

## SECOND DIVISION

[ G.R. No. 172637, April 22, 2015 ]

**OFFICE OF THE OMBUDSMAN-VISA YAS AND EMILY ROSE KO  
LIM CHAO, PETITIONERS, VS. MARY ANN T. CASTRO,  
RESPONDENT.**

### DECISION

**BRION, J.:**

Before us is a petition for review on *certiorari* filed by petitioner Office of the Ombudsman-Visayas (*Ombudsman*) against respondent Assistant City Prosecutor Mary Ann T. Castro (*respondent*), assailing the decision<sup>[1]</sup> and resolution<sup>[2]</sup> of the Court of Appeals (CA) dated February 13, 2006 and May 2, 2006, respectively, in CA-G.R. SP No. 78933.

### BACKGROUND FACTS

Sometime in 2001, Mariven Castro (*Mariven*) purchased on credit a Fuso Canter vehicle from KD Surplus. Mariven executed a promissory note, and then issued six (6) post-dated checks to KD Surplus. The checks were dishonored by the drawee bank for insufficiency of funds when presented for encashment. Mariven inquired from Emily Rose Ko Lim Chao (*Emily*), the owner-manager of KD Surplus, if it was still possible to just return the vehicle in exchange for the issued checks.<sup>[3]</sup>

At around 2:00 p.m. on September 16, 2002, Mariven's wife, Rosefil Castro (*Rosefil*), accompanied by his (Mariven's) sister, herein respondent, brought the Fuso Canter to KD Surplus' yard for appraisal and evaluation. Emily inspected the vehicle and found out that it had a defective engine, as well as a rusty and dilapidated body. Emily thus refused to accept the vehicle.

Rosefil requested the security on duty, Mercedito Guia (*Guia*), to register in the company's security logbook the fact of entry of the motor vehicle in the premises of KD Surplus. Guia refused to do so as it was already past 5:00 p.m. Upon the prodding of Rosefil, Guia inserted an entry on the upper right portion of the logbook's entry page for the date September 16, 2002, stating that the vehicle had been "checked-in" on that day. This entry was signed by Rosefil.

The respondent then left the premises of KD Surplus, but returned there a few moments later on board a Philippine National Police-Special Weapons and Tactics (PNP-SWAT) vehicle. The respondent signed on the inserted entry in the logbook as a witness, and then brought this logbook outside of KD Surplus' premises. The respondent again left KD Surplus in order to photocopy the logbook. She returned on board the PNP-SWAT vehicle after 30 minutes, and handed the logbook to the security guard. The respondent also asked Emily to sign a yellow pad paper containing a list of the issued checks, and told her to return these checks. When

Emily refused, the respondent threatened to file cases against Emily; the respondent also threatened Emily's staff with lawsuits if they will not testify in her favor.

On September 26, 2002, Emily filed an administrative complaint for violation of Republic Act No. 6713 (the Code of Conduct and Ethical Standards for Public Officials and Employees) against the respondent before the Office of the Ombudsman (Visayas). The case was docketed as OMB-V-A-0508-1.

The respondent essentially countered that the case Emily filed was a harassment suit. She further maintained that the police arrived at the premises of KD Surplus ahead of her.

### ***The Ombudsman's Rulings***

In its decision<sup>[4]</sup> dated May 6, 2003, the Ombudsman found the respondent guilty of conduct prejudicial to the best interest of the service, and imposed on her the penalty of "three (3) months suspension from the service without pay." The Ombudsman held that the respondent's act of summoning the PNP-SWAT to go with her to KD Surplus, and riding on their vehicle, overstepped the conventions of good behavior which every public official ought to project so as to preserve the integrity of public service. It added that the respondent had encouraged a wrong perception that she was a "dispenser of undue patronage."<sup>[5]</sup> The Ombudsman reasoned out as follows:

To our mind, the presence of SWAT in the vicinity was totally uncalled for as there were neither serious nor even a slight indication of an imminent danger which would justify their presence. Verily, we cannot string along with the complainant's attempt to justify her aforesaid act as an act of prudence because it is very clear that her recourse to the military by calling some members of the SWAT PNP to go with her to complainant's shop was a display of overbearingness and a show of haughtiness. Certainly, respondent cannot deny that if she were not Asst. City Prosecutor Mary Ann Castro, it would be impossible for her to get in a snap of a finger the services of this elite police team whose assistance she availed not for a legitimate purpose but for her personal aggrandizement. Her power and influence as a public official had indeed come into play which she had abused by not using it properly. Hence, we cannot make any other conclusion except that the presence of the SWAT was purposely intended to brag of her clout in the military to possibly bring about fears and apprehension on the part of complainant and the latter's employees.<sup>[6]</sup>

The respondent moved to reconsider this decision, but the Ombudsman denied her motion in its Order<sup>[7]</sup> dated July 14, 2003.

### ***Proceedings before the CA***

The respondent filed a petition for review before the CA challenging the May 6, 2003 decision and July 14, 2003 order of the Ombudsman. In its February 13, 2006

decision, the CA modified the Ombudsman's ruling, and found the respondent liable for simple misconduct only.

The CA held that the Ombudsman's suspension order was not merely recommendatory. It also ruled that the respondent was not denied due process since she submitted a counter-affidavit where she refuted, among others, Emily's claim that she went to the premises of KD Surplus on board a PNP-SWAT vehicle. The CA also held that the respondent was not suspended for her act of calling for police assistance, but for abusing her position as the Assistant City Prosecutor of Cebu City. According to the CA, the respondent used her office's influence, prestige and ascendancy to use the PNP-SWAT for a purely personal matter.

The CA thus found the respondent liable for simple misconduct only, and reduced the penalty of suspension imposed on her to one (1) month and one (1) day. It held that the respondent's acts were not characterized by the elements of corruption, clear intent to violate the law, or flagrant disregard of established rules.

The respondent and the Ombudsman filed their respective motions for reconsideration. In its resolution of May 2, 2006, the CA denied these motions for lack or merit.

### ***The Present Petition and the Respondent's Comment***

In the present petition for review on *certiorari*,<sup>[8]</sup> the Ombudsman essentially argued that the respondent's act of using her office's influence to use the PNP-SWAT for a purely personal matter constitutes conduct prejudicial to the best interest of the service. It argued that the respondent exhibited irresponsibility and corruption, and showed her lack of integrity when she took advantage of her position as Assistant City Prosecutor to summon the assistance of the elite SWAT Team in order to pressure and harass Emily.

In her Comment,<sup>[9]</sup> the respondent countered that she had been denied due process since the act of calling for police assistance was not one of the specific acts cited in Emily's complaint as constituting abuse of authority.

### **OUR RULING**

**After due consideration, we modify the assailed CA decision and resolution. We agree with the Ombudsman's ruling that the respondent is guilty of conduct prejudicial to the best interest of the service, but modify the imposed penalty.**

### **No denial of due process**

We clarify at the outset that contrary to the respondent's claim, her act of seeking police assistance and riding on a PNP-SWAT vehicle when she went to the premises of KD Surplus formed part of Emily's allegations. In Emily's affidavit-complaint, she mentioned that she saw the respondent on board the SWAT vehicle twice: *first*, when the respondent first arrived at the premises of KD Surplus; and *second*, when she returned there after photocopying the company's security logbook.

We emphasize that the respondent refuted these allegations in her counter-affidavit: she admitted that she asked for police assistance while on her way to KD Surplus, but maintained that she was on board a Revo car owned by one Jojo Obera. According to the respondent, she sought police assistance because of a possibility that a trouble might ensue between the parties. The respondent also stated that the police arrived at KD Surplus ahead of her.

To us, the respondent would have found no need to state that: (1) she was on board a Revo vehicle when she went to KD Surplus; (2) point out that the police arrived ahead of her; and (3) explain why she sought the help of the police, if Emily did not allege that she (respondent) was on board a SWAT vehicle when she went to KD Surplus on two occasions.

Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person charged to answer the accusations against him constitute the minimum requirements of due process.

**Due process is simply the opportunity given to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.**

[10]

As earlier stated, the respondent refuted Emily's allegations in her counter-affidavit. The respondent cannot now feign ignorance of the fact that her act of calling for police assistance vis-a-vis riding on board the SWAT vehicle, was not among those included in the charge against her. In addition, the security guard on duty, Guia, stated in his affidavit<sup>[11]</sup> (which was attached to Emily's affidavit-complaint) that the respondent "arrived riding in a SWAT PNP vehicle with Body No. 240, x x x she signed the logbook as a witness on the inserted entry."<sup>[12]</sup> Since these allegations formed part of Emily's affidavit-complaint, the Ombudsman has the power to determine the respondent's administrative liability based on the actual facts recited in this affidavit complaint.

The Court's ruling in *Avenido v. CSC*<sup>[13]</sup> is particularly instructive:

The charge against the respondent in an administrative case need not be drafted with the precision of an information in a criminal prosecution. It is sufficient that he is apprised of the substance of the charge against him; what is controlling is the allegation of the acts complained of, not the designation of the offense.

We reiterate that the mere opportunity to be heard is sufficient. As long as the respondent was given the opportunity to explain his side and present evidence, the requirements of due process are satisfactorily complied with; what the law abhors is an absolute lack of opportunity to be heard.<sup>[14]</sup>

*Notably, when the case was called for a preliminary conference, the respondent opted to submit the case for decision on the basis of the evidence on record.*

**The respondent's liability**