

EN BANC

[G.R. No. 179261, April 18, 2008]

THE OMBUDSMAN AND THE COMMISSIONER OF INTERNAL REVENUE, PETITIONERS, VS. BEATRIZ S. PELIÑO, RESPONDENT.

DECISION

YNARES-SATIAGO, J.:

This petition for review on certiorari assails the Decision^[1] of the Court of Appeals dated January 26, 2007 in CA-G.R. SP No. 93409 which made permanent the Writ of Injunction enjoining herein petitioners from enforcing the Order of the Ombudsman dated August 31, 2005 preventively suspending respondent for six (6) months and its Resolution^[2] of July 30, 2007 denying the motion for reconsideration.

On May 11, 2005, the Field Investigation Office (FIO) of the Office of the Ombudsman, as nominal complainant, through its Graft Investigation and Prosecution Officer Maria Olivia Elena A. Roxas, filed a complaint^[3] against respondent Beatriz S. Peliño (PELIÑO) and Joseph Albert Peliño Cuaki (CUAKI) for violation of the following laws:

1. Eighteen (18) counts of perjury under Article 183 of the Revised Penal Code, for not making a true detailed Statement of Assets, Liabilities and Net Worth (SALN);^[4]
2. Republic Act No. 6713 (R.A. No. 6713), § 8 in relation to § 11 thereof, in regard to the filing of SALNs;^[5]
3. Dishonesty and grave misconduct under § 22, paragraphs (a) and (c), Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292, as amended by Civil Service Commission Circular No. 19, series of 1999; and,
4. Republic Act No. 1379 (R.A. 1379), for alleged unexplained wealth.
^[6]

Peliño is the head of the Bureau of Internal Revenue (BIR) Large Taxpayers' Document Processing and Quality Assurance Division, while CUAKI appears on record as PELIÑO's son by one Alfonso D. Cuaki (Alfonso). CUAKI's birth certificate lists Peliño and Alfonso as his parents who were married in Manila on July 16, 1975.

The complaint charges PELIÑO with illegally acquiring and accumulating the following property and investments, as well as incurring expenses and liabilities grossly disproportionate to her income and earning capacity as a government employee, and for not disclosing the same in her annual SALNs:^[7]

1. A house and lot in Pasig City acquired in 1986 (for P800,000.00) was not declared in her 1986-1988 SALNs, but only in her 1989-2003 SALNs;

2. Two (2) lots in Quezon City (Transfer Certificate of Title, or TCT, Nos. 341855 (260 square meters, acquired on March 26, 1986) and 334240 (1,008 square meters, acquired on August 26, 1985) were not declared in her 1986 and 1987 SALNs. These two properties were sold to a certain Dante Gutierrez on April 13, 1988;
3. An 84.5-square meter condominium unit (CCT 5188-R) with 12.5-square meter basement parking lot (CCT 5189-R) in San Juan (acquired for P800,000.00) allegedly bought by CUAKI in 1989 and registered in his name. The deed of sale indicates that CUAKI was of legal age at the time of the execution of the deed, yet he was actually only about three (3) years old on said date. This property was not declared in PELIÑO's 1989-2003 SALNs;
4. A house and lot in Antipolo City worth (i.e. market value) P240,000 and with improvements amounting to P501,125.00, which was not declared in her 1989-2003 SALNs. Records further indicate that a loan with a 20-year payment plan was obtained from the GSIS for the purchase thereof, which loan was fully paid after only 12 years;
5. A three-storey building and lot in Rosario, Cavite worth P788,400.00 acquired in 1992 but which was not declared in her 1992-2003 SALNs;
6. A 578-square meter residential lot in Tanza, Cavite (TCT 408006) acquired in 1993, but not declared in her 1993-2003 SALNs;
7. A 1.58 hectare lot in Naic, Cavite (TCT 874663) acquired in 1994, and not declared in her 1994-2003 SALNs;
8. A 2.09 hectare lot in Naic, Cavite (TCT 874664) acquired in 1994, and not declared in her 1994-2003 SALNs;
9. A 4,475-square meter house and lot in Tagaytay City acquired in 1994, but declared only in her 1999-2002 SALNs. Acquisition cost is P1,000,000.00, while construction cost of the house is P1,251,961.08;
10. A 2.48 hectare agricultural land in Tanza, Cavite (TCT 871630) acquired in 1999, but not disclosed in her 1999-2003 SALNs;
11. In her 1996 and subsequent SALNs, PELIÑO did not declare her interest as incorporator in Israel Armour Phils., Inc. a marketing company established in 1996 where she has a total of P500,000.00 paid up capital contribution;
12. A 2002 model Isuzu Fuego vehicle (plate number XEW 396) acquired in 2002 for P740,000.00 but not declared in her SALN;
13. A 2004 model Toyota RAV 4 vehicle worth P1,101,000.00 acquired for cash in the name of CUAKI, who was only nineteen (19) years old then. Moreover, a certification from the BIR shows that from 1993-2003, CUAKI did not file an income tax return, indicating that during that time he did not have any source of income to be able to afford the said vehicle;
14. PELIÑO's 2000-2002 SALNs discloses a P800,000.00 loan liability, which was reduced substantially to P200,000.00 in her 2003 SALN. Meanwhile, in her 2003 SALN, PELIÑO's cash in bank increased from P100,000.00 to P108,240.50 only. Thus, while her annual salary during 2002 was only P236,874.00, she was able to discharge a P600,000.00 loan liability during that year;
15. Records from the Bureau of Immigration show that respondents frequently traveled abroad (from 1993-2003), for the most part

twice every year (except for the year 2001), to such destinations as Hongkong, Seoul, Bangkok, Osaka, Xiamen, Los Angeles and Taipei. "Conservative estimates" place their total incurred expenses (airfare only) at P528,488.44, which most likely PELIÑO paid considering that CUAKI had no income during those years;

16. When computed, the respondents' total unexplained wealth amounts to approximately P10,891,009.11, which is the difference between their 1986-2004 accumulated wealth of P P13,144,599.71, and P2,253,590.60, which is PELIÑO's total lawful income for that period.

In relation to the charge of dishonesty and grave misconduct, apart from her failure to file true detailed SALNs as required, PELIÑO likewise omitted to declare in her Personal Data Sheet^[8] that she has a son. On the contrary, she claims that she is single. CUAKI's Certificate of Live Birth^[9] shows that PELIÑO and Alfonso are his parents, who were married on July 16, 1975, although subsequent verification would show that no marriage between the two ever took place.^[10] PELIÑO herself is categorical in her claim that she never got married.^[11]

The complaint likewise sought to place PELIÑO under preventive suspension for six (6) months without pay, in accordance with § 24 of the Ombudsman Act of 1989 (Republic Act No. 6770).^[12]

On August 4, 2005, PELIÑO filed a Sworn Explanation detailing her defenses to the accusations against her.

In an Order^[13] dated August 31, 2005, the Ombudsman placed PELIÑO under preventive suspension for a period of six (6) months and directed her to file her counter-affidavit and other controverting evidence. Deputy Ombudsman for Luzon Victor C. Fernandez found that the evidence of guilt is strong that PELIÑO committed acts of dishonesty and grave misconduct which would warrant her removal from office if proved. The dispositive portion thereof states:

WHEREFORE, pursuant to Section 9, Rule III of Administrative Order No. 17, in relation to Section 24 of Republic Act No. 6770, and pending the conduct of appropriate disciplinary proceedings, respondent BEATRIZ SANCHEZ PELIÑO is hereby placed under preventive suspension for six (6) months, effective upon receipt hereof.

The Honorable, the Commissioner, Bureau of Internal Revenue, Agham Road, Diliman, Quezon City is hereby furnished a copy of this Order for its implementation in accordance with law, with the directive to inform this Office of the action taken hereon.

The respondent is hereby directed to file her counter-affidavit and other controverting evidence to the said complaint, copy of which is hereto attached, within TEN (10) DAYS from receipt hereof in three (3) legible copies addressed to this Bureau x x x

SO ORDERED.^[14]

PELIÑO filed an Urgent Motion to Lift Order of Preventive Suspension,^[15] followed by a Supplemental Motion to Lift Order of Preventive Suspension^[16] arguing thus:

1. The accusations against her are based on "conclusory and presumptive facts of unexplained wealth";
2. The complaint did not specify a transaction or transactions from which her alleged "unexplained wealth" was derived;
3. The alleged acts of misconduct do not have a direct relation to the performance of her official duties in the BIR;
4. The basis for the charge against her - unexplained wealth - is a ground for criminal, not administrative, prosecution. Thus, no preventive suspension may be imposed as an incident thereto, since forfeiture proceedings under R.A. 1379 are criminal in nature;
5. The evidence of her guilt is not strong, as the supporting documents do not reflect the true and accurate circumstances surrounding her acquisition of the properties concerned. While there are perjury charges, they constitute a matter for criminal prosecution; suspension in an administrative proceeding is therefore improper;
6. There is no need to suspend her because the reasons that justify its exigency and necessity - tampering with evidence (all of which are already in the possession of the complainant) and influencing of witnesses (there is only one, the complainant graft investigation and prosecution officer) - do not exist. Besides, her superior, Deputy Commissioner Kim S. Jacinto-Henares, had issued a certification^[17] attesting to the necessity of her presence at her office for the required work that must yet be done;
7. She did not have any duty to report the properties registered in CUAKI's name because the latter is not her son, but a mere *de facto* guardian thereof. The law - § 8 of R.A. 6713 - requires disclosure only with respect to spouses and unmarried children under eighteen (18) years of age living with the declarant. To prove that CUAKI is not her son, she presents a sworn doctor's certificate^[18] attesting to the fact that she had had a hysterectomy (specifically, the surgical removal of her uterus) on July 30, 1983, or two years *before* CUAKI was born.
8. To further support her assertion that CUAKI is not her son, she presents the affidavit of one Carmencita Castillo,^[19] the personal secretary of one Henry Go, Vice Chairman of Universal Robina Corporation, attesting to the fact that CUAKI is actually Go's son; that CUAKI was given up for adoption, but received financial support in the aggregate sum of P11,640,000.00 from 1985 up to 2000;
9. Prescinding from the foregoing, all properties registered in CUAKI's name - the condominium unit in San Juan and the Toyota RAV 4 - were obtained from proceeds of the monetary support given by Go to PELIÑO for his alleged son;
10. The other properties - the house and lot in Pasig City (Valle Verde V), house and lot in Tagaytay City, the Isuzu pickup - as well as the foreign travels were all purchased and taken using the money received (from Go) for CUAKI's regular financial support;

11. The other properties - 3-storey building and lot in Rosario, Cavite, residential and agricultural lots in Tanza and Naic, Cavite, investment with Israel Armour Phils., Inc. - are being held by her in trust for the true owners thereof. Thus, there was no need to declare them in her SALN;
12. Based on her detailed explanation as to the factual circumstances regarding the properties subject of the present inquiry, the *prima facie* presumption of illegal accumulation of wealth is controverted.

Meanwhile, or on November 11, 2005, PELIÑO filed her counter-affidavit.^[20] On December 9, 2005, the FIO filed its comment^[21] on the motion to lift the order of preventive suspension and its supplement.

Before her motion to lift order of preventive suspension and the supplemental motion thereto could be resolved, however, PELIÑO elevated the matter to the Court of Appeals *via* a petition for certiorari with application for the issuance of a temporary restraining order and/or writ of preliminary injunction against the petitioners claiming grave abuse of discretion in her being placed under preventive suspension while the charges against her were pending.

The appellate court granted PELIÑO's application for a temporary restraining order. On January 26, 2007, it promulgated the assailed Decision,^[22] the dispositive portion of which reads as follows:

WHEREFORE, the petition is GRANTED. Accordingly, the Writ of Injunction issued on May 19, 2006, ENJOINING the Ombudsman, its agents and representatives, and the Commissioner of Internal Revenue from enforcing or implementing or otherwise giving effect to the Ombudsman's Order, dated August 31, 2005, placing petitioner on preventive suspension for six months, is made PERMANENT.

SO ORDERED.^[23]

Petitioners filed a motion for reconsideration but it was denied hence this petition raising the following issues for resolution:

I

THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION IN NOT DISMISSING THE PETITION FILED WITH IT OUTRIGHTLY BECAUSE OF PREMATURETY.

II

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE WHICH IS NOT IN ACCORD WITH THE LAW AND PREVAILING JURISPRUDENCE.

In the meantime, it appears that on July 25, 2007, shortly after the appellate court rendered its January 26, 2007 Decision, the Ombudsman resumed proceedings and thereafter issued an Order requiring the parties to submit their respective position papers, after which the case shall be deemed submitted for decision. The FIO submitted its verified position paper on August 7, 2007, while PELIÑO submitted hers on September 14, 2007. On this account, respondent now seeks that the present petition be considered moot.