

## THIRD DIVISION

[ G.R. No. 192223, July 23, 2018 ]

**DANILO A. LIHAYLIHAY, PETITIONER, VS. THE TREASURER OF THE PHILIPPINES ROBERTO C. TAN, SECRETARY OF FINANCE MARGARITO B. TEVES, SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND THE GOVERNOR OF BANGKO SENTRAL NG PILIPINAS (BSP), RESPONDENTS.**

### DECISION

**LEONEN, J.:**

The grant of an informer's reward for the discovery, conviction, and punishment of tax offenses is a discretionary quasi-judicial matter that cannot be the subject of a writ of mandamus. It is not a legally mandated ministerial duty. This reward cannot be given to a person who only makes sweeping averments about undisclosed wealth, rather than specific tax offenses, and who fails to show that the information which he or she supplied was the undiscovered pivotal cause for the revelation of a tax offense, the conviction and/or punishment of the persons liable, and an actual recovery made by the State. Indiscriminate, expendable information negates a clear legal right and further impugns the propriety of issuing a writ of mandamus.

A writ of mandamus will not issue unless it is shown that there is no other plain, speedy, and adequate remedy in the ordinary course of law. While this Court exercises original jurisdiction over petitions for mandamus, it will not exercise jurisdiction over those filed without exhausting administrative remedies, in violation of the doctrine of primary jurisdiction and the principle of hierarchy of courts, and when their filing amounts to an act of forum shopping.

This resolves a Petition for Mandamus and Damages, with a Prayer for a Writ of Garnishment,<sup>[1]</sup> praying that former Treasurer of the Philippines Roberto C. Tan (Treasurer Tan), former Secretary of Finance Margarito B. Teves (Secretary Teves), the Governor of Bangko Sentral ng Pilipinas, and the Secretary of the Department of Environment and Natural Resources (collectively, respondents) be ordered to deliver to Danilo A. Lihaylihay (Lihaylihay) the amounts of P11,875,000,000,000.00 and P50,000,000,000.00, and several government lands as informer's rewards owing to Lihaylihay's alleged instrumental role in the recovery of ill-gotten wealth from former President Ferdinand E. Marcos (President Marcos), his family, and their cronies.

In his Petition, erstwhile presidential candidate<sup>[2]</sup> Lihaylihay identified himself as a "Confidential Informant of the State (CIS) pursuant to Republic Act No. 2338,<sup>[3]</sup> duly accredited and registered as such with the Bureau of Internal Revenue (BIR) and Presidential Commission on Good Government (PCGG)."<sup>[4]</sup>

Lihaylihay particularly recalled sending two (2) letters, both dated March 11, 1987,

to Atty. Eliseo Pitargue (Atty. Pitargue), the former head of the Bureau of Internal Revenue-Presidential Commission on Good Government Task Force, concerning information on former President Marcos' ill-gotten wealth.

The first letter<sup>[5]</sup> concerned gold bullions and diamonds. It read:

March 11, 1987

ATTY. ELISEO PITARGUE  
Head-BIR-PCGG Task Force  
Pursuant to MOA dated 2/27/87  
BIR Tax Fraud Division  
Diliman, Quezon City

Dear Sir:

In obedience to the call of her Excellency President Corazon C. Aquino thru Executive Order Nos. 1, 2, 14-A granting immunity from criminal prosecution to all persons who cooperate [in] the government's efforts of recovering the ill-gotten wealth amassed by Former President F. Marcos and deposited in several banks (177 banks) in 72 countries all over the world. These treasures include 650,000 tons (of) gold and 500,000 pieces of 10-karat diamonds lent by Royal Clan to CB.

The 205,000 metric tons of gold bullions from the VAULTS of the Philippine Central Bank as reserves were looted by former President Marcos and deposited in England/Austria (CREDITSTALT BANKVEREIN GRAZ, FILLALE HERRENGASSE, AUSTRIA UNDER CERTIFICATE OF OBLIGATION NO. 400786822 CREDIT ANST/CS-564003-VIEN-SUISSE-BCTSWITZERLAND-CTs-034000206. The \$13-Billion was also deposited by President Marcos in UBS Account No. 885931 alias 'I. ARENETTA'.

On February 4, 1972, the Honorable Judge Enrique B. Agana of the Court of First Instance (CFI), Branch 28, Pasay City, in LRC/Civil Case No. 3957-P[, ] ordered President Marcos to return such gold bullions and diamonds to the vaults of the Philippine Central Bank for the economic survived of the country and people.

I am privy to these transactions because I am the de[s]cendant of RAJAH LAPULAPU-the eldest son of KING LUISONG TAGEAN TALLANO, the ascendant of Don Esteban Benitez Tallano-the owner of those gold bullions/diamonds-the Royal clan that lent said treasures to the Philippine Central Bank during the time of President Manuel Roxas. Pres. Manuel Acuna Roxas is [a] first cousin of Don Esteban Benitez Tallano. While President Marcos was the brilliant lawyer of the Tagean-Tallano Clan before he entered politics in 1965.

However, upon learning of the aforesaid court decision which already became final and executory on April 4, 1972, President Marcos declared Martial Law on September 21, 1972 thereby prevented (sic) the actual enforcement of the court's decision aforesaid.

I therefore hereby reserved (sic) my right to claim for the 25% informer's reward thereof pursuant to Section 1 of Republic Act No. 2338<sup>[6]</sup> upon actual recovery of those ill-gotten wealth/assets.

DANILO A. LIHAYLIHAY  
Informer  
Bacoar, Cavite

The second letter<sup>[7]</sup> concerned alleged dollar deposits at the Union Bank of Switzerland:

March 11, 1987

ATTY. ELISEO PITARGUE  
Head, PCGG-BIR Task Force  
(Pursuant to MOA dated 2/27/87)

RE: MA VICTORIA IRENE MARCOS-ARANETA  
(UBS Account No. 885931-US\$13-B)

Dear Sir:

Pursuant to the call of Her Excellency President Corazon C. Aquino under Executive Order Nos. 14 and 14-A dated May 17, 1986, I hereby furnished (sic) the information that IRENE MARCOS-ARANETA, the younger daughter of former President Ferdinand E. Marcos, has ill gotten wealth or ill-gained properties (moneys) deposited in the UNION BANK OF SWITZERLAND (UBS).

Mrs. Irene Marcos-Araneta is the wife of Gregorio Araneta III with present addresses at 915 Mountain Home Rd., Woodside, California, USA 94062; 3510 Baker Street, San Francisco, California, USA, 94123.

UBS Account No. 885931 in the amount of US\$13-B, more or less, were deposited by Irene Araneta using an alias/cover-up "I. ARENETTA". The UBS tolerated to hide said deposit/account of the MARCOS FAMILY to avoid exposure and freezing thereby to mislead/cheat the Philippine Government.

It is, therefore, most respectfully requested of this administration to immediately initiate the necessary legal actions for the recovery of these ill-gotten wealth/prop[er]ties of the Marcos family which were being hidden in several secret bank accounts in Switzerland, in order to protect the national interest of our government and the people of the Philippines.

I also hereby reserved (sic) my right to claim for the 25% informer[']s reward under Section 1 of Republic Act No. 2338 in consonance with Section 9 of Department Order No. 46-66 of the Department of Finance (DOF) pursuant to the ruling of the Honorable Supreme Court in the case of "Gonzalo N. Rubie vs. Auditor General," 100 Phil[.] 772 (1957).

Very truly yours,

DANILO A. LIHAYLIHAY  
Informer under R.A. 2338  
Isla de Balot, Taging Dagat  
Bacoor, Cavite, Philippines

Almost 20 years later, on November 29, 2006, Lihaylihay wrote to then Commissioner of Internal Revenue, Jose Mario C. Buñag (Commissioner Buñag), demanding payment of 25% informer's reward on the P118,270,243,259.00 supposedly recovered by the Philippine government through compromise agreements with the Marcoses. He also insisted on the need for the government to collect Fortune Tobacco Corporation's tax deficiencies amounting to P97,039,862,933.40, to recover P47,500,000,000,000.00 of Marcos' deposits in Switzerland, and to deliver to him the informer's rewards corresponding to the recovery of these.<sup>[8]</sup>

On January 10, 2008, Lihaylihay wrote to then President Gloria Macapagal-Arroyo (President Macapagal-Arroyo), insisting on the need to recover the Marcos' wealth that he identified and his corresponding entitlement to an informer's reward.<sup>[9]</sup>

Acting on Lihaylihay's letter, Assistant Executive Secretary Lynn Danao-Moreno referred the matter to the Presidential Commission on Good Government,<sup>[10]</sup> which eventually referred the matter to the Department of Finance.<sup>[11]</sup>

Lihaylihay wrote to then Department of Finance Secretary Teves on August 11, 2009, reiterating his entitlement to an informer's reward.<sup>[12]</sup> On September 1, 2009, Lihaylihay wrote to both Secretary Teves and Treasurer Tan, again insisting on his entitlement to an informer's reward.<sup>[13]</sup>

On May 31, 2010, without waiting for Secretary Teves' and Treasurer Tan's official actions on his letters, Lihaylihay filed the present Petition,<sup>[14]</sup> dubbed a Petition for "Mandamus and Damages, with a Prayer for a Writ of Garnishment."<sup>[15]</sup> Insisting on his entitlement to informer's rewards, he prays that Treasurer Tan and Secretary Teves be ordered to deliver to him the amount of P11,875,000,000,000.00; that the Secretary of Environment and Natural Resources be ordered to transfer to him several government lands; and that the Governor of Bangko Sentral ng Pilipinas be ordered to garnish in his favor P50,000,000,000.00 worth of jewelry recovered from former First Lady Imelda Romualdez Marcos.<sup>[16]</sup>

For resolution is the issue of whether or not petitioner Danilo A. Lihaylihay is entitled to a writ of mandamus to compel respondents then Treasurer of the Philippines Roberto C. Tan, then Secretary of Finance Margarito B. Teves, the Secretary of the Department of Environment and Natural Resources, and the Governor of Bangko Sentral ng Pilipinas to deliver to him proceeds and properties representing 25% informer's reward pursuant to Section 1 of Republic Act No. 2338

This Petition should clearly be denied.

**I**

Rule 65, Section 3 of the 1997 Rules of Civil Procedure spells out the parameters for

the issuance of a writ of mandamus:

Section 3. Petition for mandamus. - When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

A writ of mandamus may issue in either of two (2) situations: first, "when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station"; second, "when any tribunal, corporation, board, officer or person . . . unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled."

The first situation demands a concurrence between a clear legal right accruing to petitioner and a correlative duty incumbent upon respondents to perform an act, this duty being imposed upon them by law.<sup>[17]</sup>

Petitioner's legal right must have already been clearly established. It cannot be a prospective entitlement that is yet to be settled. In *Lim Tay v. Court of Appeals*,<sup>[18]</sup> this Court emphasized that "[m]andamus will not issue to establish a right, but only to enforce one that is already established."<sup>[19]</sup> In *Pefianco v. Moral*,<sup>[20]</sup> this Court underscored that a writ of mandamus "never issues in doubtful cases."<sup>[21]</sup>

Respondents must also be shown to have *actually* neglected to perform the act mandated by law. Clear in the text of Rule 65, Section 3 is the requirement that respondents "unlawfully *neglect*" the performance of a duty. The mere existence of a legally mandated duty or the pendency of its performance does not suffice.

The duty subject of mandamus must be ministerial rather than discretionary.<sup>[22]</sup> A court cannot subvert legally vested authority for a body or officer to exercise discretion. In *Sy Ha v. Galang*:<sup>[23]</sup>

[M]andamus will not issue to control the exercise of discretion of a public officer where the law imposes upon him the duty to exercise his judgment in reference to any matter in which he is required to act, because it is his judgment that is to be exercised and not that of the court.<sup>[24]</sup>

This Court distinguished discretionary functions from ministerial duties, and related the exercise of discretion to judicial and quasi-judicial powers. In *Sanson v. Barrios*: