

EN BANC

[G.R. Nos. 212593-94, March 15, 2016]

**JESSICA LUCILA G. REYES, PETITIONER, VS. THE HONORABLE
OMBUDSMAN, RESPONDENT.**

[G.R. Nos. 213163-78]

**JESSICA LUCILA G. REYES, PETITIONER, VS. THE HONORABLE
SANDIGANBAYAN (THIRD DIVISION) AND PEOPLE OF THE
PHILIPPINES, RESPONDENTS.**

[G.R. Nos. 213540-41]

**JANET LIM NAPOLES, PETITIONER, VS. CONCHITA CARPIO
MORALES IN HER OFFICIAL CAPACITY AS OMBUDSMAN, PEOPLE
OF THE PHILIPPINES, AND SANDIGANBAYAN, RESPONDENTS.**

[G.R. Nos. 213542-43]

**JO CHRISTINE NAPOLES AND JAMES CHRISTOPHER NAPOLES,
PETITIONERS, VS. CONCHITA CARPIO MORALES, IN HER
CAPACITY AS OMBUDSMAN, PEOPLE OF THE PHILIPPINES, AND
SANDIGANBAYAN, RESPONDENTS.**

[G.R. Nos. 215880-94]

**JO CHRISTINE NAPOLES AND JAMES CHRISTOPHER NAPOLES,
PETITIONERS, VS. SANDIGANBAYAN AND PEOPLE OF THE
PHILIPPINES, RESPONDENTS.**

[G.R. Nos. 213475-76]

**JOHN RAYMUND DE ASIS, PETITIONER, VS. CONCHITA CARPIO
MORALES, IN HER OFFICIAL CAPACITY AS OMBUDSMAN, PEOPLE
OF THE PHILIPPINES, AND SANDIGANBAYAN (THIRD
DIVISION), RESPONDENTS.**

D E C I S I O N

PERLAS-BERNABE, J.:

"In dealing with probable cause[,] as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. The standard of proof is accordingly correlative to what must be proved."^[1]

Before this Court are consolidated^[2] petitions^[3] which commonly assail the Joint Resolution^[4] dated March 28, 2014 and the Joint Order^[5] dated June 4, 2014 of the Office of the Ombudsman (Ombudsman) in OMB-C-C-13-0318 and OMB-C-C-13-0396 finding probable cause for the crimes of Plunder^[6] and/or violation of Section 3 (e) of Republic Act No. (RA) 3019^[7] against petitioners Jessica Lucila "Gigi" G. Reyes (Reyes), Janet Lim Napoles (Janet Napoles), Jo Christine L. Napoles (Jo Christine Napoles) and James Christopher L. Napoles (James Napoles; collectively, the Napoles siblings), and John Raymund De Asis (De Asis), together with several others. Further assailed are: by Reyes,^[8] the Resolution^[9] dated July 3, 2014 of the Sandiganbayan, which directed the issuance of warrants of arrest against her, and several others, as well as the Resolution^[10] dated July 4, 2014 issued by the same tribunal, which denied her Urgent Motion to Suspend the Proceedings;^[11] and by the Napoles siblings,^[12] the Resolution^[13] dated September 29, 2014 and the Resolution^[14] dated November 14, 2014 of the Sandiganbayan, which found the existence of probable cause against them, and several others, and consequently, set their arraignment.

The Facts

Petitioners are all charged as co-conspirators for their respective participations in the anomalous Priority Development Assistance Fund (PDAF) scam, involving, as reported^[15] by whistleblowers Benhur Luy (Luy), Marina Sula (Sula), and Merlina Suñas (Suñas), the illegal utilization and pillaging of public funds sourced from the PDAF of Senator Juan Ponce Enrile (Senator Enrile) for the years 2004 to 2010, in the total amount of P172,834,500.00.^[16] The charges are contained in two (2) complaints, namely: (1) a Complaint^[17] for Plunder filed by the National Bureau of Investigation (NBI) on September 16, 2013, docketed as OMB-C-C-13-0318 (NBI Complaint); and (2) a Complaint^[18] for Plunder and violation of Section 3 (e) of RA 3019 filed by the Field Investigation Office of the Ombudsman (FIO) on November 18, 2013, docketed as OMB-C-C-13-0396 (FIO Complaint). Tersely put, petitioners were charged for the following acts:

(a) Reyes, as Chief of Staff of Senator Enrile during the times material to this case, for fraudulently processing the release of Senator Enrile's illegal PDAF disbursements - through: (1) project identification and cost projection;^[19] (2) preparation and signing of endorsement letters,^[20] project reports,^[21] and pertinent documents addressed to the Department of Budget and Management (DBM) and the Implementing Agencies (IAs);^[22] and (3) endorsement of the preferred JLN^[23]-controlled Non-Government Organizations (NGOs)^[24] to undertake the PDAF-funded project - and for personally^[25] receiving significant portions of the diverted PDAF funds representing Senator Enrile's "share," "commissions," or "kickbacks" therefrom,^[26] as well as her own;^[27]

(b) Janet Napoles, as the alleged mastermind of the entire PDAF scam, for facilitating the illegal utilization, diversion, and disbursement of Senator Enrile's PDAF - through: (1) the commencement via "business propositions"^[28] with the legislator regarding his allocated PDAF;^[29] (2) the creation and operation of the JLN-controlled NGOs purposely to serve as "conduits" of government funds, in this

case, Senator Enrile's PDAF;^[30] (3) the use of spurious receipts and liquidation documents to make it appear that the projects were implemented by her NGOs;^[31] (4) the falsification and machinations used in securing the funds from the IAs and liquidating disbursements;^[32] and (5) the remittance of the PDAF funds to Janet Napoles from her JLN controlled-NGOs to the JLN Corporation^[33] to be misappropriated by her and Senator Enrile;^[34]

(c) the Napoles siblings,^[35] as high ranking officers of the JLN Corporation,^[36] for continuously diverting the sums sourced from Senator Enrile's PDAF to Janet Napoles's control^[37] - through: (1) falsification and forgery of the signatures of the supposed recipients on the Certificates of Acceptance and Delivery Reports, as well as the documents submitted in the liquidation of PDAF funds;^[38] and (2) handling of the PDAF proceeds after being deposited in the accounts of the JLN-controlled NGOs; and^[39]

(d) De Asis, as Janet Napoles's driver, body guard, or messenger,^[40] for assisting in the fraudulent releases of the PDAF funds to the JLN-controlled NGOs and eventually remitting the funds to Janet Napoles's control - through: (1) preparation and use of spurious documents to obtain checks from the IAs;^[41] (2) picking up and receiving^[42] the checks representing the PDAF "commissions" or "kickbacks," and depositing them to bank accounts in the name of the JLN-controlled NGOs concerned;^[43] and (3) withdrawing and delivering the same to their respective recipients^[44] - also, for having been appointed as member/incorporator^[45] and President^[46] of certain JLN-controlled NGOs.

As alleged, the systemic pillaging of Senator Enrile's PDAF commences with Janet Napoles meeting with a legislator - in this case, Senator Enrile himself or through his Chief of Staff, Reyes, or Ruby Tuason (Tuason)^[47] - with the former rendering an offer to "acquire" his PDAF allocation in exchange for a "rebate," "commission," or "kickback" amounting to a certain percentage of the PDAF.^[48] Upon their agreement on the conditions of the "PDAF acquisition," including the "project" for which the PDAF will be utilized, the corresponding IA tasked to "implement" the same, and the legislator's "rebate," "commission," or "kickback" ranging from 40-60% of either the "project" cost or the amount stated in the Special Allotment Release Order (SARO),^[49] the legislator would then write a letter addressed to the Senate President for the immediate release of his PDAF, who in turn, will endorse such request to the DBM for the release of the SARO.^[50] By this time, the initial advance portion of the "commission" would be remitted by Janet Napoles to the legislator.^[51] Upon release of the SARO, Janet Napoles would then direct her staff - including whistleblowers Luy, Sula, and Suñas - to prepare PDAF documents containing, *inter alia*, the preferred JLN-controlled NGO that will be used for the implementation of the "project," the project proposals of the identified NGO, and the indorsement letters to be signed by the legislator and/or his staff, all for the approval of the legislator;^[52] and would remit the remaining portion or balance of the "commission" of the legislator,^[53] which is usually delivered by her staff, De Asis and Ronald John Lim.^[54] Once the documents are approved, the same would be transmitted to the IA which will handle the preparation of the Memorandum of Agreement (MOA) to be

executed by the legislator's office, the IA, and the chosen NGO.^[55] Thereafter, the DBM would release the Notice of Cash Allocation (NCA) to the IA concerned, the head of which, in turn, would expedite the transaction and release of the corresponding check representing the PDAF disbursement, in exchange for a ten percent (10%) share in the project cost.^[56] Among those tasked by Janet Napoles to pick up the checks and deposit them to the bank accounts of the NGO concerned were Luy, Suñas, De Asis, and the Napoles siblings.^[57] Once the funds are in the account of the JLN-controlled NGO, Janet Napoles would then call the bank to facilitate the withdrawal thereof.^[58] Upon withdrawal of the said funds by Janet Napoles's staff, the latter will bring the proceeds to the office of the JLN Corporation where it will be accounted. Janet Napoles will then decide how much will be left in the office and how much will be brought to her residence in Taguig City.^[59] De Asis, Luy, and Suñas were the ones instructed to deliver the money to Janet Napoles's residence.^[60] Finally, to liquidate the disbursements, Janet Napoles and her staff, *i.e.*, the Napoles siblings and De Asis, would manufacture fictitious lists of beneficiaries, liquidation reports, inspection reports, project activity reports, and similar documents that would make it appear that the PDAF-related project was implemented.^[61] Under this *modus operandi*, Senator Enrile, with the help of petitioners, among others, allegedly tunneled his PDAF amounting to around P345,000,000.00^[62] to the JLN-controlled NGOs and, in return, received "rebates," "commissions," or "kickbacks" amounting to at least P172,834,500.00.^[63]

In her defense, Reyes filed her Consolidated Counter-Affidavit^[64] on January 3, 2014, contending that the letters and documents which she purportedly signed in connection with the allocation of the PDAF of Senator Enrile were all forged, and that none of the three (3) witnesses - Luy, Suñas, and Nova Kay B. Macalintal - who mentioned her name in their respective affidavits, directly and positively declared that she received money from the PDAF in question.^[65]

For their part, the Napoles siblings filed their Joint Counter-Affidavit^[66] on February 24, 2014, opposing their inclusion as respondents in the FIO Complaint. They claimed that the said Complaint: (a) is insufficient in form and substance as it failed to state in unequivocal terms the specific acts of their involvement in the commission of the offenses charged, as required in Section 6, Rule 110 of the 2000 Rules of Criminal Procedure;^[67] and (b) failed to allege and substantiate the elements of the crime of Plunder and violation of Section 3 (e) of RA 3019.^[68] They likewise argued that the affidavits and statements of the whistleblowers contain nothing more than mere hearsay and self-serving declarations, which are, therefore, inadmissible evidence unworthy of credence.^[69]

On the other hand, while De Asis admitted^[70] that he was an employee of the JLN Corporation from 2006-2010 in various capacities as driver, bodyguard or messenger, and that he received a salary of P10,000.00 a month for serving as the personal driver and "errand boy" of Janet Napoles, he denied the allegations against him, and maintained that he was merely following instructions from Janet Napoles when he picked-up checks for the JLN-controlled NGOs; that he had no knowledge in setting up or managing the corporations which he supposedly helped incorporate (namely, *Kaupdanan Para sa Mangunguma* Foundation, Inc. [KPMFI], as President,

[71] and Countrywide Agri and Rural Economic Development Foundation, Inc. [CARED], as Member/Incorporator)[72]; and that he did not personally benefit from the alleged misuse of the PDAF.[73]

Meanwhile, despite due notice, Janet Napoles failed to file her counter-affidavits to the foregoing Complaints. Thus, the Ombudsman considered her to have waived her right to file the same.[74]

While preliminary investigation proceedings were ongoing before the Ombudsman, Tuason, who was likewise charged under OMB-C-C-13-0318 and OMB-C-C-13-0396, surfaced as an additional witness and offered her affidavit[75] implicating Reyes in the PDAF scam. This prompted Reyes to file before the Ombudsman an Omnibus Motion[76] dated March 27, 2014, requesting that: (a) she be furnished copies of: (1) Tuason's affidavit, which supposedly contained vital information that was described by Department of Justice Secretary Leila M. De Lima as "slam dunk evidence";[77] (2) the transcript of the alleged 12-hour clarificatory hearing on February 11, 2014[78] where Tuason was said to have substantiated the allegations in her affidavit; and (3) the additional documents the latter submitted thereat; and (b) she be given a period of time to comment on Tuason's affidavit or to file a supplemental counter-affidavit, if deemed necessary.[79] On even date, the Ombudsman denied[80] Reyes's Omnibus Motion on the ground that "there is no provision under [the said office's Rules of Procedure] which entitles [Reyes] to be furnished filings by the other parties, including the other respondents." [81]

The following day, the Ombudsman issued the assailed 144-page Joint Resolution[82] dated March 28, 2014 finding probable cause against, *inter alia*, Reyes, Janet Napoles, and De Asis of one (1) count of Plunder, and against Reyes, Janet Napoles, De Asis, and the Napoles siblings for fifteen (15) counts of violation of Section 3 (e) of RA 3019. Accordingly, separate motions for reconsideration were timely filed by Reyes,[83] Janet Napoles,[84] the Napoles siblings,[85] and De Asis. [86]

Pending the resolution of the aforesaid motions, the Ombudsman issued a Joint Order[87] dated May 7, 2014 granting Reyes's request for copies of the respective Counter-Affidavits of Tuason and Dennis Cunanan (Cunanan), and directing her to file a comment thereon. Among the documents allegedly attached to the said Joint Order were copies of the Supplemental Sworn Statement[88] of Tuason dated February 21, 2014 and the Sworn Statement[89] of Cunanan dated February 20, 2014,[90] to which Reyes submitted separate Comments[91] on May 13, 2014. However, Tuason's earlier Sworn Statement dated February 4, 2014[92] and the transcripts of the clarificatory hearing[93] - both of which were requested by Reyes - were not included. Hence, Reyes filed another Motion[94] on May 9, 2014 requesting copies of said documents. Subsequently, on May 13, 2014, she filed a Reiterative Motion[95] for the same purpose. The Ombudsman denied the aforesaid motions on the ground that "the Affidavit dated 4 February 2014 does not form part of the records of the preliminary investigation and neither was [it] mentioned/referred to in the Joint Resolution dated 28 March 2014." [96] It was further stated that the