

## THIRD DIVISION

[ G.R. No. 178454, March 28, 2011 ]

**FILIPINA SAMSON, PETITIONER, VS. JULIA A. RESTRIVERA,  
RESPONDENT.**

### DECISION

**VILLARAMA, JR., J.:**

Petitioner Filipina Samson appeals the Decision<sup>[1]</sup> dated October 31, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 83422 and its Resolution<sup>[2]</sup> dated June 8, 2007, denying her motion for reconsideration. The CA affirmed the Ombudsman in finding petitioner guilty of violating Section 4(b)<sup>[3]</sup> of Republic Act (R.A.) No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees.

The facts are as follows:

Petitioner is a government employee, being a department head of the Population Commission with office at the Provincial Capitol, Trece Martirez City, Cavite.

Sometime in March 2001, petitioner agreed to help her friend, respondent Julia A. Restrivera, to have the latter's land located in Carmona, Cavite, registered under the Torrens System. Petitioner said that the expenses would reach P150,000 and accepted P50,000 from respondent to cover the initial expenses for the titling of respondent's land. However, petitioner failed to accomplish her task because it was found out that the land is government property. When petitioner failed to return the P50,000, respondent sued her for *estafa*. Respondent also filed an administrative complaint for grave misconduct or conduct unbecoming a public officer against petitioner before the Office of the Ombudsman.

The Ombudsman found petitioner guilty of violating Section 4(b) of R.A. No. 6713 and suspended her from office for six months without pay. The Ombudsman ruled that petitioner failed to abide by the standard set in Section 4(b) of R.A. No. 6713 and deprived the government of the benefit of committed service when she embarked on her private interest to help respondent secure a certificate of title over the latter's land.<sup>[4]</sup>

Upon motion for reconsideration, the Ombudsman, in an Order<sup>[5]</sup> dated March 15, 2004, reduced the penalty to three months suspension without pay. According to the Ombudsman, petitioner's acceptance of respondent's payment created a perception that petitioner is a fixer. Her act fell short of the standard of personal conduct required by Section 4(b) of R.A. No. 6713 that public officials shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage. The Ombudsman held:

x x x [petitioner] admitted x x x that she indeed received the amount of P50,000.00 from the [respondent] and even contracted Engr. Liberato Patromo, alleged Licensed Geodetic Engineer to do the surveys.

While it may be true that [petitioner] did not actually deal with the other government agencies for the processing of the titles of the subject property, we believe, however, that her mere act in accepting the money from the [respondent] with the assurance that she would work for the issuance of the title is already enough to create a perception that she is a fixer. Section 4(b) of [R.A.] No. 6713 mandates that public officials and employees shall **endeavor to discourage wrong perception** of their roles as dispenser or peddler of undue patronage.

x x x x

x x x [petitioner's] act to x x x restore the amount of [P50,000] was to avoid possible sanctions.

x x x [d]uring the conciliation proceedings held on 19 October 2002 at the barangay level, it was agreed upon by both parties that [petitioner] be given until 28 February 2003 within which to pay the amount of P50,000.00 including interest. If it was true that [petitioner] had available money to pay and had been persistent in returning the amount of [P50,000.00] to the [respondent], she would have easily given the same right at that moment (on 19 October 2002) in the presence of the Barangay Officials.<sup>[6]</sup> x x x. (Stress in the original.)

The CA on appeal affirmed the Ombudsman's Order dated March 19, 2004. The CA ruled that contrary to petitioner's contentions, the Ombudsman has jurisdiction even if the act complained of is a private matter. The CA also ruled that petitioner violated the norms of conduct required of her as a public officer when she demanded and received the amount of P50,000 on the representation that she can secure a title to respondent's property and for failing to return the amount. The CA stressed that Section 4(b) of R.A. No. 6713 requires petitioner to perform and discharge her duties with the highest degree of excellence, professionalism, intelligence and skill, and to endeavor to discourage wrong perceptions of her role as a dispenser and peddler of undue patronage.<sup>[7]</sup>

Hence, this petition which raises the following issues:

1. Does the Ombudsman have jurisdiction over a case involving a private dealing by a government employee or where the act complained of is not related to the performance of official duty?
2. Did the CA commit grave abuse of discretion in finding petitioner administratively liable despite the dismissal of the *estafa* case?
3. Did the CA commit grave abuse of discretion in not imposing a lower penalty in view of mitigating circumstances?<sup>[8]</sup>

Petitioner insists that where the act complained of is not related to the performance of official duty, the Ombudsman has no jurisdiction. Petitioner also imputes grave abuse of discretion on the part of the CA for holding her administratively liable. She points out that the *estafa* case was dismissed upon a finding that she was not guilty of fraud or deceit, hence misconduct cannot be attributed to her. And even assuming that she is guilty of misconduct, she is entitled to the benefit of mitigating circumstances such as the fact that this is the first charge against her in her long years of public service.<sup>[9]</sup>

Respondent counters that the issues raised in the instant petition are the same issues that the CA correctly resolved.<sup>[10]</sup> She also alleges that petitioner failed to observe the mandate that public office is a public trust when she meddled in an affair that belongs to another agency and received an amount for undelivered work.<sup>[11]</sup>

We affirm the CA and Ombudsman that petitioner is administratively liable. We hasten to add, however, that petitioner is guilty of conduct unbecoming a public officer.

On the first issue, we agree with the CA that the Ombudsman has jurisdiction over respondent's complaint against petitioner although the act complained of involves a private deal between them.<sup>[12]</sup> Section 13(1),<sup>[13]</sup> Article XI of the 1987 Constitution states that the Ombudsman can investigate on its own or on complaint by any person **any** act or omission of any public official or employee when such act or omission appears to be illegal, unjust, or improper. Under Section 16<sup>[14]</sup> of R.A. No. 6770, otherwise known as the Ombudsman Act of 1989, the jurisdiction of the Ombudsman encompasses all kinds of malfeasance, misfeasance, and nonfeasance committed by any public officer or employee during his/her tenure. Section 19<sup>[15]</sup> of R.A. No. 6770 also states that the Ombudsman shall act on all complaints relating, but not limited, to acts or omissions which are unfair or irregular. Thus, even if the complaint concerns an act of the public official or employee which is not service-connected, the case is within the jurisdiction of the Ombudsman. The law does not qualify the nature of the illegal act or omission of the public official or employee that the Ombudsman may investigate. It does not require that the act or omission be related to or be connected with or arise from the performance of official duty. Since the law does not distinguish, neither should we.<sup>[16]</sup>

On the second issue, it is wrong for petitioner to say that since the *estafa* case against her was dismissed, she cannot be found administratively liable. It is settled that administrative cases may proceed independently of criminal proceedings, and may continue despite the dismissal of the criminal charges.<sup>[17]</sup>

For proper consideration instead is petitioner's liability under Sec. 4(A)(b) of R.A. No. 6713.

We quote the full text of Section 4 of R.A. No. 6713:

SEC. 4. *Norms of Conduct of Public Officials and Employees.* - (A) Every public official and employee shall observe the following as **standards of**

## **personal conduct in the discharge and execution of official duties:**

(a) *Commitment to public interest.* - Public officials and employees shall always uphold the public interest over and above personal interest. All government resources and powers of their respective offices must be employed and used efficiently, effectively, honestly and economically, particularly to avoid wastage in public funds and revenues.

(b) ***Professionalism.*** - Public officials and employees shall perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill. They shall enter public service with utmost devotion and dedication to duty. **They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage.**

(c) *Justness and sincerity.* - Public officials and employees shall remain true to the people at all times. They must act with justness and sincerity and shall not discriminate against anyone, especially the poor and the underprivileged. They shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest. They shall not dispense or extend undue favors on account of their office to their relatives whether by consanguinity or affinity except with respect to appointments of such relatives to positions considered strictly confidential or as members of their personal staff whose terms are coterminous with theirs.

(d) *Political neutrality.* - Public officials and employees shall provide service to everyone without unfair discrimination and regardless of party affiliation or preference.

(e) *Responsiveness to the public.* - Public officials and employees shall extend prompt, courteous, and adequate service to the public. Unless otherwise provided by law or when required by the public interest, public officials and employees shall provide information on their policies and procedures in clear and understandable language, ensure openness of information, public consultations and hearings whenever appropriate, encourage suggestions, simplify and systematize policy, rules and procedures, avoid red tape and develop an understanding and appreciation of the socioeconomic conditions prevailing in the country, especially in the depressed rural and urban areas.

(f) *Nationalism and patriotism.* - Public officials and employees shall at all times be loyal to the Republic and to the Filipino people, promote the use of locally-produced goods, resources and technology and encourage appreciation and pride of country and people. They shall endeavor to maintain and defend Philippine sovereignty against foreign intrusion.

(g) *Commitment to democracy.* - Public officials and employees shall commit themselves to the democratic way of life and values, maintain the principle of public accountability, and manifest by deed the supremacy of civilian authority over the military. They shall at all times

uphold the Constitution and put loyalty to country above loyalty to persons or party.

(h) *Simple living*. - Public officials and employees and their families shall lead modest lives appropriate to their positions and income. They shall not indulge in extravagant or ostentatious display of wealth in any form.

(B) The Civil Service Commission shall adopt positive measures to promote (1) observance of these standards including the dissemination of information programs and workshops authorizing merit increases beyond regular progression steps, to a limited number of employees recognized by their office colleagues to be outstanding in their observance of ethical standards; and (2) continuing research and experimentation on measures which provide positive motivation to public officials and employees in raising the general level of observance of these standards.

Both the Ombudsman and CA found the petitioner administratively liable for violating Section 4(A)(b) on *professionalism*. "Professionalism" is defined as the conduct, aims, or qualities that characterize or mark a profession. A professional refers to a person who engages in an activity with great competence. Indeed, to call a person a professional is to describe him as competent, efficient, experienced, proficient or polished.<sup>[18]</sup> In the context of Section 4 (A)(b) of R.A. No. 6713, the observance of professionalism also means upholding the integrity of public office by endeavoring "to discourage wrong perception of their roles as dispensers or peddlers of undue patronage." Thus, a public official or employee should avoid any *appearance of impropriety* affecting the integrity of government services. However, it should be noted that Section 4(A) enumerates the standards of personal conduct for public officers with reference to "execution of official duties."

In the case at bar, the Ombudsman concluded that petitioner failed to carry out the standard of professionalism by devoting herself on her personal interest to the detriment of her solemn public duty. The Ombudsman said that petitioner's act deprived the government of her committed service because the generation of a certificate of title was not within her line of public service. In denying petitioner's motion for reconsideration, the Ombudsman said that it would have been sufficient if petitioner just referred the respondent to the persons/officials incharge of the processing of the documents for the issuance of a certificate of title. While it may be true that she did not actually deal with the other government agencies for the processing of the titles of the subject property, petitioner's act of accepting the money from respondent with the assurance that she would work for the issuance of the title is already enough to create a perception that she is a fixer.

On its part, the CA rejected petitioner's argument that an isolated act is insufficient to create those "wrong perceptions" or the "impression of influence peddling." It held that the law enjoins public officers, at all times to respect the rights of others and refrain from doing acts contrary to law, good customs, public order, public policy, public safety and public interest. Thus, it is not the plurality of the acts that is being punished but the commission of the act itself.

Evidently, both the Ombudsman and CA interpreted Section 4(A) of R.A. No. 6713 as broad enough to apply even to private transactions that have no connection to