

THIRD DIVISION

[G.R. NO. 166797, July 10, 2007]

**JOSE M. GALARIO, PETITIONER, VS. OFFICE OF THE
OMBUDSMAN (MINDANAO) AND RUTH P. PIANO, RESPONDENTS.**

DECISION

CHICO-NAZARIO, J.:

Before Us is a Petition for *Certiorari* under Rule 65 of the 1997 Revised Rules of Court seeking the nullification of the (1) Resolution^[1] of the Office of the Ombudsman for Mindanao (OMB-Mindanao) dated 26 November 2004 finding probable cause to indict Jose M. Galario, Jr. (petitioner) for violation of Section 3(f) of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act); and (2) Order^[2] of the same Office dated 7 January 2005 denying petitioner's Motion for Reconsideration. In effect, petitioner, on injunction against the OMB-Mindanao, prays to prevent said Office from prosecuting him asserting that there is an abject absence of probable cause to hold him for trial.

This case originated from an affidavit-complaint filed by Ruth P. Piano (private respondent) against petitioner resulting in the institution of administrative and criminal investigations by the OMB-Mindanao, docketed as OMB-M-A-04-128-G and OMB-M-C-04-0282-G, respectively.

The following facts are undisputed:

Petitioner was elected on his first term as City Mayor of Valencia City, Bukidnon, during the May 2001 local elections. Upon assumption of office, petitioner effected a reorganization and personnel audit of the local bureaucracy. He then issued two memoranda, both with subject heading "TRANSFER OF ASSIGNMENT" and dated 02 July 2001, addressed to private respondent. In the first memorandum, petitioner directed:

Effective upon receipt, you are relieved from your present position as the City Budget Officer and to perform functions as the City Liaison Officer to do the following task[s] to wit:

1. To coordinate with the City Mayor and Department of Budget and Management and with other Agencies/Functionaries for the facilitation and immediate release of our Internal Revenue Allotment (IRA) and other financial assistance for the different City projects.
2. To undergo and submit a study on How to Improve the City's Economic Enterprise/Revenue for the welfare of our people.

3. To submit, keep the Local Chief Executive abreast of every transaction[s] relative hereto.
4. To turn-over all the documents & properties of the City Budget Office to Mr. Bartolome C. Barte as Budget Officer in an Acting capacity.^[3]

Thus, petitioner created the position of City Liaison Officer to which he "transferred" private respondent with the task of studying and recommending how to improve the economic enterprises and the local revenue collection efforts of the city.

The second memorandum was of the same tenor as the first and was a substantial restoration thereof.

Private respondent opposed the two memoranda and filed a complaint for Constructive Dismissal, Reinstatement to Former Position and Payment of Representation and Travel Allowance (RATA) with the Civil Service Commission—Regional Office X (CSC-Regional Office). The CSC-Regional Office agreed with private respondent and by virtue of an Order dated 7 January 2002, mandated the reinstatement of private respondent to her former position as City Budget Officer, thus:

WHEREFORE, premises considered, instant appeal is hereby granted. Accordingly, Mayor Galario is ordered to reinstate Ms. Piano to her previous position as City Budget Officer and to cause the payment of her RATA from the time she was deprived of it until her reinstatement. x x x.

^[4]

Petitioner then filed a Motion for Reconsideration of the foregoing Order which was denied by the CSC-Regional Office in another Order dated 18 February 2002. Petitioner, hence, appealed the Orders of the CSC-Regional Office dated 7 January 2002 and 18 February 2002 to the CSC-Main Office, which subsequently dismissed said appeal in Resolution No. 030096 dated 21 January 2003. In Resolution No. 030544 dated 5 May 2003, the CSC denied petitioner's Motion for Reconsideration and affirmed CSC Resolution No. 03-0096 dated 21 January 2003^[5]:

WHEREFORE, the appeal of Valencia City Mayor Jose M. Galario, Jr. is hereby DISMISSED. Civil Service Commission Regional Office No. X Orders dated January 7, 2002 and February 18, 2002 declaring the Office of the Mayor Orders both dated July 2, 2001 null and void, stand. Accordingly, Ruth P. Piano is reinstated to her former position as City Budget Officer.^[6]

Private respondent subsequently moved for the execution of CSC Resolution No. 030544 dated 5 May 2003 affirming CSC Resolution No. 030096 dated 21 January 2003.

Even before the CSC could act on private respondent's motion for execution, petitioner issued Memorandum Order No. 07-55 dated 25 July 2003, ordering private respondent to be reinstated to her former position of City Budget Officer with the grant of benefits^[7] appurtenant to the said position, supposedly in compliance with CSC Resolution No. 03-0096 dated 21 January 2003. Much later,

however, petitioner, in another letter dated 28 July 2003,^[8] instructed private respondent not to involve herself in the signing of documents relating to the city's financial transactions, citing her pending case^[9] with the Office of the Ombudsman. The task was given to Mr. Bartolome Barte, who was authorized to sign "For the City Budget Officer" in the financial transactions of the city.

In Memorandum Order No. 07-65 dated 30 July 2003, petitioner directed private respondent to transfer office from the City Hall Main Building to the Sangguniang Kabataan Building.

Meanwhile, petitioner formally asked the opinion of the CSC-Regional Office on whether or not he could legally prohibit private respondent from signing documents relating to the financial transactions of the city. In a letter dated 6 October 2003 addressed to petitioner, the CSC-Regional Office opined that considering that the Office of the Ombudsman had dismissed the administrative case against private respondent, there was no more legal impediment to her reinstatement as City Budget Officer ***as well as in the performance of her duties as such.***^[10]

Thereafter, private respondent filed with the CSC a second Motion for Execution of its Resolution No. 030096 dated 21 January 2003, resulting in the issuance by the CSC of Resolution No. 040552 dated 17 May 2004 ordering petitioner to immediately reinstate private respondent as City Budget Officer. Petitioner, on the other hand, issued official letters on 24 June 2004 and 02 July 2004 announcing the vacancy of the Office of the City Budget Officer of Valencia City, prompting private respondent to file with the CSC a third Motion for Execution of CSC Resolution No. 030096 dated 21 January 2003 which ordered her immediate reinstatement as City Budget Officer.

The CSC, in Resolution No. 04-1003 dated 7 September 2004, directed petitioner to allow private respondent to perform all the duties of a City Budget Officer. The dispositive portion of said Resolution reads:

WHEREFORE, the Commission hereby directs Mayor Jose M. Galario, Jr. to allow Piano to perform all the duties relevant to the position of City Budget Officer and to allow her to hold office at the City Budget Office. Failure of Mayor Galario, Jr. to comply with the same would compel the Commission to cite him in contempt and file the appropriate charges with the Office of the Ombudsman.

The Civil Service Commission Regional Office No. X is directed to monitor the strict implementation and enforcement of this Resolution and to submit a report to the Commission within ten (10) days from receipt.^[11]

Still not satisfied with the latest Resolution of the CSC and petitioner's purported non-compliance with the CSC Order to reinstate her as City Budget Officer, private respondent went before the OMB-Mindanao to charge petitioner administratively (OMB-M-A-04-128-G) and criminally (OMB-M-C-04-282-G) based on the following allegations:

Oppression, grave misconduct, conduct prejudicial to the best interests of the government service, and violation of anti-graft and corrupt practices acts, causing undue injury to [herein private respondent], and refusing to

act upon lawful order of the Civil Service Commission, to fully implement the Resolution of the Civil Service Commission, and violation of ethical standards required of government officials and employees, under RA6713.

After a preliminary investigation and the submission of petitioner's counter-affidavits and other evidence, the OMB-Mindanao issued a Resolution dated 26 November 2004 in OMB-M-C-04-0282-G, finding as follows -

WHEREFORE, *premises considered*, this Office finds probable cause to indict [herein petitioner] CITY MAYOR JOSE M. GALARIO, JR., GUILTY of violation of Section 3(f) of R.A. 3019, as amended.

Accordingly, let the corresponding information be filed in the Sandiganbayan.^[12]

Petitioner thereafter filed a Motion for Reconsideration praying for the setting aside of the aforesated OMB-Mindanao Resolution dated 26 November 2004. The OMB-Mindanao thereafter ruled, in its 7 January 2005 Order, that:

WHEREFORE, *premises considered*, the Motion for Reconsideration is hereby DENIED.

The Resolution dated 26 November 2004 is hereby AFFIRMED.

Here now comes petitioner before this Court via a Petition for Certiorari under Rule 65 of the revised Rules of Court, raising the following arguments:

- I. THE OFFICE OF THE OMBUDSMAN-MINDANAO COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RESOLVED THAT PROBABLE CAUSE EXISTS TO HOLD PETITIONER LIABLE FOR VIOLATION OF SECTION 3(F) OF R.A. 3019, WHEN IN TRUTH AND IN FACT, THE ELEMENTS OF THE SUBJECT CRIME DO NOT EXIST IN THIS CASE AND THAT THERE IS NO FACTUAL BASIS TO PROVE THE EXISTENCE OF THE ELEMENT OF "FAVORING HIS OWN INTEREST OR GRANTING UNDUE ADVANTAGE IN FAVOR OF ANOTHER PARTY".
- II. THAT THE OFFICE OF THE OMBUDSMAN FOR MINDANAO COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT INSISTED THAT PETITIONER FAILED TO HEED THE CSC REINSTATEMENT ORDER OF 17 MARCH 2004^[13] WHEN IN TRUTH AND IN FACT, THERE IS BOTH A LEGAL AND A PHYSICAL IMPOSSIBILITY TO COMPLY WITH THE SAME CONSIDERING THAT PRIVATE RESPONDENT WAS ALREADY REINSTATED TO HER POSITION AS EARLY AS 25 JULY 2003.
- III. THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AND FAILED TO ACCORD DUE PROCESS TO PETITIONER WHEN IT SUBSEQUENTLY FOUND HEREIN PETITIONER LIABLE UNDER SECTION 3(F) OF R.A. 3019 WHEN THERE IS NO FACTUAL ALLEGATION OF ANY OF THE ELEMENTS OF THE SAID OFFENSE IN THE COMPLAINT OF PRIVATE RESPONDENT AND MORE

IMPORTANTLY, PETITIONER WAS NOT GIVEN ANY OPPORTUNITY TO RESPOND TO AND REFUTE SUCH CHARGE CONSIDERING THAT ONLY FACTS RELATING TO SECTION 3(E) WERE RAISED IN THE COMPLAINT-AFFIDAVIT.

As petitioner empathically stated in this Petition for *Certiorari*:

[P]etitioner comes to the succor of the Honorable Supreme Court in order to restrain the respondents from prosecuting the case against petitioner before the Sandiganbayan and find that the Ombudsman acted without or in excess of its authority amounting to grave abuse of discretion when it ordered the filing of informations [*sic*] against petitioner for violation of R.A. 3019, despite the palpable absence of probable cause.^[14]

Petitioner posits that the OMB-Mindanao committed grave abuse of discretion amounting to lack or excess of jurisdiction when it found probable cause for the filing of an information against him for the violation of Section 3(f) of Republic Act No. 3019^[15] since an important element of the offense was not established, particularly, that he was "favoring his own interest or granting undue advantage in favor of another party."

Petitioner further alleges that he was deprived of due process because he was not given the opportunity to respond to and refute the charge against him considering that the offense referred to in the affidavit-complaint was for violation of Section 3(e),^[16] and not Section 3(f), of Republic Act No. 3019.

Moreover, petitioner further claims that while private respondent accused him of refusing to act within reasonable time on the Resolutions of the CSC directing private respondent's "full reinstatement" as City Budget Officer, proof to support the allegation remains wanting. Petitioner reiterates that there was reinstatement of private respondent as early as 25 July 2003 and therefore, there already existed a legal and physical impossibility to execute CSC Resolution No. 041003 dated 17 September 2004. Hence, he argues that there is sufficient justification why he no longer ordered the reinstatement of private respondent.

On the other hand, the OMB-Mindanao, as represented by the Office of the Solicitor General (OSG), asserts that the allegations in the complaint-affidavit filed with the OMB-Mindanao make a case for violation of Section 3(f) of Republic Act No. 3019. In its Comment, the OSG reasoned:

[W]hile it is true that private respondent's complaint-affidavit does not contain any specific allegation to the effect that petitioner refused to implement CSC Resolution No. 030096 dated 21 January 2003 to favor his own interest or give due advantage to Mr. Bartolome Barte, a combined evaluation and analysis of the allegations in the complaint-affidavit would readily reveal otherwise. x x x.^[17]

The OSG argues that private respondent's complaint-affidavit narrates the acts of the petitioner of removing private respondent from her position as City Budget Officer in order to have total control of the City's finances. Moreover, it maintains that the complaint-affidavit clearly alleged that petitioner banned private respondent from signing any document involving the City's financial transactions to give undue