

THIRD DIVISION

[G.R. Nos. 212491-92, March 06, 2019]

MARIA SHIELA HUBAHIB TUPAZ, PETITIONER, V. THE OFFICE OF THE DEPUTY OMBUDSMAN FOR THE VISAYAS; ATTY. FERNANDO ABELLA, REGISTER OF DEEDS; AND MACRINA ESPINA, RESPONDENTS.

DECISION

LEONEN, J.:

Public prosecutors must address the different dimensions of complaints raised before them. When they provide well-reasoned resolutions on one (1) dimension, but overlook palpable indications that another crime has been committed, they fail to responsibly discharge the functions entrusted to them. This amounts to an evasion of positive duty, an act of grave abuse of discretion correctible by certiorari.

This resolves a Petition for Certiorari^[1] under Rule 65 of the 1997 Rules of Civil Procedure, praying that the assailed April 23, 2013 Consolidated Evaluation Report^[2] and November 25, 2013 Order^[3] issued in OMB-V-C-13-0098 by public respondent Office of the Deputy Ombudsman for the Visayas be set aside for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

In its assailed Consolidated Evaluation Report, the Office of the Deputy Ombudsman for the Visayas dismissed the Criminal Complaint for falsification (as penalized under Article 171^[4] of the Revised Penal Code) and violation of Section 3(e)^[5] of the Anti-Graft and Corrupt Practices Act, filed by petitioner Maria Shiela Hubahib Tupaz (Tupaz) against private respondents Fernando M. Abella (Atty. Abella), Registrar of Deeds of Catarman, Northern Samar, and Macrina Espina (Macrina), a private individual and the person at whose urging Abella allegedly acted.^[6]

In its assailed Order, the Office of the Deputy Ombudsman for the Visayas denied Tupaz's Motion for Reconsideration.

In her Complaint-Affidavit^[7] (Complaint), Tupaz stated that her mother, Sol Espiña Hubahib (Hubahib), was the registered owner of a 100,691-square meter property in Barangay Rawis, Lao-ang, Northern Samar, covered by Original Certificate of Title No. 15609. Since its issuance in 1971, she added, a duplicate has always been in the possession of their family—initially by Hubahib and, upon her demise, by her heirs.^[8]

On April 17, 2011, Atty. Abella canceled Original Certificate of Title No. 15609 and, in its stead, issued Transfer Certificate of Title Nos. 116-2011000073 and 116-2011000074 in favor of Genaro Espiña (Genaro), represented by his attorney-in-

fact, Macrina.^[9] According to Tupaz, this cancellation was anchored on the following:

1. A document labeled as the owner's duplicate of Original Certificate of Title No. 15609 but which Tupaz argued was "materially and essentially different"^[10] from the copy on file with the Register of Deeds and the genuine owner's duplicate copy in her family's custody;
2. A Certificate Authorizing Registration supposedly issued by the Bureau of Internal Revenue, which indicated that no capital gains tax was paid despite the property being a more than 100,000- square meter commercial land with zonal valuation of P400.00 per square meter as of 2002. The same certificate indicated that only P2,655.00 in documentary stamp taxes and P100.00 for the certification fee were paid;^[11]
3. A 1972 Deed of Conveyance, which was never annotated onto Original Certificate of Title No. 15609, and which had surfaced only in 2011, bearing a forgery of Hubahib's signature;^[12] and
4. A subdivision plan that was made without the participation of or notice to Tupaz or her co-heirs/owners.^[13]

Tupaz maintained that Atty. Abella: (1) issued a spurious owner's duplicate copy of Original Certificate of Title No. 15609;^[14] (2) tolerated the use of an equally spurious Certificate Authorizing Registration and Deed of Conveyance;^[15] and (3) enabled the issuance of specious transfer certificates of titles, with Genaro as beneficiary.^[16] Hence, she filed her Complaint, asserting that Atty. Abella, along with Macrina, were liable for falsification, graft and corrupt practices, misconduct, dishonesty, and conduct prejudicial to the best interest of the service.

Tupaz's Complaint was docketed as OMB-V-C-13-0098 for the criminal aspect concerning falsification and graft and corrupt practices, and OMB-V-A-13-0100 for the administrative aspect concerning misconduct, dishonesty, and conduct prejudicial to the best interest of the service.^[17]

In its assailed April 23, 2013 Consolidated Evaluation Report,^[18] the Office of the Deputy Ombudsman for the Visayas dismissed Tupaz's Complaint for being "premature"^[19] and declined to file criminal informations—both for falsification and graft and corrupt practices—against Atty. Abella and Macrina. It reasoned:

Upon scrutiny of the present complaint, it is found that the issue on the possible criminal liability of the respondents and the administrative liability of respondent ABELLA is closely intertwined with the issue on ownership of the subject property. It hinges on which party has the better right over the lot in question. If the transfer of the title of the property in favor of respondent ESPÍÑA is upheld as valid, the present charges for falsification and dishonesty, etc. against the respondents would have no leg to stand on. Hence, the issue presented before this Office cannot be resolved without first touching on the overarching issue on ownership which is not within our jurisdiction to determine. This

matter should be brought before the proper forum wherein questions regarding the transfer of title can be adjudicated.^[20]

In its assailed November 25, 2013 Order,^[21] the Office of the Deputy Ombudsman for the Visayas denied Tupaz's Motion for Reconsideration. Maintaining that the Complaint was premature, it stated that Tupaz "has the option to again lodge the same complaint as long as the issue on ownership of the subject property has been settled by the proper court."^[22]

Thus, Tupaz filed this Petition for Certiorari^[23] specifically assailing the ruling of the Office of the Deputy Ombudsman for the Visayas on the criminal aspect of her Complaint. While no longer making averments concerning Abella's and Macrina's liability for falsification, she maintains that they must both stand trial for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act.^[24]

For resolution is the issue of whether or not public respondent Office of the Deputy Ombudsman for the Visayas acted with grave abuse of discretion amounting to lack or excess of jurisdiction in not finding probable cause to charge private respondent Fernando M. Abella, along with private respondent Macrina Espiña, with violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act.

This Court grants the Petition.

I

Probable cause for the filing of an information is "a matter which rests on likelihood rather than on certainty. It relies on common sense rather than on 'clear and convincing evidence.'"^[25] In *Ampil v. Office of the Ombudsman*:^[26]

We likewise stress that the determination of probable cause does not require certainty of guilt for a crime. As the term itself implies, probable cause is concerned merely with probability and not absolute or even moral certainty; it is merely based on opinion and reasonable belief. It is sufficient that based on the preliminary investigation conducted, it is believed that the act or omission complained of constitutes the offense charged. Well-settled in jurisprudence, as in *Raro v. Sandiganbayan*, that:

. . . [P]robable cause has been defined as the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.

Probable cause is a reasonable ground for presuming that a matter is or may be well-founded on such state of facts in the prosecutor's mind as would lead a person of ordinary caution and prudence to believe — or entertain an honest or strong suspicion — that it is so.

A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be

based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt.

A finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.

A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.

The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. . . . Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction.^[27] (Citations omitted)

The determination of probable cause is an executive, not a judicial, function. It is generally not for a court to disturb the conclusion made by a public prosecutor. This is grounded on the basic principle of separation of powers. However, "grave abuse of discretion taints a public prosecutor's resolution if he [or she] arbitrarily disregards the jurisprudential parameters of probable cause."^[28] In such cases, consistent with the principle of checks and balances among the three (3) branches of government, a writ of certiorari may be issued to undo the prosecutor's iniquitous determination. In *Lim v. Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices*:^[29]

As a general rule, a public prosecutor's determination of probable cause — that is, one made for the purpose of filing an Information in court — is essentially an executive function and, therefore, generally lies beyond the pale of judicial scrutiny. The exception to this rule is when such determination is tainted with grave abuse of discretion and perforce becomes correctible through the extraordinary writ of certiorari. The rationale behind the general rule rests on the principle of separation of powers, dictating that the determination of probable cause for the purpose of indicting a suspect is properly an executive function, while the exception hinges on the limiting principle of checks and balances, whereby the judiciary, through a special civil action of certiorari, has been tasked by the present Constitution to determine whether or not grave abuse of discretion has been committed amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. It is fundamental that the concept of grave abuse of discretion transcends mere judgmental error as it properly pertains to a jurisdictional aberration. *While defying precise definition, grave abuse of discretion generally refers to a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. Corollarily, the abuse of discretion must be patent and gross so as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law.* To note, the underlying principle behind the courts' power to review a public prosecutor's determination of probable cause is to ensure that the latter acts within the permissible bounds of his authority or does not gravely abuse the same. This manner

of judicial review is a constitutionally-enshrined form of check and balance which underpins the very core of our system of government.^[30] (Emphasis supplied, citation omitted)

Assessing the evidence before them, public prosecutors are vested "with a wide range of discretion, the discretion of whether, what and whom to charge[.]"^[31] As such, "[t]he prosecuting attorney cannot be compelled to file a particular criminal information."^[32]

Public prosecutors are not bound to adhere to a party's apparent determination of the specific crime for which a person shall stand trial. Their discretion "include[s] the right to determine under which laws prosecution will be pursued."^[33] Thus, in *Uy v. People*,^[34] the petitioner's indictment and eventual conviction for estafa was sustained despite his protestations that "the private complainant's demand letter, . . . indicates that the demand was for alleged violation of Batas Pambansa Blg. 22."^[35]

In keeping with the basic precept of judicial non-interference, "not even the Supreme Court can order the prosecution of a person against whom the prosecutor does not find sufficient evidence to support at least a *prima facie* case."^[36] In *People v. Pineda*,^[37] this Court sustained the public prosecutor and issued a writ of certiorari, invalidating the orders of Court of First Instance Judge Hernando Pineda, which compelled the prosecutor to drop four (4) out of the five (5) cases which the prosecutor had filed since, according to Judge Pineda, "the acts complained of 'stemmed out of a series of continuing acts on the part of the accused, not by different and separate sets of shots, moved by one impulse and should therefore be treated as one crime to the series of shots killed more than one victim[.]'"^[38] In ruling against judicial overreach, this Court explained:

3. The impact of respondent Judge's orders is that his judgment is to be substituted for that of the prosecutor's on the matter of what crime is to be filed in court. The question of instituting a criminal charge is one addressed to the sound discretion of the investigating Fiscal. The information he lodges in court must have to be supported by facts brought about by an inquiry made by him. It stands to reason then to say that in a clash of views between the judge who did not investigate and the fiscal who did, or between the fiscal and the offended party or the defendant, those of the Fiscal's should normally prevail. In this regard, he cannot ordinarily be subject to dictation. We are not to be understood as saying that criminal prosecution may not be blocked in exceptional cases. A relief in equity "may be availed of to stop a purported enforcement of criminal law where it is necessary (a) for the orderly administration of justice; (b) to prevent the use of the strong arm of the law in an oppressive and vindictive manner; (c) to avoid multiplicity of actions; (d) to afford adequate protection to constitutional rights; and (e) in proper cases, because the statute relied upon is unconstitutional or was 'held invalid.'" Nothing in the record would as much as intimate that the present case fits into any of the situations just recited.

And at this distance and in the absence of any compelling fact or circumstance, we are loathe to tag the City Fiscal of Iligan City with