

## FIRST DIVISION

[ G.R. No. 160772, July 13, 2009 ]

**HILARIO P. SORIANO, PETITIONER, VS. OMBUDSMAN SIMEON V. MARCELO, HON. MARILOU B. ANCHETA-MEJIA, GRAFT INVESTIGATION OFFICER II, AND ATTY. CELEDONIO P. BALASBAS, RESPONDENTS.**

### DECISION

**CARPIO, J.:**

#### The Case

Before this Court is a petition for certiorari under Rule 65 filed by Hilario P. Soriano (petitioner) seeking to set aside the Resolution dated 29 July 2002,<sup>[1]</sup> which dismissed the complaint against Assistant City Prosecutor Celedonio P. Balasbas (Balasbas), and the Order dated 14 July 2003,<sup>[2]</sup> which denied the motion for reconsideration, both issued by the Office of the Ombudsman in OMB-C-C-02-0246-E.

#### The Antecedent Facts

On 1 June 2001, petitioner filed an affidavit-complaint against Mely S. Palad (Palad), a bank examiner of the Bangko Sentral ng Pilipinas, for Falsification of Public Documents and Use of Falsified Document punishable under Article 172 of the Revised Penal Code. The complaint was filed with the Office of the City Prosecutor of Manila and was docketed as I.S. No. 01-F-22547. Acting on the complaint, Balasbas issued a Resolution on 27 August 2001 recommending that Palad be charged in court with Falsification of Public Documents and that the charge of Use of Falsified Document be dropped for lack of merit.

The Resolution of 27 August 2001 was forwarded to 2<sup>nd</sup> Assistant City Prosecutor Leoncia R. Dimagiba (Dimagiba) who recommended the filing of the information. This Resolution was forwarded to the City Prosecutor for approval.

Meanwhile, on 25 January 2002, Palad filed a Motion to Re-Open Case on the ground that she was not given a copy of the subpoena or any notice regarding the complaint filed against her.

On 27 February 2002, Dimagiba recommended the reopening of the case. City Prosecutor Ramon R. Garcia (City Prosecutor) approved the recommendation. Thus, on 26 March 2002, Balasbas issued a subpoena to the parties setting the case for investigation.

The reopening of the case prompted petitioner to file on 18 April 2002 with the Office of the Ombudsman a criminal complaint against Balasbas for violation of Section 3(e) of Republic Act No. 3019 (RA 3019), otherwise known as the Anti-Graft and Corrupt Practices Act. Petitioner alleged that in the reopening of I.S. No. 01-F-22547, Palad received an unwarranted advantage or preference, through manifest partiality, evident bad faith and gross inexcusable negligence, causing undue injury to petitioner.

In the Resolution dated 29 July 2002, Graft Investigation Officer Charity Grace A. Rico of the Office of the Ombudsman recommended the dismissal of petitioner's complaint for want of sufficient basis. This recommendation was approved by Ombudsman Simeon V. Marcelo. The Motion for Reconsideration was denied in the Order of 14 July 2003,<sup>[3]</sup> for lack of merit.

Hence, the present petition for certiorari.

### **The Issue**

Petitioner raises the sole issue of whether or not the Office of the Ombudsman acted with grave abuse of discretion, amounting to lack or in excess of jurisdiction, in dismissing the complaint against Balasbas.

### **The Court's Ruling**

The instant petition is a special civil action for certiorari which is a remedy meant to correct only errors of jurisdiction, not errors of judgment. Petitioner assails the resolution of the Office of the Ombudsman dismissing the criminal case against Balasbas. Petitioner claims that the subordinates were not supposed to blindly follow illegal orders of their superiors. He insists that Balasbas is still liable for the reopening of the case without lawful reasons, for no law gives his superiors the right to indiscriminately order the reopening of a case. Petitioner argues that Balasbas could have opted not to issue a subpoena knowing that the directive of the City Prosecutor to reopen the case of Palad was not warranted. Thus, for giving unwarranted advantage or preference to Palad that caused undue injury to petitioner, Balasbas must be held liable for violation of Section 3(e) of RA 3019.

The arguments raised by petitioner are not errors involving jurisdiction but one of judgment, which is beyond the province of the extraordinary remedy of certiorari. As we have ruled in *First Corporation v. Former Sixth Division of the Court of Appeals*,<sup>[4]</sup> to wit:

It is a fundamental aphorism in law that a review of facts and evidence is not the province of the extraordinary remedy of *certiorari*, which is *extra ordinem* - beyond the ambit of appeal. In *certiorari* proceedings, judicial review does not go as far as to examine and assess the evidence of the parties and to weigh the probative value thereof. It does not include an inquiry as to the correctness of the evaluation of evidence. Any error committed in the evaluation of evidence is merely an error of judgment that cannot be remedied by *certiorari*. An *error of judgment* is one which

the court may commit in the exercise of its jurisdiction. An error of jurisdiction is one where the act complained of was issued by the court without or in excess of jurisdiction, or with grave abuse of discretion, which is tantamount to lack or in excess of jurisdiction and which error is correctible only by the extraordinary writ of *certiorari*. *Certiorari* will not be issued to cure errors of the trial court in its appreciation of the evidence of the parties, or its conclusions anchored on the said findings and its conclusions of law. It is not for this Court to re-examine conflicting evidence, re-evaluate the credibility of the witnesses or substitute the findings of fact of the court *a quo*.

This notwithstanding, may this Court review the findings of the Office of the Ombudsman? The general rule has been that the courts will not interfere with the discretion of the prosecutor or the Ombudsman, in the exercise of his investigative power, to determine the specificity and adequacy of the averments of the offense charged.<sup>[5]</sup> As we have explained in *Esquivel v. Ombudsman*:<sup>[6]</sup>

The Ombudsman is empowered to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts. Settled is the rule that the Supreme Court will not ordinarily interfere with the Ombudsman's exercise of his investigatory and prosecutory powers without good and compelling reasons to indicate otherwise. Said exercise of powers is based upon the constitutional mandate and the court will not interfere in its exercise. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman, but upon practicality as well. Otherwise, innumerable petitions seeking dismissal of investigatory proceedings conducted by the Ombudsman will grievously hamper the functions of the office and the courts, in much the same way that courts will be swamped if they had to review the exercise of discretion on the part of public prosecutors each time they decided to file an information or dismiss a complaint by a private complainant.

In *Presidential Commission on Good Government v. Desierto*,<sup>[7]</sup> we discussed the value of the Ombudsman's independence, thus:

Case law has it that the determination of probable cause against those in public office during a preliminary investigation is a function that belongs to the Office of the Ombudsman. The Ombudsman has the discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not. It is basically his call. He may dismiss the complaint forthwith should he find it to be insufficient in form or substance, or he may proceed with the investigation if, in his view, the complaint is in due and proper form and substance. We have consistently refrained from interfering with the constitutionally mandated investigatory and prosecutorial powers of the Ombudsman. Thus, if the Ombudsman, using professional judgment, finds the case dismissible, the

Court shall respect such findings, unless the exercise of such discretionary powers is tainted by grave abuse of discretion.

The Ombudsman has the full discretion to determine whether or not a criminal case should be filed. Nonetheless, this Court is not precluded from reviewing the Ombudsman's action when there is a charge of grave abuse of discretion. Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.<sup>[8]</sup> An examination of the records would show that the Office of the Ombudsman did not act with grave abuse of discretion, amounting to lack or in excess of jurisdiction, in dismissing the complaint against Balasbas.

Balasbas, as Assistant City Prosecutor, was charged with violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act which provides, thus:

SEC. 3. Corrupt practices of public officers. -- In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x

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

The elements of the offense of violation of Section 3(e) of RA 3019, as amended, are as follows:

- 1) The accused must be a public officer discharging administrative, judicial or official functions;
- 2) He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and
- 3) That his action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.<sup>[9]</sup>

In *Albert v. Sandiganbayan*,<sup>[10]</sup> we discussed the second element, to wit: