

SECOND DIVISION

[G.R. No. 189801, October 23, 2013]

**OFFICE OF THE OMBUDSMAN (VISAYAS), PETITIONER, VS.
COURT OF APPEALS AND BERMELA A. GABUYA, RESPONDENTS.**

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for *certiorari*^[1] are the Decision^[2] dated March 19, 2009 and Resolution^[3] dated July 31, 2009 of the Court of Appeals, Cebu City (CA) in CA-G.R. SP. No. 03874 which granted respondent Bermela A. Gabuya's (Gabuya) application for the issuance of a writ of preliminary injunction against the implementation of the Decision^[4] dated February 28, 2006 rendered by the Office of the Ombudsman - Visayas (Ombudsman) in OMB-V-A-03-0736-L ordering Gabuya's dismissal from government service.

The Facts

Sometime in December 2003, Angelita Perez-Nengasca (Nengasca) and Teresita Candar-Bracero (Bracero), representing themselves as real estate agents, offered to mortgage to Vicente R. Teo (Teo) for the amount of P500,000.00 a parcel of land purportedly owned by the heirs of Melquiades S. Silva (Silva), covered by Transfer Certificate of Title (TCT) No. T-29438.^[5] However, upon verification with the Registry of Deeds of the Province of Cebu, Teo learned that the said TCT was already cancelled, prompting him to seek the assistance of the National Bureau of Investigation (NBI).^[6]

On December 10, 2003, the NBI set an entrapment operation at Teo's residence. In the process, Mario Padigos (Padigos) who posed as one of the heirs of Silva, and one Gwendolyn A. Bascon (Bascon) were arrested in the act of counting the marked money representing the proceeds of the mortgage. The NBI also accosted Nengasca and Bracero who were stationed outside Teo's house.^[7]

During the investigation, Padigos, Bascon, Nengasca and Bracero confessed that they acted under the instructions of Gabuya. Thus, the NBI hatched a second entrapment operation at the La Fortuna Bakery whereat Gabuya, after receiving from Nengasca a plastic bag with the marked money, was arrested.^[8] At that time, Gabuya was a government employee, holding the position of Administrative Officer II in the Cebu Provincial Detention and Rehabilitation Center. Hence, following her arrest, the NBI filed an administrative complaint against Gabuya for grave misconduct before the Ombudsman, docketed as OMB-V-A-03-0736-L.^[9]

For her part, Gabuya maintained her innocence claiming that: (a) she did not conspire to defraud Teo; (b) Teo never mentioned her in his affidavit;^[10] (c) she

was found negative of yellow fluorescent powder;^[11] (d) Padigos attested that she (Gabuya) had no participation in the conspiracy;^[12] and (e) she cannot be held administratively liable for the subject acts since they are not related to the functions of her office and her apprehension occurred during lunch break.^[13]

The Ombudsman Ruling

In a Decision^[14] dated February 28, 2006 (February 28, 2006 Decision), the Ombudsman found Gabuya guilty of grave misconduct and ordered her dismissal from service with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification from re-employment in the government service.^[15]

On July 18, 2008, Gabuya filed a motion for reconsideration with the Ombudsman.^[16] Pending its resolution, she filed a petition for review with prayer for the issuance of a writ of preliminary injunction^[17] before the CA (CA Petition), docketed as CA-G.R. SP. No. 03874.

The CA Ruling and Subsequent Proceedings

In a Decision^[18] dated March 19, 2009, the CA found that Gabuya has a pending motion for reconsideration of the Ombudsman's February 28, 2006 Decision which was not disclosed in the certificate of non-forum shopping attached to the CA Petition. As such, the CA remanded the case to the Ombudsman so that it may decide the motion with dispatch.^[19]

Nevertheless, the CA granted Gabuya's application for the issuance of a writ preliminary injunction, temporarily enjoining the immediate implementation of her dismissal from service. It cited as basis the Court's Decision dated September 11, 2008 in G.R. No. 175573, entitled *Office of the Ombudsman v. Samaniego*^[20] (2008 *Samaniego* ruling), where it was held that the mere filing of an appeal is sufficient to stay the execution of the Ombudsman's adverse decision involving disciplinary cases.^[21]

Dissatisfied, the Ombudsman filed an Omnibus Motion^[22] dated April 1, 2009 seeking the: (a) reconsideration of the Decision dated March 19, 2009; and (b) lifting of the writ of preliminary injunction. However, said motion was denied by the CA in a Resolution^[23] dated July 31, 2009. Hence, the instant petition.

Meanwhile, acting on a second motion for partial reconsideration in G.R. No. 175573, the Court modified its 2008 *Samaniego* ruling in a Resolution dated October 5, 2010 (2010 *Samaniego* ruling), "particularly [its] pronouncement with respect to the stay of the decision of the Ombudsman during the pendency of an appeal."^[24] The dispositive portion of the 2010 *Samaniego* ruling thus reads:^[25]

WHEREFORE, the second motion for partial reconsideration is hereby GRANTED. **Our decision dated September 11, 2008 is MODIFIED** insofar as it declared that the imposition of the penalty is stayed by the

filing and pendency of CA-G.R. SP No. 89999. **The decision of the Ombudsman is immediately executory pending appeal and may not be stayed by the filing of the appeal or the issuance of an injunctive writ.**

SO ORDERED. (Emphases and underscoring supplied)

The Issue Before the Court

The essential issue in this case is whether or not the CA gravely abused its discretion in: (a) remanding the case to the Ombudsman; and (b) issuing a writ of preliminary injunction notwithstanding such remand.

The Court's Ruling

The petition is partly granted.

The factual circumstances of the case reveal that Gabuya committed forum shopping when she filed a petition for review before the CA, i.e., the CA Petition, seeking to reverse and set aside the Ombudsman's February 28, 2006 Decision dismissing her from service, notwithstanding the pendency before the Ombudsman of her motion for reconsideration of the **same decision** praying for the **same relief**. In relation thereto, she also failed to comply with the requirements of a certificate against forum shopping under Section 5, Rule 7 of the Rules of Court^[26] (certification requirement) since the certificate she attached to the CA Petition did not include a "complete statement of the present status" of the aforesaid motion for reconsideration pending before the Ombudsman. Notably, the act of forum shopping and the violation of the certification requirement – while considered as peculiar procedural infractions – similarly constitute grounds for the dismissal of the case. As explained in *Abbott Laboratories Phils. v. Alcaraz*:^[27]

x x x The distinction between the prohibition against forum shopping and the certification requirement should by now be too elementary to be misunderstood. To reiterate, compliance with the certification against forum shopping is separate from and independent of the avoidance of the act of forum shopping itself. There is a difference in the treatment between failure to comply with the certification requirement and violation of the prohibition against forum shopping not only in terms of impossible sanctions but also in the manner of enforcing them. **The former constitutes sufficient cause for the dismissal without prejudice** [to the filing] of the complaint or initiatory pleading upon motion and after hearing, **while the latter is a ground for summary dismissal thereof** and for direct contempt. x x x. (Emphases supplied)

Despite the foregoing violations, the Court observes that the CA, instead of dismissing the case as would have been warranted under the Rules, opted to remand the same to the Ombudsman for the latter to resolve Gabuya's motion for reconsideration. It must, however, be borne in mind that a remand and a dismissal are distinct procedural concepts and hence should not be confused with one another,