

FIRST DIVISION

[G.R. NOS. 145743-89, August 10, 2007]

**ANTONIO P. CALINGIN, PETITIONER, VS. ANIANO A. DESIERTO
AS OMBUDSMAN, AND THE SANDIGANBAYAN, SECOND
DIVISION, RESPONDENTS.**

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant Petition for *Certiorari*^[1] seeking to set aside the Resolution dated July 20, 2000 approved by then Ombudsman Aniano A. Desierto, recommending the prosecution of Antonio P. Calingin and his co-accused for violation of Republic Act (R.A.) No. 3019 and Article 220 of the Revised Penal Code, docketed as Criminal Case Nos. 25549-25595.

The facts of the case as gleaned from the record are:

Antonio P. Calingin, petitioner, is a former mayor of Claveria, Misamis Oriental. During his incumbency, the municipality undertook a low-cost housing project known as the Bahay Ticala Housing Project (housing project). It developed 18.7 hectares of land for the purpose of constructing 1,342 housing units financed by a bond flotation adopted by the municipality and guaranteed by the Home Insurance and Guaranty Corporation. Bond proceeds of P20 million were earmarked to complete the first 85 housing units.

On September 5, 1994, the *Sangguniang Bayan* of Claveria passed SB Ordinance No. 94-29 adopting a bond flotation to fund priority projects as the *Sangguniang Bayan* may determine, pursuant to Section 299 of the Local Government Code of 1991.^[2] On the same date, the *Sangguniang Bayan* likewise passed SB Resolution No. 71-94 authorizing petitioner to sign the Agreement between the Municipality of Claveria and Preferred Ventures Corporation/Danilo V. Fausto/DVF Construction whereby the latter would act as consultant of the municipality in the flotation of bonds to finance the development, livelihood, and infrastructure projects of the municipality.

In a Joint Venture Agreement dated January 25, 1995, the Municipality of Claveria, represented by petitioner, contracted Blue Marlin Development Corporation (Blue Marlin) to be the developer of the housing project. Under its terms, the municipality agreed to float and issue municipal bonds in the amount of P20 million to finance the project. Blue Marlin, in turn, agreed to complete at least 85 housing units at the project site according to the approved plans and specifications.

On February 6, 1995, the same *Sangguniang Bayan* of Claveria passed SB Resolution No. 72 authorizing petitioner to represent the municipality in the implementation of the bond flotation in the total amount of P25 million, of which P20

million was set aside for the housing project.

On April 5, 1995, Blue Marlin executed a Deed of Assignment in favor of Macajalar Construction Company, represented by Kim C. Tulio, assigning to the latter full power and authority to proceed with the construction work under the Joint Venture Agreement of January 25, 1995.

Sometime in May 1995, the Municipality of Claveria, through the Philippine National Bank (PNB), paid Blue Marlin the amount of P4.5 million as partial payment for the construction of Block Nos. 1 and 2 of the housing project.

For calendar year 1995, the PNB paid Blue Marlin P9.8 million, P300,000.00 of which was returned to the bank to satisfy the sinking fund requirement.

In February 1996, the Municipality of Claveria took over the implementation of the housing project. Eleven (11) housing units amounting to P5,870,873.42 were constructed.

After one month from the takeover, the municipality ceased its construction work.

On April 8, 1996, Macajalar Construction executed an Affidavit of Quit Claim, waiving any and all of its rights or those of its successors-in-interest in the housing project in favor of the Municipality of Claveria or its authorized representative.

Subsequently, the Commission on Audit (COA) of Region X, Cagayan de Oro City conducted a special audit of the housing project for calendar years 1995 and 1996. The findings of the COA Special Audit Team are reproduced below:

I

Evaluation conducted on the Bahay Ticala Housing Project revealed the project's over-all accomplishments were worth P4,472,728.70 as against the total amount utilized for the purpose of P10,370,873.42, resulting in a loss of P5,898,144.72.

II

The Municipal Mayor approved the payment of P386,484.00 for rental of grader/heavy equipment to PSB Enterprises, Inc, whose Manager is Mr. Rocky Calingin, the Municipal Mayor's son, contrary to the provisions of Section 3 of R.A. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act and Article 403 of the Implementing Rules and Regulations (IRR) of R.A. 7160. Likewise, its lease of equipment from the said company had no legal basis because no contract of lease was executed for the purpose and no authority was secured from the Sangguniang Bayan in violation of Sections 444 Item I (VI) of R.A. 7160. Further, rental services from the said company were secured without the benefit of public bidding in violation of Section 536 of the Government Accounting and Auditing Manual Volume 1 (GAAM).

In addition, we noted the following checks were endorsed by Mayor Antonio P. Calingin:

Payee	Check No.	Date	Amount	Remarks
Xarre & Co.	487635	04-02-96	P380,454.55	Endorsed by Mayor Antonio P. Calingin for deposit under Account No. 810487-9
PBS Enterprises	487632	04-02-96	89,775.00	-do-
PBS Enterprises	487633	04-02-96	43,725.00	-do-
Ristian Hardware	487634	04-02-96	450,321.63	-do-
PSB Enterprises	487704	04-16-96	85,000.00	Endorsed & encashed by Mayor Calingin
DVF Construction	552905	12-22-95	750,000.00	-do-

It may be worth remembering that some checks which were payable to Mayor Calingin were endorsed by him for deposit to account no. 810487-9.

III

The amount of P2,750,000.00 out of P9.8 million proceeds from bonds flotation was used for purposes other than for which such bonds were floated resulting in illegal use of public funds.

IV

Disbursements of P9.5 million were made without accounting processing and signature of the Municipal Accountant in violation of Section 344 of R.A. 7160. Likewise, these disbursements were not supported with the required documents, in violation of Section 4 (6) of P.D. 1445.

V

The check of P4.5 million payable to Blue Marlin Integrated Development Corp./Kim Tulio bears only the signature of Municipal Mayor Antonio P. Calingin, as authorized by the Sangguniang Bayan members, in violation of Section 345 of RA 7160 and Section 43 of COA Circular No. 92-382.

VI

Payments amounting to P1,995,000.00 were made to Mayor Antonio P. Calingin instead of the creditors or their authorized representatives, in