

COURT'S COPY

REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
MANILA

JANET LIM NAPOLES,  
*Petitioner.*

SC \_\_\_\_\_  
*For: Certiorari under Rule 65  
(SB-14-CRM-0240)*

-versus-

SANDIGANBAYAN - First Division,  
CONCHITA CARPIO MORALES  
in her official capacity as Ombudsman,  
and PEOPLE OF THE PHILIPPINES,  
*Respondent.*

x-----x

**PETITION FOR CERTIORARI**

Petitioner, JANET LIM NAPOLES (“Petitioner”), through counsel, and unto the Honorable Supreme Court, most respectfully states, that:

**I.**  
**NATURE OF THE PETITION**

1. This is a Petition for *Certiorari* under Rule 65 of the Rules of Court seeking to nullify, for grave abuse of discretion amounting **to lack or excess of jurisdiction**, the Sandiganbayan First Division’s Resolutions dated 01 December 2015 and 26 March 2015, which wantonly trampled upon the constitutional rights of Petitioner to due process.

2. Certified True Copies of the said Resolution dated 01 December 2014 and Resolution dated 26 March 2015 are hereto attached and made integral parts of the original copy of this petition as **Annexes “A” and “B”**. Legible photocopies of the said Annexes are accordingly attached to the duplicate original copies of the instant petition.

**II.**  
**TIMELINESS AND PROPRIETY OF THE PETITION**

3. Petitioner received a copy of the Resolution dated 01 December 2014 of the Sandiganbayan First Division on 02 December 2014, the dispositive portion of which reads as follows:

“  
X x x....  
**THE COURT’S RULING**”

*In fine, the prosecution has duly established that there exists strong evidence that accused Revilla, Cambe and Napoles, in conspiracy with one another, committed the capital offense of plunder defined and penalized under RA 7080, and thus are not entitled to the constitutional right to bail. However, the Court cautions that such conclusion shall not be regarded as a prejudgment on the merits of the case that are to be determined only after a full-blown trial.<sup>1</sup>*

**WHEREFORE**, in light of all the foregoing, accused Ramon Revilla, Jr., Richard A. Cambe, and Janet Lim Napoles are denied bail.

**SO ORDERED.**

X x x... ”

4. Petitioner filed her Motion for Reconsideration<sup>2</sup> on 17 December 2014 praying for a second look at the Resolution dated 01 December 2014. However, the Motion for Reconsideration was denied through Resolution dated 26 March 2015 received on 07 April 2015.

5. Petitioner has no just, speedy and adequate remedy in the ordinary course of law. Section 4, Rule 65 of the Rules of Court provides that the petition for *certiorari* shall be filed not later than sixty (60) days from notice of judgment, order or resolution. Petitioner has up to 06 June 2015 to file a petition for *certiorari*. Hence, the filing of this petition is well within the sixty-day reglementary period.

### **III.** **THE PARTIES**

6. Petitioner, **JANET LIM NAPOLES**, is a Filipino citizen, of legal age, and is currently detained at Correctional Institution for Women, Brgy. Additional Hills, Nueve de Pebrero Street, Mandaluyong City. Petitioner may be served with processes of this Honorable Supreme Court through her counsel **DAVID CUI-DAVID BUENAVENTURA** and **ANG LAW OFFICES**, with office address at Suite 1905-A, Philippine Stock Exchange Center, West Tower, Ortigas Center, Pasig City.

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<sup>1</sup> Section 6 (d), A.M. No. 12-11-2-SC

<sup>2</sup> A Copy of the Petitioner's filed Motion for Reconsideration dated 17 December 2014 is attached as Annex "C"

7. Public Respondent, **SANDIGANBAYAN First Division**, may be served with processes of this Honorable Court at the Centennial Building, Commonwealth Avenue, Corner Batasan Road.

8. Public Respondent **CONCHITA CARPIO MORALES** is being sued in her official capacity as Ombudsman. She may be served with processes of this Honorable Court at Ombudsman Building, Agham Road, North Triangle, Diliman, Quezon City.

9. Respondent **PEOPLE OF THE PHILIPPINES**, represented by the Ombudsman may be served with processes of this Honorable Court at Ombudsman Building, Agham Road, North Triangle, Diliman, Quezon City.

#### IV. STATEMENT OF RELEVANT FACTS AND ANTECEDENT PROCEEDINGS

10. On 01 April 2014, Petitioner Napoles received a copy of the *Joint Resolution* of the Ombudsman dated 28 March 2014. The Joint Resolution was based on the FIO Complaint dated 18 November 2013 and the NBI Complaint dated 16 September 2013.

11. Petitioner Napoles filed a *Motion for Reconsideration* dated 21 April 2014 for the reversal of the Joint Resolution, finding probable cause to indict her for plunder.

12. The resolution charging Napoles of plunder was based on the Ombudsman's finding that she conspired with Senator Revilla in the commission of the crime. However, the NBI and FIO Complaints, as well as the Joint Resolution, miserably failed to establish conspiracy between and among the co-accused. Also, the Ombudsman failed to establish that the common goal of all the accused is to enable public accused Senator Revilla or any of the accused public officers to amass, accumulate or acquire ill-gotten wealth.

13. Despite the foregoing valid contentions raised by petitioner Napoles, the Office of the Ombudsman, in its Joint Order dated 04 June 2014, denied the motion for reconsideration for lack of merit. The said denial led to the filing of the *Information* dated 5 June 2014<sup>3</sup> against petitioner Napoles for the crime of plunder.

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<sup>3</sup>Information, Annex "D" hereof.

14. On 25 June 2014, Petitioner herein filed her Joint Petition for Bail before the Sandiganbayan First Division. The Joint Petition for Bail was denied by the Respondent Court in its Resolution dated 01 December 2014.

15. On 17 December 2014, Petitioner filed her Motion for Reconsideration to the Resolution dated 01 December 2014. Sandiganbayan First Division denied Petitioner's Motion for Reconsideration in its 26 March 2015 Resolution.

## V.

### GROUND FOR THE PETITION

- a. **THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION IN RULING THAT THE PROSECUTION WAS ABLE TO PROVE WITH STRONG EVIDENCE THAT SENATOR REVILLA ("SEN. REVILLA") AND RICHARD CAMBE CONSPIRED WITH JANET LIM NAPOLES, IN AMASSING, ACCUMULATING, AND ACQUIRING ILL GOTTEN WEALTH. THUS, THEIR PETITION FOR BAIL SHOULD BE DENIED.**
- b. **THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION IN RULING THAT THE HARD DISK, DISBURSEMENT LEDGER AND THE SUMMARY OF REBATES ARE RELIABLE AND WITH INTEGRITY.**
- c. **THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION IN UPHOLDING THE TESTIMONIES OF THE WITNESSES AND THE DOCUMENTS THEY TESTIFIED.**
- d. **THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION IN UPHOLDING THE INFORMATION AND RULING THAT THE EVIDENCE OF THE PROSECUTION DOES PROVE PLUNDER.**

## VI.

### DISCUSSION OF ARGUMENTS

**THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION IN RULING THAT THE PROSECUTION WAS ABLE TO PROVE WITH STRONG EVIDENCE THAT SENATOR REVILLA (“SEN. REVILLA”) AND RICHARD CAMBE CONSPIRED WITH JANET LIM NAPOLES, IN AMASSING, ACCUMULATING, AND ACQUIRING ILL GOTTEN WEALTH. THUS, THEIR PETITION FOR BAIL SHOULD BE DENIED.**

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16. The Respondent Court erred in concluding that the prosecution was able to present evidence of conspiracy, when it ruled, as follows:

*“The separate and individual acts of accused Revilla, Cambe and Napoles convincingly appears to have facilitated the amassing, accumulation and acquisition of ill gotten wealth by accused Revilla. It is immaterial that accused Cambe and Napoles by themselves have likewise amassed, accumulated, or acquired ill gotten wealth in the amount of at least P50 Million each. It is sufficient that the prosecution has established that accused Revilla and accused Cambe have conspired with one another, and with accused Napoles in the accumulation or acquisition of ill-gotten wealth of at least P50 Million.*

*The Court is persuaded that the prosecution has presented compelling evidence that accused Revilla amassed, accumulated or acquired ill-gotten wealth by repeatedly receiving from accused Napoles or her representatives or agents, money, through accused Cambe, and in those several occasions, accused Revilla and/or Cambe made use of his or their official position, authority, connections, and influence. This was established by the testimonies and the documents they testified to which, at this stage of the proceedings, has remained un rebutted and thus, given full faith and credence by the Court.” [Resolution, Page 55]*

17. Section 36, Rule 130 of the Rules of Court, limits the testimony of a witness only to matters of his personal knowledge, as follows:

*“Sec. 36. Testimony generally confined to personal knowledge; hearsay excluded. A witness can testify only to those facts which he knows of his personal knowledge;*

*that is which are derived from his own perception, except as otherwise provided in these rules.”*

18. Repeatedly, Benhur Luy and the other whistle blowers admitted that “they never saw nor heard Senator Revilla talked with Janet Lim Napoles about their alleged agreement.” That their information supposedly came only from Janet Lim Napoles. The transcripts of the testimonies of Benhur Luy and the other whistle blowers are replete with information not of their own personal knowledge but which were only mentioned or recited to them supposedly by Janet Lim Napoles. Thus, clearly hearsay. They cannot be used to prove the alleged conspiracy between Senator Revilla and Janet Lim Napoles.

19. In *People v. Romeo Santiago, Solis de Leon and Jaime Illescas*<sup>4</sup>, the Court ruled, that:

*“In order to hold an accused liable as co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or in furtherance of conspiracy. The overt act may consist of active participation in the actual commission of the crime itself or it may consist of moral assistance to his co-conspirators by exerting moral ascendancy over the other co-conspirators by moving them to execute or implement the conspiracy. Mere presence at the scene of the incident, knowledge of the plan or acquiescence thereto are not sufficient grounds to hold a person liable as a conspirator. As such, conspiracy must be established as any element of the crime and evidence of the conspiracy must be beyond reasonable doubt. Neither joint nor simultaneous action per se sufficient indicium of conspiracy, unless proved to have been motivated by a common design.”*

20. Nevertheless, mere knowledge, acquiescence, or approval of the act, without cooperation or agreement to cooperate, is not enough to constitute one a party to a conspiracy, but that there must be intentional participation in the transaction with a view to the furtherance of the common design and purpose. Conspiracy must be established, not by conjectures, but by positive and conclusive evidence<sup>5</sup>.

**The AMLC report is multiple hearsay**

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<sup>4</sup>G.R. No. 129371, October 4, 2000

<sup>5</sup> *Orodi v. Honorable Court of Appeals and People of the Philippines*, G. R. No. L-57519, September 13, 1988.

21. The same goes with the report of the AMLC. Worse, AMLC's report is not only hearsay. It is multiple hearsay. **It should be noted that the AMLC report is based on the affidavits of persons not presented in court and documents prepared by persons other than the witness from AMLC.** The AMLC report is no different from a police report. It can only prove the existence of a report but not the truthfulness of the facts mentioned in the report. Thus, by itself, that report cannot prove the allegations that Senator Revilla in fact amassed ill-gotten wealth and that Janet Lim Napoles controlled the NGOs of the whistle blowers.

22. The Respondent Court erred in concluding that Janet Lim Napoles controlled the NGOs of the whistle blowers based on the AMLC report. Specifically, the Respondent Court erred in concluding, as follows:

*“Accused Napoles’s connection to and control of the NGOs are made evident by the bank transactions of the NGO’s. Records of bank transactions of these NGOs reveal, as testified by witness Santos from AMLC, that the accounts of these NGOs with Landbank and Metrobank were only temporary repository of funds and that the withdrawal from the accounts of the NGOs had to be confirmed first with accused Napoles notwithstanding that the accounts were not under her name. It is well to note that the bank accounts of these NGOs were opened to the named presidents using JLN Corporation identification cards. These circumstances are consistent to the testimonies of accused Luy, Sula, Sunas and Baltazar that as soon as the check of the PDAF proceeds were encashed, accused Napoles directed them or any of her trusted employees to withdraw the same. At this stage, the Court sees no basis to doubt the strong evidence against Napoles.*

23. The testimony of Atty. Santos does not support the above conclusion of the Respondent Court.<sup>6</sup>:

“ *ATTY. BUENAVENTURA*

*Q : Mr. Witness, you mentioned in your findings that, JLN supposedly control the NGOs?*

*A : Yes, sir.*

*Q : And your basis for saying the same is, what?*

*A : May I refer to the report, Your Honors.*

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<sup>6</sup> October 16, 2014 TSN, 8:30 a.m., p.60-62

**CHAIRPERSON**

*Go ahead*

*Witness*

*A : Our basis is found in our report, sir. First, controlled by JLN over the NGOs are manifested by the following: first is that, all these NGOs, the five (5) NGOs that are subject of our inquiry are all employees of Janet Lim Napoles. The I.D.s that were presented to open the accounts of all these NGOs are IDs of the corporation of Janet Lim Napoles. Also the withdrawals are made by the employees of Janet Lim Napoles regardless of the fact that they are not officers of this particular NGO. So while an employee, for example in SDPFFI, Benhur Luy was designated as officer, President of this NGO and the Board of Directors for this specific NGO issued a Certificate to the effect that Benhur Luy shall have the sole authority to transact on this account, deposit, and make withdrawals. Despite of this fact, other JLN employees who are not in any way related to these NGOs are able to withdraw from the funds of this specific NGO. Also, for SDPFFI, MAMFI, and PSDFI, we found withdrawal slips with markings that says, confirmed with Janet Lim Napoles. Indicating that withdrawals from the accounts are confirmed by Janet Lim Napoles.*

**ATTY. BUENAVENTURA:**

*Q : When did you talk to Mr. Benhur Luy?*

*A : No, I haven't talked to him.*

*Q : You haven't? Up to this point in time?*

*A : No, Sir.*

*Q : How did you learn about all these things?*

*A : He executed a Sworn Statement, sir.*

*Q : You talked to the Affidavit of Mr. Benhur Luy?*

*A : Yes, Sir.*

*Q : So your basis of your supposed findings that JLN controlled the NGOs are the Affidavits of Benhur Luy and others?*

*A : The Joint Sworn Statements of Benhur Luy, confirmed by bank records.*

*Q : And you will not be in a position to say whether Benhur Luy was telling the truth or not because you didn't talk to him?*

*A : The Sworn Statement was made under oath and the fact that the entries, statements in the Sworn Statement are confirmed*



*by bank records gave us the confidence to rely on this Joint Sworn Statement.*

*Q : So since the affidavits were given under oath by Mr. Benhur Luy, your position is that, finally, he is telling the truth?*

*A : Not only that the statements are under oath, these statements, are confirmed by bank records. For example, he stated that withdrawals are generally confirmed with Janet Lim Napoles. And we found withdrawal slips that says, confirmed with Janet Lim Napoles."*

24. **The testimony of Atty. Santos from AMLC that "Landbank and Metrobank records show that withdrawals by the NGOs were confirmed by Napoles, " is multiple hearsay. It should be noted that Atty. Santos based his supposed testimony on documents which he supposedly examined and prepared by somebody else. He did not even interview that one who supposedly made the notation on the withdrawal documents. Thus, said testimony cannot be relied upon, being a mere hearsay. And hearsay evidence cannot support the testimonies of the other whistle blowers.**

25. In fact, the Honorable Justice Lagos, even asked Atty. Santos why he did not ask and/or interview that person who supposedly made the notation on the withdrawal, as follows:

*Q Yes. You are relying, you are presuming that those bank records are accurate?*

*A We rely on the accuracy of these bank records, yes, sir.*

*Q Since the withdrawal slips said that, confirmed Janet Lim Napoles, it was saying that actually happened?*

*A Yes, sir.*

*Q And if the withdrawal slips says that, confirmed with Piorato, you are presuming that particular person in the bank in fact talked to Ms. Piorato?*

*A As stated in the bank records, yes, sir.*

*Q And if the withdrawal slips indicates, confirmation with Nemesio Pablo, you are presuming that that particular staff of the bank made prior confirmation with Mr. Nemesio Pablo?*

*A As stated in the bank records, sir.*

*AJ LAGOS*

*Q Mr. Witness, did you ask the bank compliance officer why they had to check with Janet Lim Napoles or Piorato Pablo?*

A *We haven't had the opportunity, Your Honor.*<sup>7</sup>

26. As earlier argued, the AMLC report being multiple hearsay cannot be relied upon to prove that Senator Revilla received commission from Janet Lim Napoles. Thus, the Respondent Court erred in concluding that the said AMLC report proves that Senator Revilla amassed ill-gotten wealth, as follows:

*“Accused Revilla managed to remain incognito in reaping benefits from the illegal scheme with the help and cooperation of accused Cambe. Concededly, there are no direct direct proofs that accused Revilla received commissions/rebates out of the proceeds of his PDAF routed to accused Napoles, but the circumstances persuasively attest that accused Revilla on several occasions received money from illegitimate deals involving his PDAF through accused Cambe. Also, accused Came profited from the same transactions so far computed at P13, 935, 000.00.”[Page 64, Resolution][emphasis ours]*

**The conclusion of the Respondent Court that the AMLC report shows that Revilla amassed ill-gotten wealth is not based on fact but on multiple hearsay testimony**

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27. Based on the above conclusion of the Respondent Court, “the prosecution was not able to present direct proof that accused Revilla received commissions/rebates.” This absence of direct evidence cannot, however, be cured by supposed circumstances based on hearsay and multiple hearsay testimonies and AMLC report. The missing direct evidence which the prosecution was not able to present cannot be supplied by indirect hearsay evidence. The Respondent Court erred in giving evidentiary value to clearly, and manifestly multiple hearsay evidence. Worse, it is a conclusion based on multiple hearsay testimony.

**THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION IN RULING THAT THE HARD DISK, DISBURSEMENT LEDGER AND THE SUMMARY OF REBATES ARE RELIABLE AND WITH INTEGRITY.**

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<sup>7</sup> October 16, 2014 TSN, 8:30 a.m., p. 73

28. The Respondent Court erred in ruling that the hard disk, disbursement ledger and the summary of rebates are reliable and with integrity, as follows:

*“Over the objections raised by the defense on the reliability of the hard disk drive and consequently of Luy’s disbursement ledgers, the Court is satisfied that there are circumstances supporting a presumption great as to their integrity. In the case of Aznar v. Citibank, the Supreme Court refused to accept Aznar’s claim that his testimony constitutes “other evidence showing integrity and reliability” of the computer print out because “he failed to demonstrate on how the information reflected on the print out was generated and how the said information could be relied upon as true.” In this case, Narciso who was admitted as an expert witness, demonstrated in open court how the disbursement ledgers were reduced from Luy’s hard disk to hard copies. And the print out copies made before the Court reflected the same image and information as those flashed on the screen opened from Luy’s hard disk drive. Narciso likewise affirmed that the hard disk drive integrity was not compromised. Also, he testified that the files [disbursement ledgers] indicated that they were not manipulated”<sup>8</sup>*

### **Joey Narciso is not an expert witness**

29. The conclusion of the Respondent Court that Joey Narciso is an expert witness is belied by his own testimony. Specifically, Joey Narciso himself, acknowledged that he does not possess the academic and the experience required of an expert witness, as follows:

*“Q : So when did you become an expert?”*

*A : After finishing all the trainings provided by the U.S. Embassy in 2010 and 2011, sir.*

*Q : Let me get this again, Mr. Witness. Earlier, it was my understanding that you became an expert because you finished the trainings in 2013?*

*A : Yes, sir.*

*Q : So, am I correct in saying that you considered yourself to be an expert on starting 2013?*

*A : Yes, Sir.*

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<sup>8</sup> Page 65, 01 December 2015 Resolution.

*Q : But, you are now saying again that you've been conducting examinations before 2013?*

*A : Yes, Sir.*

*Q : And since you were conducting before 2013, you also considered yourself already an expert even before that?*

*A : I cannot testify or I cannot give any report if I will not consider myself as an expert digital forensic investigator, sir.*

*Q : So, from the very first time that you were assigned to examine or investigate the file, you were already considered an expert then?*

*A : Yes, sir.*

*Q : So even without the particular trainings that you mentioned, you already consider yourself as an expert?*

*A : Yes, sir.*

*Q : So, one becomes an expert even without local and foreign training?*

*A : It is different in digital forensics, sir. Because any person who is graduate or who has finished an I.T. related course without practicing the discipline cannot be an expert to that discipline. But if a person who does not have an I.T. related course but practicing and understands the principle behind digital forensics can become an expert also in digital forensics, sir.*

*Q : Mr. witness, when for the first time you conducted a file forensic examination?*

*A : Since 2010, I have been training in digital forensics but I formally took over as digital forensic investigator in November of 2012, sir.*

*Q : My question, Mr. witness is, when for the first time you conducted a file forensic examination?*

*A : In 2010, Sir.*

*Q : So since 2010, you already consider yourself an expert?*

*A : During those times when I was not yet considered a digital forensic examiner of the NBI, and during those times that I was still undergoing trainings to become a digital forensic investigator in November of 2012, sir.*

*Q : Please bear with me. Because we are tryin g to point the timeline when you consider yourself to be a file forensic expert.*

*A : Yes, Sir.*

*Q : When? What is the date?*

A : *When I took over, sir.*

Q : *And you took over in when?*

A : *In December of 2012, sir.*

Q : *So, you started to consider yourself to be an expert in December 2012?*

A : *Based on the experiences, sir.*

Q : *Mr. Witness, you listed local and foreign trainings?*

A : *Yes, Sir.*

Q : *You mentioned Encase Certification Forensic Examinations?*

A : *Yes, Sir.*

Q : *What is this Encase Certification Forensic Examinations?*

A : *Encase Certification Trainings are the trainings provided by Encase software to train a particular trainee or the attendee to be familiar enough with how the Encase Forensic Software functions.*

Q : *And how many times did you attend this particular training?*

A : *I attended CF1 and CF2 trainings, sir. So two trainings?*

Q : *CF1 is for what?*

A : *The basics of Encase Forensic Software and CF2 is for advanced forensic software using Encase, sir.*

Q : *What's the difference between the basic and advance?*

A : *The basic has something to do with the familiarization with the graphical user interface of Encase, the different functions of Encase whereas the advanced forensic Encase training has something to do with the deeper searches like recovery of folders, file analysis and some deleted folders and file signature analysis, sir.*

Q : *When did you take this particular course?*

A : *In September 2013, sir.*

Q : *So, you already consider yourself an expert even before you took this particular courses?*

A : *Based on my experiences, sir.*

Q : *My question, Mr. Witness is, you already consider yourself an expert even before you took Encase Certification Forensic?*

**PROS. AURELLANO:**

*That's been asked, Your Honors and he already answered that, Your Honors.*

**CHAIRPERSON:**

*Answer it direct.*

*Witness*

**A** : *Yes Sir.*

**Q** : *So you didn't need this particular training to become an expert?*

**A** : *Basically, yes. Because Encase Forensic Certification Training is only provided by Encase. So that, Encase software will certify you that you are an expert in using their software in the conduct of your examination.*

**Q** : *So, one can become an expert in any case without really going through an Encase Certification Forensic Examination just like you?*

**A** : *Yes, sir.*

**Q** : *So you can learn Encase by experience?*

**A** : *Just as how we learn Microsoft word, which is an application. And we practice using that, we can become an expert in Microsoft word even without taking formal courses in Microsoft word. Encase is just an application or software like that. That if you use that, you can be an expert in using Encase forensics software, sir.*

**Q** : *So, if for example, I'm able to teach myself Microsoft word, I'm able to encode files, I'm able to prepare pleadings. Since I know how to operate it, I can now consider myself as an expert in Microsoft.*

**A** : *With your experience in using Microsoft word sir.*

**Q** : *That is the level of your understanding of what an expert is?*

**A** : *With my case, sir.*

**Q** : *In your case, that is your understanding of why you consider yourself an expert?*

**A** : *Yes, Sir.*<sup>9</sup>

30. Narciso did not and could not confirm that it was Benhur Luy who really prepared his supposed disbursement ledger and that the same were accurate and true. Specifically, Narciso<sup>10</sup> when cross-examined, testified, as follows:

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<sup>9</sup> October 30, 2014 TSN, 1:00 p.m., pp. 15-20.

<sup>10</sup> October 30, 2014 TSN, 1:00 p.m., pp. 85-86.

*Q :Mr. Witness, during the second request, you were requested to go over specific files?*

*A :Yes, Sir.*

*Q :Nothing more?*

*A :Nothing more, sir.*

*Q Based on the specific files, can you tell us who prepared or who encoded them?*

*A I cannot tell who encoded them, sir.*

*Q :Based on the metadata, Mr Witness, you will not able to now whether the entries in the files are accurate or correct?*

*A :All I know, sir is the file was saved on this list.*

*Q :Based on the metadata, you will not be able from where the file data inputted on the files came from?*

*A :Yes, sir. I do not know.*

*Q :And you will not know to what particular incident or happening to the data inputted it pertain?*

*A :I would not know, sir.*

*ATTY. BUENAVENTURA*

*I've got nothing more, Your Honors.*

**Benhur's disbursement ledger is a list and proves nothing by itself. It is at the most a reminder of things supposedly done by whoever prepared it.**

31. The hard disk files and the hard copy of the disbursement records do not prove the allegations that Senator Revilla received kickbacks and/or rebates. Neither do they prove that Atty. Cambe in fact received money from JLN and/or any of the whistle blowers. At the most, they show the existence of a file and a hard copy of it. The said file and its hard copy do not prove the supposed entries found therein. It is a list and nothing more.

32. It should be noted that in the supposed files are names for signatures. The said portions are not signed. Thus, they do not prove the participation of the persons whose names appear on the said record. They are nothing but draft files for signature and approval of those who are supposed to sign and approve them.

33. The ledger is a list and the supporting documents are the proof of the entries in the ledger. The disbursement ledger of Benhur Luy is not different from a diary. The proof of the entries in the diary is not the entries themselves. The proof that money was supposedly given is not the entry. It is the receipt used by the person who received the money. In fact, Benhur Luy mentioned index cards which according to him were more accurate.

However, he did not present on the allegation that it was shredded already<sup>11</sup>. Moreover, during his testimony in open court, he admitted in numerous instances that the entries in the ledger are not accurate, quoted herewith is the August 07, 2014 TSN, 1:30 p.m., p 120 and August 20, 2014 TSN, 8:30 a.m., p.11, 12 to wit:

*“August 07, 2014 TSN, 1:30 p.m., pp. 120*

*Justice Lagos:*

*Q : Okay. So what you are saying is that there were rebates which were not entered into your day-to-day business financial ledger?*

*The Witness:*

*A : Opo, Your Honors.*

*Justice Lagos:*

*Q : Because Napoles opted to keep it in his red book?*

*The Witness:*

*A : Yes. Kasi that time po na kay Madam nap o. Tinutulungan ko na siya kasi ayaw niya ng maraming documents po e. Ayaw niya ng maraming voucher. Kasi kaya po natigilan kaming magva-voucher kasi po inilabas ni Mat Ranillo sa media-*

*Justice Lagos:*

*No, no, no. You stop there. You don't have to support through that detail.”*

*“August 20, 2014 TSN, 8:30 a.m., p.11, 12*

*Atty Ancheta:*

*Q : My question is, can you tell us, do you know who encashed these amounts?*

*A : Kasi, sir kapag sinabing encashment may tseke po yun, hindi ba po. (Sir, when you say encashment there's a check.) Savings po kasi yan, dapat po withdraw.. cash.. not encashment po kasi po kapag withdrawal slip, that's withdraw in cash. So, hindi po encashment. (That's savings, sir not encashment. Because for encashment, there is supposed to be withdrawal.)*

*Q : So you now admit that these entries here are not accurate because they pertain to checks?*

*A : Kasi, ang*

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<sup>11</sup> July 31, 2014 TSN, 1:00 p.m., pp. 60-62.



*Q : No, my question is answerable by yes or no. You have time to explain your answers later on. So based on your answer to my previous question, you are saying now that these entries here are not accurate because encashment would pertain to checks?*

*A : Yes sir.*

34. An entry that supposedly Benhur went to Europe during a particular date is not proof that he in fact was in Europe on the said date. The proof will be pictures that he was there, the stamps on his passport, his tickets and others. The entries by themselves do not prove anything.

35. The information in the supposed entries in the disbursement record was relayed to Benhur who, in turn, supposedly recorded them. Thus, hearsay. And hearsay no matter how presented and packaged is without evidentiary value.

**THE RESPONDENT COURT  
COMMITTED GRAVE ABUSE OF  
DISCRETION IN UPHOLDING THE  
TESTIMONIES OF THE WITNESSES  
AND THE DOCUMENTS THEY  
TESTIFIED.**

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36. In the case of *Escano vs. Sandiganbayan and People of the Philippines*<sup>12</sup>, the Supreme Court cautioned of the worthiness of such testimony, viz:

*“The testimony of an accused-turned-state witness, coming as it does from a polluted source, must always be received with caution and subjected to close scrutiny. And when the witness has given inconsistent testimonies on a material point, his word should not be accepted and given credence.”*

37. In her Sinumpaang Salaysay dated 02 April 2013<sup>13</sup>, Merlina Sunas admitted that she is the one preparing the documents of JLN Corporation for the projects that will be submitted to LGU’s and government agencies. She further stated in item 7, that:

*“Sa personal na pagkakaalam ko, sa implementasyon ng Malampaya Fund na 900 Million Pesos, walang deliveries ng supplies or materials at peke ang mga*

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<sup>12</sup> G.R. No. L-53208-53333 April 15, 1988.

<sup>13</sup> Sinumpaang Salaysay dated 02 April 2013 of Merlina Sunas is attached as Annex “E”

**liquidation papers na sinusumite sa implementing agencies. Ganito rin ang sistema sa mga PDAF ng mga pulitiko. Sa Fertilizer Fund naman ay may mga lugar na walang deliveries ang mga foundations na “pag-aari” o kontrolado ni Madam Janet Lim Napoles.”**

38. This statement is inconsistent to item 9 of her affidavit wherein she stated that:

*“Na bago nagsimula ang meeting, tinanong ni Madam Janet Lim Napoles sila Evelyn De Leon at John Lim tungkol sa mga deliveries sa ibat-ibang projects at tinanong kami ni Madam Janet kung sino ang contact person na magsasagawa ng seminar at training sa mga livelihood projects. Inutusan ni Madame Janet Napoles si Benhur na tawagan ang contact person, pero ayon kay Benhur Luy ay do daw ma-contact ang tao kasi busy ang phone. Kaya inutusan ni Madame Janet Napoles si Evelyn de Leon na tawagan ang parehong tao at nag ring naman ito”*

39. A reading of such statements will give an impression that there were deliveries and that JLN Corporation is involved in a legitimate business. Further in the Sworn Statement of Benhur Luy dated 23 March 2013<sup>14</sup>, he admitted in item 6, that:

*“Na nang dahil dito, ay natakot na ako at nagbalak nang umalis sa kanila at nagplano na lang na magtayo ng sariling negosyo at network na tulad sa kanila. Ngunit bago ako makaalis ay nalaman nila ang plano ko at nag umpisa na nga nila akong I detain.”*

40. From such statements, it can be discerned that JLN is operating a legitimate business. If JLN Corporation is involved in illegal business, clearly, no person in his right mind would like to put up a business same with the former.

41. In the Joint Sworn Statement of Benhur Luy, Merlina Sunas, Gertrudes Luy, and Annabelle Luy<sup>15</sup> dated 05 August 2013, it was admitted by Benhur and Merlina in item 3 thereof, that they were the ones who created and registered with the Securities and Exchange Commission several foundations during the period between 2004-2008.

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<sup>14</sup> A copy of Sworn Statement of Benhur Luy dated 23 March 2013 is attached as Annex “F”

<sup>15</sup> A copy of the Joint Sworn Statement of Benhur Luy, Merlina Sunas, Gertrudes Luy, and Annabelle Luy dated 05 August 2013 is attached as Annex “G”

42. **In item 4**, thereof, it was admitted by Gertrudes that she was made President of one of the NGO's without her knowledge and she came to know only of such fact recently. It will show that if Benhur was not open to his family when it comes to work, it follows that he would not tell them about the Malampaya Fund, Fertilizer Fund and PDAF. The allegations of Gertrudes, her husband and children Annabelle and Arthur about these funds and the operations were supplied by other persons.

43. Item 6 of the above-stated Sworn Statement would show that it was Benhur and Merlina who operated these foundations and not the Petitioner.

44. **Item 8** thereof stated that the foundations were created to help farmers improve their lives. No instruction to perform irregular acts, to forge the signatures and to create a bogus company. **Item 9.5** stated how the programs were implemented. **Hence, as admitted, not all are ghost deliveries for there were mis-delivery and under-delivery.** It follows that the liquidation documents are not absolutely false. It is not correct to state that "government funds intended to certain beneficiaries in fact do not reach them", because **it was admitted that there was mis-delivery and under-delivery.**

45. In the Sworn Statement of Marina Sula<sup>16</sup> dated 29 August 2013, it was admitted in **item 6** thereof, that "**she was the one who personally created other bogus foundations**". She also admitted in **item 7** that "**she forged the signature of other trustees**". Clearly, this is an admission of her guilt in the alleged illegal transactions.

46. It was stated under oath by Mary Arlene Baltazar<sup>17</sup> in her Sworn Statement dated 29 August 2013, specifically in **item 4**, that it was Marina Sula who provided her the amounts to be declared in all monthly BIR returns, SSS, and Philhealth. In **Item 6**, she stated that it was also Marina Sula who prepared all the necessary documentations needed for the amendment of SEC incorporation documents.

47. In Marina Sula's Sworn Statement<sup>18</sup> dated 10 September 2013, she admitted that she was the one who chose the incorporators. There was no instruction for her to forge, falsify or to get the names from directories or the names of deceased persons. Marina Sula is obviously one of the perpetrators in these alleged illegal transactions.

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<sup>16</sup> A copy of Sworn Statement of Marina Sula dated 29 August 2013 is attached as Annex "H".

<sup>17</sup> A copy of Sworn Statement of Mary Arlene dated 29 August 2013 is attached as Annex "I".

<sup>18</sup> A copy of Sworn Statement of Marina Sula dated 10 September 2013 is attached as Annex "J".

48. In Merlinas Sunas' Sworn Statement dated 02 April 2013<sup>19</sup>, she claimed that she is an employee of JLN Corporation or JLN Group of Companies for twelve (12) years. Contrary to Merlina Sunas' claim of being an employee, attached herewith is the NLRC Decision dated 29 July 2013<sup>20</sup> declaring among others that Merlina Sunas is not an employee of JLN Corporation, to wit:

*"As no employer-employee relationship between the parties have been established, the issue of illegal dismissal and other monetary claims of the Complainants have no leg to stand on.*

*WHEREFORE, a decision is hereby rendered DISMISSING the case for lack of employer-employee relationship."*<sup>21</sup>

49. Since it was ruled and established by the NLRC that Merlina Sunas is not an employee of JLN Corporation, her statements of her alleged knowledge of the operation of JLN Corporation in connection with the PDAF Scam have no basis. Since she is not an employee of JLN Corporation, she has no access/knowledge whatsoever about the transactions of JLN Corporation. Being a mere outsider, her testimony about the operation/transaction of JLN Corporation is baseless and should not be given merit.

50. It is undeniable based on the statements made by Benhur Luy, Merlina Suñas and Marina Sula that they were deeply entrenched in the alleged raid on government coffers. In fact, based on the various testimonies and statements made by these witnesses, **it can be validly presumed that they are the ones in cahoots with each other and conveniently seek to blame Petitioner Janet Lim Napoles for their wrongdoings.**

51. As admitted by Benhur, it is apparent and obvious that he and the other witnesses were the ones directly and personally responsible for the said alleged anomalous transactions and the execution of several affidavits would indicate that they are trying to fill the gaps in their stories one by one since they are weaving a tale of lies. It is farfetched and very perplexing that they would execute multiple affidavits and be very knowledgeable about the "modus operandi" if they were not the ones who perpetrated the crimes complained of. That being said, and considering their admissions in their sworn statements, it is obvious that the witnesses should be the ones charged for the commission of the crime herein alleged.

52. Again to emphasize, jurisprudence has consistently summoned, however, **that for testimonial evidence to be worthy of belief, it**

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<sup>19</sup> Annex "E"

<sup>20</sup> A copy of the NLRC Decision dated 29 July 2013 is attached as Annex "K".

<sup>21</sup> Page 08 NLRC Decision dated 29 July 2013.

**must *firstly* proceed from the mouth of a credible witness.** A person may be credible where he is without previous conviction of a crime; who is not a police character and has no police record; who has not perjured in the past; whose affidavit or testimony is not incredible; who has a good standing in the community; and **who is reputed to be trustworthy and reliable.**<sup>22</sup>

53. At this point, the question to be asked is: **Are these witnesses credible, reliable, and above-all, ---trustworthy?** The prosecution was able to prove that the whistle blowers were liars, cheaters and forgers. It was not however, able to prove they were no longer lying, and cheating with their testimonies.

**THE RESPONDENT COURT  
COMMITTED GRAVE ABUSE OF  
DISCRETION IN UPHOLDING THE  
INFORMATION AND RULING THAT  
THE EVIDENCE OF THE  
PROSECUTION DOES PROVE  
PLUNDER.**

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54. The information which the prosecution tried to amend earlier does not charge and/or allege plunder. Instead, it alleged that it was Petitioner Napoles who primarily benefited from the proceeds of the PDAF of Senator Revilla, as follows:

“ X x x...

*a. by repeatedly receiving from NAPOLES and/or her representatives LIM, DE ASIS, and others, kickbacks or commissions under the following circumstances: before, during and/or after the project identification, NAPOLES gave, and REVILLA, JR. and/or CAMBE received, a percentage of the costs of a project to be funded from REVILLA, JR.'s Priority Development Assistance Fund (PDAF), in consideration of REVILLA, JR.'s endorsement, directly or through CAMBE, to the appropriate government agencies, of NAPOLES' non-government organizations which became the recipients and/or target implementors of REVILLA, JR.'s PDAF projects, which duly-funded projects turned out to be ghosts or fictitious, thus enabling NAPOLES to misappropriate the PDAF proceeds for her personal gain;*

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<sup>22</sup> *Siao Tick Chong v. Republic*, No. L-22151, March 30, 1970, 32 SCRA 253, 258.

X x x..."

55. A closer reading of the information shows that the main character of the prosecution's story is not Senator Revilla but Petitioner Napoles. The main purpose of the alleged scheme, it appears, was not to make Senator Revilla amass ill-gotten wealth but to enable Napoles to misappropriate the PDAF proceeds for her personal gain. It was not Napoles who conspired with Senator Revilla but the other way around. **THIS IS NOT PLUNDER BUT SOMETHING ELSE.**

56. In *People v. Belicena, et.al.*<sup>23</sup>, the Respondent Court, through Justice Lagos, **DISMISSED** the Plunder case for lack of probable cause for failure to establish that the proceeds of the Tax Credit Certificates landed in the pockets of any public officer, in this wise:

*"That being said, We shall now proceed to determine whether probable cause lie against the movants for the crime of Plunder. The documentary support to the Information for Plunder filed against all of the accused consist mainly of the complaint-Affidavit executed y Felix Chingkoe, the Investigation Report of the SPTF 156, and the Joint Resolution of the Ombudsman. A painstaking and exhaustive examination of these documents reveal no single shred of finding that any public officers charged herein amassed, accumulated, and acquired ill-gotten wealth to the tune of at least P50 Million.*

*What the abovementioned documents only allege is that the public officers involved herein conspired with the Spouses Chingkoe and other private individuals, by issuing or allowing the issuance of tax credit certificates (TCCs for brevity) based on spurious and/or falsified documents submitted by FILSTAR, which were later on used by FILSTAR to pay-off its tax obligations and/or assigned by FILSTAR to two oil companies, petron and Shell, for valuable consideration, with theses two oil companies later on using the TCCs to pay for their customs and tax liabilities with the government. None of those documents, however, point to any scintilla of evidence that the proceeds resulting from the TCCs assignment or conversion by the Spouses Chingkoe landed in the pockets of any public officer.*

*Xxx*

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<sup>23</sup> Resolution dated March 9, 2011 in Crim. Case No. SB-09-CRM-0078 entitled People vs. Belicena, et. al., First Division

*“If the TCCs were used by FILSTAR as direct payment for its tax obligation or were assigned to other tax-paying entities (like Shell and Petron), then clearly it was FILSTAR and/or the Spouses Chingkoe who amassed wealth in the form of either monetary savings or monetary consideration received from the assignees of these TCCs. xxx Clearly, again, it was FILSTAR and/or Spouses Chingkoe who were the recipients of the monies paid out by the end users of the Petron credit notes. The TCC transaction chain ended up to that point. The crucial link establishing that the public officers charged therein were given by FILSTAR or the Spouses Chingkoe any amounts generated by the TCCs assignment or conversion into monetary value remains missing.”*

*The Joint Resolution issued by the Ombudsman itself, on which this Court based its initial finding of probable cause, clearly stated that:*

*“As already established from documentary evidence, twenty-eight (28) tax credit certificates issued in favor of FILSTAR in the aggregate amount of P 73,762,618.00 Pesos were utilized by FILSTAR xxx. Thus, from the foregoing, there is reasonable ground to engender a well-founded belief that Spouses Faustino and Gloria Chingkoe, with the indispensable cooperation of public respondents and in connivance with other private respondents, had unjustly enriched themselves in the amount of P73,762,618.00 xxx”*

*The finding of the Ombudsman in its Joint Resolution is apparently due to the total absence of any nexus establishing a connecting link to any public officer with respect to the acquisition of ill-gotten wealth. Otherwise stated, the conspiracy alleged to have been concocted by all of the accused, whether public or private individuals, did not involve any showing that any public officer actually obtained any monetary consideration or was able to share or was rewarded by FILSTAR or the spouses Chingkoe with the equivalent monetary value of the TCCs. At best, the public officers’ alleged complicity in blindly approving and issuing the TCCs can be taken as indispensable acts in the commission of the other offenses they have been indicted for, as such acts indicate manifest partiality and bias in favor of FILSTAR.”*

57. In a Plunder case, it must be shown that the **public officer was principally and ultimately benefited or enriched**<sup>24</sup> and not a private person, like herein Petitioner Napoles.

58. In the instant case, it was the NGO and/or herein Petitioner Napoles who appeared to have “amassed wealth” in the form of PDAF proceeds or disbursements.

59. The **crucial link** establishing that the public officers charged herein were given any amounts generated from the PDAF proceeds or disbursements, right after the release of the funds to the alleged NGO, **remains missing.**

60. Further, what the prosecution has proved was that the amount allegedly given to the accused public officers came from Petitioner Napoles’ **“own pocket”**<sup>25</sup>. Thus:

*“After the listing is released to the DBM, the Office of Senator Revilla then formally requests the DBM to release his PDAF; Napoles in the meantime would advance to Revilla, through Caambe, a downpayment representing a portion of his commission or kickback. After the SARO and/or NCA is released, Napoles would give the full payment for delivery to Senator Revilla through Cambe.*

*It bears noting that money was paid to Senator Revilla even before the SARO and/or NCA is released. Napoles would advance Senator Revilla’s down payment from her own pockets upon the mere release by his Office of the listing of projects to the DBM. The remainder of the kickback is paid after the SARO representing the legislator’s PDAF allocation is released by the DBM and a copy thereof is forwarded to Napoles. xxx”*<sup>26</sup>

61. Again, assuming *arguendo* that herein Petitioner Napoles indeed advanced Senator Revilla’s downpayment from her **“own pocket”**, this finding of the Ombudsman only proves that what was allegedly given to the public officers concerned came from the **personal fund** of the Petitioner Napoles and **not from the proceeds of PDAF.**

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<sup>24</sup> Resolution dated March 9, 2011, People vs. Belicena et. al., Crim. Case No. SB-09-CRM-0078, 1<sup>st</sup> Division, Sandiganbayan

<sup>25</sup> Page 95, Joint Resolution dated March 28, 2014

<sup>26</sup> Page 95, Joint Resolution dated March 28, 2014



62. Assuming finally, but without admitting, and for the sole purpose of determining whether the charges in the questioned Information constitute Plunder, that the common purpose or goal of all the accused in this case is to enable Petitioner NAPOLES to misappropriate the PDAF proceeds for her personal gain, this only means that the conspiracy alleged in the Information is geared towards helping herein Petitioner Napoles, a private individual, and not any of the accused public officers, in amassing, accumulating and/or acquiring ill-gotten wealth.

63. As laid down in the *Estrada* case, the *gravamen* of the conspiracy charge for the crime of plunder is that each accused, whether public officers or private individuals, by their individual acts, must have agreed to participate, directly or indirectly in the amassing, accumulation and acquisition of ill-gotten wealth of and/or for the accused public officer, and NOT FOR A PRIVATE INDIVIDUAL, like herein Petitioner Napoles.

64. Certainly, within the contemplation of the law and existing jurisprudence, this is NOT PLUNDER.

65. To put in a nutshell, the Respondent Court erred in ruling that the prosecution was able to present strong evidence against the Petitioner on the basis of the hearsay, speculative, and conjectural testimonies of its witnesses and their unreliable disbursement ledgers, reports and opinions.

66. The information does not charge and the evidence presented by the prosecution does not prove plunder but something else.

### P R A Y E R

**WHEREFORE**, Petitioner, **JANET LIM NAPOLES**, respectfully prays of this Honorable Supreme Court to give due course to this Petition, and after due consideration, render a Decision:

1. **SETTING ASIDE, REVERSING** and **NULLIFYING** the Resolution dated 01 December 2014 and the Resolution dated 26 March 2015, denying the Petitioner's Joint Petition for Bail for being issued with grave abuse of discretion;

2. **GRANTING/ALLOWING** Petitioner **JANET LIM NAPOLES** to post bail for her provisional liberty in such amount to be fixed by the Court on the ground that the evidence of her guilt is not strong.

Other reliefs, just and equitable, are likewise prayed for.

Pasig City, for City of Manila, 05 June 2015.

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**First Division**

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**OFFICE OF THE OMBUDSMAN**

Ombudsman Building, Agham Road,  
North Triangle, Diliman, Quezon City

**EXPLANATION**

The foregoing Petition is being filed and served to this Honorable Court by personal service and to the other parties by registered mail due to time, distance and manpower constraints.

  
**EVITA MAGNOLIA I. ANSALDO**