



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CRIM. CASE NO. SB-22-CRM-0001
For: Violation of Section 3 (e) of RA No. 3019 as amended

- versus -

CRIM. CASES NOS. SB-22-CRM-0002
to SB-22-CRM-0003
For: Violation of Art. 217 (Malversation of Public Funds) and in relation to Art. 171 of the Revised Penal Code

ALAN ALUNAN JAVELLANA,
President

RHODORA BULATAO MENDOZA,
Director, Administrative and Finance Division

ROMULO MAGAHIS RELEVO
Head, General Services Unit

MA. JULIE ASOR VILLARALVO-JOHNSON
Department Accountant

All of: National Agribusiness Corporation

MARILOU L. ANTONIO
Kasangga sa Magandang Bukas Foundation, Inc.

ELIZABETH D. BALBACAL
Private Individual

Accused.

Present:

DE LA CRUZ, J., Chairperson
ECONG, J.
MALABAGUIO*, J.

Promulgated on:

6 November 2023.

**Sitting as Special Member of the First Division as per Administrative Order No. 173-A-2022, dated August 2, 2022.*

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DE LA CRUZ, J.:

Accused Alan Alunan Javellana, Rhodora Bulatao Mendoza, Romulo Magahis Relevo and Ma. Julie Asor Villaralvo-Johnson, in conspiracy with Marilou L. Antonio and Elizabeth Dasalla Balbacal, all stand charged for violating Section 3(e) of RA 3019, Malversation of Public Funds under Article 217 of the Revised Penal Code, and Malversation of Public Funds through Falsification of Official/Public Documents under Article 217, in relation to Article 171 of the Revised Penal Code, in separate Informations the respective accusatory portions of which read:

Criminal Case No. SB-22-CRM-0001

That in June 2008, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within this Honorable Court's jurisdiction, accused public officers ALAN ALUNAN JAVELLANA, president, RHODORA BULATAO MENDOZA, Director, Administrative and Finance Division, ROMULO MAGAHIS RELEVO, Head, General Services Unit, MA. JULIE ASOR VILLARALVO-JOHNSON, Department Accountant, all of the National Agribusiness Corporation (NABCOR), while in the performance of their administrative and/or official functions and taking advantage of their official positions, conspiring with one another and with private individuals MARILOU L. ANTONIO, Chief Finance Officer/Project Coordinator of Kasangga sa Magandang Bukas Foundation, Inc. (KMBFI) and ELIZABETH D. BALBACAL, Certified Public Accountant, did then and there willfully, unlawfully, and criminally cause undue injury to the Government and/or give unwarranted benefits, advantage, and preference to KMBFI, a non-governmental organization, in the total amount of at least Four Million Eight Hundred Fifty Thousand pesos (₱4,850,000.00), as reflected in Disbursement Voucher (DV) Nos. 08-07-02441 and 08-07-02548 and covered by Special Allotment Release Order (SARO) No. 08-04188 and the Priority Development Assistance Fund (PDAF) of Congressman Vicente F. Belmonte Jr., through manifest partiality, evident bad faith, and/or gross inexcusable negligence, by flagrantly disregarding the General Appropriation Law, Republic Act No. 9184 and its implementing rules and regulations, and Commission on Audit Circular No. 2007-001, and making it appear that the amount was used for the implementation of livelihood programs through the procurement and distribution of various seedlings in the 1st District of Lanao del Norte/Iligan City, which programs/projects

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turned out to be non-existent, to the damage and prejudice of the Government, through the following acts/omission:

- a) **Javellana** irregularly entered into the MOA with KMBFI through Antonio; selected KMBFI as a project partner on the purported implementation of the livelihood programs; and as the signing official and NABCOR president, failed to monitor the project implementation and the utilization of the fund;
- b) **Javellana** also facilitated, processed, and approved the DVs and Checks for the PDAF releases to KMBFI, along with **Villaralvo-Johnson** who certified that supporting documents were complete and proper, **Relevo** who certified that the expenses were necessary and lawful and incurred under his direct supervision, and **Mendoza** who signed/prepared the Project Framework and Check;
- c) **Antonio**, acting for and in behalf of KMBFI, participated in the preparation of the PDAF documents, received the checks, issued the corresponding KMBFI Official Receipts and submitted falsified liquidation documents, while **Balbacal** purportedly verified the correctness of the Disbursement and Liquidation Reports despite the fact that the reports, including its supporting documents, were falsified and fabricated.

CONTRARY TO LAW.

Criminal Case No. SB-22-CRM-0002

That in July 2008, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within this Honorable Court's jurisdiction, accused public officers ALAN ALUNAN JAVELLANA, president, RHODORA BULATAO MENDOZA, Director, Administrative and Finance Division, ROMULO MAGAHIS RELEVO, Head, General Services Unit, MA. JULIE ASOR VILLARALVO-JOHNSON, Department Accountant, all of the National Agribusiness Corporation (NABCOR), and as such, are accountable for public funds received and/or entrusted to them by reason of their office, acting in relation to their office and taking advantage of the same, conspiring and confederating with one another and with private individuals MARILOU L. ANTONIO, Chief Finance Officer/Project Coordinator of Kasangga sa Magandang Bukas Foundation, Inc. (KMBFI) and ELIZABETH D. BALBACAL, Certified Public Accountant, did then and there willfully, unlawfully, and feloniously appropriate, take, misappropriate or consent or, through abandonment or negligence, allow KMBFI, a non-governmental organization, to take public funds amounting to at least Four Million Three Hundred Sixty-Five Thousand pesos (P4,365,000.00) as

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reflected in DV No. 08-07-02441 dated 14 July 2008, covered by Special Allotment Release Order (SARO) No. 08-04188 and the Priority Development Assistance Fund (PDAF) of Congressman Vicente F. Belmonte Jr., by flagrantly disregarding the General Appropriation Law, Republic Act No. 9184 and its implementing rules and regulations, and Commission on Audit Circular No. 2007-001, and making it appear that the amount was used for the implementation of livelihood programs through the procurement and distribution of various seedlings in the 1st District of Lanao del Norte/Iligan City, which programs/projects turned out to be non-existent, to the damage and prejudice of the Government, through the following acts/omission:

- a) **Javellana** irregularly entered into the MOA with KMBFI through Antonio; selected KMBFI as a project partner on the purported implementation of the livelihood programs; and as the signing official and NABCOR president, failed to monitor the project implementation and the utilization of the fund;
- b) **Javellana** also facilitated, processed, and approved the DVs and Checks for the PDAF releases to KMBFI, along with **Villaralvo-Johnson** who certified that supporting documents were complete and proper, **Relevo** who certified that the expenses were necessary and lawful and incurred under his direct supervision, and **Mendoza** who signed/prepared the Project Framework and Check;
- c) **Antonio**, acting for and in behalf of KMBFI, participated in the preparation of the PDAF documents, received the checks, issued the corresponding KMBFI Official Receipts and submitted falsified liquidation documents, while **Balbacal** purportedly verified the correctness of the Disbursement and Liquidation Reports despite the fact that the reports, including its supporting documents, were falsified and fabricated.

CONTRARY TO LAW.

Criminal Case No. SB-22-CRM-0003

That in July 2008, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within this Honorable Court's jurisdiction, accused public officers ALAN ALUNAN JAVELLANA, president, RHODORA BULATAO MENDOZA, Director, Administrative and Finance Division, ROMULO MAGAHIS RELEVO, Head, General Services Unit, MA. JULIE ASOR VILLARALVO-JOHNSON, Department Accountant, all of the National Agribusiness Corporation (NABCOR), and as such, are accountable for public funds received and/or entrusted to them by reason of their office, acting in relation to their office and

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taking advantage of the same, conspiring and confederating with one another and with private individuals **MARILOU L. ANTONIO**, Chief Finance Officer/Project Coordinator of Kasangga sa Magandang Bukas Foundation, Inc. (KMBFI) and **ELIZABETH D. BALBACAL**, Certified Public Accountant, did then and there willfully, unlawfully, and feloniously appropriate, take, misappropriate or consent or, through abandonment or negligence, allow KMBFI, a non-government organization, to take public funds, by means of falsifying liquidation documents, amounting to at least Four Hundred Eighty Five Thousand pesos (₱485,000.00) Retention Fee, as reflected in DV No. 08-07-02548 dated 21 July 2008 and covered by Special Allotment Release Order (SARO) No. 08-04188 and the Priority Development Assistance Fund (PDAF) of Congressman Vicente F. Belmonte Jr., by flagrantly disregarding the General Appropriation Law, Republic Act No. 9184 and its implementing rules and regulations, and Commission on Audit Circular No. 2007-001, and making it appear that the amount was used for the implementation of livelihood programs through the procurement and distribution of various seedlings in the 1st District of Lanao del Norte/Iligan City, which programs/projects turned out to be non-existent, to the damage and prejudice of the Government, through the following acts/omission:

- a) **Javellana** irregularly entered into the MOA with KMBFI through Antonio, selected KMBFI as a project partner on the purported implementation of the livelihood programs; and as the signing official and NABCOR president, failed to monitor the project implementation and the utilization of the fund;
- b) **Javellana** also facilitated, processed, and approved the DVs and Checks for the PDAF releases to KMBFI, along with **Villaralvo-Johnson** who certified that supporting documents were complete and proper, **Relevo** who certified that the expenses were necessary and lawful and incurred under his direct supervision, and **Mendoza** who signed/prepared the Project Framework and Check;
- c) **Antonio**, acting for and in behalf of KMBFI, participated in the preparation of the PDAF documents, received the checks, issued the corresponding KMBFI Official Receipts and submitted falsified liquidation documents to cause the release of the Retention Fee, while **Balbacal** purportedly verified the correctness of the Disbursement and Liquidation Reports despite the fact that the reports, including its supporting documents, were falsified and fabricated.

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Upon being arraigned, accused Relevo,¹ Mendoza² and Balbacal,³ assisted by their counsel *de officio*, separately pleaded not guilty to the charges against them.

Accused Javellana, Villaralvo-Johnson and Antonio have remained at-large.

During the pre-trial, the parties stipulated on the following facts:⁴

A. Proposed by the prosecution (admitted by the accused)

1. During the period material to the Information in this case, accused Mendoza and Relevo were public officials and accountable officers who held the following positions in National Agribusiness Corporation (NABCOR):

Rhodora Bulatao Mendoza	Director, Administrative and Finance Division
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Romulo Magahis Relevo	Head, General Services Unit
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2. Also, during the period material to the Information in this case, accused Balbacal, a Certified Public Accountant (CPA), was a private individual.

3. Whenever referred to orally or in writing by the Court, the prosecution and/or the witnesses, accused Mendoza, Relevo and Balbacal admit that they are the same accused in this case.

4. The Special Audit Office of the Commission on Audit (COA-SAO) conducted a government-wide performance audit of the allocation and utilization of Priority Development Assistance Fund (PDAF), from June 15, 2010 to September 13, 2012, covering CYs 2007 to 2009, as contained in SAO Report No. 2012-03.

5. On May 8, 2008, Special Allotment Release Order (SARO) No. ROCS-0804188 was released by the Department of

¹ Records, Vol. I, p. 328

² Id., p. 328

³ Id., p. 404

⁴ Pre-Trial Order, Id., Vol. II, pp. 125-136.

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Budget and Management (DBM) in favor of the Department of Agriculture (DA) in the amount of ₱5 Million, charged to the PDAF of Congressman Vicente F. Belmonte Jr. (Cong. Belmonte Jr.), as financial assistance for the implementation of his livelihood program/project in the 1st District of Lanao Del Norte/Iligan City.

6. On June 11, 2008, the DBM issued a Notice of Cash Allocation (NCA) No. 363207-5 for the DA.

7. On June 4, 2008, Cong. Belmonte Jr. sent a Letter-Request to DA Secretary Arthur Yap for the transfer of Cong. Belmonte Jr.'s ₱5 Million PDAF to NABCOR.

8. The DA, represented by Secretary Arthur C. Yap, and NABCOR, represented by accused Alan A. Javellana, President, executed a Memorandum of Agreement (MOA), dated June 19, 2008, where Cong. Belmonte Jr. shall transfer his ₱5 Million allocation to NABCOR under SARO No. ROCS-08-04188.

9. On June 26, 2008, the DA issued Obligation Request No. 200-08-06-4460 for the fund transfer of Cong. Belmonte Jr.'s, ₱5 Million PDAF to NABCOR.

10. Accused Javellana and Mendoza, NABCOR President and Director for Administration and Finance, respectively, signed a Project Framework for livelihood projects through procurement and distribution of various seedlings, such as mango, calamansi, rambutan and jackfruit.

11. The ₱5 Million PDAF of Cong. Belmonte Jr. under SARO No. ROCS-08-04188 was released to NABCOR under Disbursement Voucher (DV) No. 08-06-4054, dated June 26, 2008.

12. The DA issued to the order of NABCOR Land Bank of the Philippines (LBP) Check No. 0000455233, dated July 7, 2008, in the amount of ₱5 Million, signed by DA Secretary Yap.

13. NABCOR issued Official Receipt No. 133, dated July 14, 2008, for its receipt of the transferred amount of ₱5 Million.

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14. Kasangga sa Magandang Bukas Foundation Inc. (KMBFI) is a non-stock and non-profit association registered with the Securities and Exchange Commission (SEC).

15. The principal office of KMBFI was at No. 911 Algericas Street, Sampaloc, Manila, per its Certificate of Incorporation/Articles of Incorporation and By-laws.

16. The No. 1 purpose of KMBFI was to assist the masses both in the rural and urban areas in the provision of their basic human needs for existence, through programs/projects on food production, health services, education and related activities on livelihood and community and development.

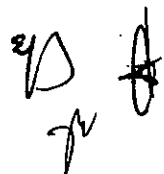
17. On July 9, 2008, the MOA, between NABCOR, represented by its President, accused Javellana; and KMBFI, represented by its Chief Finance Officer/Project Coordinator accused Antonio, was executed for KMBFI to implement Cong. Belmonte Jr.'s livelihood project in Lanao del Norte for the consideration of ₱4,850,000.00, payable in two tranches: (1) 90% or ₱4,365,000.00 upon submission of the Project Proposal, and (2) 10% or ₱485,000.00 upon submission of the Physical and Audited Financial Reports.

18. The amount of ₱4,850,000.00 was equivalent to 97% of the ₱5 Million PDAF of Cong. Belmonte Jr., and the remaining 3% was for NABCOR's administrative cost.

19. On July 14, 2008, the 1st tranche of payment in the amount of ₱4,365,000.00 was released and paid by NABCOR to KMBFI through DV No. 08-07-02441 and UCPB Check No. 0000417358.

20. DV No. 08-07-02441 was signed by accused Relevo, General Services Unit Head, Villaralvo-Johnson, Accountant, Javellana, President, all of NABCOR; and accused Antonio, CFO/Project Coordinator of KMBFI.

21. UCPB Check No. 0000417358 was signed by accused Mendoza, Director Administrative and Finance Divison, and accused Javellana, both of NABCOR.



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22. KMBFI issued to NABCOR Official Receipt No. 0015, dated July 15, 2008, for its receipt of ₱4,365,000.00.

23. On July 18, 2008, accused Antonio, submitted to NABCOR Partial Physical Report, dated July 18, 2008, Certificate of Acceptance, dated July 17, 2008, List of Beneficiaries signed by Cong. Belmonte Jr., and partial Disbursement and Liquidation Report as of July 18, 2008.

24. The supporting documents of the partial Disbursement and Liquidation Report were: B.B. Vergara Plant Nursery (a) Official Receipt No. 136, dated July 17, 2008, (b) Sales Invoice No. 233, dated July 16, 2008, and (c) Delivery Receipt No. 338, dated July 16, 2008, showing that KMBFI purportedly procured from B.B. Vergara Plant Nursery various fruit seedlings worth ₱4,365,000.00, which fruit seedlings were allegedly distributed by KMBFI to Iligan City and the Municipalities of Lanao del Norte, namely: Bacolod, Baroy, Kauswagan, Kolambugan, Linamon, Maigo and Tubod.

25. On July 21, 2008, the 2nd tranche of PDAF in the amount of ₱485,000.00 was released and paid by NABCOR to KMBFI through DV No. 08-07-02548 and UCPB Check No. 0000436805.

26. DV No. 08-07-02548 was signed by accused Relevo, Villalarvo-Johnson and Javellana, both of NABCOR.

27. UCPB Check No. 0000436805 was signed by accused Mendoza and Javellana.

28. KMBFI issued Official Receipt No. 0017, dated July 23, 2008, for its receipt from NABCOR of the amount of ₱485,000.00.

29. On August 4, 2008, accused Antonio, CFO/Project Coordinator of KMBFI, submitted to NABCOR the Final Physical Report, dated July 31, 2008, Certificate of Acceptance, dated July 30, 2008, List of Beneficiaries signed by Cong. Belmonte Jr., and Final Disbursement and Liquidation Report as of July 30, 2008.

30. The supporting documents of the Final Disbursement and Liquidation Report were: B.B. Vergara Plant Nursery (a) Official Receipt No. 194, dated July 29, 2008, (b) Sales Invoice No. 298, dated July 25, 2008, and (c) Delivery Receipt No. 401, dated July

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25, 2008, which all showed that KMBFI purportedly procured from B.B. Vergara Plant Nursery the additional fruit seedlings worth ₱485,000.00, which fruit seedlings were allegedly distributed by NABCOR to the city and municipalities named under paragraph 24.

31. On August 12, 2014, COA issued SAO Notice of Disallowance (ND) No. DA-2014-108-PDAF (07-09), dated August 12, 2014, for the disallowance of the ₱5 Million PDAF of Cong. Belmonte Jr.

32. On November 24, 2014, COA issued another SAO ND No. NAB-2014-119-PDAF (07-09), dated November 24, 2014.

33. The Field Investigation Office of the Office of the Ombudsman (FIO-OMB) conducted an investigation on the audit of the SAO-COA, as contained in SAO Audit Report No. 2012-03 and, as a result, filed a complaint against all the accused before the OMB.

B. Proposed by accused Mendoza (admitted by the prosecution)

1. She used to be employed/connected with NABCOR as its Manager for Administration and Finance from April 16, 2006 to September 30, 2006, and thereafter became the Director of its Administrative and Finance Division from October 1, 2006 to December 31, 2008. Finally, she became the Vice President of its Administrative and Finance Division from August 1, 2009 until March 23, 2011.

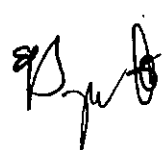
2. The documents signed by accused Mendoza were signed by her with the position indicated under her name.

3. She was authorized to co-sign with accused Javellana all the documents where her signatures appear.

C. Proposed by accused Relevo (admitted by the prosecution)

1. He was duly authorized to sign all the documents where his signatures appear.

2. NABCOR executed through its President, accused Javellana, a MOA with KMBFI detailing how the subject allotment of



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Cong. Belmonte Jr. would be used for the livelihood projects through the procurement and distribution of various fruit seedlings in the 1st District of Lanao del Norte and that accused Relevo was not a signatory thereto.

3. The subject livelihood projects financed from the allotment of Congressman Belmonte, Jr. in PDAF were not implemented.

D. Proposed by accused Balbacal (admitted by the prosecution)

1. She was first appointed in government as a Budget Analyst in December 1, 1978 with the DBM; she was appointed as Senior Budget Specialist in the same office on December 31, 1987 until July 31, 1994; she transferred to the Commission on Elections effective August 1, 1994 as Accountant IV; she was promoted to Chief Accountant of FSD-Main with the same office on October 25, 1996 until January 26, 2015 when she was appointed as Acting Budget Officer V; she was re-shuffled as Division Chief of Accounting Division (sic) on January 27, 2015 until she retired from the service effective February 1, 2016.

The parties likewise stipulated⁵ on the following as the issues to be resolved:

1. Whether all the accused, in conspiracy with one another, acted with manifest partiality, evident bad faith, and/or gross inexcusable negligence in disbursing public funds in the total amount of ₱4,850,000.00, sourced from the ₱5 Million PDAF of Cong. Belmonte Jr., and paid by NABCOR to KMBFI, thereby causing undue injury to the Government and/or giving unwarranted benefit, advantage, and preference to KMBFI.

2. Whether accused Mendoza and Relevo, both public officers and accountable officers of NABCOR, while in the performance of their administrative and/or official functions, and conspiring with accused Balbacal, appropriated, took, misappropriated, or consented, or through abandonment or

⁵ Pre-Trial Order, Id., Vol. II, p.129-130.

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negligence, allowed KMBFI to take public funds amounting to at least ₱4,365,000.00 sourced from the ₱5 Million PDAF of Cong. Belmonte Jr., and paid by NABCOR to KMBFI.

3. Whether accused Mendoza and Relevo, both public officers and accountable officers of NABCOR, while in the performance of their administrative and/or official functions, and conspiring with accused Balbacal, appropriated, took, misappropriated, or consented, or through abandonment or negligence, allowed KMBFI to take public funds by means of falsifying liquidation documents, amounting to at least ₱485,000.00 sourced from the ₱5 Million PDAF of Cong. Belmonte Jr., and paid by NABCOR to KMBFI.

EVIDENCE FOR THE PROSECUTION

After the pre-trial, trial ensued. The prosecution presented **Joan Agnes N. Alfafaras**, State Auditor IV of COA, as its sole witness, whose testimony is summarized below.

Through her Judicial Affidavit,⁶ Alfafaras testified on direct examination that in 2010, the COA-SAO conducted special audits on the PDAF and Various Infrastructure Projects including Local Projects (VILP), covering calendar years 2007-2009. At that time, she held the position of State Auditor III of COA-SAO and, as such, she performed all the duties and activities assigned to her by the directors and team supervisor and she was designated as a co-team leader or a member in an audit team.

The COA was prompted to conduct special audits due to the emerging issues at that time on the utilization of the PDAF of legislators based on the reports of COA resident auditors, such as unliquidated fund transfers, undocumented disbursements, and non-compliance with existing rules and regulations. The special audit on the PDAF of legislators for calendar years 2007-2009 was authorized under COA Office Order No. 2010-309,⁷ dated May 13,

⁶ Id., Vol. II, pp. 238-804

⁷ Exhibit WW-1.

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2010, and subsequent COA Office Orders No. 2010-327,⁸ No. 2011-039,⁹ No. 2011-428,¹⁰ and No. 2011-714.¹¹

As co-team leader in this particular audit, she implemented the audit plan along with the team members and gathered documents; analyzed data and concluded the audit; conducted ocular inspection of the business sites of selected non-governmental organizations (NGOs) and suppliers; reviewed the accomplishments of the team members; and prepared Notices of Disallowances relative to the disallowed transactions of implementing agencies for review and approval of the over-all team leader and SAO Director.

The audit aimed to determine the propriety of the releases of PDAF by the DBM and the utilization thereof and implementation of PDAF-funded projects by several implementing agencies, which include among others, the DA and NABCOR. The audit focused on the (a) allocation and transfer of funds and monitoring releases; (b) implementation of the livelihood and other projects; (c) implementation of infrastructure projects; and (d) financial assistance and other charges by the local government units (LGUs). In executing the objective of this audit, the team relied on (1) the specific provisions in the General Appropriations Act (GAA) for 2007, 2008, and 2009; (2) the Government Procurement Act (RA 9184); (3) pertinent provisions of the Government Auditing Code (PD 1445); (4) COA Circular No. 2007-001; (5) DBM National Budget Circular (NBC) No. 476, and (6) GPPB Resolution No. 12-2007.

The special audit covered the PDAF allocation of 202 senators and congressmen/representatives including that of Cong. Belmonte Jr. under SARO No. ROCS-08-04188.¹²

In connection with these cases, the audit team gathered several documents from the Government Accountancy Office of COA, the DA and NABCOR. These include a copy of SAROs,

⁸ Exhibit WW-2, dated May 18, 2010.

⁹ Exhibit WW-3, dated January 19, 2011.

¹⁰ Exhibit WW-4, dated June 17, 2011.

¹¹ Exhibit WW-5, dated October 12, 2011.

¹² Exhibit C.

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Advice of NCA Issued (ANCAI), DVs, and their supporting documents.¹³

The audit team then sent confirmation letters¹⁴ to Cong. Belmonte Jr., requesting him to confirm his signature on the documents attached to COA's letters, to the beneficiaries and to the KMBFI President; conducted ocular inspection of the business site of KMBFI and supplier B.B. Vergara Plant Nursery in Talisay, Batangas;¹⁵ and served a confirmation letter to Bonifacio B. Vergara, proprietor of B.B. Vergara Plant Nursery.¹⁶

After inspecting the site of B.B. Vergara Plant Nursery, Mr. Vergara replied to the audit team's request for confirmation, indicating that B.B. Vergara Plant Nursery did not issue all the official receipts/invoices enumerated in the COA audit team's letter, dated November 24, 2010, and that they did not deliver goods or render any service to the NGOs/POs enumerated therein during the period January 2007 to March 2010.¹⁷

Upon receipt of the reply of Mr. Vergara, the audit team proceeded to send out confirmation letters to eight city and municipal mayors of the 1st District of Lanao del Norte. After validating with the beneficiaries, two municipal mayors from the Municipal Government of Baroy and Bacolod, both in Lanao del Norte, denied receipts of fruit bearing tree seedlings from KMBFI,¹⁸ while the other six municipal mayors did not respond to the audit team's request for confirmation.

When the audit team conducted an ocular inspection/validation of the business site of KMBFI, it found that the KMBFI's given address on January 6, 2011 was a two-door apartment, and its present occupant claimed that she was not aware of the existence of KMBFI within the unit and disclosed that a Myra Villanueva, the Project Coordinator of KMBFI in CY 2009, who migrated to the USA in April 2010, previously rented the unit. The present occupant did not identify herself to the team.¹⁹

¹³ Exhibits C, E, H, I, J, and L to Z.

¹⁴ Exhibits XX and YY.

¹⁵ Judicial Affidavit, Records, Vol. II, p. 248.

¹⁶ Exhibit AA.

¹⁷ Exhibit BB.

¹⁸ Exhibits EE and FF.

¹⁹ Judicial Affidavit, Records, Vol. II, p. 252.

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In addition, auditor's reports were attached to the letters of KMBFI.²⁰ The team observed that accused Balbacal, the Certified Public Accountant, expressed an opinion that the Partial Disbursement and Liquidation Report were presented fairly, in all material respects and in accordance with generally accepted accounting principles. Accused Balbacal conducted financial audit of the receipts and disbursement of funds of KMBFI subject of these cases.²¹

The team opined that accused Balbacal's opinion of fair presentation of the financial reports are not a guarantee that the transactions are free of fraud or having no intentional omission. This is because (1) the team found that the existence of KMBFI is questionable as the structure at the given address of KMBFI is a 2-door apartment, not an office of an NGO; (2) the supposed supplier of seedlings denied having transactions with KMBFI; and (3) the issuance of receipts and invoices, and two out of eight purported recipients denied having received planting materials allegedly distributed by KMBFI.²²

Thereafter, the team sent a confirmation letter to KMBFI president to determine, among others, if NABCOR "indeed received the total amount of ₱56,551,000.00²³ and implemented the abovementioned projects."²⁴

After gathering the relevant documents, the audit team evaluated and analyzed all the documents as well as the results of the confirmation, inspection and validation. It observed that the transactions under SARO No. ROCS-08-04188, including the selection of NGO, were undertaken without due regard to existing laws, rules and regulations.²⁵ Likewise, the physical existence of KMBFI is questionable. Other findings include questionable procurement and distribution of fruit bearing tree seedlings and utilization of ₱150,000.00 as administrative costs.²⁶

²⁰ Exhibits U and Z.

²¹ Judicial Affidavit, Records, Vol. II, p. 254.

²² Id., p. 254.

²³ Under SARO No. ROCS 08-04188, the amount pertaining to Cong. Vicente Belmonte, Jr. is ₱4,850,000.00.

²⁴ Exhibit PP.

²⁵ GPPB Resolution No. 12-2007, the amendment of Section 53 of the IRR-A of R.A. No. 9184, NBC No. 476 and COA Circular No. 2007-001.

²⁶ Judicial Affidavit, Records, Vol. II, p. 255.

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Non-compliance with the existing laws and regulations meant that SARO No. ROCS-08-04188 and its corresponding NCA were released by the DBM to DA in the absence of documents required under DBM NBC No. 476 to be submitted by DA as implementing agency (IA). As provided therein, the Project Profile and endorsement letter from the IA shall serve as the basis for the DBM to release SARO and corresponding NCA. While none of these requirements were submitted by DA to DBM, SARO and NCA were nonetheless released by DBM²⁷ to DA.

Being the implementing agency identified in the GAA, the DA should have implemented the project. However, in this case, the DA merely transferred the amount of ₱5 Million to NABCOR, an attached agency of DA endorsed by Cong. Belmonte Jr., covered by MOA to implement the project without legal basis. NABCOR was not among the implementing agencies of PDAF projects identified in the GAA nor was it mandated to actually implement livelihood projects.²⁸

Moreover, the transfer of ₱4,850,000.00 from NABCOR to KMBFI is likewise non-compliant with existing rules and regulations since there is no law appropriating or specifically earmarking such funds to be contracted out to an NGO as required under GPPB Resolution No. 12-2007 which was adopted as Section 53(j) of the IRR-A of RA 9184. NGOs were not among those identified in the GAA for the year as implementing arms of PDAF projects.²⁹

Furthermore, the selection of KMBFI did not observe the guidelines prescribed under existing laws and regulations for the following reasons:

1. The NGO shall be selected through competitive public bidding or negotiated procurement prescribed under Section 53(j) of the IRR-A of RA No. 9184, as provided under GPPB Resolution No. 12-2007. None of these selection processes were observed. Instead, a MOA, dated July 9, 2008, was entered into with KMBFI upon the request of the legislator to implement project as indicated in the MOA.

²⁷ Id., p. 256.

²⁸ Id., p. 256.

²⁹ Id., p. 256.

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2. There was no proof that the project was made public via newspapers, agency websites, bulletin boards and the like, at least three months prior to the target date of commencement of the identified projects to ensure transparency as required under Item 4.5.1 of COA Circular No. 2007-001.

3. The Bids and Awards Committee (BAC) shall accredit NGO after conducting selection process, including screening of qualification documents, ocular inspection of NGO's business site and evaluation of their technical and financial capability. There were, likewise, no documents to manifest that these processes were at all undertaken.

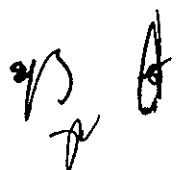
4. The MOA did not include provisions on the following, among others: (a) Systems and procedures to implement the project; (b) Time schedules for the periodic inspection/evaluation, reporting, monitoring requirements and date of completion; (c) Visitorial audit by the officials and personnel of COA; and (d) project description, beneficiaries, benefits to be derived, brief description and site/location.³⁰

Following this audit, the audit team ascribed liability to the following persons:

1. Alan A. Javellana – he entered into MOA with KMBFI, approved disbursement vouchers and signed the checks releasing the fund to KMBFI when (a) NGOs were not identified in the GAA for the year 2008 as among the implementing arms of PDAF-funded projects; (b) absence of appropriation law earmarking an amount for the implementation by the NGOs; (c) non-compliance with GPPB guidelines and COA Circular No. 2007-001; (d) physical existence of KMBFI is questionable; and (e) failed to monitor project implementation as evidenced by submission of spurious documents by KMBFI.

2. Rhodora B. Mendoza – signed the checks releasing the fund to KMBFI when (a) NGOs were not identified in the GAA for the year 2008 as among the implementing arms of PDAF funded projects; (b) absence of appropriation law earmarking an amount for the implementation by the NGOs; (c) non-compliance with GPPB

³⁰ Id., pp. 257-258.



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guidelines and COA Circular No. 2007-001; and (d) physical existence of KMBFI is questionable.

3. Romulo M. Relevo – he certified in the DVs that the expenses are necessary and lawful when transfer of funds to KMBFI has no legal basis, selection of NGO is not in accordance with existing laws, rules and regulations, and the documents submitted are spurious.

4. Ma. Julie A. Villaralvo-Johnson – she certified in the disbursement vouchers that the supporting documents are complete and proper, when transfer of funds to KMBFI is not proper as NGOs are not among the identified implementing arms of PDAF projects, NGO was not selected in accordance with existing laws, rules and regulations, and the documents submitted are spurious.

5. Marilou L. Antonio – she submitted spurious documents to liquidate funds received.³¹

These findings, along with the laws, rules and regulations violated, and the need for the persons found liable to refund the full amount disallowed are contained in the NDs issued pursuant to COA Circular No. 2009-006, dated September 15, 2009, prescribing the use of the Rules and Regulations on Settlement of Accounts of the Commission on Audit.³²

During cross examination,³³ Alfafaras confirmed that accused Relevo, Balbacal and Mendoza did not deny their signatures in the documents that the COA submitted. As to accused Balbacal's participation, Alfafaras testified that she did not meet Balbacal and the audit team was not able to verify the signature appearing in the documents where Balbacal supposedly signed because there was no information as to her address. The team merely relied on the documents attached to the disbursement vouchers and it did not write accused Balbacal a letter asking her to explain her findings in the liquidation report and partial disbursement.³⁴

³¹ Id., pp. 259-260.

³² Exhibits RR and SS.

³³ TSN, dated August 9, 2022.

³⁴ Id., pp. 13-16.

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Alfafaras further claimed that under GPPB Resolution No. 12-2007 and as clarified in COA Circular No. 2007-01, the selection of the NGO should be through public bidding or negotiated procurement. In this case, it was Cong. Belmonte Jr. who endorsed the NGO, which is not proper.³⁵

The MOA, dated June 19, 2008,³⁶ was entered into and signed by DA and NABCOR and its purpose was to document the transfer of funds from the DA to NABCOR. The only signatories were DA Secretary Yap and accused Javellana of NABCOR. Accused Relevo, Mendoza and Balbacal did not sign the MOA.³⁷

Under COA Circular 2007-01, public officers and employees of the government are required to observe and comply with the requirements of the laws, rules, and regulations. The said circular was also addressed to the Chief Accountants or Heads of the Accounting and other concerned officers. In this case, accused Mendoza and Relevo not only had discretion in the selection process of the NGO but they should also comply with the requirements of the laws.³⁸

On redirect,³⁹ Alfafaras testified that their team did not make any confirmation from accused Relevo, Balbacal and Mendoza because they did not deny their signatures on the documents that they examined and evaluated. The documents that bore the signatures of the accused were obtained from NABCOR.⁴⁰

The prosecution formally offered its evidence and, over the objections of the accused, the Court ruled to admit Exhibits A to ZZ, AA to SS, WW-1 to WW-5, XX, and YY, but not for the purposes for which they were offered.⁴¹

³⁵ Id., pp. 18-19.

³⁶ Exhibit V.

³⁷ TSN, dated August 9, 2022, p. 23.

³⁸ Id., p. 28.

³⁹ TSN, dated August 9, 2022.

⁴⁰ Id., p. 31.

⁴¹ Minutes of the proceedings, Records, Vol. IV, p. 94.

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EVIDENCE OF THE DEFENSE

The defense presented accused Mendoza, Relevo, Balbacal and Necitas B. Patinio, as its witnesses.

For accused Mendoza:

Accused **Rhodora B. Mendoza**, Director for Financial Management Service and Finance of NABCOR at the time material to these cases.

During her direct examination,⁴² accused Mendoza, through her judicial affidavit, testified that she came to know about the cases when she received the complaint-affidavit from the OMB. She denied the allegations against her because she merely performed her function as the director for financial management. In her capacity as such, her primary function was to sign the checks issued to the NGOs, and relevant to this case, to KMBFI.⁴³

She came to know about KMBFI because of the MOA signed by accused Javellana and the project coordinator of the foundation. Based on the MOA, the role of NABCOR is to transfer the funds to the NGO following the letter instruction of the legislator.⁴⁴

As regards the MOA, her role is to check the attachments, including the copy of the SARO, the copy of the NCA, the letter addressed to DA Secretary Yap, and the letter instruction of the legislator addressed to accused Javellana. After going through the attachments, she forwarded the same to accused Javellana for his signature, and it was notarized thereafter.⁴⁵

The notarized MOA, together with the project proposal, triggered the accounting department to process the checks to be issued to the KMBFI. KMBFI then issued an official receipt for the receipt of the check as proof that it had acknowledged the check.⁴⁶

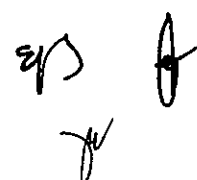
⁴² TSN, dated November 15, 2022.

⁴³ Id., pp. 15-17.

⁴⁴ Id., pp. 19-20.

⁴⁵ Id., pp. 20-24.

⁴⁶ Id., pp. 24-25.

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During the first tranche or the first release of the check, KMBFI is required to submit the project proposal. On the succeeding releases, KMBFI submitted the liquidation report duly signed by its external auditor, as stated in the MOA. The same documents were forwarded to the office of Herminia S. Aquino, then supervising auditor of NABCOR.⁴⁷

After NABCOR submits the documents, the supervising auditor would affix her signature in the liquidation report, and then the documents will be forwarded to the DA. The DA will also submit that same document to the resident auditor of the DA and the latter will issue a credit notice. The agency will then liquidate the advances given by the DA to NABCOR.⁴⁸

On cross examination,⁴⁹ Mendoza confirmed that she signed two (2) checks in relation to this case. She also checked the provisions in the MOA and the corresponding attachments.⁵⁰

She did not check whether the 2007 GAA earmarked an amount to be contracted to KMBFI and whether KMBFI was chosen through competitive public bidding before NABCOR made a contract with it.⁵¹

Upon inquiry of the court, Mendoza clarified that there are two signatories in the checks subject of this case, both of which were signed by Javellana first and then herself, after checking whether the supporting documents are complete. Despite the lack of public bidding, she signed the checks because there was a letter instruction from the legislator which indicated which NGO was chosen to implement these projects.⁵²

As regards the MOA, the person who prepared it was Shyr Ann Montuya who belonged to Mendoza's office and because of that, Mendoza was tasked to review the MOA prior to signing.⁵³

⁴⁷ Id., pp. 25-28.

⁴⁸ Id., p. 28.

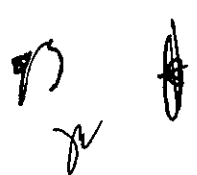
⁴⁹ TSN, dated November 15, 2022.

⁵⁰ Id., pp. 37-47.

⁵¹ Id., pp. 49-51.

⁵² Id., pp. 52-55.

⁵³ Id., pp. 60-61.



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For accused Relevo:

Accused **Romeo Relevo**, General Services Unit Head of NABCOR at the time material to these cases.

In his Judicial Affidavit,⁵⁴ he testified that as General Services Unit Head, part of his duties were to ensure that they had sufficient office supplies needed in the day-to-day operation, to secure supplies needed in their projects through processes of procurement, and to manage NABCOR's stockroom. He also supervised the personnel who performed janitorial and messengerial services.⁵⁵

He ended up as one of the signatories of the subject DVs because accused Javellana met with him in his office and told him that the officer who was authorized to sign DVs, Ms. Munsod, was on medical leave. He was instructed to temporarily be one of the signing officers of DVs. He was hesitant to assume the role but he was assured that it was merely temporary since Javellana was already looking for a replacement.⁵⁶

When presented with DV No. 08-07-02441, he got a hold of it when it was forwarded to him by their finance department together with several attached documents. He carefully read and reviewed each one of them and then he went to the office of accused Javellana to ask for his guidance prior to signing. After checking and evaluating the supporting documents and found them to be complete and in proper order, he signed Box A of the subject DV, certifying that the expenses were necessary and lawful and incurred under his direct supervision. Also, prior to signing Box A, he sought confirmation from Javellana that KMBFI had already completed delivery. He only affixed his signature on DV No. 08-07-02441.⁵⁷

On cross examination,⁵⁸ Relevo clarified that he signed two DVs: DV No. 08-07-02441⁵⁹ and DV No. 08-07-02548.⁶⁰ He was also given verbal instructions by accused Javellana to sign the two

⁵⁴ Judicial Affidavit, Records, Vol. IV, pp. 234-248.

⁵⁵ Id., p. 236.

⁵⁶ Id., pp. 236-237.

⁵⁷ Id., pp. 238-239.

⁵⁸ TSN, dated January 17, 2023.

⁵⁹ Exhibit R.

⁶⁰ Exhibit W.

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DVs. Moreover, despite his knowledge of the lacking supporting documents to the DVs, he confirmed signing them.⁶¹

Furthermore, he likewise admitted that it was Javellana who signed the portion that approved for payment of the DVs and it was Villaralvo-Johnson who signed the portion certifying that supporting documents are complete and proper. Without the signatures of Javellana, Villaralvo-Johnson, and himself, the funds would not have been released.⁶²

For accused Balbacal:

Elizabeth Balbacal, Chief Accountant of FSD-Main, COMELEC at the time material to these cases.

In her Judicial Affidavit,⁶³ she denied participating in the crimes charged against her. Her purported signatures found on the Partial Disbursement and Liquidation Reports and Auditor's Reports⁶⁴ were allegedly forged.⁶⁵ To prove that her signatures have been forged, Balbacal presented 12 additional documents bearing her genuine signature for comparison by the National Bureau of Investigation (NBI).

On cross-examination,⁶⁶ Balbacal testified that in the Partial Distribution Liquidation Reports and the Auditor's Reports, the license number and address in the letterhead indicated therein are hers. She did not pursue any legal action for the supposed falsification of her signatures as she did not know about it beforehand.⁶⁷

Necitas B. Patinio, expert witness,⁶⁸ Document Examiner II of the National Bureau of Investigation.

⁶¹ TSN, dated January 17, 2023, pp. 9-16.

⁶² Id., pp. 18-19.

⁶³ Judicial Affidavit, Records, Vol. IV, pp.277-322.

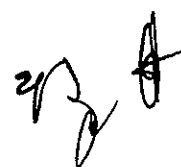
⁶⁴ Exhibits U and Z of the Prosecution; Exhibits 3, 4, 5, and 6 – Balbacal.

⁶⁵ Judicial Affidavit, Records, Vol. IV, pp. 280-282.

⁶⁶ TSN, dated January 31, 2023.

⁶⁷ Id., pp. 20-21.

⁶⁸ Ruled by the Court as expert witness, Order dated February 14, 2023.



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In her judicial affidavit,⁶⁹ witness Patinio testified that as document examiner, her duties and functions include examining documents involving questioned handwritings and hand paintings, signatures, typewriting, fraudulent alterations, and counterfeit documents; preparing written reports on the result of the comparative analysis and/or laboratory examination; testifying as expert/technical witness before courts and other investigating bodies; and preparing written reports on the result of the comparative analysis and/or laboratory examinations.⁷⁰

She was assigned as the document examiner to conduct the handwriting examination of the questioned signatures of accused Balbacal appearing on the Partial Disbursement Report, dated July 18, 2008, with Auditor's Report as of July 18, 2008 and on the Partial Disbursement Report as of July 30, 2008 with Auditor's Report as of July 30, 2008. She examined several documents bearing standard signatures of accused Balbacal which she used to compare with the questioned signatures to determine whether the latter are authentic or falsified.⁷¹

Her finding was scientific comparative examinations made on the specimens revealed that there exist significant differences in handwriting characteristics and habits between the questioned and the standard/specimen signatures ELIZABETH D. BALBACAL, such as in the structural pattern of letters/element; manner of execution of strokes; and other identifying details, thus, she concluded that the questioned and the standard signatures ELIZABETH D. BALBACAL were not written by one and the same person.⁷²

On cross,⁷³ she clarified that the dissimilarities with regard to the spontaneity, rhythm, pressure of the pen, loops in the strokes, signs of stops, shades, that may be found between the questioned signature and the genuine ones are deciding factors in her determination whether the questioned signatures are falsified. To some degree, there are other factors that must be taken into consideration such as the position of the writer when she is signing,

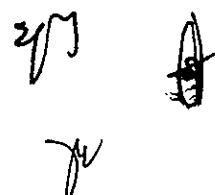
⁶⁹ Amended Judicial Affidavit, Records, Vol. V, pp. 89-186

⁷⁰ Id., pp. 92-93.

⁷¹ Id., pp. 96-101.

⁷² Id., pp. 114-115; Exhibit 28-a.

⁷³ TSN, dated July 18, 2023.



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the condition of the surface on which the paper where the questioned signature is written is placed, the kind of pen and/or paper used, the state of mind of the writer, and her feeling and nerves during the time when the signature is written.⁷⁴

She further stated that while there are significant differences in the handwriting characteristics and habits between the questioned documents and standard signatures of accused Balbacal such as the structural pattern of letters/element, manner of execution of stroke and other identifying details, she did not determine the writing instrument and kind of paper used by the accused.⁷⁵

When she received the Resolution dated November 21, 2022, granting accused Balbacal's motion to refer documents to the NBI for expert handwriting examination, there were only eight documents indicated. She also required Balbacal to submit additional 13 documents. She is not familiar with the signature of Balbacal and only relied on the documents and specimen given to her to be able to conduct her handwriting examination.⁷⁶

Upon visual examination of the signatures in open court, Patinio admitted that to some degree, some of the standard signatures are very short and some appears different compared to the rest.⁷⁷ Moreover, she stands firm that the questioned signatures and standard signatures are not the same due to visible hesitating strokes on the former that are not seen in the latter.⁷⁸

As an expert, she is aware of the possibility that there might be material discrepancies between the strokes in the questioned signature and the standard signature and this can be attributed to the fact that the requesting party tried to avoid the principal characteristics of her signature to conceal her identity. It is also possible that the author of a questioned signature, who has some knowledge on handwriting examination, or has been previously charged of falsification, would deliberately affix his signature in a

⁷⁴ Id., pp. 19-20.

⁷⁵ Id., p. 21.

⁷⁶ Id., p. 29.

⁷⁷ Id., pp. 30-38.

⁷⁸ Id., pp. 38-39.

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very low manner, make more pen lifts or stops than what appears in his standard signatures so that he can claim forgery later on.⁷⁹

She admitted that one document marked as Exhibit 12 containing Balbacal's signature that was forwarded to the NBI was not used as a standard signature because she overlooked it. She characterized this particular signature to be entirely different from all the standard signatures that were previously identified. She agreed that a portion of Balbacal's signature found on the Partial Disbursement and Liquidation Report as of July 18, 2008 looks the same as the accused's signature on Exhibit 12.⁸⁰

Furthermore, she admitted that Balbacal's signatures on the records of this case are the same as the standard signatures affixed by the accused on a long bond paper for comparison during the handwriting examination, as personalized styles and a variation of Balbacal's signature, but appears different to some degree.⁸¹

On redirect,⁸² she testified that there are variations on the standards as appearing in the visual aids because the hand is not a precision machine, and the partial deviations appearing on two specimens of the same writer are quite predictable.

One of the requirements of the NBI in examining documents is to compare the questioned signatures from documents containing contemporaneous signatures within three years of the questioned signature. It is also a practice of the NBI to require the one who is requesting the analysis of the signature and who is denying that the questioned signature is not his or hers to sign.

Their office is also able to detect if the one who is trying to deny the signature is really the one who made the signature if he or she is making the variations intentionally of his/her signature and if this particular person would write in a very slow and hesitating manner and when she is trying to somewhat control her habit. She considers the one act of signing of accused Balbacal as a habit which was enough for her to consider the same for examination.⁸³

⁷⁹ Id., pp. 44-45.

⁸⁰ Id., pp. 45-49

⁸¹ Id., pp. 50-58.

⁸² Id., pp. 59-60.

⁸³ Id., pp. 62-64.

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Despite the differences in the standard signatures, Patinio still considers them as genuine because the habits in writing the signatures are the same, and these habits do not appear in the questioned signatures.⁸⁴

The defense thereafter formally offered in evidence their respective exhibits. Over the objections of the prosecution, this Court resolved to admit Exhibits 1 and 2 for accused Mendoza, and Exhibits 1, 2, 3, and 5 for accused Relevo.⁸⁵ The Court also admitted all the exhibits of accused Balbacal. In addition, the prosecution formally offered as rebuttal evidence Exhibits ZZ to III, inclusive. Over the objections of accused Balbacal, the Court admitted all the rebuttal evidence of the prosecution.⁸⁶

THE FACTS

From the evidence presented, both testimonial and documentary, as well as the stipulations between the parties, the Court finds the relevant facts set forth below.

On May 8, 2008, DBM Secretary Rolando G. Andaya, Jr. issued SARO No. ROCS-08-04188⁸⁷ to authorize the release of the amount of ₱5 Million, chargeable against the PDAF of Cong. Belmonte Jr. for the Fiscal Year 2008, in favor of the Department of Agriculture (DA) for the purpose of financial assistance for the implementation of livelihood programs/projects in the 1st District of Lanao del Norte.

On June 4, 2008, Cong. Belmonte Jr. requested DA Secretary Yap to transfer the ₱5 Million to NABCOR to expedite the implementation of his livelihood programs/projects.⁸⁸

The DBM issued the ANCAI⁸⁹ to the DA Secretary pertaining to the Notice of Cash Allocation (NCA) No. 363207-5 on June 11, 2008, notifying LBP that the amount of ₱5 Million is earmarked for the credit of the MDS Sub-Account No. 2321-90026-0.⁹⁰

⁸⁴ Id., pp. 64-67.

⁸⁵ Order, dated August 1, 2023, Records, Vol. VI, p. 344.

⁸⁶ Order, dated August 8, 2023, Records, Vol. VI, p. 367.

⁸⁷ Exhibit C.

⁸⁸ Exhibit H.

⁸⁹ Exhibit E.

⁹⁰ Exhibit D.

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On June 19, 2008, the DA, through Secretary Yap, and NABCOR, through accused Javellana, entered into a MOA⁹¹ where "the DA shall transfer to NABCOR the amount of FIVE MILLION PESOS (P5,000,000.00) chargeable against the allocation of HON. VICENTE F. BELMONTE, under SARO No.: ROCS-08-04188, dated May 8, 2008." On the other hand, "[t]he NABCOR shall:

1. Issue an official receipt to DA corresponding to the amount received;
2. Enter into agreement with the concerned proponent(s) in implementing the project;
3. Submit to DA accomplishment reports for the utilization of the funds;
4. Return to DA any unused funds;
5. Submit report of disbursement as liquidation duly verified by their resident Auditor; and
6. Administer, manage and disburse the received amount in accordance with accounting and auditing rules and regulations."

Such transfer was effected under Obligation Request No. 200-08-06-4460⁹² and evidenced by DV No. 08-06-4054,⁹³ both dated June 26, 2008. Correspondingly, LBP Check No. 0000455233, dated July 7, 2008, in the amount of P5 Million was issued in favor of NABCOR.⁹⁴ NABCOR then issued to DA Official Receipt No. 0000133, dated July 13, 2008.⁹⁵

On July 9, 2008, NABCOR, represented by accused Javellana, and KMBFI, represented by accused Antonio, entered into a MOA,⁹⁶ the pertinent provisions of which read:

NOW, THEREFORE, in connection with the above premises and considerations, the parties hereby agree to the following:

⁹¹ Exhibit V.

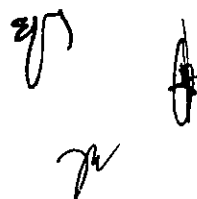
⁹² Exhibit I.

⁹³ Exhibit O.

⁹⁴ Exhibit P.

⁹⁵ Exhibit Q.

⁹⁶ Exhibit L.



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A. The **NABCOR** shall:

1. Transfer the amount of **FOUR MILLION EIGHT HUNDRED FIFTY THOUSAND PESOS (Php 4,850,000.00)** to the **Kasangga sa Magandang Bukas Foundation, Inc.** to support the Implementation of the Integrated Livelihood Development Projects in the **1st District of Lanao del Norte**.
2. **NABCOR** shall release the funds in two (2) tranches, broken down as follows:
 - a. 90% or **Php 4,365,000.00** upon submission of the Project Proposal;
 - b. 10% or **Php 485,000.00** upon submission of the Physical and Audited Financial Reports.

B. The **KASANGGA SA MAGANDANG BUKAS FOUNDATION, INC.**, shall:

1. Issue an official receipt corresponding to the amount released.
2. Coordinate with the office of Cong. Vicente Belmonte for the implementation of the projects.
3. Administer, manage and disburse the **FUND** in accordance with accounting and auditing rules and regulations.
4. Prepare and submit to **NABCOR** the regular and audited financial report.

On July 14, 2008, **NABCOR** transferred the amount of **₱4,365,000.00** to **KMBFI** by virtue of **DV No. 08-07-02441⁹⁷** and **UCPB Check No. 0000417358,⁹⁸** representing 90% first tranche payment for the implementation of the integrated livelihood project of Cong. Belmonte Jr. in the **1st District of Lanao del Norte**. In turn, **KMBFI** issued to **NABCOR** Official Receipt No. 0015 for the same amount on July 15, 2008.⁹⁹

⁹⁷ Exhibit R.

⁹⁸ Exhibit S.

⁹⁹ Exhibit T.

Handwritten initials and signatures: "JS" and a signature.

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Four days after, or on July 18, 2008, accused Antonio, as CFO/Project Coordinator of KMBFI, wrote a letter¹⁰⁰ to accused Javellana, submitting its Partial Disbursement and Liquidation Report relative to the ₱5.0 Million project of Cong. Belmonte Jr. in Lanao del Norte under NABCOR, which reads:

Kasangga sa Magandang Bukas Foundation, Inc.
No. 911 Algeciras St., Barangay 473, Sampaloc, Manila
July 18, 2008

MR. ALAN JAVELLANA
President
National Agribusiness Corporation
PSE Bldg., Ortigas Center
Pasig City

Dear Sir:

We are submitting herewith the Partial Disbursement and Liquidation Report of the **Kasangga sa Magandang Bukas Foundation, Inc.** relative to the ₱5,000,000.00 project of Cong. Vicente F. Belmonte, Jr., 1st District of Lanao del Norte, under NABCOR inclusive of the following documents, namely:

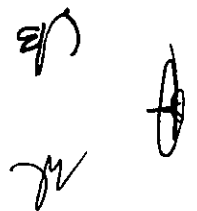
1. Partial Physical Report dated July 18, 2008
2. Certificate of Acceptance dated July 17, 2008
3. List of Beneficiaries duly signed by Cong. Vicente F. Belmonte, Jr.
4. Auditor's Report as of July 18, 2008
5. Disbursement and Liquidation Report as of July 18, 2008
6. BB Vergara Plant Nursery—
Official Receipt No. 136 dated July 17, 2008
Sales Inv. No. 233 dated July 16, 2008
Del. Receipt No. 338 dated July 16, 2008

For your kind acknowledgment and appropriate action.

Very truly yours,

(Sgd.)
MARILOU L. ANTONIO
CFO/Project Coordinator

¹⁰⁰ Exhibit U, p. 1.



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The **Partial Physical Report**¹⁰¹ attached to the said letter, reads:

Kasangga sa Magandang Bukas Foundation, Inc.
No. 911 Algeciras St., Barangay 473, Sampaloc, Manila

PARTIAL PHYSICAL REPORT

The Kasangga sa Magandang Bukas Foundation, Inc. was a recipient of a financial assistance in the amount of Five Million Pesos as allocation of Hon. Vicente F. Belmonte, Jr., Representative of the 1st District of Lanao del Norte, through the National Agribusiness Corporation (NABCOR) for the distribution of farm inputs/implements to aid in implementation of livelihood and agricultural development in the said district.

The Foundation, pursuant to the provisions of the Memorandum of Agreement entered by three parties, received on July 15, 2008 the initial release of the allocated assistance in the amount of Four Million Three Hundred Sixty Five Thousand Pesos (P4,365,000.00).

In connection thereof, the Foundation hereby renders its physical report which contains the utilization and/or disbursement of the aforesaid amount and the project beneficiaries.

This Certification is issued and submitted in accordance with the requirements of COA Circular for Liquidation.

July 18, 2008

(Sgd.)
MARILOU L. ANTONIO
CFO/Project Coordinator

KBMFI's Certificate of Acceptance,¹⁰² which acknowledged its receipt from B.B. Vergara Plant Nursery of 39,960 grafted seedlings of mango, calamansi, rambutan and Jackfruit, signed by accused Antonio, reads:

Kasangga sa Magandang Bukas Foundation, Inc.
No. 911 Algeciras St., Barangay 473, Sampaloc, Manila

CERTIFICATE OF ACCEPTANCE

¹⁰¹ Exhibit U, page 2.

¹⁰² Exhibit U, page 3.

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THIS IS TO CERTIFY that I/We received the following farm inputs/implements for the project of Cong. Vicente F. Belmonte, Jr. for the 1st District of Lanao del Norte:

<u>Supplier</u>	<u>Quantity</u>	<u>Items</u>
<i>Seedlings:</i>		
B.B. VERGARA PLANT NURSERY	9,990 pcs	Mango Grafted Seedlings
	9,900 pcs	Calamansi Grafted Seedlings
	9,900 pcs	Rambutan Grafted Seedlings
	9,900 pcs	Jackfruit Grafted Seedlings

(Sgd.)
MARILOU L. ANTONIO
CFO/Project Coordinator

The undated **List of Beneficiaries**¹⁰³ contained in the letterhead of Cong. Belmonte Jr. which appeared to be signed by him reads as follows:

**PROJECT OF REP. VICENTE F. BELMONTE, JR.
FOR THE FIRST DISTRICT OF LANA DEL NORTE
UNDER THE NATIONAL AGRIBUSINESS CORPORATION**

LIST OF BENEFICIARIES

CITY/ MUNICIPALITIES	SEEDLINGS			
	MANGO (Qty)	CALAMANSI (Qty)	RAMBUTAN	JACKFRUIT (Qty)
1. ILIGAN CITY	1,249	1,238	1,238	1,238
2. BACOLOD	1,249	1,238	1,238	1,238
3. BAROY	1,249	1,238	1,238	1,238
4. KAUSWAGAN	1,249	1,238	1,238	1,238
5. KOLAMBUGAN	1,249	1,237	1,237	1,237
6. LINAMON	1,249	1,237	1,237	1,237
7. MAIGO	1,248	1,237	1,237	1,237
8. TUBOD	1,248	1,237	1,237	1,237
TOTAL	9,990	9,990	9,990	9,990

(Sgd.)
VICENTE F. BELMONTE, JR.

Accused Antonio likewise prepared a **Partial Disbursement and Liquidation Report as of July 18, 2008**,¹⁰⁴ which was Verified and Found Correct purportedly by the auditor, accused Balbacal.

¹⁰³ Exhibit U, p. 4.

¹⁰⁴ Exhibit U, p. 5.

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In her purported separate undated Auditor's Report,¹⁰⁵ accused Balbacal made an opinion that ***"After assessing the evidence supporting the amounts and disclosures of the financial statements, it is my opinion that the Disbursement and Liquidation Report of the Kasangga sa Magandang Bukas Foundation, Inc. in the abovementioned period are presented fairly, in all material respects and in accordance with generally accepted accounting principles."***

On July 21, 2008, NABCOR issued DV No. 08-07-02548,¹⁰⁶ for the amount of ₱485,000.00 in favor of KMBFI, representing 10% second tranche payment for the implementation of the integrated livelihood development project of Cong. Belmonte Jr., and UCPB Check No. 0000436805,¹⁰⁷ payable to KMBFI, covering the same amount, for which KMBFI issued NABCOR Official Receipt No. 0017, dated July 23, 2008.¹⁰⁸

Subsequently, in a letter, dated August 4, 2008, accused Antonio submitted KMBFI's Final Disbursement and Liquidation Report¹⁰⁹ to accused Javellana as regards the supposed utilization of the amount of ₱485,000.00, attaching to the said report: (1) the Final Physical Report, dated July 31, 2008, (2) Certificate of Acceptance, dated July 30, 2008, signed by accused Antonio and Balbacal, (3) Undated List of Beneficiaries signed by Cong. Belmonte Jr., (4) Auditor's Report as of July 30, 2008, purportedly signed by accused Balbacal, (5) Disbursement and Liquidation Report as of July 30, 2008, signed by accused Antonio and Balbacal, (6) B.B. Vergara Plant Nursery's (a) Official Receipt No. 194, dated July 29, 2008, (b) Sales Invoice No. 298, dated July 25, 2008, and (c) Delivery Receipt No. 401, dated July 25, 2008.¹¹⁰

By virtue of Office Order No. 2010-309, dated May 13, 2010,¹¹¹ COA created a team to conduct government-wide performance audit of the PDAFs of the legislators, including that of Cong. Belmonte Jr. The evaluation focused on releases, utilization and programs/projects implemented during CYs 2007 to 2009.

¹⁰⁵ Exhibit U, p. 9.

¹⁰⁶ Exhibit W.

¹⁰⁷ Exhibit X.

¹⁰⁸ Exhibit Y.

¹⁰⁹ Exhibit Z, P. 1.

¹¹⁰ Exhibit Z, pp. 2-9.

¹¹¹ Exhibit WW-1.

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During the conduct of the audit and evaluation by the Special Audits Office team, COA Director Susan Garcia sent a letter, dated November 24, 2010,¹¹² to the manager/owner of B.B. Vergara Plant Nursery, the purported supplier listed in the KMBFI liquidation reports. The letter sought to confirm the purchase by KMBFI of the seedlings, and the authenticity of the issuances of the said supplier of the various sales invoices, delivery and official receipts to several NGOs, including KMBFI.

On December 6, 2010, Bonifacio B. Vergara, proprietor of B.B. Vergara Plant Nursery, sent a reply letter to Director Garcia, **denying** that his plant nursery issued the official and delivery receipts, as well as the sales invoice, enumerated in COA's November 24, 2010 letter, and that B.B. Vergara Plant Nursery did not deliver goods or render any service to the NGOs enumerated therein, including KMBFI, during the period January 2007 to March 2010.¹¹³ Bonifacio Vergara likewise executed an affidavit to this effect.¹¹⁴

Thereafter, the COA received reply-letters under oath from municipal mayors attesting to the fact that their respective municipalities, the alleged recipients of Cong. Belmonte Jr.'s livelihood programs, did not receive the seedlings and planting materials from the KMBFI.¹¹⁵

The COA Special Audits team also conducted an ocular inspection of the listed address of KMBFI and found that it was a two-door apartment, and its present occupant, who did not identify herself, claimed that she was not aware of the existence of KMBFI within the unit.¹¹⁶ The latter also disclosed that a Myra Villanueva, the Project Coordinator of KMBFI in CY 2009, previously rented the unit.¹¹⁷

On August 12, 2014, the COA-SAO issued ND No. DA-2014-108-PDAF (07-09) to the DA.¹¹⁸ In the said ND, it was stated that:

¹¹² Exhibit AA.

¹¹³ Exhibit BB.

¹¹⁴ Exhibit DD.

¹¹⁵ Exhibits EE, FF, GG, HH, II, JJ, KK, LL, and MM.

¹¹⁶ Exhibit QQ.

¹¹⁷ Judicial Affidavit of prosecution witness Joan Alfafaras, Records, Vol. II, p. 252.

¹¹⁸ Exhibit RR.

Handwritten initials and marks: "y/s", "ju", and a circled "A".

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The transaction amounting to ₱5.0 Million is being disallowed as this was undertaken without due regard to existing laws and regulations. The release of SARO and corresponding Notice of Cash Allocation (NCA) by DBM to DA, and subsequent transfer of fund by DA to NABCOR were not compliant with the requirements of DBM Budget Circular (NBC) No. 476 dated September 20, 2001, pertinent provisions of the General Appropriations Act (GAA) for the year and COA Circular No. 2007-001. Thus, the transaction was considered illegal and irregular, as defined under COA Circular No. 85-55A, as amended by COA Circular No. 2012-003 dated October 29, 2012.

X X X

Similarly, on November 24, 2014, the COA-SAO issued ND No. NAB-2014-119-PDAF (07-09) to NABCOR.¹¹⁹ The COA-SAO had the same findings as regards the utilization of funds amounting to ₱5 Million and the same was disallowed because it was undertaken without due regard to existing laws and regulations, and considered illegal and irregular as defined under COA Circular No. 85-55A, as amended by COA Circular No. 2012-003, dated October 29, 2012. The said ND states:

We have audited the utilization of funds released by the Department of Agriculture (DA) to National Agribusiness Corporation (NABCOR) out of Priority Development Assistance Fund (PDAF) of Congressman Vicente "Varf" F. Belmonte covered by Special Allotment Release Order (SARO) No. ROCS-08-4188 dated May 8, 2008 in the amount of P5.00 Million of which P4.85 Million was transferred to Kasangga sa Magandang Bukas Foundation, Inc. (KMBFI) with address at 911 Algeciras St., Sampaloc, Manila for the implementation of integrated livelihood development projects in the 1st District of Lanao del Norte covered by the following reference documents:

Funds Transferred to KMBFI			Fund Utilization as reported by KMBFI				
Check							
Date	No.	Amount	Payee	OR No.	Date	Amount	Particulars
7/14/2008	17358	P4,365,000	B.B. Vergara Plant Nursery	136	7/17/08	P4,365,000	11,100 pcs. each of grafted seedlings of mango, calamansi, rambutan and jackfruit
7/21/2008	36805	485,000		194	7/29/08	485,000	
Total		P4,850,000	Total			P4,850,000	

The balance of P150,000 was retained by NABCOR as administrative cost.

¹¹⁹ Exhibit SS.

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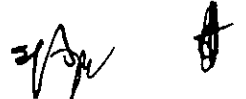
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The utilization of funds amounting to P5.00 Million is being disallowed as the same was undertaken without due regard to existing laws and regulations. Thus, considered illegal and irregular, as defined under COA Circular No. 85-55A, as amended by COA Circular No. 2012-003 dated October 29, 2012. The deficiencies are discussed below and under SAO Report No. 2012-03:

- Of the amounts received by NABCOR without its endorsement, P4.85 Million was merely transferred to KMBFI, a non-governmental organization (NGO), despite the absence of an appropriation law earmarking an amount to be contracted out to NGOs as required under Government Procurement Policy Board (GPPB) Resolution No. 12-2007 issued on June 29, 2007 which was adopted as Section 53(j) of the IRR-A of RA No. 9184. NGOs were not among those identified in the GAA for the year as implementing arms of PDAF projects. The transfer, which was covered by Memorandum of Agreement (MOA) with NABCOR President Alan A. Javellana and KMBFI Project Coordinator Marilou L. Antonio as signatories, is therefore considered without legal basis.
- The selection of NGO for projects earmarked for implementation by NGOs is subject to the guidelines prescribed under GPPB Resolution No. 12-2007 dated June 9, 2007 and COA Circular No. 2007-001 dated October 25, 2007 which were not at all observed as discussed below:
 - NGO shall be selected through competitive bidding or negotiated procurement prescribed under Section 53(j) of the IRR-A of RA No. 9184 as provided under GPPB Resolution No. 12-2007. None of these selection processes were observed. Instead, KMBFI was selected and accepted by NABCOR apparently upon the request of the legislator as disclosed in the MOA;
 - There was no proof that the project was made public via newspapers, agency websites, bulletin boards and the like, at least three months prior to the target date of commencement of the identified projects to ensure transparency as required under Item 4.5.1 of COA Circular No. 2007-001;
 - The Bids and Awards Committee shall accredit NGO after conducting selection process, including



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screening of the qualification documents, ocular inspection of NGO business site and evaluation of their technical and financial capability. There were, likewise, no documents to manifest that these processes were at all undertaken; and

- The MOA did not include provisions on the following, among others:
 - Systems and procedures to implement the project;
 - Time schedules for the periodic inspection/evaluation, reporting, monitoring requirements and date of completion;
 - Visitorial audit by the officials and personnel of COA; and
 - Project description, beneficiaries, benefits to be derived, brief description and site/location.
- Worse, the physical existence of KMBFI turned out to be questionable as discussed below:
 - The given address is a two-door apartment. The present occupant claimed that she was not aware of the existence of KMBFI within the unit. She disclosed though that Ms. Myra Villanueva, the NGO's Corporate Secretary, who migrated to the USA in April 2010, previously rented the unit.

xxx

KMBFI did not submit written confirmation on its transactions with NABCOR and additional documents requested by the Audit Team. Under Item 4.1 of COA Circular No. 2007-001, funds transferred to NGO retain their character as public funds and thus subject to pertinent laws, and government rules and regulations.

- The amounts transferred to KMBFI were purportedly used to procure grafted mango, calamansi, rambutan and jackfruit seedlings from B.B. Vergara Plant Nursery. The validity of such transactions with the said supplier is also questionable as the supplier denied having transacted business with KMBFI, issuing the receipts/invoices and receiving the corresponding payments. The amounts of P0.485 Million and

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P4.365 Million were apparently paid in cash which is unlikely and questionable.

- Based on records, the 44,100 pieces of grafted fruit bearing tree seedlings were distributed to 8 City and Municipalities of Lanao del Norte. The reported distribution is, however, also questionable for the following reasons:
 - There was no proof of distribution of the items procured as the distribution list was not acknowledged received by anybody. The names of the intended recipients were not even indicated. Only the names of the city and municipalities are indicated as recipients; and
 - Of the eight municipalities, the Muncipal Mayors of Baroy and Bacolod denied receipt by their respective municipalities the items allegedly distributed. The other six Muncipal Mayors did not respond to the Audit Team's request for confirmation.
- The utilization of P150,000 retained by NABCOR as administrative cost cannot also be accounted as the said amount formed part of its income. Considering the above mentioned deficiencies in the project implementation, it is apparent that NABCOR did not use the fund in assessing the qualification of KMBFI and supervising the implementation of the project.

x x x

On January 17, 2018, the FIO-OMB filed a Complaint-Affidavit ¹²⁰ with the OMB for Malversation of Public Funds, Falsification of Public Documents, and/or Malversation of Public Funds through Falsification of Public Documents, and for Violation of Section 3(e) of RA 3019, as amended, against the following: Vicente F. Belmonte Jr, Arthur C. Yap, Jesus Manuel M. Paras, Telma C. Tolentino, Charie Sarah D. Saquing, Delia A. Ladera, Alan A. Javellana, Rhodora B. Mendoza, Romulo M. Relevo, Ma. Julie A. Villaralvo-Johnson, Marilou L. Antonio, and Elizabeth D. Balbacal. The charge stemmed from the audit conducted by COA-SAO as contained in SAO Report No. 2012-03.¹²¹

¹²⁰ Exhibit A; received by the Office of the Ombudsman on January 17, 2018.

¹²¹ Exhibit B.

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In a Resolution, dated December 19, 2019, the OMB found probable cause to charge accused Javellana, Mendoza, Relevo, Villaralvo-Johnson, Antonio, and Balbacal with: (1) Malversation of Public Funds in relation to the fund releases amounting to at least ₱4,365,000.00 covered by DV No. 08-07-02441, dated July 14, 2008; (2) Malversation of Public Funds through Falsification of Public Documents in relation to the fund releases amounting to at least ₱485,000.00 covered by DV No. 08-07-02548, dated July 21, 2008; and (3) Violation of Section 3(e) of RA No. 3019 in relation to the fund releases amounting to the total amount of at least ₱4,850,000.00 covered by the two aforementioned DVs. The Ombudsman dismissed the criminal complaint against Yap, Belmonte Jr., Paras, Tolentino, Saquing and Ladera.¹²²

The Ombudsman later issued an Order, dated February 8, 2021, denying accused Javellana's Motion for Reconsideration.¹²³

Thereafter, the OMB filed the Informations in these cases against them.

Hence, this Decision.

DISCUSSION

As accused Javellana, Villaralvo-Johnson and Antonio are still at large, the following discussion shall highlight only the participation of accused Mendoza, Relevo and Balbacal. Should the name of accused Javellana, Villaralvo-Johnson and Antonio be mentioned, it is only to lend completeness to the narration of events, and will not ascertain their culpability, if any.

Crim Case No. SB-22-CRM-0001
Violation of Section 3(e) of RA 3019

Section 3(e) of RA 3019 provides:

Sec. 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

¹²² Records, Vol. I, pp. 16-40.

¹²³ Id., pp. 41-45.

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practices of any public officer and are hereby declared to be unlawful:

X X X

(e) Causing any undue injury to any party, including the Government, or giving any private party an unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

The elements of violation of Section 3(e) of RA 3019 are as follows: (a) that the accused must be a public officer discharging administrative, judicial, or official functions, or a private individual acting in conspiracy with such public officers; (b) that he or she acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and (c) that his or her action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.¹²⁴

The first element, *i.e.*, *that the accused must be a public officer discharging administrative, judicial, or official functions, or private individual acting in conspiracy with such public officers*, is present.

The parties stipulated that at the time material to these cases, accused Mendoza was NABCOR's Director of Administrative and Finance Division, while accused Relevo was the Head of General Services Unit of NABCOR, both of whom were discharging administrative, judicial and/or official functions when Cong. Belmonte Jr.'s PDAF allocations were released for the supposed implementation of his livelihood project.¹²⁵ Accused Balbacal was a Certified Public Accountant and a private individual,¹²⁶ who is charged with conspiracy with the other accused.

¹²⁴ *Canlas v. People of the Philippines and the Sandiganbayan (Third Division)*, G.R. Nos. 236308-09, February 17, 2020, citing *PCGG v. Office of the Ombudsman*, G.R. No. 194619, March 20, 2019.

¹²⁵ Pre-Trial Order, Records, Vol. II, p. 125.

¹²⁶ *Id.*, p. 125.

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Conspiracy will be discussed in conjunction with the second element.

The second element is also present. Accused Mendoza and Relevo acted with manifest partiality, evident bad faith and/or gross inexcusable negligence.

In *Fuentes v. Sandiganbayan*,¹²⁷ the Supreme Court explained the second element of violating Section 3(e) of RA 3019 as follows:

As to the second element, it is worthy to stress that the law provides three modes of commission of the crime, namely, through "manifest partiality," "evident bad faith," and/or "gross negligence." In *Coloma, Jr. v. Sandiganbayan* (744 Phil. 214 [2014]), the Court defined the foregoing terms as follows:

"Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith" does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud. "Gross negligence" has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property.

In other words, there is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. On the other hand, "evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.

The Information charges that the accused, while in the performance of their administrative and/or official functions and taking advantage of their positions, conspiring with one another, caused undue injury to the Government and/or gave unwarranted

¹²⁷ G.R. No. 186421, April 17, 2017.

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benefits, advantage, and preference to KMBFI, a non-governmental organization, in the total amount of ₱4,850,000.00, through manifest partiality, evident bad faith and/or gross inexcusable negligence by flagrantly disregarding the pertinent provisions of the GAA, RA No. 9184 and its implementing rules and regulations, and COA Circular No. 2007-001, and by making it appear that the said amount was used for the implementation of livelihood programs through the procurement and distribution of various seedlings in the 1st District of Lanao del Norte/Iligan City, which programs/projects turned out to be non-existent.

Accused Mendoza admitted to have (a) initialed the MOA between DA and NABCOR, (b) signed the Project Framework, and UCPB Checks No. 0000417358 and No. 0000436805. She also admitted checking the provisions of the MOA between NABCOR and KMBFI and its attachments before forwarding the same to accused Javellana for his signature. She is aware that the signed and notarized MOA between NABCOR and KMBFI, together with the project proposal, would trigger the release of the funds to KMBFI. However, she claims that she just performed a ministerial duty.

The initial of accused Mendoza on the MOA is required before accused Javellana signed the same, and her and accused Javellana's signatures, as NABCOR's Director of Administrative and Finance Division, and as its President, respectively, on the UCPB checks were crucial. Without their signatures, the funds would not have been disbursed, transferred and released to KMBFI. Contrary to accused Mendoza's contention, her initial on the MOA and her signing of the checks were not ministerial.

In *Villanueva v. People of the Philippines*,¹²⁸ the Supreme Court ruled that a ministerial act leaves no room for the exercise of discretion in its performance, whereas, a discretionary act by its nature requires the exercise of judgment. Citing *Cariño v. Capulong*,¹²⁹ the Supreme Court differentiated a ministerial act from a discretionary act, thus:

A purely ministerial act or duty, in contra-distinction to a discretionary act, is one which an officer or tribunal performs in a

¹²⁸ G.R. No. 237864, July 8, 2020, citing *Cariño v. Capulong*, 294 Phil. 594 (1993).

¹²⁹

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given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment, upon the propriety of the act done. If the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed, such duty is ministerial only when the discharge of the same requires neither the exercise of official discretion nor judgment.

In *Luspo v. People of the Philippines*,¹³⁰ the Supreme Court ruled that signing the checks is not a ministerial duty. In that case, the Supreme Court denied accused Duran's Motion for Reconsideration claiming that the act of issuing checks was merely in pursuance of his ministerial duty of preparing and counter-signing the checks. The Supreme Court, in ruling so, stated:

Contrary to Duran's claim, affixing his signature on the checks is not a ministerial duty on his part. As he himself stated in his petition and in his present motion, his position as Chief of the Regional Finance Service Unit of the North CAPCOM imposed on him the duty "to be responsible for the management and disbursement and accounting of PNP funds." This duty evidently gives him the discretion, within the bounds of law, to review, scrutinize, or countercheck the supporting documents before facilitating the payment of public funds.

His responsibility for the disbursement and accounting of public funds makes him an accountable officer. Section 106 of Presidential Decree No. 1445 requires an accountable officer, who acts under the direction of a superior officer, to notify the latter of the illegality of the payment in order to avoid liability. This duty to notify presupposes, however, that the accountable officer had duly exercised his duty in ensuring that funds are properly disbursed and accounted for by requiring the submission of the supporting documents for his review.

By relying on the supposed assurances of his co-accused Montano that the supporting documents are all in order, contrary to what his duties mandate, Montano simply assumed that these documents exist and are regular on its face even if nothing in the records indicate that they do and they are. The nature of his duties is simply inconsistent with his "ministerial" argument. With Duran's failure to discharge the duties of his office and given the circumstances attending the making and issuance of the checks, his conviction must stand.

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¹³⁰ G.R. No. 188487, October 22, 2014.

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In determining the extent of Mendoza's participation in reviewing and affixing her initial on the MOA, signing the project framework, and signing the checks, accused Mendoza testified:¹³¹

JUSTICE ECONG:

Alright. Who prepared the project framework?

A It was the NGO. It forms part of- an integral part of the Memorandum of Agreement.

Q So, it's prepared by them and then you signed it?

A Yes, because it was only received by us and my name was stamped. Honestly, I cannot remember for too long already, your Honors. But I have affixed my signature because –

JUSTICE ECONG:

Just because you saw your name, you affix your signature?

A Yes, your Honor.

x x x

PROS. ABLAZA:

Q So you admit you initial in the Memorandum of Agreement between the NABCOR and the Department of Agriculture?

A Yes, ma'am, based on the pro forma that we are preparing, I'm only checking the very details.

x x x

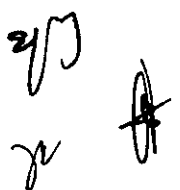
ATTY. ABLAN:

The best evidence, your Honor, would be the MOA document, your Honor.

PROS. ABLAZA:

But your Honors the witness testified that she checks and read the provision. I would like to confirm if she checks the provision

¹³¹ TSN, dated November 15, 2022.



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pertaining on the system and procedure to implement the livelihood development project.

JUSTICE ECONG:

She already said she checked and read those provisions.

x x x

PROS. ABLAZA:

Q Ms. Witness, prior to signing the checks involved in these present cases, you had the duty to review, scrutinize and counter check the supporting documents before facilitating the release of the PDAF funds through checks, correct?

A Yes, ma'am.

Q In fact one of your duties and responsibilities as Vice President for Administration and Finance is to oversee the accounting, audit and budget, cash, general services, property procurement and human resources, correct?

A Yes, ma'am.

Q So before you sign the checks involved in these cases, did you check the General Appropriations Act if it marks an amount to be contracted to KMBFI?

x x x

Q If it marked.

JUSTICE ECONG:

If it earmarked.

PROS ABLAZA:

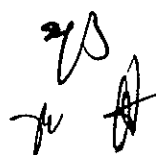
An amount to KMBFI. If it earmarked an amount to be contracted to KMBFI.

JUSTICE ECONG:

Okay, specify what year? Anong GAA yan?

PROS. ABLAZA:

2007, your Honor. During the period material to these cases, 2007 your Honor.



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WITNESS:

I do not have the capacity to check that, ma'am, because we were under the Department of Agriculture which is the line agency that is in the GAA.

Q But you confirmed a while ago that one of your duties and responsibilities as Vice-President for Administration and Finance is to oversee the accounting, audit and budget, cash, general services, property procurement and human resources?

A Yes, ma'am. We got the money through the Memorandum of –
(interrupted)

x x x

PROS. ABLAZA:

Q Did you check whether KMBFI was chosen to competitive public bidding before NABCOR made a contract with it?

A No, Ma'am.

Q Did you check if there were projects implemented by KMBFI prior to NABCOR's transaction with them?

A Yes.

Q Did you check if KMBFI had projects made public through the newspaper of general circulation, agency, website bulletin boards and the like?

A That I am not aware of.

Q Did you check if there was a bids and award committee for the purpose of accrediting KMBFI?

A None.

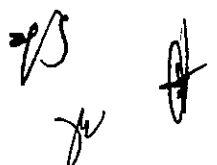
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JUSTICE ECONG:

Q Were there instances when Mr. Javellana signed and you refused to sign the check?

A Not in this case, your Honor. I cannot remember. Not in this case.

Q What about in other cases?



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A There were times.

Q So there were times that Mr. Javellana signed the check, and you refused to sign?

A I'm sorry I overheard the word, refused.

Q Yes.

A Yes, you Honor. There were times that he signed first the check, and because sometimes there are documents lacking in that particular PDAF or SARO, then we would have to wait until the documents would have submitted.

Q Okay, in these cases or the two checks that you signed in relation to these cases, you signed when the checks were presented to you?

A Yes, your Honor.

Q You no longer have to wait for other documents to be complied with?

A I cannot remember that there was a deficiency in the document during that time that the checks were prepared and signed by me for this case, for this SARO.

Q Alright. Isn't the requirement of public bidding of the project part of the prerequisite prior to payment?

A With regard to the PDAF, I cannot remember that NABCOR had ever made a public bidding because of the existence of the letter instruction of the legislator, and in 2006, since we were being audited by the COA, there was never.

x x x

From the foregoing exchanges, the Court finds that accused Mendoza was not merely exercising ministerial functions with regard to the subject PDAF transaction. Indeed, Mendoza, together with the other accused, acted with manifest partiality in favor of KMBFI when, even without undergoing public bidding or accreditation process NABCOR, through the accused, (1) chose KMBFI to implement the project of Cong. Belmonte Jr. in the 1st District of Lanao del Norte, (2) executed a MOA with the said NGO, and (3) signed and released to KMBFI the checks in the total amount of ₱4,850,000.00. Indeed, the accused displayed bias in

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favor of KMBFI, which excites a disposition to see and report matters as they are wished for rather than as they are. At the very least, accused Mendoza was wantonly remiss in her duties as NABCOR's Director of Administrative and Finance, when before affixing her signatures on the subject papers/documents, she failed to check compliance with the law, rules and COA circulars, which caused undue injury to the government.

First, the Project Framework, which accused Mendoza admitted to have signed together with accused Javellana, is a supporting document to be prepared by NABCOR as an attachment to the MOA. Accused Mendoza admitted that she merely relied on the document prepared by another entity, KMBFI, and not by NABCOR. She wantonly affixed her signature on the said Project Framework just because she saw her name there, without carefully reading the provisions therein.

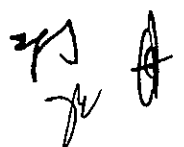
Second, it should be stressed that the pertinent GAA does not include NGOs as implementing arm of the PDAF projects. It is the DA that is identified in the said GAA as one of the agencies authorized to implement PDAF projects. And the DA, in turn, executed a MOA¹³² with NABCOR, one of its attached agencies, transferring to NABCOR the ₱5.0 Million PDAF it received and designating it to be the one to "[e]nter into agreement with the concerned proponent(s) in implementing the project." Besides, at the time material to these cases, there was no appropriation law earmarking an amount to be contracted out to NGOs like KMBFI.¹³³

As a general rule, all procurements must be done through competitive public bidding, except as provided under alternative modes of procurement.¹³⁴ Procurement of the services of an NGO that will implement a PDAF project is not one of the alternative modes of procurement. Accused Mendoza and the other accused should have seen to it that the law has been complied with where other NGOs should have participated in accordance with the provision of RA 9184, and its implementing regulation. It is undisputed in this case that no such competitive public bidding was conducted and accused Mendoza was instrumental in unilaterally

¹³² Exhibit V.

¹³³ Please see Exhibit B, Page 36, Table 5. GAA Menu of Programs Eligible for Funding Under PDAF for CYs 2007-2009.

¹³⁴ Section 10, RA 9184.



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selecting KMBFI as project partner for the implementation of Cong. Belmonte Jr.'s livelihood project.

Third, the participation of NGOs in public procurements is governed by COA Circular No. 2007-001, which provides the guidelines in the granting, utilization, accounting and auditing of the funds released to NGOs. Under this circular, NGOs are required to undergo strict accreditation procedures before they may be allowed to participate in the implementation of government projects. The relevant provisions of COA Circular No. 2007-001 states that:

3.0 SCOPE

These guidelines shall apply to all funds granted to NGOs/POs for the implementation of projects as enumerated in paragraph 4.1 hereof.

4.0 GUIDELINES

4.1 GO funds granted the NGOs/POs shall retain their character as public funds.

4.2 The flow of the funds shall follow the normal procedures of allotment release by the Department of Budget and Management, and the fund allocation/transfer and disbursement by the GOs. The guidelines that follow shall be strictly observed.

x x x

The NGO/PO shall submit the proposal or application for funding accompanied by the following documents:

4.4 Requisites for entitlement to government funds

4.4.1 Certificate of registration with the Securities and Exchange Commission (SEC), and/or either the Cooperative Development Authority (CDA) or the Department of Labor and Employment (DOLE) as the case may be, depending on the nature of the service required to be rendered. This is to ensure that the NGO/PO has a legal personality; has officers who are responsible and accountable for its operations, and is based in the community where the project shall be implemented. Exempted from this registration requirement are intentional (sic) organizations and specialized agencies doing business in this country as a result of bilateral agreements.

4.4.2 Authenticated copy of the latest Articles of Incorporation, or the Articles of Cooperation as the case may be, showing the original incorporators/organizers and the Secretary's certificate of incumbent



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officers, together with the Certificate of Filing with the SEC/Certificate of Approval by the CDA.

4.4.3 Financial reports, audited by an independent Certified Public Accountant, for the past three years preceding the date of project implementation, to ensure that it has a stable financial condition and that the funds provided by the GO shall not be its sole source of funds. For NGO/PO which has been in operation for less than three (3) years, report of accomplishment or any equivalent proof certified by its President and Secretary that it had previously implemented similar projects shall be required, in addition to financial reports for the years it has been in operation.

4.4.4 Disclosure by the NGO/PO of other related business, if any, and extent of ownership therein;

4.4.5 WFP, and Sources and Details of Proponents Equity Participation in the Project.

4.4.6 Complete project proposal approved/signed by its officers which shall include the objectives, target beneficiaries, feasibility studies, risk assessment, designs, plans, blueprints, charts, etc.

4.4.7 List and/or photographs of similar projects previously completed by the NGO/PO, if any, indicating the source of funds for their implementation.

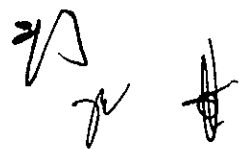
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4.5 Procedure for the Availment, Release, and Utilization of Funds

The following procedures shall be strictly complied with:

4.5.1 The GO shall identify the priority projects under its WFP which may be implemented by the NGO/PO, their purpose/s, specifications and intended beneficiaries as well as the time frame within which the projects are to be undertaken. To ensure transparency, the foregoing information shall be made public via newspapers, agency websites, bulletin boards and the like, at least three months prior to the target date of commencement of the identified projects.

4.5.2 For each project proposal, the GO shall accredit the NGO/PO project partners through the Bids and Awards Committee (BAC), or a committee created for the purpose, which shall formulate the selection criteria. The Committee shall perform the selection process, including the screening of the qualification documents, ocular inspection of the NGOs/POs business site, and evaluation of the technical and financial capability of the NGO/PO.



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4.5.3 Upon proper evaluation, the GO, thru the Committee, shall award the project to the NGO/PO which meets the minimum qualification requirements and the specification for the project and which can satisfactorily undertake the project at terms most advantageous to the beneficiaries, taking into consideration the cost effectiveness of the project. The project shall be covered by a MOA which shall embody the terms of reference such as:

- a. Project name, intended beneficiaries, benefits to be delivered, project cost estimates, a brief description of the project, and its site/location;
- b. Systems and procedures to implement the project such as, but not limited to, the procurement of goods and services by the NGO/PO and their distribution which should be documented and coordinated through the GO authorized officials and the respective barangays;
- c. Time schedules for the releases of funds, periodic inspection/evaluation, reporting, monitoring requirements, date of commencement and date of completion;
- d. Submission of the required periodic financial and physical status reports;
- e. Specific period to liquidate the funds granted to the NGO/PO, with the GO;
- f. In case of construction projects like school buildings, housing, and other similar structures, and acquisition of assets like vehicles and equipment, a stipulation of ownership of the infrastructure or fixed asset. In the procurement of any type of asset out of government funds, the NGO/PO shall conduct simple bidding or canvass to ensure the best quality of purchase;
- g. In case the asset shall be owned by a specified beneficiary, a stipulation that a Deed of Donation shall be executed by the GO therefor;
- h. Monitoring and inspection of project implementation and verification of financial records and reports of the NGO/PO by the GO;
- i. Visitorial audit by the officials and personnel of the Commission on Audit (COA) authorized to perform the audit under an approved office order;
- j. Institution of legal action by the GO against the defaulting NGO/PO which fails to complete a project covered by the MOA, or for a material violation of the provisions of the MOA or of this Circular, and in any of these cases, its subsequent disqualification from applying for another project in any other GO;



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k. In case of the dissolution of a recipient NGO/PO, voluntary or involuntary, the lien of the granting GO on its assets, in accordance with existing laws, to the extent of the expended or unutilized portion of the fund;

l. Maintenance by the NGO/PO of a separate savings account for each fund received from the GO; and

m. The return by the NGO/PO to the granting GO of any amount not utilized to complete the project, including interest, if any.

x x x.

The evidence presented by the parties shows that the foregoing requirements under COA Circular 2007-001 were not complied with when NABCOR, through accused Mendoza and the other accused, selected KMBFI to implement Cong. Belmonte Jr.'s livelihood project.

The Circular requires the submission, among others, of the following documents for the accreditation of the NGO: (1) NGO's Certificate of Registration with the SEC, and authenticated copy of its articles of incorporation; (2) Financial Reports, audited by an independent CPA for the past three years preceding the date of project implementation, or for the NGO which has been in operation for less than three years, report of accomplishment or any equivalent proof certified by its President and Secretary that it had previously implemented similar projects, in addition to financial reports for the years it has been in operation; (3) Complete project proposal approved/signed by its officers which shall include the objectives, target beneficiaries, feasibility studies, risk assessment, designs, plans, blueprints, charts, etc.; (4) List and/or photographs of similar projects previously completed by the NGO/PO, if any, indicating the source of funds for their implementation.

KMBFI did not submit its SEC Certificate of Registration, Articles of Incorporation and other related documents to NABCOR for accreditation purposes. It was the OMB FIO that secured the registration documents of KMBFI from the SEC, consisting of KMBFI's Certificate of Incorporation, Articles of Incorporation and By-Law.¹³⁵ Accused Mendoza, as a ranking official of NABCOR, did not bother to verify whether KMBFI had been duly accredited and

¹³⁵ Exhibits A, pp. 86 to 97.

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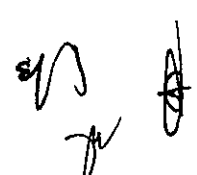
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authorized to implement the livelihood project of Cong. Belmonte Jr. She, along with Javellana and Relevo, merely endorsed and authorized the release of ₱4,850,000.00 from NABCOR to KMBFI purportedly to implement Cong. Belmonte Jr.'s livelihood project in the 1st District of Lanao del Norte. But no such project was implemented because accused Antonio submitted to NABCOR spurious documents purportedly showing that such project was implemented.

Item 4.4.1 of COA Circular No. 2007-001, requires that to ensure that the NGO has a legal personality, has officers who are responsible and accountable for its operations, and is based in the community where the project shall be implemented, the NGO is allowed to receive government funds and implement the PDAF of a legislator, the said NGO must submit the proposal or application for funding accompanied by Certificate of Registration with the Securities and Exchange Commission.

The corporate documents of KMBFI reveals that the said NGO was incorporated only June 29, 2007, or about a little more than a year prior to the execution of the MOA between NABCOR and KMBFI and the transfer to KMBFI of the amount of ₱4,850,000.00. Not having operated for three years, NABCOR did not require the said NGO to submit a report of accomplishment or any equivalent proof certified by its President and Secretary that it had previously implemented similar projects, in addition to financial reports for the years it has been in operation.

Neither did Mendoza and the other NABCOR officials direct KMBFI to submit the other requirements mentioned under Item 4.4.6 of the COA Circular, such as complete project proposal approved/signed by its officers which shall include the objectives, target beneficiaries, feasibility studies, risk assessment, designs, plans, blueprints, charts, etc. and list and/or photographs of similar projects previously completed by the NGO/PO, if any, indicating the source of funds for their implementation. It is noteworthy that the project framework (supposed to be project proposal) was incomplete and did not include the matters required by the COA circular, and worse, signed by accused Javellana and Mendoza, instead of KMBFI's officers. Mendoza admitted not having reviewed the same but merely affixed her signature because she saw her name there.



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Moreover, the Articles of Incorporation of KMBFI shows that its principal office is at No. 911 Algeciras Street, Sampaloc, Manila.¹³⁶ On the other hand, Item 4.4.1 of COA Circular 2007-001 requires that the NGO that will implement the PDAF project should be "based in the community where the project should be implemented." The project was supposed to be implemented in the 1st District of Lanao del Norte/Iligan City.

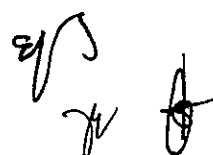
Worse, an ocular inspection of the address of KMBFI disclosed that it is a two-door apartment, the current occupant of whom claiming that she was not aware of the existence of KMBFI in the said unit.

Also, accused Mendoza admitted that the project was not made public via newspapers, agency websites, bulletin boards and the like, at least three months prior to the target date of commencement of the identified project to ensure transparency as required under Item 4.5.1 of COA Circular No. 2007-001.

Not only that, Bonifacio Vergara, the proprietor of B.B. Vergara Plant Nursery, the supposed supplier of the grafted fruit seedlings purportedly purchased by KMBFI and distributed to the 1st District of Lanao del Norte **denied** having transacted with KMBFI or accused Antonio, and that the supposed sales invoices, delivery receipts, and official receipts covering the said transaction were merely fabricated and did not come from the said plant nursery. Indeed, even the mayors of the city/municipalities which were supposed to be the beneficiaries of the said seedlings denied having received any seedling from KMBFI. And no proof of receipt of the grafted fruit seedlings by the intended beneficiaries were required by the accused to be submitted before the last tranche of the PDAF was released. What was submitted was merely the undated list of beneficiaries signed by Cong. Belmonte Jr.

Likewise, a reading of the MOA between NABCOR and KMBFI discloses that none of the provisions provided under Item 4.5.3 of the COA Circular are embodied therein, such as, among others: (a) Systems and procedures to implement the project such as, but not limited to, the procurement of goods and services by the NGO and their distribution which should be documented and

¹³⁶ Exhibit A, p. 89.



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coordinated through the GO authorized officials and the respective barangays; (b) Time schedules for the periodic inspection/evaluation, reporting, monitoring requirements and date of completion; (c) Visitorial audit by the officials and personnel of COA; and (d) Project description, beneficiaries, benefits to be derived, brief description and site/location.

Ignoring the said systems and procedures in the procurement of goods by the NGO and their distribution which should have been documented and coordinated through NABCOR's authorized officials, accused Mendoza and the other accused let go of the government funds in the total amount of ₱4,850,000.00 in favor of KMBFI, enabling accused Antonio of KMBFI to submit spurious documents, such as B.B. Vergara Plant Nursery Sales Invoice, Official Receipt, and Delivery Receipt purportedly showing that fruit seedlings were procured and distributed to non-existing beneficiaries when in fact no such transaction was ever entered into with the said supplier, and no such seedlings were distributed to the supposed beneficiaries.

Accused Mendoza cannot feign ignorance of these terms of reference because as Director of Administrative and Finance Division, and a signatory to all financial obligations and transactions with NGOs in connection with PDAFs, she is expected to know these requirements relating to the disbursement of funds by NABCOR.

Indeed, knowing that these terms of reference were not found in the MOA, Mendoza should not have signed and released the checks to KMBFI. She cannot claim that signing them were only part of her ministerial duties. She admitted in her testimony that there were instances when she opted not to sign the checks immediately even though accused Javellana had already affixed his signature. This only means that as one of the last two officials who will enable the release of the funds, she was tasked to make sure that everything is in order.

To reiterate, accused Mendoza, as NABCOR's Director of Administrative and Finance Division, had the duty to check and review the supporting documents. She claimed to have reviewed the supporting documents, including the MOA. However, she only checked whether the SARO numbers and the DVs matched the

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provisions in the “*pro forma*” MOA. She blindly signed the project framework, which was an attachment to the MOA.

Thus, the Court hereby finds that Mendoza and the other accused acted with manifest partiality in favor of KMBFI that caused the unjustified release of government funds which were merely pocketed by accused Antonio. At the very least, the Court finds Mendoza committed negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected, and because she omitted that care which even inattentive and thoughtless men never fail to take on their own property, which triggered the release of the PDAF of Cong. Belmonte Jr. from NABCOR to KMBFI.

As to accused Relevo, during the pre-trial, he stipulated with the prosecution that “[s]ubject livelihood projects financed from the allotment of Congressman Belmonte, Jr. in PDAF **were not implemented**.”¹³⁷ He also stipulated that “[h]e was duly authorized to sign all documents where his signature appear.”

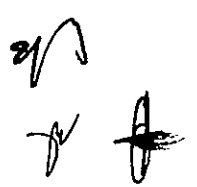
Relevo admitted that it was he who signed Box A of DV No. 08-07-02441, in the amount of ₱4,365,000.00, and DV No. 08-07-02548, in the amount of ₱485,000.00. The said two DVs covered the two checks released by NABCOR to KMBFI. Without the said DVs, the two checks in the total amount of ₱4,850,000.00 would not have been issued, released, and paid to KMBFI. Relevo, in signing Box A of the said DVs certified that the disbursements were necessary and lawful despite the glaring deficiencies in the attached supporting documents.

Thus, he testified:

PROSECUTOR ABLAZA:

Q We will move forward, sir. When you sign in box A of those two (2) disbursement vouchers, it meant that you reviewed the disbursement vouchers as well as all of its supporting documents

¹³⁷ Please see Note 4.



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or attachments as you mentioned in your answer to question no. 14, correct?

A Correct, ma'am.

Q And your signatures thereto indicated that you certified that expenses, advances necessary lawful and incurred under your direct supervision, correct?

A Correct, ma'am.

Q And when you certify, it means that you attest and confirm the necessity and lawfulness of the intended projects, correct?

A Correct, ma'am.

Q When you certify as to necessity, it means that the expenditure or disbursement is necessary, correct?

A Correct, ma'am.

Q When you certify as to lawfulness, it means that the expenditure or disbursement is not just necessary but legal, meaning compliant with existing laws, rules and regulations, correct?

THE WITNESS:

A Yes, ma'am.

PROSECUTOR ABLAZA:

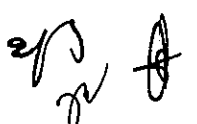
Q And when you certify that the expenditures, advances are necessary under your direct supervision, direct supervision means you gave specific instruction on all assignments, and you have control of other persons or employees, who are responsible for actions taken on the expenses incurred or advances taken, correct?

A Correct, ma'am.

Q So, if you find that the action taken or supporting documents of the disbursement vouchers are lacking, you will not sign box A of those disbursement vouchers, correct?

A Correct, ma'am.

Q In your answer to question no. 12, you enumerated the attachments to the disbursement vouchers that you claimed to have carefully read and reviewed one by one, and these are, and



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I quote "the SARO, Notice of Cash Allocation or NCA, project proposal, MOA, Indorsement coming from the legislator for the release of fund, Accomplishment Report, Independent Audit Report, Certificate of Acceptance, Inspection Report, SEC and DTI Registration, Official Receipts, Sales Invoice, Delivery Receipt, Purchase Order, Quotations, Contract of Services, Acknowledgment Receipts, among others." Do you confirm that?

THE WITNESS:

A Yes, ma'am.

PROSECUTOR ABLAZA:

Q But the only documents that are indicated attached to the subject DVs are for Exhibit W... may I be allowed to read the attachments on Exhibit W? Your Honors, the attachment to the Exhibit W, are: Partial Physical and Audited Financial Reports, copy of MOA, Certificate of Acceptance, List of Beneficiaries, Official Receipt No. 136 and Sales Invoice No. 233, Copy of Disbursement No. 08-07-02441, do you confirm that?

A Yes, ma'am.

Q And the attachment to Exhibit R, are: Project Proposal, the Memorandum of Agreement, Indorsement from Cong. Belmonte and copy of SARO No. ROCS-08-04188, do you confirm that?

A Yes, ma'am.

Q Despite the lacking documents that you mentioned in your answer to question no. 12, you still signed the disbursement vouchers, correct?

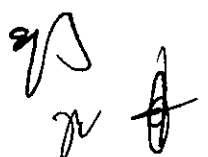
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A Correct, ma'am.

Q You did not confront anyone from the Finance Department, who allegedly gave you these documents, that the documents are lacking, correct?

THE WITNESS:

A Correct, ma'am.



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Indeed, Relevo admitted having signed the two DVs even in the absence of documents that should have been attached to the said DVs. By doing so, Relevo in conspiracy with accused Mendoza, acted with manifest partiality in choosing KMBFI as the NGO that would implement Cong. Belmonte Jr.'s livelihood project in the 1st District of Lanao del Norte. At the very least, he also committed negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. Accused Relevo omitted that care even inattentive and thoughtless men never fail to take on their own property.

The acts of Relevo and Mendoza showed manifest partiality in favor of KMBFI, which caused undue injury to the government in the total amount of ₱4,850,000.00.

As to accused Balbacal, the prosecution contends that her liability stems from her verifying the correctness of the Disbursement and Liquidation Reports despite the fact that the reports, including its supporting documents were falsified and fabricated.

For her part, Balbacal denied her participation in these cases and insisted that the signatures appearing on the disbursement and liquidation reports and audit reports were forged. To support her claim, she presented Necitas B. Patinio, Document Examiner II of the NBI, as her expert witness.

As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence, the burden of proof lies on the party alleging forgery. One who alleges forgery has the burden to establish his case by a preponderance of evidence, or evidence which is of greater weight or more convincing than that which is offered in opposition to it.¹³⁹

¹³⁸ TSN dated January 17, 2023, pp. 13-16.

¹³⁹ *Philippine Trust Company v. Redentor R. Gabinete, Shangrila Realty Corporation and Elisa T. Tan*, G.R. No. 216120, March 29, 2017.

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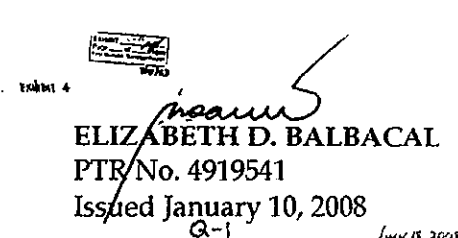
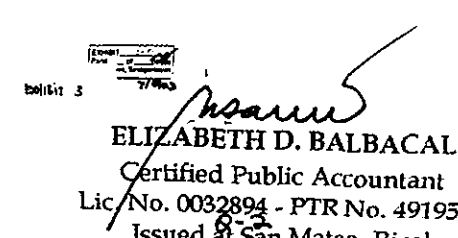
In this case, Balbacal offered Questioned Documents Report No. 17-123 issued by the NBI.¹⁴⁰ Witness Patinio found that there exist significant differences in the handwriting characteristics and habits between the questioned and standard/specimen signatures. She concluded that the questioned and standard/specimen signatures of ELIZABETH BALBACAL were not written by one and the same person.

A finding of forgery does not depend entirely on the testimony of handwriting experts and that the judge still exercises independent judgment on the issue of authenticity under scrutiny.¹⁴¹

The Court conducted its own examination of the questioned and standard signatures of accused Balbacal. Witness Patinio testified that one vital requirement of the NBI in examining the genuineness of the signatures in question is to compare the questioned signatures from documents containing contemporaneous genuine signatures of the person involved. Contemporaneous signatures span within three years of the questioned signature.¹⁴²

In these cases, the questioned signatures are in the Partial Disbursement and Liquidation Report as of July 18, 2008, Auditor's Report as of July 18, 2008, Disbursement and Liquidation Report as of July 30, 2008, and Auditor's Report as of July 30, 2008. Therefore, the contemporaneous signatures relevant to this case are from 2007, 2008, and 2009.

For easier comparison, the Court reproduced the subject signatures in the tables below:

Questioned Signatures	
 <p>EXHIBIT 4 ELIZABETH D. BALBACAL PTR/No. 4919541 Issued January 10, 2008 G-1 July 18, 2008</p>	 <p>EXHIBIT 3 ELIZABETH D. BALBACAL Certified Public Accountant Lic/No. 0032894 - PTR No. 4919541 Issued at San Mateo, Rizal</p>
Exhibit 4-B-Balbacal	Exhibit 3-B-Balbacal

¹⁴⁰ Exhibit-28-Balbacal.

¹⁴¹ Please see note 139, citing *Mendoza v. Fermin*, G.R. No. 177235, July 7, 2014.

¹⁴² TSN dated July 18, 2023, p. 62.

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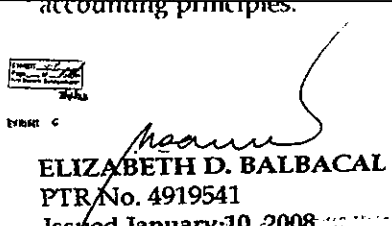
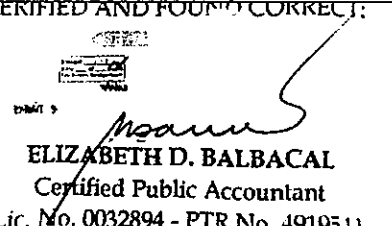
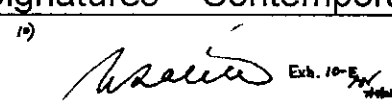
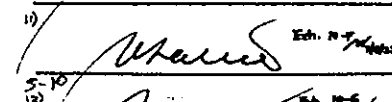
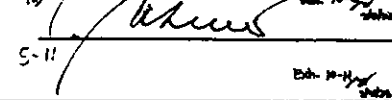
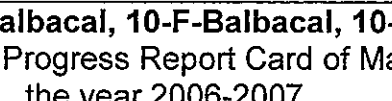
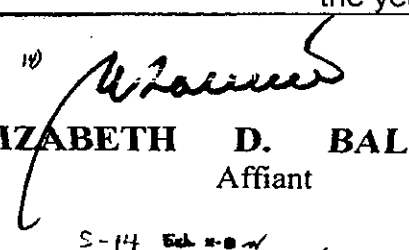
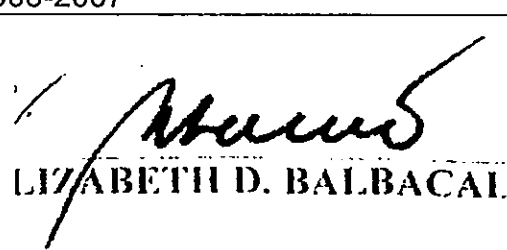
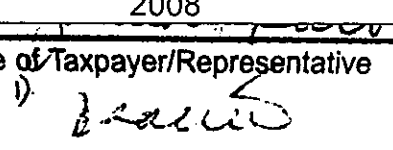
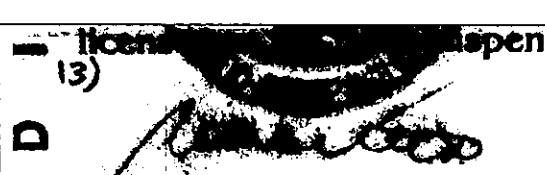
Auditor's Report as of July 18, 2008 accounting principles.	Partial Disbursement and Liquidation Report as of July 18, 2008 VERIFIED AND FOUND CORRECT.
 ELIZABETH D. BALBACAL PTR No. 4919541 Issued January 10, 2008	 ELIZABETH D. BALBACAL Certified Public Accountant Lic. No. 0032894 - PTR No. 4919541
Exhibit 6-B-Balbacal Auditor's Report as of July 30, 2008	Exhibit 5-B-Balbacal Partial Disbursement and Liquidation Report as of July 30, 2008

Table 1. Questioned Signatures of Accused Balbacal.

Standard Signatures – Contemporaneous	
1st 	Exh. 10-E
2nd 	Exh. 10-F
3rd 	Exh. 10-G
4th 	Exh. 10-H
Exhibits 10-E-Balbacal, 10-F-Balbacal, 10-G-Balbacal Guardian Angel Academy Progress Report Card of Mary Albert Balbacal for the year 2006-2007	
 ELIZABETH D. BALBACAL Affiant	 ELIZABETH D. BALBACAL
Exhibit 11-B-Balbacal Affidavit of Loss dated June 20, 2008	Exhibit 12-A-Balbacal Certificate of Full Settlement ¹⁴³
nature of Taxpayer/Representative 	 Signature of Professional
Exhibit 13-B-Balbacal BIR Deposit Slip dated October 20, 2009	Exhibit 20-C-Balbacal PRC ID issued on September 18, 2007

¹⁴³ Undated document but testified to by witness Balbacal as a document from 2008 (Judicial Affidavit of Elizabeth Balbacal, Records, Vol. IV, p. 282).

Handwritten initials/signature

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<p>15)</p>  <p>ELIZABETH D. BALBACAL Chief Accountant VPD-FSD 5-15 [unclear] July 17, 2008</p>	 <p>ELIZABETH D. BALBACAL No. 1523 45-1736</p>
<p>Exhibit 21-B-Balbacal Letter to Resident Auditor, COMELEC dated July 17, 2008</p>	<p>Exhibit 22-B-Balbacal Home Development Mutual Fund Transaction Card issued on October 18, 2008</p>

Table 2. Standard Signatures of Accused Balbacal from 2007 to 2009.

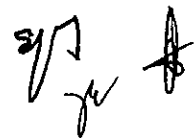
After a judicious examination of the foregoing specimens, the Court concludes that the questioned signatures and standard signatures were indeed not affixed by one and the same person.

It does not escape the Court's attention the notable differences between the signatures shown above. There are three dominant elements in Balbacal's signature: (1) the initial strokes, (2) the loops in the middle, and (3) the embellishment in the end.

The initial strokes in the four questioned signatures are consistently affixed in a straight, diagonally upward manner in one swift motion, before continuing to draw the next stroke downwards. In the standard signatures, on the other hand, the initial stroke starts with a small inner loop at the bottom before extending the initial stroke in a curved manner upwards before proceeding to the next stroke downwards.

The second stroke (affixed after the upward stroke from the bottom) in the questioned signatures is consistently drawn sharply and diagonally straight downwards, as opposed to the standard signatures which have a slight curve which almost looks like a second loop.

The embellishments in the end (the last loop at the bottom) of the questioned signatures appear to be consistently wider than those of the standard signatures, while the latter are narrower loops before continuing the stroke upwards. The bottom strokes created in the standard signatures are closer to each other, as opposed to the last loop of the questioned signatures which distinguishably appear to be more open.



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The last upward stroke at the end in the questioned signatures is affixed with a slight curve before extending the last stroke ending upwards while in the standard signatures, there is a noticeable sharp upward motion from the last loop at the bottom before moving to the last stroke in a diagonally upward manner.

Hence, without being distracted by the other standard signatures from years not within the contemporaneous time period of the questioned signatures, the Court is convinced that it was not accused Balbacal who affixed the signatures on the Partial Disbursement and Liquidation Report as of July 18, 2008,¹⁴⁴ Auditor's Report, dated July 18, 2008,¹⁴⁵ Partial Disbursement and Liquidation Report as of July 30, 2008,¹⁴⁶ and Auditor's Report, dated July 30, 2008.¹⁴⁷

Settled is the rule that private persons, acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses under Section 3 of RA 3019, in consonance with the avowed policy of the Anti-Graft Law to repress certain acts of public officers and private persons alike constituting graft or corrupt practices act or which may lead thereto.¹⁴⁸

Conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it. To determine conspiracy, there must be a common design to commit a felony.¹⁴⁹ In terms of proving its existence, conspiracy takes two forms. The first is the express form, which requires proof of an actual agreement among all the co-conspirators to commit the crime. However, conspiracies are not always shown to have been expressly agreed upon. Thus, there is the second form, the implied conspiracy.¹⁵⁰ In *Macapagal-Arroyo v. People of the Philippines*,¹⁵¹ the Court expounded on implied conspiracy, thus:

¹⁴⁴ Exhibit U, page 5.

¹⁴⁵ Exhibit U, page 9.

¹⁴⁶ Exhibit Z, page 5.

¹⁴⁷ Exhibit Z, page 9.

¹⁴⁸ *Canlas v. People of the Philippines and the Sandiganbayan (Third Division)*, G.R. Nos. 236308-09, February 17, 2020, citing *PCGG v. Office of the Ombudsman*, G.R. No. 194619, March 20, 2019.

¹⁴⁹ *People of the Philippines v. Morilla*, G.R. No. 189833, February 5, 2014.

¹⁵⁰ *People of the Philippines v. Jimmy Evasco and Ernesto Eclavia*, G.R. No. 213415, September 26, 2018, citing *Macapagal-Arroyo v. People of the Philippines*, G.R. Nos. 220598 and 220953, July 19, 2016.

¹⁵¹ G.R. Nos. 220598 and 220953, July 19, 2016.

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An implied conspiracy exists when two or more persons are shown to have aimed their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative, indicating closeness of personal association and a concurrence of sentiment. Implied conspiracy is proved through the mode and manner of the commission of the offense, or from the acts of the accused before, during and after the commission of the crime indubitably pointing to a joint purpose, a concert of action and a community of interest.¹⁵²

Balbacal argues that the prosecution failed to show that she acted in bad faith when she allegedly verified the reports. Also, no evidence was shown to prove that Balbacal knows or should have known that the supporting documents were falsified had she exercised due diligence in her audit/verification.

The Court agrees.

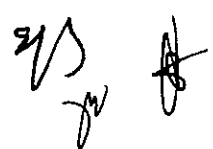
A scrutiny of the testimonial and documentary evidence offered by the prosecution as against Balbacal would reveal that the prosecution did not offer proof, other than the signed Partial Disbursement and Liquidation Reports and Audit Reports, of Balbacal's supposed participation in the conspiracy to defraud the government.

The Court found that the signatures on those reports were not affixed by Balbacal.

And although her license number as a certified public accountant, her PTR number, their date and place of issue, and her address were indicated in the said reports, those matters alone, without any additional circumstances that would show by clear and positive evidence that she consented to their use, do not meet the required quantum of proof to establish her participation in the questioned transaction.

Considering that the Court, in its independent examination, finds that the signatures in the reports were not actually affixed by her, the Court is constrained to conclude that the prosecution was not able to sufficiently establish by proof beyond reasonable doubt

¹⁵² Underscoring and emphasis supplied.



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her participation in the felonies charged. Absent any evidence that would link her to the conspiracy, the Court finds accused Balbacal not guilty of the crime of violating Section 3(e) of RA 3019.

The same conclusion could not be reached as regards accused Mendoza and Relevo. As earlier discussed, there were several circumstances that attended the said accused's affixing of their respective signatures.

Both Mendoza and Relevo's manifest partiality and/or gross inexcusable negligence are sufficient for this Court to conclude their participation in this grand scheme of inflicting undue injury to defraud the government. At the very least, Relevo in signing the two DVs involved in the cases, just like Mendoza, likewise acted with gross inexcusable negligence.

Considering that the gravity of negligence required by law for a violation of Section 3(e) of RA No. 3019 to exist falls short of the degree of bad faith or partiality to violate the same provision, a conspiracy of silence and inaction arising from gross inexcusable negligence would almost always be inferred only from the surrounding circumstances and the parties' acts or omissions that, taken together, indicate a common understanding and concurrence of sentiments respecting the commission of the offense.¹⁵³

Finally, the third and last element of violating Section 3(e) of RA 3019, that is, *that the public officers' action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of their functions*, is likewise present.

The Supreme Court consistently held that there are two (2) ways by which a public official violates Section 3(e) of RA 3019 in the performance of his functions, namely: (a) by causing undue injury to any party, including the Government; or (b) by giving any private party any unwarranted benefit, advantage or preference.¹⁵⁴ The accused may be charged under either mode or both. The

¹⁵³ *Edna J. Jaca v. People of the Philippines*, G.R. No. 166967, January 28, 2013.

¹⁵⁴ *Cabrera, et al. v. Sandiganbayan, et al.*, G.R. Nos. 162314-17, October 25, 2004.

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disjunctive term “or” connotes that either act qualifies as a violation of Section 3(e) of RA No. 3019.¹⁵⁵

The word “unwarranted” means lacking adequate or official support; unjustified; unauthorized; or without justification or adequate reasons. “Advantage” means a more favorable or improved position or condition; benefit or gain of any kind; benefit from course of action. “Preference” signifies priority or higher evaluation or desirability; choice or estimation above another.¹⁵⁶

The evidence of the prosecution sufficiently established that there was undue preference given to KMBFI when it was selected to implement the PDAF-funded projects. Furthermore, the transfer of the amount of ₱4,850,000.00 from NABCOR to KMBFI by virtue of a deficient MOA was tainted with irregularities. Witness Alfafaras of the COA-SAO testified on this, thus:

x x x

119. Q: What made the transfer of ₱4,850,000.00 from NABCOR to KMBFI non-compliant with existing rules and regulations, if you know?

A: The funds were transferred to KMBFI despite the absence of law appropriating or specifically earmarking such funds to be contracted out to an NGO as required under GPPB Resolution N. 12-2208 which was adopted as Section 53(j) of the IRR-A of R.A. No. 9184.

120. Q: And what was this Section 53(j) of the IRR-A of R.A. No. 9184 that you just mentioned?

A: As provided therein, funds may be transferred to NGOs for implementation when there is an appropriation law or ordinance earmarking an amount to be specifically contracted out to NGOs. NGOs were not among those identified in the GAA for the year as implementing arms of PDAF projects.

¹⁵⁵ *Braza v. Sandiganbayan*, G.R. No. 195032, February 20, 2013, citing *Velasco v. Sandiganbayan*, G.R. No. 160991, February 28, 2005; *Constantino v. Sandiganbayan*, G.R. Nos. 140656 and 154482, September 13, 2007.

¹⁵⁶ Please see note 154.

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121. Q: What made you state that the selection of KMBFI did not observe the guidelines prescribed under existing laws and regulations?

A: For the following reasons, ma'am:

- (1) The NGO shall be selected through competitive bidding or negotiated procurement prescribed under Section 53(j) of the IRR-A of RA No. 9184 as provided under GPPB Resolution NO. 12-2207. None of these selection processes was observed. Instead, a MOA dated July 9, 2008 was entered into with KMBFI upon the request of the legislator to implement project as indicated in the MOA.
- (2) There was no proof that the project was made public via newspapers, agency websites, bulletin boards and the like, at least three months prior to the target date of commencement of the identified projects to ensure transparency as required under Item 4.5.1 of COA Circular No. 2007-001.
- (3) The Bids and Awards Committee (BAC) shall accredit NGO after conducting selection process, including screening of the qualification documents, ocular inspection of NGO's business site and evaluation of their technical and financial capability. There were, likewise, no documents to manifest that these processes were at all undertaken.
- (4) The MOA did not include provisions on the following, among others (a) Systems and procedures to implement the project; (b) Time schedules for the periodic inspection/evaluation, reporting, monitoring requirements and date of completion; (c) Visitorial audit by the officials and personnel of COA; and (d) project description, beneficiaries, benefits to be derived, brief description and site/location.

X X X¹⁵⁷

¹⁵⁷ Judicial Affidavit of Joan Alfafaras, Records, Vol. II, pp. 257-258.

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The foregoing testimony remained uncontroverted and unrebutted.

Furthermore, the acts of accused Mendoza and Relevo inevitably caused undue injury to the government. Undue injury in the context of Section 3(e) of RA 3019 should be equated with the civil law concept of actual damage. Unlike in actions for torts, undue injury in Section 3(e) cannot be presumed even after a wrong or a violation of a right has been established. Its existence must be proven as one of the elements of the crime. Thus, it is required that the undue injury be specified, quantified and proven to the point of moral certainty.¹⁵⁸

Records of these cases show that the supposed livelihood projects funded by Cong. Belmonte Jr.'s PDAF turned out to be fictitious and non-existent when the COA-SAO team conducted its audit. The prosecution presented the reply-letter from the B.B. Vergara Plant Nursery's proprietor Bonifacio B. Vergara which confirmed that the sales invoices, official and delivery receipts were not genuine and authentic.¹⁵⁹

Moreover, the prosecution also presented in evidence the reply-letters of mayors of several municipalities confirming that they did not receive the seedlings that were supposed to be distributed to their constituents.¹⁶⁰

Undoubtedly, the manifest partiality and/or gross inexcusable negligence of accused Mendoza and Relevo resulted in the release of the PDAF from NABCOR, effectively robbing the residents of the 1st District of Lanao del Norte the benefits that they were entitled to.

From the foregoing, the Court, therefore, finds and so holds that accused Mendoza and Relevo acted with unity of purpose, with manifest partiality and/or gross negligence, in giving unwarranted benefits to KMBFI and caused undue injury to the government in the total amount of ₱4,850,000.00, thereby violating Section 3(e) of RA 3019, as amended.

¹⁵⁸ *Tio v. People of the Philippines*, G.R. No. 230252, January 19, 2021.

¹⁵⁹ Exhibits BB and DD.

¹⁶⁰ Exhibits EE to MM.

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Malversation of Public Funds (Art. 217, RPC)

Crim. Case No. SB-22-CRM-0002

Art. 217 of the Revised Penal Code provides:

Article 217. *Malversation of public funds or property; Presumption of malversation.* – Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds, or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

x x x

4. The penalty of *reclusion temporal* in its medium and maximum periods, if the amount involved is more than Two million four hundred thousand pesos (₱2,400,000) but does not exceed Four million four hundred thousand pesos (₱4,400,000).

x x x

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly unauthorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal use. (As amended by RA No. 10951)

Malversation may be committed by appropriating public funds or property; by taking or misappropriating the same; by consenting, or through abandonment or negligence, by permitting any other person to take public funds or property; or by being otherwise guilty of the misappropriation or malversation of such funds or property.¹⁶¹

Thus, the elements of malversation under the said provision of law are: (1) that the offender is a public officer; (2) that he or she had custody or control of funds or property by reason of the duties of his or her office; (3) that those funds or property were funds or

¹⁶¹ *Zoleta v. Sandiganbayan*, G.R. No. 185224, July 29, 2015.

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property for which he or she was accountable; and (4) that he or she appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.¹⁶²

The first two elements of malversation are sufficiently established.

That accused Mendoza and Relevo are public officers is stipulated by the parties. At the time material to these cases, Mendoza was NABCOR's Director, Administrative and Finance Division, while accused Relevo was NABCOR's Head, General Services Unit.

That both Mendoza and Relevo had custody or control of NABCOR's funds or property by reason of the duties of their office, is likewise proven.

In *Corpuz v. People of the Philippines*, the Supreme Court ruled that an accountable officer is a public officer who, by reason of his or her office, is accountable for public funds or property.¹⁶³ Sections 101(1) and 102 of the Government Auditing Code of the Philippines (PD No. 1445) states that:

Section 101. Accountable officers; x x x

1. Every officer of any government agency whose duties permit or require the possession or custody of government funds or property shall be accountable therefor and for the safekeeping thereof in conformity with law

2. x x x

Section 102. Primary and secondary responsibility

1. The head of any agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency.

¹⁶² *Corpuz v. People of the Philippines*, G.R. No. 241383, June 08, 2020.

¹⁶³ G.R. No. 241383, June 08, 2020.

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2. Persons entrusted with the possession or custody of the funds or property under the agency head shall be immediately responsible to him, without prejudice to the liability of either party to the government.

x x x

In *Zoleta*,¹⁶⁴ the Supreme Court ruled that public officers whose signatures are needed before any disbursement of public funds can be made, are considered to have control and responsible over the subject funds. Thus:

As a required standard procedure, the signatures of, among others, the Vice-Governor and the Provincial Accountant are needed before any disbursement of public funds can be made. No checks can be prepared and no payment can be effected without their signatures on the disbursement voucher and the corresponding check. In other words, any disbursement and release of public funds require their approval. Thus, Constantino and Camanay, in their capacities as Vice-Governor and Provincial Accountant, had control and responsibility over the subject funds.

The third element, that is, that those funds or property were funds or property which he or she was accountable, is likewise present.

By virtue of SARO No. ROCS-08-04188, the DBM released to the DA the amount of ₱5.0 Million sourced from Cong. Belmonte Jr.'s PDAF as the financial assistance for the implementation of livelihood programs in the 1st District of Lanao del Norte.¹⁶⁵

It was proven by sufficient evidence that the DA transferred the funds to NABCOR through the issuance of DV No. 08-06-4054¹⁶⁶ and LBP Check No. 0000455233,¹⁶⁷ and NABCOR confirmed receipt of the said amount through the issuance of NABCOR O.R. No. 0000133.¹⁶⁸ Therefore, the entire amount of ₱5.0 Million was in NABCOR's custody.

¹⁶⁴ Please see Note 161.

¹⁶⁵ Exhibit C.

¹⁶⁶ Exhibit O.

¹⁶⁷ Exhibit P.

¹⁶⁸ Exhibit Q.

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Mendoza, together with Javellana became accountable officers for whatever disbursements NABCOR made with the ₱5.0 Million it received from the DA, including the anomalous transfer of the amount of P4,365,000.00 to KMBFI which was received by accused Antonio. NABCOR also retained 3% of ₱5.0 Million, or ₱150,000.00 as administrative cost for supposed implementation of the livelihood programs.¹⁶⁹

The public funds subject of this case is Cong. Belmonte Jr.'s PDAF which is a lump-sum discretionary fund wherein legislators are able to effectively control certain aspects of the fund's utilization and is primarily intended for local projects.¹⁷⁰

Accused Mendoza was the Director of Administrative and Finance Division of NABCOR. Following the doctrine in *Luspo v. People*,¹⁷¹ she is also an accountable officer as she was one of the signatories of the checks in this case (the other one being Javellana). She is also charged as a co-conspirator of the other co-accused.

In addition, accused Relevo was the Head of the General Services Unit of NABCOR. He was designated authorized signatory to NABCOR's DVs and, in fact, he signed Box A of the two DVs involved in these cases by reason of which NABCOR's fund in the total amount of ₱4,850,000.00 was released to KMBFI. As he admitted, without his signature, no checks would be prepared and no funds would be released in favor of KMBFI. Thus, Relevo is considered accountable public officer who had control over NABCOR's funds.

The fourth element, *i.e.*, that he or she appropriated, took, misappropriated or, through abandonment or negligence, permitted another person to take them, is also proven in this case.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy does not need to be proven by direct evidence and may be inferred from the conduct—before, during, and after the commission of the crime—indicative of a joint purpose,

¹⁶⁹ Exhibit N.

¹⁷⁰ *Belgica v. Executive Secretary Ochoa*, G.R. No. 208566, November 19, 2013.

¹⁷¹ G.R. No. 188487, October 22, 2014.

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concerted action and concurrence of sentiments. In conspiracy, the act of one is the act of all. Conspiracy is present when one concurs with the criminal design of another, as shown by an overt act leading to the crime committed. It may be deduced from the mode and manner of the commission of the crime.¹⁷²

In the crime of malversation of public funds, all that is necessary for conviction is sufficient proof that the accused accountable officer had received public funds or property, and did not have them in his possession when demand therefor was made without any satisfactory explanation of his failure to have them upon demand. For this purpose, direct evidence of the personal misappropriation by the accused is unnecessary as long as he cannot satisfactorily explain the inability to produce or any shortage in his accounts.¹⁷³

It is undisputed that KMBFI failed to implement the livelihood programs funded by Cong. Belmonte, Jr.'s PDAF. The prosecution was able to prove that no fruit seedlings had been purchased from B.B. Vergara Plant Nursery, the supposed supplier contracted by KMBFI for the seedlings that would be distributed to the supposed beneficiaries. Also, no proof of distribution of the said fruit seedlings to their intended beneficiaries appears on record. Furthermore, municipal mayors of the municipalities which were supposed to receive the said seedlings positively denied receiving the said seedlings, or benefiting and participating in the supposed livelihood project. Accused Relevo admitted this. In sum, public funds were disbursed to finance ghost projects.

The prosecution proved that despite the absence of public bidding or proper screening or accreditation of KMBFI as NGO-partner to implement Cong. Belmonte, Jr.'s PDAF-funded livelihood projects, NABCOR, through the accused, knowingly and willfully signed the DVs and checks approving the transfer of ₱4,365,000.00 to KMBFI.

Mendoza admitted that she signed the checks¹⁷⁴ (after Javellana affixed his) that enabled the transfer of the amount of ₱4,365,000.00 from NABCOR to KMBFI. As earlier noted, she did

¹⁷² *People of the Philippines v. Pantaleon and Vallejos*, G.R. Nos. 158694-96, March 13, 2009.

¹⁷³ *Mesina v. People of the Philippines*, G.R. No. 162489, June 17, 2015.

¹⁷⁴ Exhibits S and X.

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not verify or check whether the 2008 GAA earmarked an amount to be contracted to KMBFI, and whether KMBFI was chosen through competitive public bidding, or through the strict process of accreditation, before NABCOR executed the MOA with it. Despite the glaring irregularities in the supporting documents, by blatantly disregarding existing laws and COA rules and circular, she still consented to the disbursement of said funds to KMBFI.

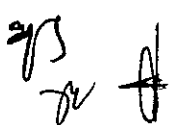
Relevo also had participated in the malversation. Without affixing his signature on Box A of the DVs, public funds would not have been remitted to accused Antonio of KMBFI. He likewise admitted knowing the consequences of signing the DVs, and even though he was aware of the circumstances which should have prevented him from signing, he still participated in the processing and release of the said PDAF to KMBFI.

From the foregoing, the Court agrees that Mendoza, acting in conspiracy with Relevo and the other accused, including accused Javellana and Antonio, or at the very least, through negligence, participated in the misappropriation of the sum of ₱4,365,000.00 by permitting accused Antonio of KMBFI to take the said funds, thereby committing the crime of malversation.

However, there is doubt as regards Balbacal's criminal participation. Absent a positive, convincing evidence that she acted in concert with her co-accused with the unified criminal design to malverse the subject PDAF, she cannot be held criminally liable.

The prosecution failed to prove, with the quantum of proof required, accused Balbacal's complicity with the other accused. In the absence of proof of conspiracy as against Balbacal, the prosecution would need to prove that all the other elements are present as to her independently. It should be noted that the Court ruled in Crim. Case No. SB-22-CRM-001 that Balbacal was not the one who signed the forged Disbursement and Liquidation Reports and Auditor's Report. Hence, the first element that Balbacal should be an accountable officer is already lacking. Therefore, the charge of malversation against her should necessarily fail.

Thus, the Court finds that accused Mendoza, in conspiracy with Relevo and the other accused, or through the negligence of Mendoza and Relevo, permitted accused Antonio to malverse the



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amount of ₱4,365,000.00 to the damage and prejudice of the government.

Malversation of Public Funds through
Falsification of Commercial Documents
(Art. 217 in relation to Art. 172, RPC)
Crim. Case No. SB-22-CRM-0003

The Information in SB-22-CRM-003, which pertains to the amount of ₱485,000.00, charges the accused with the complex crime of *malversation through falsification of commercial documents by private individuals* under Article 217, in relation to Article 172 of the Revised Penal Code, as opposed to the caption in the Information which charges the crime of malversation through falsification of public documents under Article 217 in relation to Article 171 and Article 48 of the Revised Penal Code.

It is a basic tenet in criminal procedure that the facts alleged in the body of the information, not the technical name given by the prosecutor appearing in the title of the information, determine the character of the crime.¹⁷⁵

The prosecution charges that accused Antonio, acting for and in behalf of KMBFI, and Balbacal, being the certified public accountant who purportedly signed the Auditor's Report and the Disbursement and Liquidation Reports, are parties to the Malversation, in connivance with the other accused public officers of NABCOR.

Article 217 of the Revised Penal Code provides:

Art. 217. Malversation of public funds or property; Presumption of malversation.—Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds, or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

x x x

¹⁷⁵ *People of the Philippines v. Dasmariñas*, G.R. No. 203986, October 4, 2017.

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2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than Forty thousand pesos (₱40,000) but does not exceed One million two hundred thousand pesos (₱1,200,000).

x x x

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal use. (As amended by RA No. 10951)

The elements of malversation are: (1) that the offender is a public officer; (2) that he or she had custody or control of funds or property by reason of the duties of his or her office; (3) that those funds or property were funds or property for which he or she was accountable; and (4) that he or she appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.¹⁷⁶

Meanwhile, Article 172 of the Revised Penal Code provides:

Article 172. *Falsification by private individual and use of falsified documents.* The penalty of *prision correccional* in its medium and maximum periods and a fine of not more than One million pesos (₱1,000,000.00) shall be imposed upon:

1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document;

2. Any person who, to the damage of a third party, or with intent to cause such damage, shall in any private document, commit any of the acts of falsification enumerated in the next preceding article; and

3. x x x (As amended by RA 10951)

¹⁷⁶ *Corpuz v. People*, G.R. No. 241383, June 8, 2020.

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Article 171, on the other hand, reads in part:

Article 171. *Falsification by Public Officer, Employee or Notary or Ecclesiastic Minister.* – The penalty of *prision mayor* and a fine not to exceed One million pesos (P1,000,000.00) shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

x x x

2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;

x x x

4. Making untruthful statements in a narration of facts;

x x x (As amended by RA 10951)

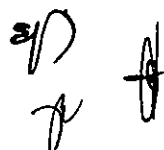
When the offender commits on a document any of the acts of falsification enumerated in Article 171 as a necessary means to commit another crime, the two crimes form a complex crime under Article 48 of the Revised Penal Code.¹⁷⁷

The Court will first determine accused Mendoza and Relevo committed the crime of falsification in conspiracy with private individuals accused Antonio and Balbacal under Article 172.

The elements of falsification of public, official, or commercial document by a private individual are: (1) that the offender is a private individual or a public officer or employee who did not take advantage of his official position; (2) that he or she committed any of the acts of falsification enumerated in Art. 171; and (3) that the falsification was committed in a public or official or commercial document.

Here, the first element is satisfied. Accused Antonio and Balbacal are private individuals who are charged to have acted in conspiracy with other accused public officials.

¹⁷⁷ Reyes, L.B., *The Revised Penal Code (Criminal Law, Book Two, 15th ed. (2001))*, p. 226.



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As to the second element, the records show that in her letter, dated July 18, 2008,¹⁷⁸ accused Antonio submitted to accused Javellana, President of NABCOR, the liquidation documents pertaining to the first tranche of Cong. Belmonte, Jr.'s PDAF in the amount of P4,365,000.00, consisting of the following: (1) Partial Physical Report, dated July 18, 2008,¹⁷⁹ (2) Certificate of Acceptance, dated July 17, 2008,¹⁸⁰ (3) Undated List of Beneficiaries,¹⁸¹ (4) Partial Disbursement and Liquidation Report as of July 18, 2008,¹⁸² (5) B.B. Vergara Plant Nursery Official Receipt No 136,¹⁸³ (6) B.B. Vergara Plant Nursery Sales Invoice No. 233,¹⁸⁴ (6) B.B. Vergara Plant Nursery Delivery Receipt No. 338¹⁸⁵ and (7) Elizabeth D. Balbacal's undated Auditor's Report.¹⁸⁶ The purpose of submitting the said liquidation documents is to show that the said amount of ₱4,365,000.00 had been legitimately utilized for the implementation of Cong. Belmonte, Jr.'s livelihood project in the 1st District of Lanao del Norte, and that the second tranche of PDAF in the amount of ₱485,000.00 should already be released to KMBFI.

True enough, on July 21, 2008, NABCOR officials, including accused Mendoza and Relevo, together with the other accused, processed and issued DV No. 08-07-02548¹⁸⁷ and UCPB Check No. 0000436805, payable to KMBFI, for the amount of ₱485,000.00,¹⁸⁸ representing the second tranche of Cong. Belmonte, Jr.'s PDAF. The said check was received by KMBFI, as shown by the DV, and its Official Receipt No. 0017, dated July 23, 2008.

It turned out that the said liquidation documents, including B.B. Vergara Plant Nursery (a) Official Receipt No 136, (b) Sales Invoice No. 233, and (c) Delivery Receipt No. 338, were all spurious and fabricated, Bonifacio B. Vergara, the proprietor of B.B. Vergara Plant Nursery, denying having transacted with KMBFI and having

¹⁷⁸ Exhibit U, page 1 of 9.

¹⁷⁹ Id., page 2 of 9.

¹⁸⁰ Id., page 3 of 9.

¹⁸¹ Id., page 4 of 9.

¹⁸² Id., page 5 of 9.

¹⁸³ Id., page 6 of 9.

¹⁸⁴ Id., page 7 of 9.

¹⁸⁵ Id., page 8 of 9.

¹⁸⁶ Id., page 9 of 9.

¹⁸⁷ Exhibit W.

¹⁸⁸ Exhibit X.

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issued the said liquidation documents,¹⁸⁹ with respect to the grafted fruit seedlings mentioned in the said documents.

In Criminal Case No. SB-22-CRM-0001, the Court finds that the prosecution failed to prove beyond reasonable doubt accused Balbacal's participation in the said case as her signatures on the Liquidation Reports and Auditors Reports were not affixed by her, and that there was no showing that she participated in the preparation of the other liquidation documents. However, it was shown that it was accused Antonio of NABCOR who submitted the fabricated documents to NABCOR.

It was the responsibility of KMBFI under the MOA to prepare and submit to NABCOR the said liquidation reports. All the said documents were prepared and submitted to NABCOR by accused Antonio and supposedly verified by accused Balbacal. The accused made it appear in the liquidation report that the alleged supplier B.B. Vergara Plant Nursery issued the spurious sales invoice, delivery receipt, and official receipt to prove the purchase and delivery of the seedlings to KMBFI. But it was shown that no transaction was made between KMBFI and B.B. Vergara Plant Nursery, and that the said commercial documents were not issued by the said plant nursery.

In the case of *People v. Sendaydiego*,¹⁹⁰ the Supreme Court ruled that the person who had in his possession a falsified document and made use of it, taking advantage of it and profiting thereby, the presumption is that he is the material author of the falsification. Hence, the High Court held:

The rule is that if a person had in his possession a falsified document and be made use of it (uttered it), taking advantage of it and profiting thereby, the presumption is that he is the material author of the falsification. This is especially true if the use or uttering of the forged documents was so closely connected in time with the forgery that the user or possessor may be proven to have the capacity of committing the forgery, or to have close connection with the forgers, and therefore, had complicity in the forgery. (U.S. vs. Castillo, 6 Phil., 453; *People vs. De Lara*, 45 Phil. 754; *People vs. Domingo*, 49 Phil. 28; *People vs. Astudillo*, 60 Phil. 338 *People vs. Manansala*, 105 Phil. 1253).

¹⁸⁹ Exhibit BB, pages 1 to 3.

¹⁹⁰ 81 SCRA 120, 141

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In the absence of a satisfactory explanation, one who is found in possession of a forged document and who used or uttered it is presumed to be the forger (Alarcon vs. Court of Appeals, L-21846, March 31, 1967, 19 SCRA 688; People vs. Caragao, L-28258, December 27, 1969, 30 SCRA 993).

The COA-SAO team found and confirmed in the audit that B.B. Vergara Plant Nursery, through its proprietor Bonifacio Vergara, did not transact with KMBFI and did not issue said documents as regards the supposed grafted fruit seedlings.¹⁹¹ This leaves the Court to conclude that accused Antonio indeed fabricated these documents. The partial physical report, as well as the final physical report attaching the fabricated and spurious liquidation reports were all prepared by accused Antonio. These pieces of evidence have remained un rebutted.

As to the third element, the documents falsified in this case are the official receipts, delivery receipts and sales invoices supposedly issued by B.B. Vergara Plant Nursery. These are classified as commercial documents. According to jurisprudence, commercial documents or papers are those used by merchants or business persons to promote or facilitate trade or credit transactions. Common examples include receipts, order slips, and invoices.¹⁹²

By falsifying these receipts and invoices, accused Antonio made it appear that a legitimate business transaction indeed happened between B.B. Vergara Plant Nursery and KMBFI when in fact, it did not.

These falsified documents were used by the accused public officials and accused Antonio in order to release the remaining 10% or the amount of ₱485,000.00 to KMBFI, completing the complex crime of malversation through falsification.

As in this case, all the elements are likewise present. First, accused Javellana, president of NABCOR, in conspiracy with accused Mendoza and Relevo, signed the disbursement vouchers and checks that released the amount of ₱485,000.00 to KMBFI. The said amount is part of Cong. Belmonte, Jr.'s PDAF, which is public

¹⁹¹ Exhibit BB.

¹⁹² *Malabanan v. Sandiganabayan*, G.R. No. 186329, August 2, 2017.

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funds. Finally, there is sufficient proof that the said amount has been misappropriated.

Moreover, after the COA-SAO conducted its audit, it issued Notice of Disallowance No. NAB-2014-119-PDAF (07-09).¹⁹³ Accused Javellana, Mendoza, Relevo, Villaralvo-Johnson, and Antonio were among the persons named as liable for the disbursements of the ₱5 Million PDAF of Cong. Belmonte, Jr. A total of ₱4,850,000.00 was transferred to KMBFI and the balance of ₱150,000.00 was retained as NABCOR as administrative cost. The is no evidence on record that the said amount had been settled.

If a demand was made upon an accountable public official to produce the funds in his custody and he or she failed to do so, the presumption thereby arising would render unnecessary further proof of conversion. The disappearance of public funds in the hands of the accountable public officer is *prima facie* evidence of its conversion.¹⁹⁴

However, the same conclusion could not be achieved with regard to accused Balbacal. The Court earlier ruled that the prosecution failed to prove beyond reasonable doubt Balbacal's participation therein, and that the said accused did in fact sign the auditor's report and liquidation reports.

WHEREFORE, in light of all the foregoing, judgment is hereby rendered:

1. In Criminal Case No. SB-22-CRM-0001, accused **RHODORA BULATAO MENDOZA** and **ROMULO MAGAHIS RELEVO** are hereby found **GUILTY** beyond reasonable doubt of violation of Section 3(e) of RA 3019, and are hereby sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, up to ten (10) years, as maximum, with perpetual disqualification from holding public office.

Accused **ELIZABETH DASALLA BALBACAL** is hereby **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt. Considering that the act or omission from which

¹⁹³ Exhibit SS.

¹⁹⁴ *Salamera v. Sandiganbayan*, G.R. No 121099, February 17, 1999.

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the civil liability arises exists, civil liability may likewise be assessed against accused Balbacal.

Hence, by way of civil liability, accused Mendoza, Relevo and Balbacal are hereby ordered to indemnify the government and return to the Treasury, jointly and severally, the sum of **Four Million Eight Hundred Fifty Thousand Pesos (P4,850,000.00)** which represents the amounts wrongfully and illegally disbursed.

2. In Criminal Case No. SB-22-CRM-0002, accused **RHODORA BULATAO MENDOZA** and **ROMULO MAGAHIS RELEVO** are hereby found **GUILTY** beyond reasonable doubt of Malversation of Public Funds under Article 217 of the Revised Penal Code, as amended. There being no mitigating or aggravating circumstance in this case, they are hereby sentenced to suffer the indeterminate penalty of ten (10) years and one (1) day of *prision mayor* as minimum, to sixteen (16) years, five (5) months and eleven (11) days of *reclusion temporal* as maximum.

They shall also suffer the penalty of perpetual special disqualification from holding any public office.

Accused **ELIZABETH DASALLA BALBACAL** is hereby **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt.

3. In Criminal Case No. SB-22-CRM-0003, accused **RHODORA BULATAO MENDOZA** and **ROMULO MAGAHIS RELEVO** are hereby found **GUILTY** beyond reasonable doubt of the complex crime of Malversation of Public Funds through Falsification of Commercial Documents under Article 217 in relation to Article 172 of the Revised Penal Code. As this is a complex crime under Article 48 of the RPC, the penalty for the more serious crime of malversation shall be imposed, the same to be applied in its maximum period. Hence, the accused are hereby sentenced to suffer an indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correccional* as minimum, to eight (8) years, eight (8) months and one (1) day of *prision mayor*, as maximum.

Accused **ELIZABETH DASALLA BALBACAL** is hereby **ACQUITTED** for failure of the prosecution to prove her guilt beyond

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reasonable doubt. Considering that the act or omission from which the civil liability arises exists, civil liability may likewise be assessed against accused Balbacal.

Accused Mendoza and Relevo shall also suffer the penalty of perpetual special disqualification from holding any public office.

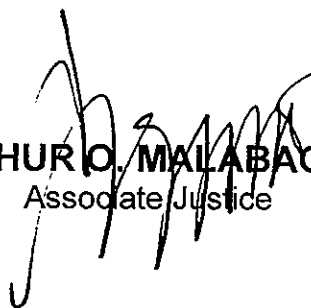
Accordingly, the hold-departure order issued against accused Balbacal by reason of these cases is hereby lifted and set aside, and the bond she posted for her provisional liberty is ordered released, subject to the usual accounting and auditing procedures.

SO ORDERED.


EFREN N. DE LA CRUZ
Chairperson/Associate Justice

WE CONCUR:


GERALDINE FAITH A. ECONG
Associate Justice


ARTHURIO O. MALABAGUIO
Associate Justice

DECISION

PP v. Alan Alunan Javellana, et al.

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x ----- x

ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Decision.


EFREN N. DE LA CRUZ
Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division's Chairperson's Attestation, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


AMPARO M. CABOTAJE-TANG
Presiding Justice

