

THIRD DIVISION

[G.R. No. 158189, April 23, 2010]

**ROBERTO B. KALALO, PETITIONER, VS. OFFICE OF THE
OMBUDSMAN, ERNESTO M. DE CHAVEZ AND MARCELO L.
AGUSTIN, RESPONDENTS.**

D E C I S I O N

PERALTA, J.:

This is a petition for *certiorari* under Rule 65 of the Rules of Court seeking to nullify and/or set aside the Resolution dated May 14, 2002 and the Order dated October 8, 2002 of the Office of the Ombudsman.

The antecedent facts are as follows.

Petitioner Roberto Kalalo, an employee of Pablo Borbon Memorial Institute of Technology (PBMIT), now Batangas State University, filed a Complaint Affidavit^[1] with the Office of the Ombudsman against the officials of the same school, namely: Dr. Ernesto M. De Chavez, President; Dr. Virginia M. Baes, Executive Vice-President; Dr. Rolando L. Lontok, Sr., Vice-President for Academic Affairs; Dr. Porfirio C. Ligaya, Vice-President for Extension Campus Operations; Professor Maximo C. Panganiban, Dean and Campus Administrator, Districts 1 and 2; Dr. Amador M. Lualhati, University Secretary; and Marcelo L. Agustin, Researcher, Office of the BSU President.

According to petitioner, the above-named officials committed falsification of public documents and violations of Sections 3 (a) and (e) of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act, based on the following incidents:

The 129th General Meeting of the Board of Trustees of the PBMIT/BSU transpired on January 21, 1997.

In March 2001, petitioner, who was then the Board Secretary, claimed that he found in his table, a final print of the Minutes^[2] of the above-mentioned General Meeting which was forwarded by respondent Marcelo Agustin upon the order of respondent De Chavez, in order for the petitioner to certify as to its correctness. The fact that the said copy of the Minutes was given to him after a long period of time and other inconsistencies found in the same document, caused suspicion on the part of the petitioner. After conducting his own investigation, petitioner questioned the following three (3) resolutions, which, according to him, were inserted by De Chavez:

- 1) Resolution No. 6, s. 1997, which ratified the referendum dated August 4, 1996 approving the adjustment of charges or fees on the following documents issued by the college: 1) Admission and Testing Fee, 2)

Transcript of Records, 3) Certification, 4) Honorable Dismissal, 5) Diploma, 6) Fine (late enrollees), 7) Library Card, and 8) second copy of Diploma;

2) Resolution No. 25, which relates to the authorizing of the President of PBMIT/BSU to deposit all the income of the college with government depositary banks in the form of savings, time, money placement and other deposit accounts, and to open a PBMIT testing, admission and placement office account;

3) Resolution No. 26, refers to the resolution approving the construction contracts entered into by PBMIT with C.S. Rayos Construction and General Services for the construction of the DOST/FNRI/PBMIT Regional Nutrition and Food Administration and Training Center and the Physical Education and Multi-Purpose Playground. The contract prices for the approved projects were P2,693,642.90 and P968,283.63, respectively.

As claimed by petitioner, the authentic minutes had eight (8) pages, while the falsified one had nine (9) pages. Thus, he concluded that Resolution Nos. 25 and 26 were mere intercalations on the minutes of the annual meeting.

Petitioner also claimed that respondent's deviation from the usual procedure in signing and approving the minutes was highly suspicious. According to petitioner, the usual procedure was for respondent De Chavez, in his capacity as Vice-Chairman, to sign the minutes only after the same has been attested by petitioner as the Board Secretary. However, De Chavez submitted a copy of the minutes to petitioner with his signature already affixed thereon. Thus, petitioner refused to sign the said minutes.

Despite the refusal of petitioner to sign the minutes, Resolution No. 25 was still implemented.

Respondents filed their Joint Counter-Affidavit^[3] denying petitioner's allegations and stating that it was ministerial on the part of respondent De Chavez to sign the minutes prepared by petitioner himself in his capacity as Board Secretary. Petitioner, on the other hand, reiterated and stood by his allegations in his Complainant's Reply to Respondents' Joint Counter-Affidavit^[4] dated April 1, 2002.

In its Resolution^[5] dated May 14, 2002, the Office of the Deputy Ombudsman for Luzon dismissed the complaint of petitioner stating that:

A careful evaluation of the case records and the evidence submitted reveals that the charge of falsification against respondents has no leg to stand on.

What clearly appears on the records was that complainant had issued certifications as to the correctness of the resolutions in question, namely, Resolution Nos. 6, s. 1997; 25 and 26. Readily, it can be said that said certifications did not only dispute complainant's claim, but casts serious doubt as to the merit of the instant complaint as well.

It must be pointed out that complainant assailed the authenticity of the minutes of the 129th General Assembly meeting of the Board of Trustees of PBMIT and accused herein respondent for allegedly inserting/intercalating therein the aforesaid Resolution Nos. 6, 25 and 26.

With the foregoing certifications subscribed by complainant himself confirming the authenticity of the subject resolutions and the contents thereof, we fail to see any grounds for complainant to question the same.

IN THE LIGHT OF THE FOREGOING, it is respectfully recommended that the instant complaint be DISMISSED as it is hereby dismissed.

SO RESOLVED.^[6]

Petitioner filed a Motion for Reconsideration^[7] dated August 16, 2002, which was denied by the Ombudsman in an Order^[8] dated October 8, 2002 for lack of merit.

Hence, the present petition.

Petitioner raises the following arguments:

I

PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN SERIOUSLY MISAPPRECIATING THE FACTS AND ISSUES OF THE INSTANT CASE.

II

PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN ISSUING THE ASSAILED RESOLUTION AND ORDER WITHOUT FACTUAL AND LEGAL BASES.

III

PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN NOT FINDING "PROBABLE CAUSE" AGAINST BOTH PRIVATE RESPONDENTS.^[9]

The petition is bereft of merit.

Petitioner extensively and exhaustively discusses in his petition, the differences between what he claimed to be the falsified Minutes and what he presented as the true and authentic Minutes of the general meeting, and by not subscribing to his own findings, he now comes to this Court alleging that the Office of the Ombudsman gravely abused its discretion which amounted to lack and/or excess of jurisdiction.

A careful reading of his arguments shows that the matters he raised were purely

factual. He claims that the Office of the Ombudsman grievously erred in finding that petitioner had issued certifications as to the correctness of the resolutions in question, namely Resolution Nos. 6, s. 1997; 25 and 26, when, according to petitioner, he positively asserted that the same were signed by mistake or out of sheer inadvertence. He went on to state that the signature on the questioned Minutes was forged and that the one inadvertently signed was the excerpts, not the Minutes. This line of argument has been repeatedly emphasized along with his own findings of falsification.

In alleging the existence of grave abuse of discretion, it is well to remember *Sarigumba v. Sandiganbayan*,^[10] where this Court ruled that:

For grave abuse of discretion to prosper as a ground for *certiorari*, it must first be demonstrated that the lower court or tribunal has exercised its power in an arbitrary and despotic manner, by reason of passion or personal hostility, and it must be patent and gross as would amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law. Grave abuse of discretion is not enough. Excess of jurisdiction signifies that the court, board or office, has jurisdiction over the case but has transcended the same or acted without authority.

After considering all the issues and arguments raised by the parties, this Court finds no clear showing of manifest error or grave abuse of discretion committed by the Office of the Ombudsman.

As a general rule, courts do not interfere with the discretion of the Ombudsman to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts.^[11]

This Court has consistently held that the Ombudsman has discretion to determine whether a criminal case, given its facts and circumstances, should be filed or not. It is basically his call. He may dismiss the complaint forthwith should he find it to be insufficient in form and substance, or should he find it otherwise, to continue with the inquiry; or he may proceed with the investigation if, in his view, the complaint is in due and proper form and substance.^[12]

In the present case, the Office of the Ombudsman did not find probable cause that would warrant the filing of Information against respondents. Probable cause, for purposes of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondents are probably guilty thereof. The determination of its existence lies within the discretion of the prosecuting officers after conducting a preliminary investigation upon complaint of an offended party.^[13] Probable cause is meant such set of facts and circumstances which would lead a reasonably discreet and prudent man to believe that the offense charged in the Information, or any offense included therein, has been committed by the person sought to be arrested. In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. A finding of probable cause needs only to rest on