

EN BANC

[G.R. Nos. 206438 and 206458, July 31, 2018]

**CESAR MATAS CAGANG, PETITIONER, VS. SANDIGANBAYAN,
FIFTH DIVISION, QUEZON CITY; OFFICE OF THE OMBUDSMAN;
AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

[G.R. Nos. 210141-42]

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FIFTH DIVISION, QUEZON CITY; OFFICE OF THE OMBUDSMAN;
AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

DECISION

LEONEN, J.:

Every accused has the rights to due process and to speedy disposition of cases. Inordinate delay in the resolution and termination of a preliminary investigation will result in the dismissal of the case against the accused. Delay, however, is not determined through mere mathematical reckoning but through the examination of the facts and circumstances surrounding each case. Courts should appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case. Nonetheless, the accused must invoke his or her constitutional rights in a timely manner. The failure to do so could be considered by the courts as a waiver of right.

G.R. Nos. 206438 and 206458 are Petitions for Certiorari with an urgent prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction^[1] assailing the Resolutions dated September 12, 2012^[2] and January 15, 2013^[3] of the Sandiganbayan. The assailed Resolutions denied Cesar Matas Cagang's (Cagang) Motion to Quash/Dismiss with Prayer to Void and Set Aside Order of Arrest in Criminal Case Nos. SB-11-CRM-0456 and SB-11-CRM-0457.

G.R. Nos. 210141-42, on the other hand, refer to a Petition for Certiorari with an urgent prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction^[4] assailing the June 18, 2013 Order^[5] and September 10, 2013 Resolution^[6] of the Sandiganbayan. The assailed Resolutions denied Cagang's Motion to Quash Order of Arrest in Criminal Case Nos. SB-11-CRM-0456 and SB-11-CRM-0457.

Both Petitions question the Sandiganbayan's denial to quash the Informations and Order of Arrest against Cagang despite the Office of the Ombudsman's alleged inordinate delay in the termination of the preliminary investigation.

On February 10, 2003, the Office of the Ombudsman received an anonymous complaint alleging that Amelia May Constantino, Mary Ann Gadian, and Joy Tangan

of the Vice Governor's Office, Sarangani Province committed graft and corruption by diverting public funds given as grants or aid using barangay officials and cooperatives as "dummies." The complaint was docketed as CPL-M-03-0163 and referred to the Commission on Audit for audit investigation. A news report of Sun Star Davao dated August 7, 2003 entitled "*P61M from Sarangani coffers unaccounted*" was also docketed as CPL-M-03-0729 for the conduct of a fact-finding investigation.^[7]

On December 31, 2002, the Commission on Audit submitted its audit report finding that the officials and employees of the Provincial Government of Sarangani appear to have embezzled millions in public funds by sourcing out the funds from grants, aid, and the Countrywide Development Fund of Representative Erwin Chiongbian using dummy cooperatives and people's organizations.^[8] In particular, the Commission on Audit found that:

- (1) There were releases of financial assistance intended for non-governmental organizations/people's organizations and local government units that were fraudulently and illegally made through inexistent local development projects, resulting in a loss of P16,106,613.00;
- (2) Financial assistance was granted to cooperatives whose officials and members were government personnel or relatives of officials of Sarangani, which resulted in the wastage and misuse of government funds amounting to P2,456,481.00;
- (3) There were fraudulent encashment and payment of checks, and frequent travels of the employees of the Vice Governor's Office, which resulted in the incurrence by the province of unnecessary fuel and oil expense amounting to P83,212.34; and
- (4) Inexistent Sagiptaniman projects were set up for farmers affected by calamities, which resulted in wastage and misuse of government funds amounting to P4,000,000.00.^[9]

On September 30, 2003, the Office of the Ombudsman issued a Joint Order terminating Case Nos. CPL-M-03-0163 and CPL-M-03-0729. It concurred with the findings of the Commission on Audit and recommended that a criminal case for Malversation of Public Funds through Falsification of Public Documents and Violation of Section 3(e) of Republic Act No. 3019 be filed against the public officers named by the Commission on Audit in its Summary of Persons that Could be Held Liable on the Irregularities. The list involved 180 accused.^[10] The case was docketed as OMB-M-C-0487-J.

After considering the number of accused involved, its limited resources, and the volumes of case records, the Office of the Ombudsman first had to identify those accused who appeared to be the most responsible, with the intention to later on file separate cases for the others.^[11]

In a Joint Order dated October 29, 2003, the accused were directed to file their counter-affidavits and submit controverting evidence. The complainants were also given time to file their replies to the counter-affidavits. There was delay in the release of the order since the reproduction of the voluminous case record to be furnished to the parties "was subjected to bidding and request of funds from the

Central Office."^[12] Only five (5) sets of reproductions were released on November 20, 2003 while the rest were released only on January 15, 2004.^[13]

All impleaded elective officials and some of the impleaded appointive officials filed a Petition for Prohibition, Mandamus, Injunction with Writ of Preliminary Injunction and Temporary Restraining Order with Branch 28, Regional Trial Court of Alabel, Sarangani. The Regional Trial Court issued a Temporary Restraining Order enjoining the Office of the Ombudsman from enforcing its October 29, 2003 Joint Order.^[14]

In an Order dated December 19, 2003, the Regional Trial Court dismissed the Petition on the ground that the officials had filed another similar Petition with this Court, which this Court had dismissed.^[15] Thus, some of the accused filed their counter-affidavits.^[16]

After what the Office of the Ombudsman referred to as "a considerable period of time," it issued another Order directing the accused who had not yet filed their counter-affidavits to file them within seven (7) days or they will be deemed to have waived their right to present evidence on their behalf.^[17]

In a 293-page Resolution^[18] dated August 11, 2004 in OMB-M-C-0487-J, the Ombudsman found probable cause to charge Governor Miguel D. Escobar, Vice Governor Felipe Constantino, Board Members, and several employees of the Office of the Vice Governor of Sarangani and the Office of the Sangguniang Panlalawigan with Malversation through Falsification of Public Documents and Violation of Section 3(e) of Republic Act No. 3019.^[19] Then Tanodbayan Simeon V. Marcelo (Tanodbayan Marcelo) approved the Resolution, noting that it was modified by his Supplemental Order dated October 18, 2004.^[20]

In the Supplemental Order dated October 18, 2004, Tanodbayan Marcelo ordered the conduct of further fact-finding investigations on some of the other accused in the case. Thus, a preliminary investigation docketed as OMB-M-C-0480-K was conducted on accused Hadji Moner Mangalen (Mangalen) and Umbra Macagcalat (Macagcalat).^[21]

In the meantime, the Office of the Ombudsman filed an Information dated July 12, 2005, charging Miguel Draculan Escobar (Escobar), Margie Purisima Rudes (Rudes), Perla Cabilin Maglinte (Maglinte), Maria Deposo Camanay (Camanay), and Cagang of Malversation of Public Funds thru Falsification of Public Documents.^[22] The Information read:

That on July 17, 2002 or prior subsequent thereto in Sarangani, Philippines, and within the jurisdiction of this Honorable Court, accused Miguel Draculan Escobar, being the Governor of the Province of Sarangani, Margie Purisima Rudes, Board Member, Perla Cabilin Maglinte, Provincial Administrator, Maria Deposo Camanay, Provincial Accountant, and Cesar Matas Cagang, Provincial Treasurer, and all high ranking and accountable public officials of the Provincial Government of Sarangani by reason of their duties, conspiring and confederating with one another, while committing the offense in relation to office, taking advantage of their respective positions, did then and there willfully, unlawfully and

feloniously take, convert and misappropriate the amount of THREE HUNDRED SEVENTY[-]FIVE THOUSAND PESOS (P375,000.00), Philippine Currency, in public funds under their custody, and for which they are accountable, by falsifying or causing to be falsified Disbursement Voucher No. 101-2002-7-10376 and its supporting documents, making it appear that financial assistance has been sought by Amon Lacungam, the alleged President of Kalalong Fishermen's Group of Brgy. Kalaong, Maitum, Sarangani, when in truth and in fact, the accused knew fully well that no financial assistance had been requested by Amon Lacungan and his association, nor did said Amon Lacungan and his association receive the aforementioned amount, thereby facilitating the release of the above-mentioned public funds in the amount of THREE HUNDRED SEVENTY[-]FIVE THOUSAND PESOS (P375,000.00) through the encashment by the accused of Development Bank of the Philippines (DBP) Check No. 11521401 dated July 17, 2002, which amount they subsequently misappropriated to their personal use and benefit, and despite demand, said accused failed to return the said amount to the damage and prejudice of the government and the public interest in the aforesaid sum.

CONTRARY TO LAW.^[23]

The Sandiganbayan docketed the case as Crim. Case No. 28331. Escobar, Maglinte, and Cagang were arraigned on December 6, 2005 where they pleaded not guilty. Rudes and Camanay remained at large.^[24]

On June 17, 2010, the Sandiganbayan rendered a Decision^[25] in Crim. Case No. 28331 acquitting Escobar, Maglinte, and Cagang for insufficiency of evidence. Maglinte, however, was ordered to return P100,000.00 with legal interest to the Province of Sarangani. The cases against Rudes and Camanay were archived until the Sandiganbayan could acquire jurisdiction over their persons.^[26]

In a Memorandum^[27] dated August 8, 2011 addressed to Ombudsman Conchita Carpio Morales (Ombudsman Carpio Morales), Assistant Special Prosecutor III Pilarita T. Lapitan reported that on April 12, 2005, a Resolution^[28] was issued in OMB-M-C-0480-K finding probable cause to charge Mangalen and Macagcalat with Malversation of Public Funds through Falsification and Violation of Section 3(e) of Republic Act No. 3019.^[29] Thus, it prayed for the approval of the attached Informations:

It should be noted that in a Memorandum dated 10 December 2004 and relative to OMB-M-C-03-0487-J from which OMB-M-C-04-0480-K originated, Assistant Special Prosecutor Maria Janina Hidalgo recommended to Ombudsman Marcelo that the status of state witness be conferred upon Gadian. This recommendation was approved by Ombudsman Marcelo on 20 December 2004. Hence, as may be noted[,], Gadian was no longer included as respondent and accused in the Resolution dated 12 April 2005 and the attached Information.

Related cases that originated from OMB-M-C-03-0487-J for which no further preliminary investigation is necessary were filed before the

courts. One of these cases is now docketed as Criminal Case No. 28293 and pending before the Sandiganbayan, First Division. It is noteworthy that in its Order dated 14 November 2006 the Sandiganbayan, First Division granted the Motion to Dismiss of the counsel of Felipe Constantino after having submitted a duly certified true copy of his clients Death Certificate issued by the National Statistics Office. Considering the fact therefore, there is a necessity to drop Constantino as accused in this case and accordingly, revised the attached Information.

An Information for Malversation through Falsification of Public Documents is also submitted for your Honor's approval considering that no such Information is attached to the records of this case.

VIEWED IN THE FOREGOING LIGHT, it is respectfully recommended that, in view of his death, Felipe Constantino no longer be considered as accused in this case and that the attached Informations be approved.^[30]

Ombudsman Carpio Morales approved the recommendation on October 20, 2011.^[31] Thus, on November 17, 2011, Informations^[32] for Violation of Section 3(e) of Republic Act No. 3019 and Malversation of Public Funds through Falsification of Public Documents were filed against Cagang, Camanay, Amelia Carmela Constantino Zoleta (Zoleta), Macagcalat, and Mangalen. The Informations read:

[For Violation of Section 3(e), Republic Act No. 3019]

That on 20 September 2002, or sometime prior or subsequent thereto, in Sarangani, Philippines, and within the jurisdiction of this Honorable Court, accused Provincial Treasurer CESAR MATAS CAGANG, Provincial Accountant MARIA DEPOS CAMANAY, and Executive Assistant to Vice Governor Felipe Katu Constantino, AMELIA CARMELA CONSTANTINO ZOLETA, and then Vice-Governor and now deceased Felipe Katu Constantino, all of the Provincial Government of Sarangani, committing the offense in relation to the performance of their duties and functions, taking advantage of their respective official positions, through manifest partiality, evident bad faith or gross inexcusable negligence, conspiring and confederating with Barangay Captain UMBRA ADAM MACAGCALAT and HADJI MONER MANGALEN, the alleged President and Treasurer, respectively of Kamanga Muslim-Christian Fishermen's Cooperative ("Cooperative"), did then and there willfully, unlawfully and feloniously cause the disbursement of the amount of Three Hundred and Fifty Thousand Pesos (P350,000.00) under SARO No. D-98000987 through Development Bank of the Philippines Check No. 282398 dated 20 September 2002 and with HADJI MONER MANGALEN as payee thereof, by falsifying Disbursement Voucher No. 401-200209-148 dated 20 September 2002 and its supporting documents to make it appear that financial assistance was requested and given to the Cooperative, when in truth and in fact, neither was there a request for financial assistance received by the said Cooperative after the check was encashed, as herein accused, conspiring and confederating with each other, did then and there malverse, embezzle, misappropriate and convert to their own personal use and benefit the said amount of P350,000.00 thereby