

## THIRD DIVISION

[ G.R. No. 163017, June 18, 2008 ]

**HILARIO P. SORIANO, PETITIONER, VS. OMBUDSMAN SIMEON V. MARCELO, HON. JENNIFER A. AGUSTIN-SE, GRAFT INVESTIGATION OFFICER I, WILFRED L. PASCASIO, GRAFT INVESTIGATION OFFICER II, AND LEONCIA R. DIMAGIBA, RESPONDENTS.**

### DECISION

**AUSTRIA-MARTINEZ, J.:**

This resolves the Petition for *Certiorari* under Rule 65 of the Rules of Court, praying that the Ombudsman Resolution<sup>[1]</sup> dated October 22, 2002, dismissing the complaint against Leoncia R. Dimagiba (Dimagiba), 2<sup>nd</sup> Assistant City Prosecutor of the City Prosecutor, Manila City; and the Order <sup>[2]</sup> dated November 17, 2003, denying petitioner's motion for reconsideration, be reversed and set aside.

The antecedent facts are as follows.

On July 1, 2002, Hilario P. Soriano (petitioner) filed with the Office of the Ombudsman a criminal and administrative complaint against Dimagiba for violation of Section 3(e) of Republic Act (R.A.) No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, alleging that Dimagiba showed manifest partiality thereby giving unwarranted benefits to one Mely Palad against whom petitioner has filed a complaint for falsification of public document before the City Prosecutor's Office, by recommending the reopening of the preliminary investigation of said case.

Petitioner alleged in his affidavit-complaint that the Resolution dated August 27, 2001, submitted by Assistant City Prosecutor Celedonio P. Balasbas, for the filing of a case against Palad was duly recommended for approval by Dimagiba; that she had likewise recommended for approval the Information against Palad; that six months after she signed the said Resolution and Information as reviewing officer, she summarily recommended the reopening of the complaint; and that she anchored the same on "the interest of justice" without saying how the interest of justice could be served by reopening a complaint six months after it had been resolved by the investigating fiscal and duly approved by her.<sup>[3]</sup>

In her Counter-Affidavit dated September 20, 2002, Dimagiba denied petitioner's allegations. Petitioner filed his Reply thereto on October 3, 2002.

Respondent Jennifer A. Agustin-Se (Agustin-Se), Graft Investigation Officer I of the Evaluation and Preliminary Investigation Bureau of the Office of the Ombudsman, submitted the herein assailed Resolution dated October 22, 2002 for approval of the Ombudsman, pertinent portions of which are reproduced hereunder:

Respondent emphasized that in between the period of January 7 and 22, 2002, a Motion to re-open the case was filed by Palad. She claimed that she could not mention the exact date of the filing of said Motion, since the case folder is already with the Department of Justice after a Motion to inhibit Prosecutor Balasbas was filed by complainant, and the Prosecutor to whom the case was subsequently re-raffled inhibited himself. Prosecutor Balasbas was therefore asked to comment on the Motion to Re-Open since that was the standing policy of the office. Hence, the following events transpired thereafter:

February 26, 2002 -	The case folder, together with the comment of Pros. Balasbas on the Motion to re-open was forwarded to respondent's office.
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March 11, 2002 -	The folder with respondent's recommendation was forwarded to the office of the City Prosecutor it being policy in the office that the final action on the motion should be approved by the City Prosecutor.
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March 13, 2002 -	The record was returned to respondent's office with the approval by the City Prosecutor of the recommendation to re-open. The record was in turn remanded to the office of Pros. Balasbas.
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March 22, 2002 -	Mr. Soriano filed a motion for inhibition.
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Respondent also explained that his [sic] recommendation for the re-opening of Palad's case for preliminary investigation was not done to give undue advantage, benefit or preference to the latter because, she does not have any reason to do so. Neither did she know said person nor did she meet her or anybody acting on her behalf. Moreover, the same was intended to pre-empt the possible filing of Palad of a Motion for Reinvestigation, which was often the practice resorted to by a party who

was not able to file a Counter-Affidavit. And in her fifteen (15) years of experience as Prosecutor, she posited that such practice of respondents who failed to submit Counter-Affidavit further delays the disposition of the case. Her recommendation therefore for the re-opening of the case for preliminary investigation is for the purpose of expediting the disposition of the case.

Respondent added that her recommendation to re-open the case was merely a recommendation. It was the approval of the City Prosecutor that made her recommendation operative.

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The question now posed before this Office is whether or not the recommendation of respondent Dimagiba for the re-opening of the case against Palad for preliminary investigation is an act of giving unwarranted benefit to the latter by means of manifest partiality, resulting to violation of Sec. 3(e) of Republic Act 3019, as amended.

In the case of *Marcelo vs. Sandiganbayan*, (185 SCRA 346), manifest partiality is described as a clear, notorious, as plain inclination or predilection [sic] to favor one side rather than the other.

In the instant case, evidence presented is not enough to show that such condition exists.

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It is noted that respondent's basis in recommending the re-opening of the subject case was due to the absence of any return attached to the record evidencing that Palad properly received the subpoena sent to her during the conduct of the preliminary investigation. Such circumstance was considered by herein respondent a substantial deficiency that affects due process and needs to be corrected, otherwise it may only delay further proceedings, as in fact Palad had since moved to reopen her case. In making therefore the recommendation for the re-opening of the case because of said perception, clearly, it can be seen that the intention of respondent being then a reviewing officer was merely to correct what appears to her to be a stumbling block in the proceedings. Surely, such basis for the re-opening of the subject case is far from being characterized as capricious or arbitrary amounting to manifest partiality.

Neither did respondent act with evident bad faith when she recommended the re-opening of Palad's case for preliminary investigation.

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In the instant case, complainant failed to present sufficient evidence to show that she operates with furtive design, or motive of self interest or ill will or ulterior motives when she made the recommendation for the re-opening of Palad's case.

In this context, the principle of regularity in the performance of official functions has not been adequately rebutted by the evidence adduced by the complainant. Hence, the said principle must be applied in favor of herein respondent.<sup>[4]</sup>

The Resolution submitted by respondent Agustin-Se was approved on June 4, 2003 by then Ombudsman Simeon V. Marcelo.

On June 30, 2003, petitioner filed a Motion for Reconsideration.

In an Order dated November 17, 2003, submitted by respondent Wilfred L. Pascasio, Graft Investigation and Prosecution Officer II and approved by the Deputy Ombudsman on February 4, 2004, per Delegation of Authority by the Ombudsman dated January 23, 2004,<sup>[5]</sup> said motion was denied for lack of merit and for being filed out of time.

Hence, herein petition where the only issue is whether respondents committed grave abuse of discretion amounting to lack of jurisdiction in dismissing petitioner's complaint against Dimagiba and denying his motion for reconsideration.

At the outset, it must be stressed that *certiorari* is a remedy meant to correct only errors of jurisdiction, not errors of judgment. As ruled in *First Corporation v. Former Sixth Division of the Court of Appeals*,<sup>[6]</sup> to wit:

It is a fundamental aphorism in law that a review of facts and evidence is not the province of the extraordinary remedy of *certiorari*, which is *extra ordinem* - beyond the ambit of appeal. **In *certiorari* proceedings, judicial review does not go as far as to examine and assess the evidence of the parties and to weigh the probative value thereof. It does not include an inquiry as to the correctness of the evaluation of evidence. Any error committed in the evaluation of evidence is merely an error of judgment that cannot be remedied by *certiorari*.** An *error of judgment* is one which the court may commit in the exercise of its jurisdiction. An error of jurisdiction is one where the act complained of was issued by the court without or in excess of jurisdiction, or with grave abuse of discretion, which is tantamount to lack or in excess of jurisdiction and which error is correctible only by the extraordinary writ of *certiorari*. ***Certiorari* will not be issued to cure errors of the trial court in its appreciation of the evidence of the parties, or its conclusions anchored on the said findings and its conclusions of law. It is not for this Court to re-examine conflicting evidence, re-evaluate the credibility of the witnesses or substitute the findings of fact of the court *a quo*.** <sup>[7]</sup> (Emphasis supplied)

Likewise worthy of emphasis is the holding of the Court in *Presidential Ad-Hoc Fact Finding Committee on Behest Loans v. Desierto*,<sup>[8]</sup> imparting the value of the Ombudsman's independence.

Under Sections 12 and 13, Article XI of the 1987 Constitution and RA 6770 (The Ombudsman Act of 1989), the Ombudsman has the power to