

SECOND DIVISION

[G.R. No. 172700, July 23, 2010]

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. ROLSON RODRIGUEZ, RESPONDENT.

D E C I S I O N

CARPIO, J.:

The Case

This is a petition for review^[1] of the 8 May 2006 Decision^[2] of the Court of Appeals in CA-G.R. SP No. 00528 setting aside for lack of jurisdiction the 21 September 2004 Decision^[3] of the Ombudsman (Visayas) in OMB-V-A-03-0511-H.

The Antecedent Facts

On 26 August 2003, the Ombudsman in Visayas received a complaint^[4] for abuse of authority, dishonesty, oppression, misconduct in office, and neglect of duty against Rolson Rodriguez, *punong barangay* in Brgy. Sto. Rosario, Binalbagan, Negros Occidental. On 1 September 2003, the *sangguniang bayan* of Binalbagan, Negros Occidental, through vice-mayor Jose G. Yulo, received a similar complaint^[5] against Rodriguez for abuse of authority, dishonesty, oppression, misconduct in office, and neglect of duty.

In its 8 September 2003 notice,^[6] the municipal vice-mayor required Rodriguez to submit his answer within 15 days from receipt of the notice. On 23 September 2003, Rodriguez filed a motion to dismiss^[7] the case filed in the *sangguniang bayan* on the ground that the allegations in the complaint were without factual basis and did not constitute any violation of law. In a compliance^[8] dated 22 October 2003, Rodriguez alleged complainants violated the rule against forum shopping.

Meanwhile, in its 10 September 2003 order,^[9] the Ombudsman required Rodriguez to file his answer. Rodriguez filed on 24 October 2003 a motion to dismiss^[10] the case filed in the Ombudsman on the grounds of *litis pendentia* and forum shopping. He alleged that the *sangguniang bayan* had already acquired jurisdiction over his person as early as 8 September 2003.

The municipal vice-mayor set the case for hearing on 3 October 2003.^[11] Since complainants had no counsel, the hearing was reset to a later date. When the case was called again for hearing, complainants' counsel manifested that complainants would like to withdraw the administrative complaint filed in the *sangguniang bayan*. On 29 October 2003, complainants filed a motion^[12] to withdraw the complaint lodged in the *sangguniang bayan* on the ground that they wanted to prioritize the

complaint filed in the Ombudsman. Rodriguez filed a comment^[13] praying that the complaint be dismissed on the ground of forum shopping, not on the ground complainants stated. In their opposition,^[14] complainants admitted they violated the rule against forum shopping and claimed they filed the complaint in the *sangguniang bayan* without the assistance of counsel. In his 4 November 2003 Resolution,^[15] the municipal vice-mayor dismissed the case filed in the *sangguniang bayan*.

In its 29 January 2004 order,^[16] the Ombudsman directed both parties to file their respective verified position papers. Rodriguez moved for reconsideration of the order citing the pendency of his motion to dismiss.^[17] In its 11 March 2004 order,^[18] the Ombudsman stated that a motion to dismiss was a prohibited pleading under Section 5 (g) Rule III of Administrative Order No. 17. The Ombudsman reiterated its order for Rodriguez to file his position paper.

In his position paper, Rodriguez insisted that the *sangguniang bayan* still continued to exercise jurisdiction over the complaint filed against him. He claimed he had not received any resolution or decision dismissing the complaint filed in the *sangguniang bayan*. In reply,^[19] complainants maintained there was no more complaint pending in the *sangguniang bayan* since the latter had granted their motion to withdraw the complaint. In a rejoinder,^[20] Rodriguez averred that the *sangguniang bayan* resolution dismissing the case filed against him was not valid because only the vice-mayor signed it.

The Ruling of the Ombudsman

In its 21 September 2004 Decision,^[21] the Ombudsman found Rodriguez guilty of dishonesty and oppression. It imposed on Rodriguez the penalty of dismissal from the service with forfeiture of all benefits, disqualification to hold public office, and forfeiture of civil service eligibilities. Rodriguez filed a motion for reconsideration.^[22] In its 12 January 2005 Order,^[23] the Ombudsman denied the motion for reconsideration. In its 8 March 2005 Order,^[24] the Ombudsman directed the mayor of Binalbagan, Negros Occidental to implement the penalty of dismissal against Rodriguez.

Rodriguez filed in the Court of Appeals a petition for review with prayer for the issuance of a temporary restraining order.

The Ruling of the Court of Appeals

In its 8 May 2006 Decision,^[25] the Court of Appeals set aside for lack of jurisdiction the Decision of the Ombudsman and directed the *sangguniang bayan* to proceed with the hearing on the administrative case. The appellate court reasoned that the *sangguniang bayan* had acquired primary jurisdiction over the person of Rodriguez to the exclusion of the Ombudsman. The Court of Appeals relied on Section 4, Rule 46 of the Rules of Court, to wit:

Sec. 4. *Jurisdiction over person of respondent, how acquired.* - The court shall acquire jurisdiction over the person of the respondent by the service

on him of its order or resolution indicating its initial action on the petition or by his voluntary submission to such jurisdiction.

The appellate court noted that the *sangguniang bayan* served on Rodriguez a notice, requiring the latter to file an answer, on 8 September 2003 while the Ombudsman did so two days later or on 10 September 2003.

Petitioner Ombudsman contends that upon the filing of a complaint before a body vested with jurisdiction, that body has taken cognizance of the complaint. Petitioner cites Black's Law Dictionary in defining what "to take cognizance" means to wit, "to acknowledge or exercise jurisdiction." Petitioner points out it had taken cognizance of the complaint against Rodriguez before a similar complaint was filed in the *sangguniang bayan* against the same respondent. Petitioner maintains summons or notices do not operate to vest in the disciplining body jurisdiction over the person of the respondent in an administrative case. Petitioner concludes that consistent with the rule on concurrent jurisdiction, the Ombudsman's exercise of jurisdiction should be to the exclusion of the *sangguniang bayan*.

Private respondent Rolson Rodriguez counters that when a competent body has acquired jurisdiction over a complaint and the person of the respondent, other bodies are excluded from exercising jurisdiction over the same complaint. He cites Article 124 of the Implementing Rules and Regulations of Republic Act No. 7160,^[26] which provides that an elective official may be removed from office by order of the proper court or the disciplining authority whichever first acquires jurisdiction to the exclusion of the other. Private respondent insists the *sangguniang bayan* first acquired jurisdiction over the complaint and his person. He argues jurisdiction over the person of a respondent in an administrative complaint is acquired by the service of summons or other compulsory processes. Private respondent stresses complainants violated the rule against forum shopping when they filed identical complaints in two disciplining authorities exercising concurrent jurisdiction.

The Issues

The issues submitted for resolution are (1) whether complainants violated the rule against forum shopping when they filed in the Ombudsman and the *sangguniang bayan* identical complaints against Rodriguez; and (2) whether it was the *sangguniang bayan* or the Ombudsman that first acquired jurisdiction.

The Court's Ruling

The petition has merit.

Paragraph 1, Section 13 of Article XI of the Constitution provides:

Sec. 13. The Ombudsman shall have the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office, or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.