

## EN BANC

[ G.R. Nos. 212140-41, January 21, 2015 ]

**SENATOR JINGGOY EJERCITO ESTRADA, PETITIONER, VS.  
BERSAMIN, OFFICE OF THE OMBUDSMAN, FIELD  
INVESTIGATION OFFICE, OFFICE OF THE OMBUDSMAN,  
NATIONAL BUREAU OF INVESTIGATION AND ATTY. LEVITO D.  
BALIGOD, RESPONDENTS.**

### D E C I S I O N

**CARPIO, J.:**

It is a fundamental principle that the accused in a preliminary investigation has no right to cross-examine the witnesses which the complainant may present. **Section 3, Rule 112 of the Rules of Court expressly provides that the respondent shall only have the right to submit a counter-affidavit, to examine all other evidence submitted by the complainant** and, where the fiscal sets a hearing to propound clarificatory questions to the parties or their witnesses, to be afforded an opportunity to be present but without the right to examine or cross-examine.

- *Paderanga v. Drilon*<sup>[1]</sup>

This case is a Petition for Certiorari<sup>[2]</sup> with prayer for (1) the issuance of a temporary restraining order and/or Writ of Preliminary Injunction enjoining respondents Office of the Ombudsman (Ombudsman), Field Investigation Office (FIO) of the Ombudsman, National Bureau of Investigation (NBI), and Atty. Levito D. Baligod (Atty. Baligod) (collectively, respondents), from conducting further proceedings in OMB-C-C-13-03013 and OMB-C-C-13-0397 until the present Petition has been resolved with finality; and (2) this Court's declaration that petitioner Senator Jinggoy Ejercito Estrada (Sen. Estrada) was denied due process of law, and that the Order of the Ombudsman dated 27 March 2014 and the proceedings in OMB-C-C-13-03013 and OMB-C-C-13-0397 subsequent to and affected by the issuance of the challenged 27 March 2014 Order are void.

OMB-C-C-13-0313,<sup>[3]</sup> entitled *National Bureau of Investigation and Atty. Levito D. Baligod v. Jose "Jinggoy" P. Ejercito Estrada, et al.*, refers to the complaint for Plunder as defined under Republic Act (RA) No. 7080, while OMB-C-C-13-0397,<sup>[4]</sup> entitled *Field Investigation Office, Office of the Ombudsman v. Jose "Jinggoy" P. Ejercito-Estrada, et al.*, refers to the complaint for Plunder as defined under RA No. 7080 and for violation of Section 3(e) of RA No. 3019 (Anti-Graft and Corrupt Practices Act).

### The Facts

On 25 November 2013, the Ombudsman served upon Sen. Estrada a copy of the complaint in OMB-C-C-13-0313, filed by the NBI and Atty. Baligod, which prayed, among others, that criminal proceedings for Plunder as defined in RA No. 7080 be conducted against Sen. Estrada. Sen. Estrada filed his counter-affidavit in OMB-C-C-13-0313 on 9 January 2014.

On 3 December 2013, the Ombudsman served upon Sen. Estrada a copy of the complaint in OMB-C-C-13-0397, filed by the FIO of the Ombudsman, which prayed, among others, that criminal proceedings for Plunder, as defined in RA No. 7080, and for violation of Section 3(e) of RA No. 3019, be conducted against Sen. Estrada. Sen. Estrada filed his counter-affidavit in OMB-C-C-13-0397 on 16 January 2014.

Eighteen of Sen. Estrada's co-respondents in the two complaints filed their counter-affidavits between 9 December 2013 and 14 March 2014.<sup>[5]</sup>

On 20 March 2014, Sen. Estrada filed his *Request to be Furnished with Copies of Counter-Affidavits of the Other Respondents, Affidavits of New Witnesses and Other Filings* (Request) in OMB-C-C-13-0313. In his Request, Sen. Estrada asked for copies of the following documents:

- (a) Affidavit of [co-respondent] Ruby Tuason (Tuason);
- (b) Affidavit of [co-respondent] Dennis L. Cunanan (Cunanan);
- (c) Counter-Affidavit of [co-respondent] Godelina G. Amata (Amata);
- (d) Counter-Affidavit of [co-respondent] Mario L. Relampagos (Relampagos);
- (e) Consolidated Reply of complainant NBI, if one had been filed; and
- (f) Affidavits/Counter-Affidavits/Pleadings/Filings filed by all the other respondents and/or additional witnesses for the Complainants.<sup>[6]</sup>

Sen. Estrada's request was made "[p]ursuant to the right of a respondent '**to examine the evidence submitted by the complainant** which he may not have been furnished' (Section 3[b], Rule 112 of the Rules of Court) and to '**have access to the evidence on record**' (Section 4[c], Rule II of the Rules of Procedure of the Office of the Ombudsman)."<sup>[7]</sup>

On 27 March 2014, the Ombudsman issued the assailed Order in OMB-C-C-13-0313. The pertinent portions of the assailed Order read:

This Office finds however finds [sic] that the foregoing provisions [pertaining to Section 3[b], Rule 112 of the Rules of Court and Section 4[c], Rule II of the Rules of Procedure of the Office of the Ombudsman] do not entitle respondent [Sen. Estrada] to be furnished all the filings of the respondents.

Rule 112 (3) (a) & (c) of the Rules of Court provides [sic]:

- (a) The **complaint** shall state the address of the respondent and shall be **accompanied by the affidavits of the complainant and his witnesses**, as well as other supporting

documents to establish probable cause ...

xxx xxx xxx

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the **respondent shall submit his counter-affidavit** and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with **copies thereof furnished by him to the complainant.**

Further to quote the rule in furnishing copies of affidavits to parties under the Rules of Procedure of the Office of the Ombudsman [Section 4 of Rule II of Administrative Order No. 07 issued on April 10, 1990]:

a) If the complaint is not under oath or is based only on official reports, the investigating officer shall require the **complainant or supporting witnesses to execute affidavits** to substantiate the complaints.

b) After ***such affidavits*** have been secured, the investigating officer shall issue an order, attaching thereto a **copy of the affidavits and other supporting documents**, directing the respondents to submit, within ten (10) days from receipt thereof, his counter-affidavits and controverting evidence with **proof of service thereof on the complainant.** The complainant may file reply affidavits within ten (10) days after service of the counter-affidavits.

It can be gleaned from these aforecited provisions that this Office is required to furnish [Sen. Estrada] a copy of the Complaint and its supporting affidavits and documents; and this Office complied with this requirement when it furnished [Sen. Estrada] with the foregoing documents attached to the Orders to File Counter-Affidavit dated 19 November 2013 and 25 November 2013.

It is to be noted that there is no provision under this Office's Rules of Procedure which entitles respondent to be furnished all the filings by the other parties, e.g. the respondents. Ruby Tuason, Dennis Cunanan, Godelina G. Amata and Mario L. Relampagos themselves are all respondents in these cases. Under the Rules of Court as well as the Rules of Procedure of the Office of the Ombudsman, the respondents are **only required to furnish** their counter-affidavits and controverting evidence **to the complainant**, and **not** to the other respondents.

To reiterate, the rights of respondent [Sen.] Estrada in the conduct of the preliminary investigation depend on the rights granted to him by law and these cannot be based on whatever rights he believes [that] he is entitled to or those that may be derived from the phrase "due process of law."

Thus, this Office cannot grant his motion to be furnished with copies of all the filings by the other parties. Nevertheless, he should be furnished a copy of the Reply of complainant NBI as he is entitled thereto under the rules; however, as of this date, no Reply has been filed by complainant NBI.

**WHEREFORE**, respondent [Sen.] Estrada's *Request to be Furnished with Copies of Counter-Affidavits of the Other Respondents, Affidavits of New Witnesses and Other Filings* is **DENIED**. He is nevertheless entitled to be furnished a copy of the Reply if complainant opts to file such pleading.<sup>[8]</sup> (Emphases in the original)

On 28 March 2014, the Ombudsman issued in OMB-C-C-13-0313 and OMB-C-C-13-0397 a Joint Resolution<sup>[9]</sup> which found probable cause to indict Sen. Estrada and his co-respondents with one count of plunder and 11 counts of violation of Section 3(e) of RA No. 3019. Sen. Estrada filed a Motion for Reconsideration (of the Joint Resolution dated 28 March 2014) dated 7 April 2014. Sen. Estrada prayed for the issuance of a new resolution dismissing the charges against him.

**Without filing a Motion for Reconsideration of the Ombudsman's 27 March 2014 Order denying his Request**, Sen. Estrada filed the present Petition for Certiorari under Rule 65 and sought to annul and set aside the 27 March 2014 Order.

### **THE ARGUMENTS**

Sen. Estrada raised the following grounds in his Petition:

THE OFFICE OF THE OMBUDSMAN, IN ISSUING THE CHALLENGED ORDER DATED 27 MARCH 2014, ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION AND VIOLATED SEN. ESTRADA'S CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW.<sup>[10]</sup>

Sen. Estrada also claimed that under the circumstances, he has "no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, except through this Petition."<sup>[11]</sup> Sen. Estrada applied for the issuance of a temporary restraining order and/or writ of preliminary injunction to restrain public respondents from conducting further proceedings in OMB-C-C-13-0313 and OMB-C-C-13-0397. Finally, Sen. Estrada asked for a judgment declaring that (a) he has been denied due process of law, and as a consequence thereof, (b) the Order dated 27 March 2014, as well as the proceedings in OMB-C-C-13-0313 and OMB-C-C-13-0397 subsequent to and affected by the issuance of the 27 March 2014 Order, are void.<sup>[12]</sup>

**On the same date, 7 May 2014, the Ombudsman issued in OMB-C-C-13-0313 and OMB-C-C-13-0397 a Joint Order furnishing Sen. Estrada with the counter-affidavits of Tuason, Cunanan, Amata, Relampagos, Francisco Figura, Gregoria Buenaventura, and Alexis Sevidal, and directing him to comment thereon within a non-extendible period of five days from receipt of the order.**

On 12 May 2014, Sen. Estrada filed before the Ombudsman a motion to suspend proceedings in OMB-C-C-13-0313 and OMB-C-C-13-0397 because the denial of his Request to be furnished copies of counter-affidavits of his co-respondents deprived him of his right to procedural due process, and he has filed the present Petition before this Court. The Ombudsman denied Sen. Estrada's motion to suspend in an Order dated 15 May 2014. Sen. Estrada filed a motion for reconsideration of the Order dated 15 May 2014 but his motion was denied in an Order dated 3 June 2014.

**As of 2 June 2014, the date of filing of the Ombudsman's Comment to the present Petition, Sen. Estrada had not filed a comment on the counter-affidavits furnished to him.** On 4 June 2014, the Ombudsman issued a Joint Order in OMB-C-C-13-0313 and OMB-C-C-13-0397 denying, among other motions filed by the other respondents, Sen. Estrada's motion for reconsideration dated 7 April 2014. The pertinent portion of the 4 June 2014 Joint Order stated:

While it is true that Senator Estrada's request for copies of Tuason, Cunanan, Amata, Relampagos, Figura, Buenaventura and Sevidal's affidavits was denied by Order dated 27 March 2014 and *before* the promulgation of the assailed Joint Resolution, this Office thereafter re-evaluated the request and granted it by Order dated 7 May 2014 granting his request. Copies of the requested counter-affidavits were appended to the copy of the Order dated 7 May 2014 transmitted to Senator Estrada through counsel.

**This Office, in fact, held in abeyance the disposition of the motions for reconsideration in this proceeding in light of its grant to Senator Estrada a period of five days from receipt of the 7 May 2014 Order to formally respond to the above-named co-respondents' claims.**

In view of the foregoing, this Office fails to see how Senator Estrada was deprived of his right to procedural due process.<sup>[13]</sup> (Emphasis supplied)

On 2 June 2014, the Ombudsman, the FIO, and the NBI (collectively, public respondents), through the Office of the Solicitor General, filed their Comment to the present Petition. The public respondents argued that:

I. PETITIONER [SEN. ESTRADA] WAS NOT DENIED DUE PROCESS OF LAW.

II. THE PETITION FOR *CERTIORARI* IS PROCEDURALLY INFIRM.

A. *LITIS PENDENTIA* EXISTS IN THIS CASE.

B. PETITIONER HAS A PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW.

III. PETITIONER IS NOT ENTITLED TO A WRIT OF PRELIMINARY INJUNCTION AND/OR TEMPORARY RESTRAINING ORDER.<sup>[14]</sup>

On 6 June 2014, Atty. Baligod filed his Comment to the present Petition. Atty. Baligod stated that Sen. Estrada's resort to a Petition for Certiorari under Rule 65 is improper. Sen. Estrada should have either filed a motion for reconsideration of the