

⁴ Docket – Vol. III, p. 1102.

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Accused complied and submitted an additional copy on August 7, 2017.⁵

Evidently from the foregoing, accused's Motion for Leave of Court to File Demurrer to Evidence,"⁶ with attached "Demurrer to Evidence," was filed late. Counting five (5) days from June 23, 2017, the date of receipt of the Resolution dated June 5, 2017, accused had until June 28, 2017 to file said motion and demurrer to evidence. However, the same was filed only on June 30, 2017, or two days late.

However, the Court is inclined to admit the same considering that technical rules of procedure are not ends in themselves but are primarily designed to aid in the administration of justice.⁷ If a stringent application of the rules would hinder rather than serve the demands of substantial justice, the former must yield to the latter.⁸ In the interest of liberality, and considering that the purpose of accused in seeking leave of court to file demurrer to evidence is to prove the insufficiency of the prosecution's evidence, the Court hereby resolves to grant the instant motion.

Hence, accused's **Motion for Leave of Court to File Demurrer to Evidence** is hereby **GRANTED**. Accordingly, the **Demurrer to Evidence** is hereby **ADMITTED**.

We shall now resolve accused's *Demurrer to Evidence*.

On September 8, 2014, the prosecution filed an Amended Information dated September 2, 2014, against Lynard Allan S. Bigcas for Unlawful Importation under Section 3601 of the Tariff and Customs Code of the Philippines, allegedly committed as follows:

"That on or about 5 May 2011 or several days prior thereto, in Talakag, Bukidnon, and in Kauswagan, Cagayan de Oro City, within the jurisdiction of this Honorable Court, accused Lynard Alllan S. Bigcas, did then and there willfully, unlawfully and fraudulently cause the importation into the Philippines of twenty nine (29) motor vehicles, namely, (1) 2008 Mitsubishi Lancer Evolution (2) Chevrolet Tahoe (3) Chevrolete (*sic*)

⁵ Docket – Vol. III, pp. 1104 to 1126.

⁶ Docket – Vol. III, pp. 1078 to 1082.

⁷ *Philippine Phosphate Fertilizer Corporation vs. Commissioner of Internal Revenue*, G.R. No. 141973, June 28, 2005.

⁸ *Basco vs. Court of Appeals, et al.*, G.R. No. 125290, August 9, 2000.

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Corvette (4) Dodge Charger (5) Toyota Sequioa (6) Ranger RZR Utility Terrain (7) Polaris Magnum 325 ATV (8) Yamaha Ultramatic (9) Kawasaki Ninja (10) Suzuki R/GSX 1000 (11) Harley Davidson Motorcycle (12) 2006 Honda CBR 600RR (13) Suzuki GSX/R (14) Suzuki GSX 1300R (15) 2008 Honda CBR 600RR (16) 2003 Kawasaki (17) 2005 Honda (18) Honda Stunt Bike (19) 2007 Yamaha (20) Kawasaki KMX (21) 2005 Honda CRF (22) 2005 Honda CRF (23) 2003 Suzuki GSX R1000 (24) Yamaha YZF450 (25) Yamaha YZF285 (26) Suzuki RGSX (27) MOTO Elf (28) Suzuki (29) Martin Brothers Chopper, having a total value of \$473,667.00 and unpaid customs duties and other taxes in the aggregate amount of P18,898,931.00, exclusive of charges and penalties, without an authority to import from the Department of Trade and Industry (DTI), in violation of Executive Order No. 156 dated 12 December 2002 prohibiting the importation of used motor vehicles, to the damage and prejudice of the Government in the amount of Php 18,898,931.00, exclusive of penalties and charges.

CONTRARY TO LAW.”⁹

On December 12, 2014, the accused voluntarily appeared before Hon. Dennis Z. Alcantar, Executive Judge, Regional Trial Court (RTC) Branch 18, Cagayan de Oro City, and submitted himself to the jurisdiction of this Court by posting the required bail bond for his provisional liberty.¹⁰

During his arraignment on July 2, 2015, accused pleaded “not guilty” to the crime charged, with the assistance of defense counsel *de parte*, Atty. Jerome J. Jarales.¹¹

During the pre-trial conference held on May 25, 2016, the parties admitted the following¹²:

“A. FACTS.

⁹ Amended Information, Docket – Vol. II, pp. 593 to 594.

¹⁰ Resolution dated February 4, 2015, Docket – Vol. II, pp. 640 to 641; Letter dated January 5, 2014 from the Assistant/Acting Clerk of Court Atty. Dick Carlo J. Cabanlas transmitting documents relative to the bond put up by the accused with attached documents, Docket – Vol. II, pp. 623 to 636.

¹¹ Certificate of Arraignment, Docket – Vol. II, p. 703; Resolution dated July 2, 2015, Docket – Vol. II, pp. 710 to 711.

¹² Pre-Trial Order dated August 25, 2016, Docket – Vol. II, pp. 963 to 973.

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1. The accused is the same person in the Information and was arraigned before the Honorable Court of Tax Appeals (CTA) on July 2, 2015;
2. The Honorable CTA has jurisdiction over the case;
3. That on May 3, 2011, a team of NBI agents and police authorities raided the house of accused's stepfather in Talakag, Bukidnon and the house of one Boy Aribal in Kauswagan, Cagayan de Oro City; and
4. That the raid on May 3, 2011 was by virtue of two separate search warrants issued by the Regional Trial Court (RTC), Branch 37 of Cagayan de Oro City and of RTC 11, Manolo Fortich, Bukidnon."

In addition, accused's counsel agreed to stipulate on the existence of the Letter dated May 18, 2011, marked as Exhibit "P-11".¹³

Plaintiff presented in open court the testimonies of the following witnesses: (1) Rommel E. Doctor¹⁴; (2) Marvin Mison¹⁵; and (3) Jose Justo S. Yap¹⁶, and formally offered its documentary exhibits¹⁷, viz:

<i>Exhibit</i>	<i>Description</i>
"P-2"	Amended Complaint – Affidavit
"P-2-1"	Signature of Rommel Doctor
"P-6" ¹⁸	Amended Warrant of Seizure and Detention
"P-6-1" ¹⁹	Signature of Marvin Mison
"P-6-2 to 13"	Photos of the imported smuggled vehicles
"P-8" with submarkings	Certification from Michael Rey B. Laureta
"P-11"	Letter from Collector Lowell Medija
"P-13"	Letter of Marvin Mison to Atty. Justo Yap
"P-13-1"	Signature of Marvin Mison
"P-16"	Tabulated rates of the duties and taxes of the subject vehicles

¹³ Minutes of the Hearing dated September 15, 2016 and Order dated September 15, 2016, Docket – Vol. II, pp. 998 to 1001.

¹⁴ Minutes of the Hearing dated August 25, 2016, Docket – Vol. II, pp. 956 to 957.

¹⁵ Minutes of the Hearing dated November 3, 2016, Docket – Vol. II, pp. 1008 to 1010.

¹⁶ Minutes of the Hearing dated November 23, 2016, Docket – Vol. II, pp. 1022 to 1026.

¹⁷ Docket – Vol. II, pp. 1030 to 1031.

¹⁸ Marked as "P-12," Docket – Vol. II, pp. 805 to 807.

¹⁹ Marked as "P-12-1," Docket – Vol. II, p. 807.

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Except for Exhibits “P-6-2 to 13” and “P-8 with submarkings,” the Court admitted plaintiff’s evidence.²⁰

On June 30, 2017, accused filed his Motion for Leave of Court to File Demurrer to Evidence with attached Demurrer to Evidence.

In his Demurrer to Evidence, accused alleges that plaintiff failed to establish that he brought into the Philippines, or has assisted in bringing into the country, any article contrary to law. Accused cites the case of *Bureau of Customs vs. Devanadera*²¹, and submits that the Bureau of Customs (BOC) must first prove that the articles were indeed imported before charges for unlawful importation under Section 3601 to prosper. And in order to prove that the vehicles are imported, they must allegedly first be offered in evidence, which the prosecution has failed to do.

Accused contends that the provision in Section 3601 authorizing prosecution by mere possession is not applicable absent the showing that the items possessed by accused are imported in the first place.

Even assuming that the subject vehicles have been offered in evidence, accused further claims that it must be shown that the authorities, in obtaining said evidence against the accused, did not violate his constitutional rights against unreasonable search and seizure.

Lastly, accused argues that Exhibit “P-13” does not prove any importation because there is no evidence presented by the prosecution that the vehicles were not locally obtained. He alleges that the prosecution failed to present any certification from any appropriate agency or department that the vehicles subject of this case cannot be obtained locally, if only to suggest a conclusion that the same must have been really imported.

On the other hand, plaintiff avers that the twenty-nine (29) vehicles have been proven to be imported, and cites the following grounds:

- a. The issuance of the warrant of seizure and detention of the

²⁰Resolutions dated February 22, 2017 and June 5, 2017, Docket – Vol. II, pp. 1046 to 1047 and pp. 1069 to 1076, respectively.

²¹ G.R. No. 193253, September 8, 2015.

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29 vehicles by the BOC presupposes unlawful importation. In addition, the testimonies and the affidavits identified by the witnesses that were offered and admitted by the Court duly established the importation.

- b. The resolution of the Regional Trial Court of Cagayan de Oro City ordering the forfeiture of the vehicles in favor of the government, which plaintiff contends is subject to the Court's judicial notice, presupposes that the vehicles were imported.

Plaintiff also argues that it is of judicial notice that the accused filed an appeal before this Court to the case for replevin filed before the RTC of Cagayan de Oro City, in which accused admitted that the imported luxury vehicles were owned by him.

- c. Plaintiff alleges that the accused never raised an issue that the vehicles were not imported.
- d. Plaintiff avers that the vehicles seized are imported brands (Martin Brothers and Harley Davidson, among others), which is likewise subject to the Court's judicial notice.

A demurrer to the evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced, is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.²²

Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded according to the circumstances. To be considered sufficient therefore, the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation therein by the accused.²³

In the instant case, accused is charged under Section 3601 of

²² *Gutib vs. Court of Appeals, et al.*, G.R. No. 131209, August 13, 1999.

²³ *Singian, Jr. vs. Sandiganbayan (3rd Division), et al.*, G.R. Nos. 195011-19, September 30, 2013.

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the Tariff and Customs Code of the Philippines for unlawful importation, which states:

“SEC. 3601. *Unlawful Importation.* - Any person who shall fraudulently import or bring into the Philippines, or assist in so doing, any article, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such article after importation, knowing the same to have been imported contrary to law, shall be guilty of smuggling and shall be punished with:

xxx

xxx

xxx

When, upon trial for violation of this section, the defendant is shown to have had possession of the article in question, possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the court: Provided, however, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution under this section.

Unlawful importation or smuggling is committed by any person who: (1) fraudulently imports or brings into the Philippines any article contrary to law; (2) assists in so doing any article contrary to law; or (3) receives, conceals, buys, sells or in any manner facilitate the transportation, concealment or sale of such goods after importation, knowing the same to have been imported contrary to law.²⁴

In the case of *Rimorin, Sr. vs. People of the Philippines*²⁵, the Supreme Court laid down the requisites of the crime of smuggling, to wit:

“In his discussion of a similarly worded provision of Republic Act No. 455, a criminal law authority explained thus:

‘In order that a person may be deemed guilty of smuggling or illegal importation under the foregoing statute, three requisites must concur: (1) that the merchandise must have

²⁴ *Jardeleza vs. People of the Philippines*, G.R. No. 165265, February 6, 2006.

²⁵ G.R. No. 146481, April 30, 2003, citing Luis B. Reyes, *The Revised Penal Code*, Vol. II (14th ed., 1998), p.300.

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been fraudulently or knowingly imported contrary to law; (2) that, the defendant, if he is not the importer himself, must have received, concealed, bought, sold or in any manner facilitated the transportation, concealment or sale of the merchandise; and (3) that the defendant must be shown to have knowledge that the merchandise had been illegally imported. If the defendant, however, is shown to have had possession of the illegally imported merchandise, without satisfactory explanation, such possession shall be deemed sufficient to authorize conviction.”

Thus, before the charge of unlawful importation can prosper, plaintiff must first prove that an importation has indeed taken place, from which the subject goods were brought into the country.

In the case of *Bureau of Customs vs. Devanadera*,²⁶ the Supreme Court held:

“xxx the Court reviews the following findings of the Acting Secretary of Justice in affirming the State Prosecutor's dismissal of the BOC's complaint-affidavit for lack of probable cause:

Respondents are being charged for unlawful importation under Section 3601, and fraudulent practices against customs revenues under Section 3602, of the TCCP, as amended. For these charges to prosper, complainant must prove, first and foremost, that the subject articles were imported. On this score alone, complainant has miserably failed.

xxx

xxx

xxx

After a careful review of records, the Court affirms the dismissal of the BOC's complaint-affidavit for lack of probable cause, but partly digresses from the reasoning of the Acting Secretary of Justice in arriving at such conclusion. While the Acting Secretary of Justice correctly stated that the act of fraudulent importation of articles

²⁶ G.R. No. 193253, September 8, 2015.

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must be first proven in order to be charged for violation of Section 3601 of the TCCP, the Court disagrees that proof of such importation is also required for various fraudulent practices against customs revenue under Section 3602 thereof.

As held in *Jardeleza v. People*, the crime of unlawful importation under Section 3601 of the TCCP is complete, in the absence of a *bona fide* intent to make entry and pay duties when the prohibited article enters Philippine territory. Importation, which consists of bringing an article into the country from the outside, is complete when the taxable, dutiable commodity is brought within the limits of the port of entry. xxx" (*Underscoring Ours*)

Accused argues that plaintiff failed to establish that the subject vehicles were imported as the vehicles themselves were not offered in evidence.

Accused is mistaken. The subject vehicles are not the only evidence that could prove its physical existence. It may be shown by other evidence.

Be that as it may, however, the Court does not find any evidence in the records proving the alleged importation by the accused.

The prosecution's witness, Marvin Mison testified that based on pictures, information given to him, ordinary perception, and considering that our country does not have any factory that produces these kinds of vehicles, he concluded that the subject motor vehicles are imported, to wit:

"ASST. STATE PROS. ROJAS:

Q. Mr. Witness, do you have any proof to show that they are imported vehicles?

MR. MISON:

A. We have pictures and based on information given to us, these items are imported because we do not have any factories that produce these kind of vehicles, the Dodge Charger. Based on ordinary

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perception, Your Honors, these are imported. So, we asked them to produce all the necessary documents to prove that they have purchase receipts.²⁷

xxx xxx xxx

ASST. STATE PROS. ROJAS:

Q. Can you please identify, Mr. Witness, why do you said (*sic*) that this is imported vehicle?

MR. MISON:

A. Based on the information given to me by our Custom Police and the members of the National Bureau of Investigation. These are all coming from, not from the Philippines because based on ... (Interrupted)

JUSTICE GRULLA

Yes

MR. MISON:

A. Simple perception, we do not produce this kind of ... (Interrupted)²⁸

However, upon clarificatory questions propounded by the Court, it appears that witness Mison, or his office failed to check or present evidence to show that the subject motor vehicles cannot actually be manufactured in the Philippines. In fact, Mison further testified that there is no documentation to support their conclusion that the motor vehicles are imported, to wit:

“JUSTICE DEL ROSARIO:

At any rate, you were saying that the fact that the vehicles are imported was simply based on perception?

MR. MISON:

A. Yes, Your Honors.

²⁷ Transcript of Stenographic Notes (TSN) dated November 3, 2016, p. 22.

²⁸ TSN dated November 3, 2016, p. 26.

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JUSTICE DEL ROSARIO:

Perception in the sense that by looking at the motor vehicles, you believe or you see that they are imported?

MR. MISON:

A. Yes, Your Honors.

JUSTICE DEL ROSARIO:

Did you happen to check on any agency of the government to confirm whether these motor vehicles cannot actually be manufactured in the Philippines?

MR. MISON:

A. At that time, Your Honors, we were not able to do so, Your Honors.

JUSTICE DEL ROSARIO:

You did not check also with the Department of Trade and Industry... (interrupted)

MR. MISON:

A. No, Your Honors.

JUSTICE DEL ROSARIO:

The probability of these motor vehicles being manufactured in the Philippines?

MR. MISON:

A. No, Your Honors.

JUSTICE DEL ROSARIO:

So, everything was based on your personal perception?

MR. MISON:

A. Yes, Your Honors.

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JUSTICE DEL ROSARIO:

And the perception also of the National Bureau of Investigation?

MR. MISON:

A. Yes, Your Honors.

JUSTICE DEL ROSARIO:

Without any documentation to back up the supposed conclusion that they are imported motor vehicles?

MR. MISON:

A. Yes, Your Honors.”²⁹

On the other hand, Atty. Jose Justo Yap testified that they were able to determine that the motor vehicles were imported based on his agents’ familiarity with local and imported vehicles, and the information provided by the Philippine National Police (PNP), to wit:

“ASST. STATE PROS. ROJAS:

Q. So, Mr. Witness, you said that those vehicles inside the premises of the two premises, were imported vehicles? How did you come to know that they are imported vehicles?

ATTY. YAP (Prosecution’s Witness):

A. Well, aside from my ages’ (sic) familiarity with imported vehicles, as well as local, we find that they are imported vehicles and also, based on the information provided by the Philippine National Police, Police Director of Misamis Oriental, that there are imported motor vehicle and when... (interrupted)

ASST. STATE PROS. ROJAS:

Q. So, all those vehicles inside the premises were

²⁹ TSN dated November 3, 2016, pp. 87 to 89.

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imported. My question a while ago, how did you come to know that it is imported, so, you said, do you have any proof to show that they are imported vehicles?

ATTY. YAP (Prosecution's Witness):

A. Yes, ma'am.

ASST. STATE PROS. ROJAS:

Q. Yes. Can you please show to the Court any proof to show that they are imported vehicles?

ATTY. YAP (Prosecution's Witness):

A. During the service of the warrant, Your Honors, part of the standard operating procedure, is to take photographs of the area including the items and the motor vehicles and during the inspection, they were able to retrieve documents proving that these are all imported.

ASST. STATE PROS. ROJAS:

Q. Mr. Witness, when warrant is only for the firearms, why did you include the imported vehicles?

ATTY. YAP (Prosecution's Witness):

A. Well, because of the initial information that the importation was made without necessary documents and... (Interrupted)

ASST. STATE PROS. ROJAS:

Q. Who told you that they don't have necessary documents?

ATTY. YAP (Prosecution's Witness):

A. The Philippine National Police.

ASST. STATE PROS. ROJAS:

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Q. Aside from those, aside from the Philippine National Police, when you went to the premises of the accused? What did you do... (Interrupted)

ATTY. YAP (Prosecution's Witness):

A. When they noticed that the motor vehicles and the motor bikes are all imported, they requested for the importation documents from the occupants of the house... (Interrupted)

ASST. STATE PROS. ROJAS:

Q. From the occupants of the house?

ATTY. YAP (Prosecution's Witness):

A. But they failed to present one.

ASST. STATE PROS. ROJAS:

Q. They failed to present. So, when they failed to present any documents of importation, what did they do?

ATTY. YAP (Prosecution's Witness):

A. Per reports of my agents, they inspected the vehicles and they checked on the documents inside and they were able to produce some documents proving that these are all imported vehicles."³⁰

However, the introduction of these alleged documents (a photo and document) to prove that the vehicles are imported was objected to by defense counsel since these documents were not included in the Pre-Trial Order. Such objection was sustained by the Court.³¹

Atty. Jose Justo Yap also clarified that the information from the PNP was only on the two vehicles of the accused (the Martin Brothers Chopper and the Dodge Charger), to wit:

"JUSTICE DEL ROSARIO:

³⁰ TSN dated November 23, 2016, pp. 12 to 14.

³¹ TSN dated November 23, 2016, pp. 14 to 16.

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They received information from the PNP that the accused has in his possession smuggled vehicles?

ATTY. YAP (Prosecution's Witness):

A. Only two, Your Honors, the Martin Brothers Chopper, the big bike, and the Dodge Charger, Your Honors."³²

From the foregoing testimonies of prosecution witnesses, the Court finds plaintiff's case against accused to be based merely on perception and second hand information provided to them, and without direct proof to show that these were verified as correct and true. Similarly, the documentary evidence presented by the prosecution do not prove unlawful importation by accused as well.

First, Exhibit "P-2"³³ is the Amended Complaint-Affidavit executed by Rommel Doctor alleging that prior to July 2010, the accused imported 29 assorted motor vehicles and big bikes into the Philippines. In the course of his testimony,³⁴ however, witness Doctor admitted that his knowledge of the allegations in the document is limited only to assessment or the estimated duties and taxes (Exhibit "P-16"³⁵). His supervisor asked him to verify, but he could not do so because the import documents were not presented to him.

Second, plaintiff argues that the issuance of the Amended Warrant of Seizure and Detention of the 29 vehicles (Exhibit "P-12"³⁶) by the BOC presupposes unlawful importation.

Contrary to plaintiff's allegation, the fact that the BOC issued the said warrant is not conclusive of the fact of importation, especially in a criminal case where the accused is presumed innocent until proven guilty beyond reasonable doubt.

Third, Exhibits "P-11"³⁷ and "P-13"³⁸ state that there are no records of any importation of the subject vehicles and motorcycles in the Mindanao Container Terminal Sub-port, Port of Iligan, Port of

³² TSN dated November 23, 2016, pp. 46 to 47.

³³ Docket – Vol. II, pp. 731 to 740.

³⁴ TSN dated August 25, 2016, pp. 25 to 26, 33 to 37.

³⁵ Docket – Vol. II, p. 811.

³⁶ Exhibit "P-12" was offered as Exhibit "P-6" in the Formal Offer of Exhibits.

³⁷ Docket – Vol. II, p. 804.

³⁸ Docket – Vol. II, p. 808.

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Ozamis or the Port of Cagayan de Oro. Hence, plaintiff concludes unlawful importation on the part of accused.

Clearly, these pieces of evidence do not prove importation of the subject vehicles. Moreover, the fact that plaintiff's record fails to show that an import entry was filed does not altogether make out a case under Section 3601 without first determining whether the subject articles are indeed imported.

Plaintiff suggests that the following presuppose that the vehicles were imported, and should be of judicial notice by this Court, to wit:

1. the resolution of the RTC of Cagayan de Oro City ordering the forfeiture of the vehicles in favor of the government;
2. that the accused filed an appeal before this Court to the case for replevin filed before the RTC of Cagayan de Oro City, in which accused admitted that the imported luxury vehicles were owned by him; and
3. that the vehicles seized are imported brands.

The Court disagrees.

Judicial notice is the cognizance of certain facts which judges may properly take and act on without proof because they already know them. Under the Rules of Court, judicial notice may either be mandatory or discretionary.³⁹ Sections 1 and 2 of Rule 129 of the Rules of Court provide as follows:

"SEC. 1. *Judicial notice, when mandatory.* - A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

³⁹ *People vs. Tundag*, G.R. Nos. 135695-96, October 12, 2000.

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SEC 2. *Judicial notice, when discretionary.* - A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.”

Applying the foregoing, it is clear that the above-mentioned allegations of the plaintiff are not among the matters which the rules mandatorily require the Court to take judicial notice of, without any introduction of evidence.

Neither are these allegations of public knowledge, capable of unquestionable demonstration, or ought to be known to the judges because of their judicial functions, in order to allow the Court to take discretionary judicial notice of the same.

Even assuming that the resolution of the RTC of Cagayan de Oro, and the appeal of the accused from the RTC’s decision may be subject to this Court’s judicial notice, the Supreme Court held in the case of *Pilipinas Shell Petroleum Corporation vs. Commissioner of Customs*⁴⁰ that before a court could take judicial notice of any record pertaining to other cases pending before it, the opposing party must be given an opportunity to object. The Supreme Court said:

“As a general rule, courts are not authorized to take judicial notice of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding the fact that both cases may have been tried or are actually pending before the same judge. However, this rule is subject to the exception that in the absence of objection and as a matter of convenience to all parties, a court may properly treat all or any part of the original record of the case filed in its archives as read into the records of a case pending before it, when with the knowledge of the opposing party, reference is made to it, by name and number or in some other manner by which it is sufficiently designated. Thus, for said exception to apply, the party concerned must be given an opportunity to object before the court could take judicial notice of any record pertaining to other cases pending before it.”

⁴⁰ G.R. No. 195876, December 5, 2016.

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In the instant case, accused was not given the opportunity to object to plaintiff's claims of judicial notice. In addition, the matters claimed by plaintiff to be of judicial notice were not even properly referenced in its opposition. Thus, plaintiff's assertion of judicial notice is improper.

It behooves the prosecution to remember that it has the burden to overcome the accused's presumption of innocence by presenting the quantum of evidence required. In so doing, the prosecution must rest on its own merits and must not rely on the weakness of the defense. And if the prosecution fails to meet the required amount of evidence, the defense may logically not even present evidence on its own behalf.⁴¹

From the foregoing, the Court finds that the evidence presented by the prosecution is insufficient to sustain a verdict of guilt. Considering that the prosecution's evidence is not competent and sufficient to establish a *prima facie* case, it follows that it cannot eventually be proof beyond reasonable doubt.

In view of the foregoing, the Court finds it no longer necessary to discuss the other issues raised.

WHEREFORE, in light of the foregoing considerations, accused's **Demurrer to Evidence** is **GRANTED**. Accordingly, CTA Criminal Case No. O-368 is **DISMISSED** for failure of the prosecution to present competent and sufficient evidence to establish the guilt of accused beyond reasonable doubt.

SO ORDERED.


ROMAN G. DEL ROSARIO
Presiding Justice


ERLINDA P. UY
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice

⁴¹ *People of the Philippines vs. Capuno*, G.R. No. 185715, January 19, 2011.