

## THIRD DIVISION

[ G.R. Nos. 173057-74, September 20, 2010 ]

**BGEN. (RET.) JOSE S. RAMISCAL, JR., PETITIONER, VS. HON. JOSE R. HERNANDEZ, AS JUSTICE OF THE SANDIGANBAYAN; 4TH DIVISION, SANDIGANBAYAN AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### DECISION

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

This is a Petition for *Certiorari* and Prohibition with prayer for the issuance of a Temporary Restraining Order (TRO) seeking to reverse and set aside the Resolution<sup>[1]</sup> dated May 4, 2006 of the Sandiganbayan in Criminal Case Nos. 28022-23 and 25122-45. The assailed Resolution denied petitioner's motions for inhibition,<sup>[2]</sup> which sought to disqualify respondent Justice Jose R. Hernandez, Associate Justice of the Sandiganbayan, Fourth Division, from taking part in said cases.

The facts are as follows:

Petitioner, Retired BGen. Jose S. Ramiscal, Jr., then President of the Armed Forces of the Philippines-Retirement and Separation Benefits System (AFP-RSBS),<sup>[3]</sup> signed several deeds of sale for the acquisition of parcels of land for the development of housing projects and for other concerns. However, it appears that the landowners from whom the AFP-RSBS acquired the lots executed unilateral deeds of sale providing for a lesser consideration apparently to evade the payment of correct taxes. Hence, the Senate Blue Ribbon Committee conducted an extensive investigation in 1998 on the alleged anomaly.

In its Report dated December 23, 1998, the Committee concluded that there were irregularities committed by the officials of the AFP-RSBS and recommended the prosecution of those responsible, including petitioner, who had signed the unregistered deeds of sale as AFP-RSBS President. Accordingly, on January 28, 1999, fourteen (14) informations were filed with the Sandiganbayan against petitioner for violation of Section 3(e)<sup>[4]</sup> of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, and for the crime of *estafa* through falsification of public documents as defined under paragraph 4 of Article 171<sup>[5]</sup> of the Revised Penal Code, as amended.<sup>[6]</sup> The informations charging petitioner with violations of the Anti-Graft and Corrupt Practices Act were docketed as Criminal Case Nos. 25122-25133 while those charging *estafa* through falsification of public documents were docketed as Criminal Case Nos. 25134-25145.

Then, on July 27, 2003, junior officers and enlisted men from elite units of the AFP took over the Oakwood Premier Apartments at Ayala Center in Makati City to air their grievances about graft and corruption in the military. In response to the

incident, President Gloria Macapagal-Arroyo created a Fact-Finding Commission (Feliciano Commission) wherein respondent's wife, Professor Carolina G. Hernandez, was appointed as one of the Commissioners. On October 17, 2003, the Feliciano Commission submitted its Report recommending, among others, the prosecution of petitioner. President Arroyo then issued Executive Order No. 255 on December 5, 2003, creating the Office of a Presidential Adviser under the Office of the President to implement the recommendations of the Feliciano Commission.<sup>[7]</sup> Professor Carolina G. Hernandez was appointed as Presidential Adviser in the newly created office. Shortly thereafter, respondent Justice Hernandez was appointed as Associate Justice of the Sandiganbayan and assigned to its Fourth Division.

On October 11, 2004, eight additional informations were filed with the Sandiganbayan against petitioner. Two were assigned to the Fourth Division of the court, one for violation of R.A. No. 3019, docketed as Criminal Case No. 28022, and the other for *estafa* through falsification of public documents, docketed as Criminal Case No. 28023.

On April 6, 2006, petitioner filed two motions to inhibit Justice Hernandez from taking part in Criminal Case Nos. 25122-45 and Criminal Case Nos. 28022-23 pending before the Fourth Division. Petitioner cited that Justice Hernandez's wife, Professor Hernandez, was a member of the Feliciano Commission and was tasked to implement fully the recommendations of the Senate Blue Ribbon Committee, including his criminal prosecution. Further, the spousal relationship between Justice Hernandez and Professor Hernandez created in his mind impression of partiality and bias, which circumstance constitutes a just and valid ground for his inhibition under the second paragraph of Section 1, Rule 137 of the Rules of Court.

In its Consolidated Comment/Opposition,<sup>[8]</sup> the Office of the Special Prosecutor (OSP) asserted that the grounds raised by petitioner in his motions for inhibition were anchored on mere speculations and conjectures. It stressed that the recommendation of the Feliciano Commission was a product of consensus of the members of the Commission which was a collegial body. And even if Professor Hernandez signed the Report of the Commission to implement the recommendations of the Senate Blue Ribbon Committee, the findings of the said Commission did not remove the presumption of innocence in petitioner's favor. Hence, the OSP argued that the mere membership of Prof. Hernandez in the Feliciano Commission did not automatically disqualify Justice Hernandez from hearing the criminal cases against petitioners.

On May 4, 2006, Justice Hernandez issued the assailed Resolution, the dispositive portion of which reads:

ACCORDINGLY, accused Jose S. Ramiscal's Motions for Inhibition are DENIED.

SO ORDERED.

Petitioner did not seek reconsideration of the Resolution, but instead filed a petition for *certiorari* and prohibition before this Court on the following grounds:

I

THE RESPONDENT HON. JOSE R. HERNANDEZ COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN REFUSING TO INHIBIT HIMSELF FROM THE CASES PENDING BEFORE THE 4<sup>TH</sup> DIVISION AGAINST PETITIONER NOTWITHSTANDING THAT UNDER RULE 137 HE IS DISQUALIFIED TO TRY OR SIT IN JUDGMENT IN THESE CASES;

II

THE RESPONDENT 4<sup>TH</sup> DIVISION OF THE SANDIGANBAYAN IS PROCEEDING TO HEAR THESE CASES WITHOUT OR IN EXCESS OF JURISDICTION AND WITH GRAVE ABUSE OF DISCRETION NOTWITHSTANDING THAT ITS MEMBER, THE RESPONDENT JUSTICE JOSE HERNANDEZ, IS DISQUALIFIED FROM SITTING OR TAKING PART IN ITS PROCEEDINGS; AND,

III

THE HON. JUSTICE HERNANDEZ IS DISQUALIFIED FROM TAKING PART IN SITTING OR HEARING THE CASES AGAINST PETITIONER IN ALL THE CASES PENDING BEFORE ALL THE FIVE (5) DIVISIONS OF THE SANDIGANBAYAN IN CONSEQUENCE OF HIS DISQUALIFICATION UNDER RULE 137.<sup>[9]</sup>

Essentially, the issue is: Did Justice Hernandez commit grave abuse of discretion amounting to lack or excess of jurisdiction in not inhibiting himself from the cases against petitioner pending before the Sandiganbayan?

Petitioner submits that it was erroneous for Justice Hernandez to deny the motions to inhibit himself under the second paragraph of Section 1 of Rule 137 of the Rules of Court, when in fact the basis for his disqualification was the latter's spousal relationship with Professor Hernandez, which situation was governed by the first paragraph of the said section. According to petitioner, while Professor Hernandez was not directly "pecuniarily interested" in the case, she was more than so interested in them because as an appointee of President Arroyo, she was receiving emoluments to monitor the progress of the cases and to see to it that the recommendations of the Feliciano Commission are fulfilled.

We deny the petition.

The rule on inhibition and disqualification of judges is laid down in Section 1, Rule 137 of the Rules of Court:

Section 1. *Disqualification of judges.*--No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law,