MIMAROPA Region
Provincial Environment and Natural Resources Office
Bgy. Sta. Monica, Puerto Princesa City, Palawan
E-mail: penropalawan@denr.gov.ph
Telfax No. (048) 433-5638

COS File SINCMCR

25 January 2022

MEMORANDUM

FOR : **The Regional Executive Director**
MIMAROPA Region
Roxas, Blvd. Ermita, Manila

FROM : The OIC-Provincial Environment and
Natural Resources Officer

SUBJECT : **UPDATES ON THE FILED CRIMINAL COMPLAINT TO MESSRS. ROMMEL IBUNA, RODOLFO BERNARDO AND FELIX BELTRAN IN VIOLATION OF SECTION 78 OF PD 705 IN SNAKE ISLAND NCMCR**

In line with the filed criminal complaint to Messrs. Rommel Ibuna, Rodolfo Bernardo and Felix Beltran to the City Prosecutor's Office in violation of Section 78 of PD 705 known as "The Revised Forestry Code of the Philippines" in Snake Island – National Coastal and Marine Center for Research, Mr. Ibuna and Bernardo filed the counter affidavit against the complaint while Mr. Beltran has no response as of to date. Attached is the copy of the counter affidavit of Mr. Rommel Ibuna and Rodolfo Bernado for your reference and record.

For your information and further instruction.

FELIZARDO B. CAYATOC

Conservation and Development Section
RELEASED
BY
DATE 1/26/22
672

DENR PENRO
PALAWAN RECORDS
RELEASED
BY:
DATE: JAN 26 2022 CN 22-230

2022-0642

Republic of the Philippines
CITY PROSECUTION OFFICE OF PUERTO PRINCESA CITY
Hall of Justice
Puerto Princesa City

ERIBERTO SANOS,
Complainant.
-versus-

ROMMEL A IBUNA AND
RODOLFO BERNARDO,
Respondents.
x----------x

NPS DOCKET NO NO iv-17-inv- 21-056

Violation of section 78 PD 705

URGENT MANIFESTATON AND
MOTION FOR EXTESION OF TIME TO FILE
COUNTER AFFIDAVIT

COMES NOW, by way of special appearance the undersigned counsel in behalf of respondent ROMMEL IBUNA unto this Honorable Office most respectfully avers-

1. That the respondent Rommel Ibuna left for the United States of America on January 3, 2022 and is expected to have his return flight to the country on January 21, 2022 but is still required to be immediately placed on quarantine until January 26, 2022 before he is allowed to go about with his personal public affairs. Thus respondent Rommel Ibuna could not possibly prepare his counter affidavit and submit the same earlier than January 26, 2022 because while abroad he would have his sworn statement there apostilled first of its notarization before he could file it. The apostille procedure in United States of America will take a minimum of fifteen days and by then Mr Ibuna would have already left the USA and would not be able to retrieve the apostilled counter affidavit at the State Department of USA. On the other hand upon arrival in the Philippines he would not be allowed to meet with his lawyers until he has completed his quarantine by the 26 of January.

2. That Mr Ibuna has not actually been served yet of the subpoena in this case and he only learned of the existence of the subpoena when he was informed by overseas phone call by his daughter on January 14, 2021. His daughter was in turn informed by their Makati Office. The Makati Office was informed by a certain Evelyn who received the subpoena at PEO Road, Bgy. Bancao Bancao which place is no longer the present residence of Mr Ibuna.

3. Mr IBuna desires to refute the charges against him as soon as he returns to the country and is able to move about to confer with his lawyers. Thus,

it is most respectfully prayed that respondent Ibuna be given until at least February 6, 2022 within which to file his counter affidavit considering the earlier mentioned facts and in consideration of the Supreme Court circular that moved the filing of all due pleadings in all courts until the end of January 2022.

4. At this early it is respectfully manifested that the complainant has not presented any sworn statement of any witness accusing Mr Ibuna of any act or omission of making any occupation or constructing the structure subject of the complaint in the subject area. All that is stated by the complainant PENRO and his witness is a sweeping accusation against Mr. Rommel IBuna. It must be noted that there are two persons surnamed Ibuna, one is Rodolfo Ibuna who is now deceased while the other is his son Rommel Ibuna. Here are also two Rodolfos, one is surnamed Ibuna while the other is Bernardo. The complainant failed to state when and how Mr Rommel Ibuna took unlawful possession or occupation of the subject property or allegedly constructed structure on the property in 2019. There being no specific act or omission proven to have been committed by Mr Ibuna, the complaint against him should be muto propio dismissed and he should even be spared from the burden of filing a counter affidavit.

5. Attached in support of this motion are the photocopies of the relevant plane tickets and of the passport duly inscribed with an immigration exit stamp.

PRAYER

WHEREFORE it is most respectfully prayed that the respondent Ibuna be given until February 6, 2022 within which to file his counter affidavit.

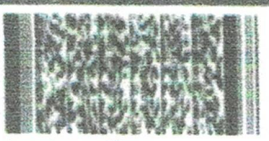
Respectfully submitted, January 16, 2022, Puerto Princesa City.

ALLAN B CARLOS
Special Appearance as counsel for respondent Ibuna
271 Rizal Avenue, Puerto Princesa City
5300, Palawan. Cp number 09209504578, carloslawoffice@yahoo.com
PTR no. 1641407 dated 1/11/22, IBP lifetime no 04178
Attorneys Roll no 40766 MCLE Exemption no VI-1048 until April 14, 2022

Copy to: PENRO ERIBERTO SANOS
DENR Penro office
Sta Monica, Puerto Princesa City.

Philippine Airlines

Passenger: Ibuna Rommel Mr (ADT)
Booking ref: UHAQ3R
Ticket number: 079 2406962149



Issuing office:
PHILIPPINE AIRLINES CONTACT CENTER,
MANILA, PHILIPPINES
Telephone: (632) 88558888
Date: 11Nov2021

ELECTRONIC TICKET RECEIPT

At check-in you must show a: (i) government-issued I.D. and the document you gave for reference at reservation time; (ii) documentary proof entitling you to exemptions or discounts (e.g. OFW, Senior Citizen, PWD, etc.) you availed at time of purchase, if any.

From	To	Flight	Departure	Arrival	Last check-in
MANILA NINOY AQUINO INTL Terminal: 2	**SAN FRANCISCO** SAN FRANCISCO INTL Terminal: I	PR104	**22:10** 03Jan2022	**18:30** 03Jan2022	
Class: L Seat: 45D Baggage (4): 2PC Fare basis: LXTUS	Operated by: PHILIPPINE AIRLINES Marketed by: PHILIPPINE AIRLINES Booking status (1): OK			NVA (3): 03Jul2022 Duration: 12:20	
Special Service Request	FQTV - FREQUENT TRAVELLER INFORMATION - CONFIRMED DOCA - PASSENGER/CREW ADDRESS INFORMATION - CONFIRMED DOCS - PASSENGER/CREW PRIMARY TRAVEL DOCUMENT INFO - CONFIRMED DOCO - PASSENGER/CREW OTHER TRAVEL RELATED INFO - CONFIRMED				
SAN FRANCISCO SAN FRANCISCO INTL Terminal: I	**MANILA** NINOY AQUINO INTL Terminal: 2	PR105	**21:30** 19Jan2022	**04:30** 21Jan2022	
Class: V Seat: 32C Baggage (4): 2PC Fare basis: VXTUS	Operated by: PHILIPPINE AIRLINES Marketed by: PHILIPPINE AIRLINES Booking status (1): OK			NVB (2): 06Jan2022 NVA (3): 03Jul2022 Duration: 15:00	
Special Service Request	FQTV - FREQUENT TRAVELLER INFORMATION - CONFIRMED				

(1) OK = Confirmed; RQ = Waitlist; SA = Space Available; NS = No Seat (2) NVB = Not valid before (3) NVA = Not valid after (4) Each passenger can check in a specific amount of baggage at no extra cost as indicated above in the column baggage. Each piece of baggage may not exceed the specified weight.

REPUBLIKA NG PILIPINAS | REPUBLIC OF THE PHILIPPINES

PASAPORTE/
PASS

Uri/ Type
P

Kodigo ng bansa/ Country code
PHL

Pasaporte Blg/Passport no.
P7540118B

Apelyido/Surname
IBUNA

Pangalan/Given names
ROMMEL

Pangalan ng ina/Mother's name
AMAGNA

Petsa ng kapanganakan/Date of birth
21 SEP 1969

Nasyonalidad
FILIPINO

Kasarian/Sex
M

Lugar ng kapanganakan/Place of birth
MANILA

Petsa ng pagkakaloob/Date of issue
07 SEP 2021

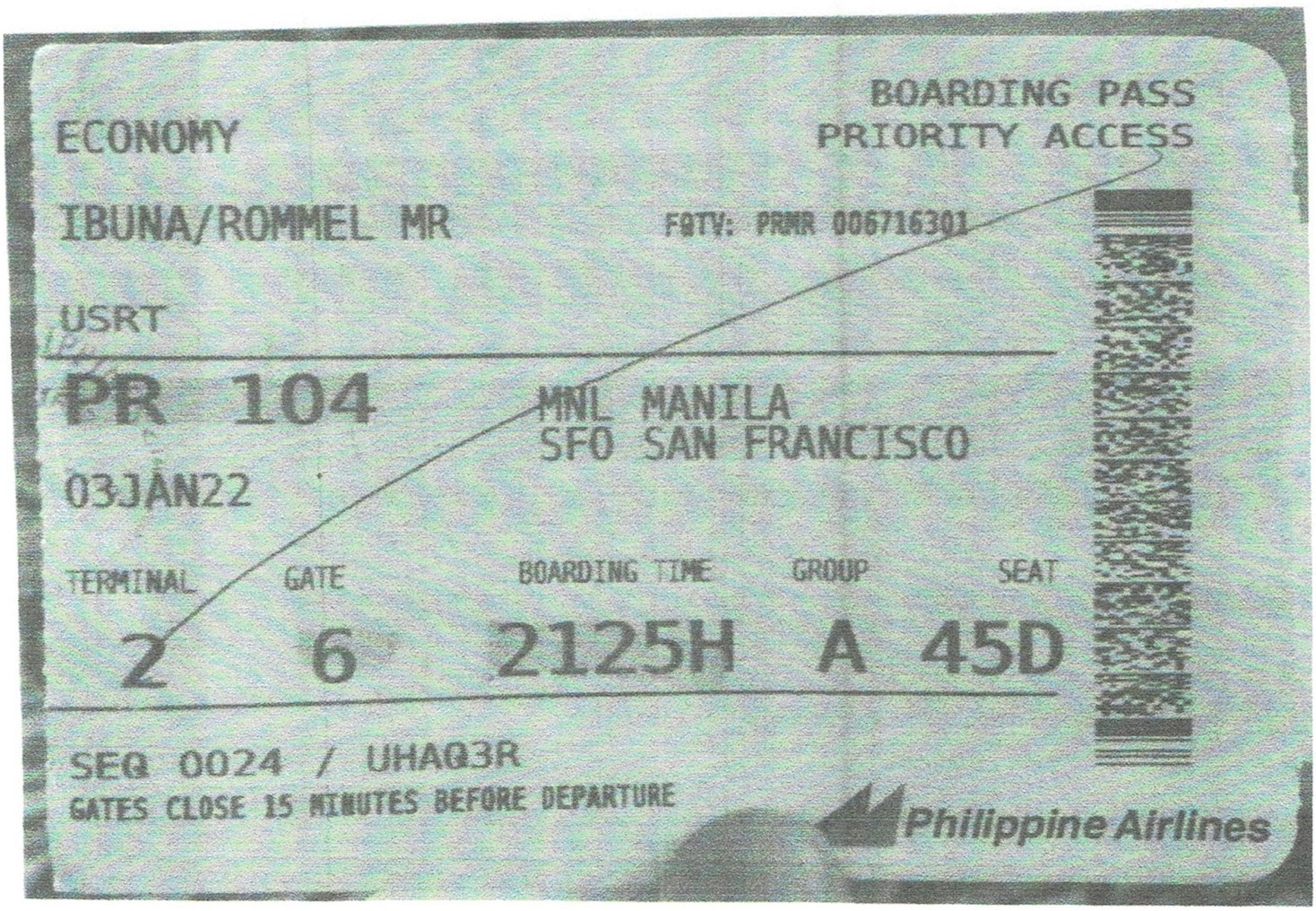
Petsa ng pag-expire/Date of expiry
06 SEP 2031

Awtoridad/Authority
DFA MANILA

P<PHLIBUNA<<ROMMEL<<<<<<<<<<<<<<<<<<<<<<<<<<<<

P7540118B2PHL6909219M3109063<<<<<<<<<<<<<<06


JUL 04 2022


BOARDING PASS
PRIORITY ACCESS
ECONOMY
IBUNA/ROMMEL MR
FQTV: PRMR 006716301
USRT
PR 104
MNL MANILA
SFO SAN FRANCISCO
03JAN22
TERMINAL
GATE
BOARDING TIME
GROUP
SEAT
2
6
2125H
A
45D
SEQ 0024 / UHAQ3R
GATES CLOSE 15 MINUTES BEFORE DEPARTURE
Philippine Airlines

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF JUSTICE
CITY PROSECUTION OFFICE OF PUERTO PRINCESA
Hall of Justice, Sta. Monica, Puerto Princesa City

ERIBERTO B. SAÑOS,
Complainant,

- versus - NPS NO. IV-17-INV-21J-0563

ROMMEL A. IBUNA and
RODOLFO O. BERNARDO,
Respondents.
x----------x

COUNTER-AFFIDAVIT
(OF RESPONDENT RODOLFO O. BERNARDO)

RESPONDENT Rodolfo O. Bernardo, assisted by counsel, respectfully alleges under oath:

1. Respondent Bernardo received the subpoena dated October 28, 2021 issued by Honorable Associate Prosecutor Lilibeth Ajes-Laurente in the above-entitled case on January 5, 2022 giving him 10 days or until January 15, 2022 to submit his counter-affidavit. Since January 15, 2022 is a Saturday, the last day falls due on Monday, January 17, 2022.

2. Respondent herein vehemently denies the charge of Violation of Section 78 of P.D. 705 otherwise known as "The Revised Forestry Code of the Philippines" because he did not construct the structure on the sand bar at the Lagoon area of Snake Island in 1996 without any authority of DENR.

3. The nipa hut on the sand bar belonged to one Nicolas Quilisado because he erected the same upon the authority of DENR. The said structure and the possessory right of Mr. Nicolas Quilisado was sold by him to respondent Bernardo without the cooperation and participation of respondent Rommel A. Ibuna. Before the sale was consummated, a survey was conducted in the presence of Mr. Larry Martinez of the DENR who certified that the sand bar is not within the Snake Island Research Center.

4. Apart from the fact that the respondent Bernardo did not illegally possess the nipa hut, the complainant cannot possibly charge him of Violation of Section 78 of P.D. 705 for the valid and legal reasons discussed in the succeeding paragraphs.

5. Specifically, Violation of Section 78 of P.D. 705 penalizes the "Unlawful Occupation or Destruction of **Forest Lands and Grazing Lands**. In other words, if the land occupied or destroyed is **not a forest land or grazing land**, there can be no violation of such law.

6. Respondent's lawyer explained to him that one of the essential element of Felony is that it must be "punishable by law." "This is based upon the maxim "*nullum crimen nulla poena lege*", that is, there is no crime where there is no law punishing it."[1]

7. Complainant himself admitted in paragraph 5 of his complaint-affidavit dated October 1, 2021 that "**The Snake Island is purely unclassified public forestland**."

8. Notably, the exact wordings of SECTION 78 reads: "Unlawful Occupation or Destruction **of Forest Lands** and Grazing Lands," without the modifying word "purely unclassified".

9. According to respondent's lawyer, "the elementary rule in statutory construction is that when the words and phrases of the statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must be taken to mean exactly what it says."[2]

10. To allow the complainant to include in the law "unclassified forest land" will encroach upon legislative power of Congress:

> "Where the law is clear and unambiguous, it must be taken to mean exactly what it says and the court has no choice but to see to it that the mandate is obeyed. Where the law is clear and free from doubt or ambiguity, there is no room for construction or interpretation.
>
> Thus, where what is not clearly provided in the law is read into the law by construction because it is more logical and wise, it would be to encroach upon legislative prerogative to define the wisdom of the law, which is

[1] Page 39 Luis B. Reyes, Revised Penal Code I, 1977 Edition page 39
[2] Baranda vs. Gustilo,No. L-81163, September 26, 1988, 165 SCRA 757, Citations omitted

judicial legislation. For whether a statute is wise or expedient is not for the courts to determine. Courts must administer the law, not as what they think it ought to be but as they find it and without regard to its consequences."[3]

11. The position of the lawyer of the respondent Bernardo finds support in the case of *Matuguina Integrated Wood Products, Inc. vs. Court of Appeals*[4] which teaches:

> "In construing statutes, the terms used therein are generally to be given their ordinary meaning, that is, such meaning which is ascribed to them when they are commonly used, to the end that absurdity in the law must be avoided. The term "obligations" as used in the final clause of the second paragraph of Section 61 of P.D. 705 is construed to mean those obligations incurred by the transferor in the ordinary course of business. It cannot be construed to mean those obligations or liabilities incurred by the transferor as a result of transgressions of law, as these are personal obligations of the transferor, and could not have been included in the term "obligations" **absent any modifying provision to that effect.**"

12. This precept applies with more vigor in this criminal case and especially due to the absence of the modifying phrase "purely unclassified public" forest land in Section 78 of P.D. 705:

> "It is a well-known rule of legal hermeneutics that penal or criminal laws are strictly construed against the state the State and liberally in favor of the accused. **This means that penal statutes cannot be enlarged or extended by intendment, implications, or any equitable consideration.** And the court must not bring cases within the provision of a statute that are not clearly embraced by it, nor by a narrow, technical or forced construction excluded cases from it that are obviously within its provision. Thus, where a statute penalizes the commission of an act on certain specific occasions, it cannot be construed to penalize it on all occasions."[5]

[3] Agpalo Statutory Construction 2009 edition, page 207
[4] G.R. No. 98310, October 24, 1996, 263 SCRA 480, emphasis supplied
[5] Agpalo Statutory Construction 2009 edition, pages 397 to 398, emphasis supplied

13. To extend Section 78 of P.D. 705 to cover "purely unclassified public forest lands" which is not mentioned in the said law clearly transgress this basic principle.

14. The respondent Rodolfo O. Bernardo is executing this counter-affidavit to prove the truth of all the foregoing and to request the Honorable Office of the City Prosecutor of Puerto Princesa City to dismiss the complaint.

IN WITNESS WHEREOF respondent Bernardo have hereunto affixed his signature this 11th day of January 2022 at Manila.

RODOLFO O. BERNARDO
Respondent

Assisted by:

ARTURO S. SANTOS
Counsel for the Respondent
6/F TRIDA Building, now Parkview Plaza Bldg.
T.M. Kalaw cor. Taft Avenue, Ermita, Manila
IBP LIFETIME MEMBER
NO. 437471/01-05-98
PTR NO. 0165334/1-05-22 /Manila
ROLL NO. 24816
MCLE Compliance No. VI-0002215/05-10-17
Tel. No. 525-1355

SUBSCRIBED AND SWORN to before me this 11 day of January 2022 in Manila; affiant exhibited to me his identification card with signature and photograph as competent proof of his identity.

DOC. NO. 937
PAGE NO. 188
BOOK NO. IV
SERIES OF 2022

ATTY. PEDRO D. GENATO
Notary Public Until June 30, 2022
Notarial Commission 2020 - 044 Mla
1150 Gen. Luna St., Ermita, Manila
IBP# 165729 Pasig - 10-14-2022
PTR# 0154718 Mla - 1-3-2022
Roll # 12088, TIN# 132-436-687
MCLE Compl. No. VI-0021170 until 4-14-2022

COPY FURNISHED:

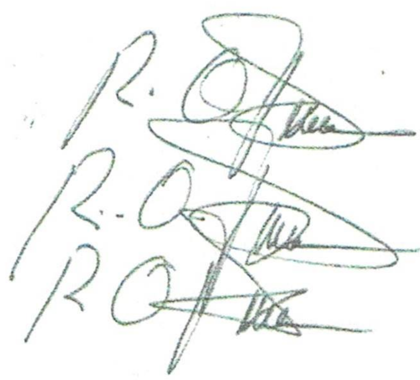
CITY PROSECUTION OFFICE
PUERTO PRINCESA CITY
PALAWAN

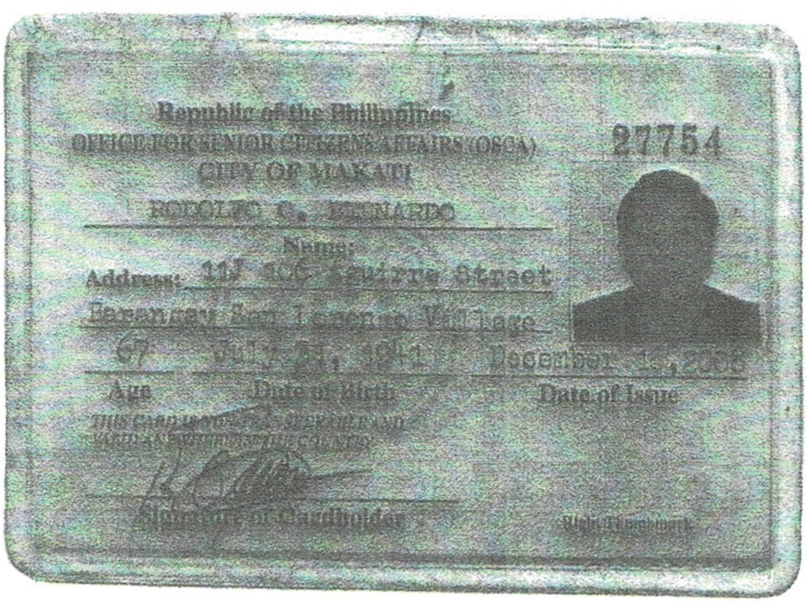
MR. ERIVERTO B. SAÑOS
CESE
OIC- PENRO, DENR
MIMAROPA Region
Provincial Environment &
Natural Resources Office
Province of Palawan

EXPLANATION
(Pursuant to Section II, Rule 13
of the 1997 Rules of Civil Procedure)

Electronic copy of the foregoing Counter-Affidavit (of Respondent Rodolfo O. Bernardo) was served to this Honorable Court, through its e-mail addresses at ocpppcpalawan5300@gmail.com and a physical copy of the same was furnished to Eriberto B. Saños through LBC, personal service not being practical due to the distance between the office of the undersigned counsel to the said addressees and in view of the inadequate number of messengerial personnel of the office.

ARTURO S. SANTOS





Republic of the Philippines
OFFICE FOR SENIOR CITIZENS AFFAIRS (OSCA)
CITY OF MAKATI

27754

RODOLFO C. BERNARDO
Name:

Address: 117 [illegible] Street
Barangay San Lorenzo Village

67	July [illegible], 1941	December 1, 200[illegible]
Age	Date of Birth	Date of Issue

THIS CARD IS [illegible]
[illegible]

Signature of Cardholder

Right Thumbmark

ditto

ditto

ditto