

SECOND DIVISION

[G.R. Nos. 172476-99, September 15, 2010]

**BRIG. GEN. (RET.) JOSE RAMISCAL, JR., PETITIONER, VS.
SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES,
RESPONDENTS.**

D E C I S I O N

CARPIO, J.:

The Case

This is a special civil action for certiorari^[1] seeking to annul the 5 April 2006 Resolution^[2] of the *Sandiganbayan* Fourth Division in Criminal Case Nos. 25122-45. The assailed Resolution denied petitioner's motion to set aside his arraignment on 26 February 2006 pending resolution of his motion for reconsideration of the Ombudsman's finding of probable cause against him.

The Facts

Petitioner Jose S. Ramiscal, Jr. was a retired officer of the Armed Forces of the Philippines (AFP), with the rank of Brigadier General, when he served as President of the AFP-Retirement and Separation Benefits System (AFP-RSBS) from 5 April 1994 to 27 July 1998.^[3]

During petitioner's term as president of AFP-RSBS, the Board of Trustees of AFP-RSBS approved the acquisition of 15,020 square meters of land situated in General Santos City for development as housing projects.^[4]

On 1 August 1997, AFP-RSBS, represented by petitioner, and Atty. Nilo J. Flaviano, as attorney-in-fact of the 12 individual vendors,^[5] executed and signed bilateral deeds of sale over the subject property, at the agreed price of P10,500.00 per square meter. Petitioner forthwith caused the payment to the individual vendors of the purchase price of P10,500.00 per square meter of the property.

Subsequently, Flaviano executed and signed unilateral deeds of sale over the same property. The unilateral deeds of sale reflected a purchase price of only P3,000.00 per square meter instead of the actual purchase price of P10,500.00 per square meter. On 24 September 1997, Flaviano presented the unilateral deeds of sale for registration. The unilateral deeds of sale became the basis of the transfer certificates of title issued by the Register of Deeds of General Santos City to AFP-RSBS.^[6]

On 18 December 1997, Luwalhati R. Antonino, the Congresswoman representing the first district of South Cotabato, which includes General Santos City, filed in the Ombudsman a complaint-affidavit^[7] against petitioner, along with 27 other

respondents, for (1) violation of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act; and (2) malversation of public funds or property through falsification of public documents. The case was docketed as Case No. OMB-3-98-0020.

After preliminary investigation, the Ombudsman, in its 20 January 1999 Resolution, [8] found petitioner probably guilty of violation of Section 3(e) of RA 3019 and falsification of public documents, thus:

WHEREFORE, PREMISES CONSIDERED, this Office finds and so holds that the following crimes were committed and that respondents, whose names appear below, are probably guilty thereof:

x x x x

4. JOSE RAMISCAL, JR., WILFREDO PABALAN, NILO FLAVIANO, conspirators for twelve (12) counts of falsification of public documents relative to the twelve (12) unilateral Deeds of Sale;

x x x x

6. JOSE RAMISCAL, JR. WILFREDO PABALAN, and NILO FLAVIANO twelve (12) counts of violation of section 3(e) of RA 3019 for short-changing the government in the correct amount of taxes due for the sale of Lot X to AFP-RSBS; [9]

On 28 January 1999, the Ombudsman filed in the *Sandiganbayan* 12 informations [10] for violation of Section 3(e) of RA 3019 and 12 informations [11] for falsification of public documents against petitioner and several other co-accused.

Petitioner filed his first motion for reconsideration dated 12 February 1999, [12] with a supplemental motion dated 28 May 1999, [13] of the Ombudsman's finding of probable cause against him. In its 11 June 1999 Order, [14] the *Sandiganbayan* disposed of petitioner's first motion for reconsideration, thus:

WHEREFORE, the prosecution is given 60 days from today within which to evaluate its evidence and to do whatever is appropriate on the Motion for Reconsideration dated February 12, 1999 and supplemental motion thereof dated May 28, 1999 of accused Jose Ramiscal and to inform this Court within the said period as to its findings and recommendations together with the action thereon of the Ombudsman.

In a memorandum dated 22 November 2001, the Office of the Special Prosecutor (OMB-OSP) recommended that petitioner be excluded from the informations. On review, the Office of Legal Affairs (OMB-OLA), in a memorandum dated 18 December 2001, recommended the contrary, stressing that petitioner participated in and affixed his signature on the contracts to sell, bilateral deeds of sale, and various agreements, vouchers, and checks for the purchase of the subject property. [15]

The memoranda of OMB-OSP and OMB-OLA were forwarded for comment to the Office of the Ombudsman for Military (OMB-Military). In a memorandum dated 21 August 2002, the OMB-Military adopted the memorandum of OMB-OSP recommending the dropping of petitioner's name from the informations. Acting Ombudsman Margarito Gervacio approved the recommendation of the OMB-Military. However, the recommendation of the OMB-Military was not manifested before the *Sandiganbayan* as a final disposition of petitioner's first motion for reconsideration.

A panel of prosecutors^[16] was tasked to review the records of the case. After thorough review, the panel of prosecutors found that petitioner indeed participated in and affixed his signature on the contracts to sell, bilateral deeds of sale, and various agreements, vouchers, and checks for the purchase of the property at the price of P10,500.00 per square meter. The panel of prosecutors posited that petitioner could not feign ignorance of the execution of the unilateral deeds of sale, which indicated the false purchase price of P3,000.00 per square meter. The panel of prosecutors concluded that probable cause existed for petitioner's continued prosecution. In its 19 December 2005 memorandum,^[17] the panel of prosecutors recommended the following:

WHEREFORE, premises considered, undersigned prosecutors recommend the following:

1. The August 2002 approved Recommendation of the Ombudsman-Military be set aside and **the Motion for Reconsideration filed by Ramiscal (petitioner) be DENIED;**
2. Another information for violation of Section 3(e) of RA 3019 be filed against Ramiscal and all the other accused for causing damage to the government when it caused the payment of the amount of Php 10,500.00 per square meter for the subject lots when the actual amount should only be Php 3,000.00 per square meter.^[18] (Emphasis supplied)

Ombudsman Ma. Merceditas N. Gutierrez approved the recommendation of the panel of prosecutors. Upon receipt of the final findings of the Ombudsman, the *Sandiganbayan* scheduled the arraignment of petitioner.

Meanwhile, on 26 January 2006, petitioner filed his second motion for reconsideration^[19] of the Ombudsman's finding of probable cause against him.

On 26 February 2006, petitioner was arraigned. For his refusal to enter a plea, the *Sandiganbayan* entered in his favor a plea of not guilty. On 9 March 2006, petitioner filed a motion to set aside his arraignment^[20] pending resolution of his second motion for reconsideration of the Ombudsman's finding of probable cause against him.

The Ruling of the *Sandiganbayan*

The *Sandiganbayan* pointed out that petitioner's second motion for reconsideration

of the Ombudsman's finding of probable cause against him was a prohibited pleading. The *Sandiganbayan* explained that whatever defense or evidence petitioner may have should be ventilated in the trial of the case. In its assailed 5 April 2006 Resolution, the *Sandiganbayan* denied for lack of merit petitioner's motion to set aside his arraignment, thus:

WHEREFORE, the Motion to Set Aside Arraignment is hereby DENIED for lack of merit.

SO ORDERED.^[21]

The Issue

Did the *Sandiganbayan* commit grave abuse of discretion when it denied petitioner's motion to set aside his arraignment pending resolution of his second motion for reconsideration of the Ombudsman's finding of probable cause against him?

The Court's Ruling

The petition has no merit.

Petitioner contends that the Ombudsman should have excluded him from the informations. He claims lack of probable cause to indict him considering the prior findings of the Ombudsman recommending the dropping of the cases against him. Petitioner claims that heads of offices have to rely to a reasonable extent on their subordinates and that there should be grounds other than the mere signature appearing on a questioned document to sustain a conspiracy charge.

Respondent *Sandiganbayan* counters that it correctly denied petitioner's motion to set aside his arraignment. Respondent court argues that petitioner's motion for reconsideration, filed on 26 January 2006 and pending with the Ombudsman at the time of his arraignment, violated Section 7, Rule II of the Rules of Procedure of the Office of the Ombudsman, as amended. Respondent court maintains that the memorandum of the panel of prosecutors finding probable cause against petitioner was the final decision of the Ombudsman.

The Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 15, Series of 2001,^[22] sanction the immediate filing of an information in the proper court upon a finding of probable cause, even during the pendency of a motion for reconsideration. Section 7, Rule II of the Rules, as amended, provides:

Section 7. Motion for Reconsideration. -

a) Only one motion for reconsideration or reinvestigation of an approved order or resolution shall be allowed, the same to be filed within five (5) days from notice thereof with the Office of the Ombudsman, or the proper Deputy Ombudsman as the case may be, with corresponding leave of court in cases where the information has already been filed in

court;

b) The filing of a motion for reconsideration/reinvestigation **shall not bar** the filing of the corresponding information in Court on the basis of the finding of probable cause in the resolution subject of the motion. (Emphasis supplied)

If the filing of a motion for reconsideration of the resolution finding probable cause cannot bar the filing of the corresponding information, then neither can it bar the arraignment of the accused, which in the normal course of criminal procedure logically follows the filing of the information.

An arraignment is that stage where, in the mode and manner required by the Rules, an accused, for the first time, is granted the opportunity to know the precise charge that confronts him. The accused is formally informed of the charges against him, to which he enters a plea of guilty or not guilty.^[23]

Under Section 7 of Republic Act No. 8493,^[24] otherwise known as the Speedy Trial Act of 1998, the court must proceed with the arraignment of an accused within 30 days from the filing of the information or from the date the accused has appeared before the court in which the charge is pending, whichever is later, thus:

*Section 7. Time Limit Between Filing of Information and Arraignment and Between Arraignment and Trial. - **The arraignment of an accused shall be held within thirty (30) days from the filing of the information, or from the date the accused has appeared before the justice, judge or court in which the charge is pending, whichever date last occurs.*** x x x (Emphasis supplied)

Section 1(g), Rule 116 of the Rules of Court, which implements Section 7 of RA 8493, provides:

Section 1. Arraignment and plea; how made. -

(g) Unless a shorter period is provided by special law or Supreme Court circular, **the arraignment shall be held within thirty (30) days from the date the court acquires jurisdiction over the person of the accused.** xxx (Emphasis supplied)

Section 1(g), Rule 116 of the Rules of Court and the last clause of Section 7 of RA 8493 mean the same thing, that the 30-day period shall be counted from the time the court acquires jurisdiction over the person of the accused, which is when the accused appears before the court.

The grounds for suspension of arraignment are provided under Section 11, Rule 116 of the Rules of Court, which applies suppletorily in matters not provided under the Rules of Procedure of the Office of the Ombudsman or the Revised Internal Rules of