadmissible in evidence"; or (d) "if by the record or document included in the pleading these allegations appear unfounded[.]"²⁹⁶ (Emphasis supplied, citations omitted)

As the determination lies in the sufficiency and not the truthfulness of material allegations, we limit our scrutiny within the four corners of the complaint,²⁹⁷ or in this case, the petition for forfeiture, which provides:

6. This is a Petition [f]or Forfeiture of Unlawfully Acquired Properties pursuant to Section 2 of Republic Act No. 1379 and Section 1 of Republic Act No. 6770[;]
7. Petitioner's right to recover unlawfully acquired properties in the names of, or held by respondents is not barred by prescription, laches or estoppel.
8. The Office of the Ombudsman, after conducting an inquiry similar to a preliminary investigation in criminal cases, has determined a *prima facie* case exists against respondents Hernando B. Perez, Rosario S. Perez, Ernest DL. Escaler, Ramon C. Arceo, Jr., for acquiring an amount of money and/or property manifestly out of proportion to the salary of respondent Hernando B. Perez as public officer, and to his other lawful income.
9. Respondent Hernando B. Perez is a former Secretary of Justice. . . .
10. Due to the pressure, threats and intimidation exerted by respondents Hernando B. Perez and Ernest DL. Escaler upon the person of . . . (Jimenez), [he] was forced to give in to the demand of respondents . . . to pay the sum of . . . (\$ 2,000,000.00) . . . in exchange for the cessation

²⁹⁶ Id. at 7-9.

²⁹⁷ Id.

of such threats and intimidation upon the person of Jimenez[.]

11. Respondents Escaler suggested how the money would be transferred to a bank account in Hong Kong, and would fax the transaction details to Jimenez for immediate implementation. . . .

....

13. Consistent with respondent Escaler's instructions, on February 23, 2001, Trade and Commerce Bank, Cayman Islands issued a confirmation receipt of the amount of US\$ 1,999,965.00 by Coutts Bank, Hong Kong, in favor of the beneficiary, Account No. H013706[.]

....

DETAILS OF THE MONEY TRAIL

....

22. Respondent ESCALER is the owner of Account No. H013706 at Coutts Bank, Hongkong. . . .

....

24. Account No. H013706 transferred funds in the total amount of US\$ 1.7 Million to Account Nos. 338 118 and/or 348 118 at EFG Private Bank AG; US\$ 200,000.00 to Account 243-69772 at Citibank Manila; and Issued/funded US\$ 250,000.00 Bank Draft in favor of Respondent Ramon C. Arceo, Jr:

- a. On March 6, 2001, the amount of US\$ 1,000,000.00 was debited from Account No. H013706 and was transferred to Account No. 338 118. . . .
- b. On [May 23, 2001], the following transactions involving Account No. H013706 based on instructions of respondent Ernest DL. Escaler . . . occurred:
 - b.1 US\$ 250,000.00 were debited by the issuance of a Bank Draft in favor of respondent Ramon C. Arceo, Jr.
 - b.2. US\$ 200,000.00 were debited and the same was transferred to Account 243-69772 maintained by respondent Ernest DL. Escaler at Citibank, Manila.
 - b.3. US\$700,000.00 were debited and transferred to Account No. 348 118 at EFG Private Bank, Geneva, Switzerland[.]

25. Respondent Hernando B. Perez, Rosario S. Perez and Ramon Antonio C. Arceo, Jr. are identified as the owners of Account Nos. 338 118 and/or 348 118, the recipient of the total amount of US\$ 1.7 Million . . . from respondent Ernest DL Escaler's Account No. H013706 in Coutts Bank, Hongkong[.]

....

27. Records will reveal that respondent Hernando B. Perez did not disclose in his 2001 and 2002 Statements of Assets, Liabilities and Networth

(SALNs) his and/or his wife's financial interest of at least US\$ 1,700,000.00 transferred to their accounts (338 118 and 348 118) by respondent Escaler in 2001. . . .

28. Considering that respondent Hernando B. Perez, during his incumbency as public officer, unlawfully acquired monies/properties which are manifestly out of proportion to his salary as such public officer and to his other lawful income and the income from legitimately acquired property, such monies/properties amounting to more or less US\$ 2,000,000.00 are subject in favor of the government[.]²⁹⁸

The petition for forfeiture states a cause of action against Escaler.

The right of the State to recover unlawfully acquired properties of a public officer or employee emanates from Republic Act No. 1379, the pertinent sections of which provide:

SECTION 2. Filing of petition. — Whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed prima facie to have been unlawfully acquired. The Solicitor General, upon complaint by any taxpayer to the city or provincial fiscal who shall conduct a previous inquiry similar to preliminary investigations in criminal cases and shall certify to the Solicitor General that there is reasonable ground to believe that there has been committed a violation of this Act and the respondent is probably guilty thereof, shall file, in the name and on behalf of the Republic of the Philippines, in the Court of First Instance of the city or province where said public officer or employee resides or holds office, a petition for a writ commanding said officer or employee to show cause why the property aforesaid, or any part thereof, should not be declared property of the State: Provided, That no such petition shall be filed within one year before any general election or within three months before any special election.

.....

SECTION 6. Judgment. — If the respondent is unable to show to the satisfaction of the court that he has lawfully acquired the property in question, then the court shall declare such property, forfeited in favor of the State, and by virtue of such judgment the property aforesaid shall become property of the State: Provided, That no judgment shall be rendered within six months before any general election or within three months before any special election. The Court may, in addition, refer this case to the corresponding Executive Department for administrative or criminal action, or both. (Emphasis supplied)

Section 1(b) of Republic Act No. 1379 states what constitutes legitimately acquired properties:

²⁹⁸ Rollo (G.R. No. 229394), pp. 526–534.

SECTION 1. *Definitions.*

.....

- (b) “*Other legitimately acquired property*” means any real or personal property, money or securities which the respondent has at any time acquired by inheritance and the income thereof, or by gift *inter vivos* before his becoming a public officer or employee, or any property (or income thereof) already pertaining to him when he qualified for public office or employment, or the fruits and income of the exclusive property of the respondent’s spouse. *It shall not include:*
1. *Property unlawfully acquired by the respondent, but its ownership is concealed by its being recorded in the name of, or held by, the respondent’s spouse, ascendants, descendants, relatives, or any other person.*
 2. *Property unlawfully acquired by the respondent, but transferred by him to another person or persons on or after the effectivity of this Act.*
 3. Property donated to the respondent during his incumbency, unless he can prove to the satisfaction of the court that the donation is lawful. (Emphasis supplied)

As Republic Act No. 1379 covers situations where properties unlawfully acquired by a public officer are concealed or transferred under the name of another, Escaler’s insistence that he is not covered as he is not a public officer fails. Moreover, since the complaint specifically alleges his participation in the bank transactions involving the money presumed to be unlawfully acquired by Perez during his incumbency as a public officer, respondent did not err in impleading his name in the petition for forfeiture. The findings of the Sandiganbayan in its April 18, 2016 Resolution are well-taken:

In case a public officer or employee conceals and/or transfers the ownership of his/her unlawfully acquired property to his/her spouse, relatives or any other person, the Republic could still validly forfeit the same since the ownership of the said property is still traceable to the public officer or employee. In order, however, for the Republic to forfeit the said property, the public officer or employee’s spouse, relatives or any other person, to whom the ownership of the said property was concealed or transferred, must be impleaded by the Republic in the forfeiture case that it would file. *By impleading the said spouse, relatives or any other person in the forfeiture case, the Republic would have a complete settlement of its case against the erring public officer or employee.* In the same vein, it would give the spouse, relative or any other person to whom the property was transferred or concealed the opportunity to prove his/her legitimate ownership of the subject property. *Thus, it is not only proper but indispensable to implead the said spouse, relative or any other person in the forfeiture proceedings notwithstanding the fact that the said person/s is/are private individual/s.*²⁹⁹ (Emphasis supplied)

²⁹⁹ Id. at 96.

Escaler's insistence on the necessity of a taxpayer's complaint to set the forfeiture proceeding in motion is also misplaced.³⁰⁰ The authority of the Ombudsman to file this petition for forfeiture, even in the absence of a complaint from a taxpayer, emanates from its constitutional mandate empowering it to investigate *on its own* any act or omission of any public official that appears to be "illegal, unjust, improper, or inefficient."³⁰¹ Worth stressing that under Republic Act No. 6770, the Ombudsman has the authority to "[i]nvestigate and initiate the proper action for the recovery of ill-gotten and/or unexplained wealth amassed after February 25, 1986 and the prosecution of the parties involved therein."³⁰²

Finally, contrary to Escaler's assertions,³⁰³ a preliminary inquiry was conducted before the filing of the petition for forfeiture. As found by the Sandiganbayan in its January 17, 2017 Resolution:

First. The [Field Investigation Office] of the Office of the Ombudsman filed a *Complaint* dated November 11, 2005 against [Perez, et al. and Escaler] for violation of [Republic Act] No. 1373 (sic) on November 14, 2005. Thus:

The Field Investigation Office (FIO) of the Office of the Ombudsman, as nominal complainant, hereby files this complaint before the Preliminary Investigation, Administrative Adjudication and Monitoring Office (PAMO) against the following respondents, namely:

.....

C. Former Justice Secretary HERNANDO BENITO PEREZ; ROSARIO SALVADOR PEREZ; ERNEST L. ESCALER; RAMON ANTONIO C. ARCEO, Jr.; and JOHN DOES, for violation of the provisions of [Republic Act] No. 1379 (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 Therefore).

.....

The aforesaid complaint thereafter narrates why the said respondents should be charged with a violation of [Republic Act] No. 1379.

Second. Acting on the said complaint of the [Field Investigation Office] (and that of then Congressman Jimenez), the [Preliminary Investigation, Administrative Adjudication and Monitoring Office] directed the herein respondents to file their respective counter-affidavits.

³⁰⁰ Id. at 64.

³⁰¹ CONST., art. XI (Accountability of Public Officers), sec. 13.

³⁰² See Republic Act No. 6770 (1989), sec. 15(11), Ombudsman Act of 1989. See also *Republic v. Sandiganbayan*, 277 Phil. 759, 776-777 (1991) [Per J. Regalado, *En Banc*].

³⁰³ *Rollo* (G.R. No. 230186), p. 72

Pursuant to the said directive, . . . Perez, et al. filed their Consolidated Joint Counter-Affidavit dated December 12, 2005. In the said joint counter-affidavit, . . . [and] directly addressed the charges that they violated [Republic Act] No. 1379. . . .

Respondent Escaler, on the other hand, did not file any counter-affidavit. Instead, he filed a motion seeking to disqualify the Office of the Ombudsman from conducting the preliminary investigation and turn over the said case to the Department of Justice on the ground of prejudgment and the use of evidence allegedly improperly obtained. Said motion was denied by the Office of the Ombudsman. Despite repeated opportunity given him to submit his counter-affidavit, he chose not to do so. Thus, the Office of the Ombudsman deemed . . . Escaler's failure to submit his counter-affidavit a waiver and, consequently, submitted the case for resolution based on the pleadings available on record.

. . . .

Third. In its *Joint Resolution* dated November 6, 2006, the Special Panel of Investigators recommended the institution of the forfeiture proceedings against herein respondents after the May 2007 elections. This recommendation was not immediately implemented because then Ombudsman Gutierrez ordered that a new panel be constituted to study the said recommendation.

Fourth. Thereafter, Ombudsman Morales issued *Office Order No. 177*, dated May 3, 2012, series of 2012, constituting a Special Panel of Reviewers which was tasked to review the matter of initiation of forfeiture proceedings pursuant to the said directive of then Ombudsman Gutierrez. On January 28, 2013, the Special Panel of Reviewers submitted their *Memorandum* of even date to Ombudsman Morales recommending the filing of a petition for forfeiture against the herein respondents after the May 13, 2013 elections. Said recommendation was approved by Ombudsman Morales on January 30, 2013.

*Under the obtaining facts, it is undisputable that an inquiry similar to a preliminary investigation was conducted prior to the filing of the petition for forfeiture, subject of this case. Contrary to the assertion of . . . Escaler, he was notified of the said proceedings. In fact, he even filed a motion to disqualify and inhibit the Office of the Ombudsman from hearing the complaints against them. . . Escaler cannot therefore claim that "[he] was not included in, nor notified of, much less participated in, the previous inquiry required by law in forfeiture case filed pursuant to [Republic Act No.] 1379."*³⁰⁴ (Emphasis supplied)

All told, this Court finds that the Sandiganbayan did not commit grave abuse of discretion in issuing the assailed Order and Resolutions. With the foregoing disquisitions, it would also be unnecessary to belabor upon the other issues raised by the parties.

ACCORDINGLY, the consolidated Petitions in G.R. Nos. 229394 and

³⁰⁴ *Rollo* (G.R. No. 229394), pp. 171-174.

230186 are **DISMISSED** for lack of merit.

SO ORDERED.

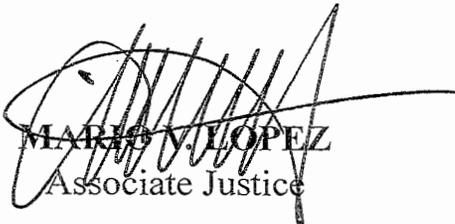


MARVIC M.V.F. LEONEN
Senior Associate Justice

WE CONCUR:



AMY C. LAZARO-JAVIER
Associate Justice



MARIC V. LOPEZ
Associate Justice



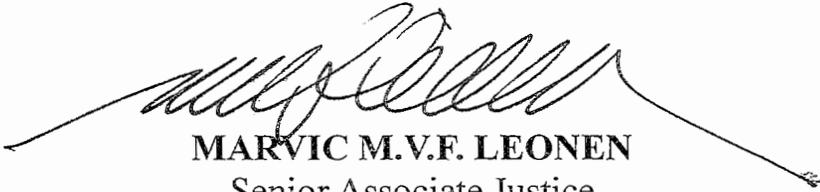
JHOSEP Y. LOPEZ
Associate Justice



ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

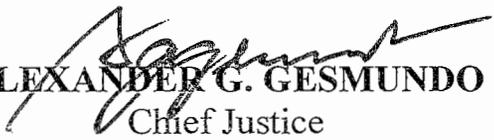
I attest that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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.


ALEXANDER G. GESMUNDO
Chief Justice