

## SECOND DIVISION

[ G.R. NO. 145938, February 10, 2006 ]

**OFFICE OF THE OMBUDSMAN, PETITIONER, VS. THE HONORABLE  
AUGUSTO V. BREVA, PRESIDING JUDGE, REGIONAL TRIAL  
COURT, DAVAO CITY, BRANCH 10, ERNESTO SALVADOR AND  
GUILLERMO SALDAÑA, RESPONDENTS.**

### D E C I S I O N

**GARCIA, J.:**

In this petition for certiorari under Rule 65 of the Rules of Court, petitioner Office of the Ombudsman seeks the annulment and setting aside of the **Orders dated September 8 and 29, 2000** of the Regional Trial Court (RTC) of Davao City in Criminal Case No. 45, 505-2000 entitled *People of the Philippines vs. Ernesto Salvador and Guillermo Saldaña*, Accused, a prosecution for violation of the Anti-Graft and Corrupt Practices Act.

The facts:

At times material hereto, the above-named accused, Ernesto Salvador and Guillermo Saldaña, now private respondents, were both employees of the Sangguniang Panglungsod of Davao City. Private respondent Salvador held the position of Legislative Officer II, while private respondent Saldaña was the Sanggunian's Secretary.

Investigating news reports regarding the allegations of Davao City Councilor Diosdado Mahipus concerning anomalous disbursements of the city's Php1M legislative research fund, the Office of the Ombudsman for Mindanao, in a proceeding thereat docketed as OMB-MIN-98-0200, thru its Graft Investigation Officer Rachelle M. Ladrera-Tagud, issued a resolution (hereinafter referred to as the *Ladrera resolution*) finding the existence of sufficient evidence to warrant the criminal prosecution of both private respondents for violation of Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act. Accompanying the *Ladrera resolution* is a draft Information<sup>[1]</sup> bearing date March 22, 2000, the accusatory portion of which reads:

That sometime in or about 1997, or shortly prior or subsequent thereto, in Davao City, and within the jurisdiction of this Honorable Court, the accused, ERNESTO SALVADOR and GUILLERMO SALDAÑA, both low-ranking public employees, committing the offense while in performance of their official duties and taking advantage of their public position, conspiring, confederating and mutually aiding one another, did there and then, willfully, unlawfully and criminally, cause undue injury to the City Government of Davao thru evident bad faith in the performance of their official duties when accused Salvador made a cash advance in the

amount of P1 million under the Legislative Research Program of the Sangguniang Panglungsod and in the liquidation of the same, they made it appear that they have paid said amount to the caterers who provided food and snacks during the seminars and trainings they have allegedly conducted for the youth in the different barangays in Davao City when in truth and in fact, no seminars and trainings of said nature were conducted, thereby causing damage and injury to the government in the said amount.

#### CONTRARY TO LAW.

On May 2, 2000, the Deputy Ombudsman for Mindanao endorsed the records of OMB-MIN-98-0200, including the *Ladrera resolution* and the draft Information, to the City Prosecutor of Davao.

On May 29, 2000, the City Prosecutor of Davao filed with the RTC of Davao City the aforementioned Information, thereat docketed as *Criminal Case No. 45, 505-2000* which was raffled to Branch 5 of the court.

Meanwhile, in OMB-MIN-98-0200, private respondent Ernesto Salvador filed a motion for reconsideration of the *Ladrera resolution*, followed a few days later by a similar motion of private respondent Guillermo Saldaña.

To complement their motions for reconsideration, both private respondents jointly filed in *Criminal Case No. 45, 505-2000 an Omnibus Manifestations and Motions*, praying thereunder as follows:

- a. For reconsideration and/or completion of Preliminary Investigation by the Ombudsman;
- b. Holding in abeyance the implementation of and/or recall the warrant of arrest; and
- c. To defer further proceedings.

In its Order<sup>[2]</sup> of July 20, 2000, however, the trial court denied the omnibus motion.

Subsequently, private respondent Salvador filed with the same court a *Motion to Quash* Criminal Case No. 45, 505-2000, invoking the pronouncement of this Court in *George Uy vs. Sandiganbayan*<sup>[3]</sup> bearing on the authority of the Ombudsman to file information with regular courts.

On September 8, 2000, the trial court issued an Order<sup>[4]</sup> considering as submitted "without any opposition" respondent Salvador's *Motion to Quash*.

On the same date - September 8, 2000 - the trial court issued the herein assailed Order<sup>[5]</sup> dismissing *Criminal Case No. 45, 505-2000*, rationalizing as follows:

Submitted for resolution without opposition is the MOTION TO QUASH filed by accused Ernesto Salvador, dated August 31, 2000,.... The motion is based on the ground that the Officer who filed the Information in this case had no authority to do so in light of the ruling of the Supreme Court

in the case of George Uy v. Sandiganbayan, et al. (G.R. Nos. 105965-70) where it is held that –

*"In this connection, it is the prosecutor, not the Ombudsman, who has the authority to file the corresponding information/s against petitioner in the regional trial court. The Ombudsman exercises prosecutorial powers only in cases cognizable by the Sandiganbayan."*

xxx      xxx      xxx

*"The clear import of such pronouncement is to recognize the authority of the State and regular provincial and city prosecutors under the Department of Justice to have control over prosecution of cases falling within the jurisdiction of the regular courts. The investigation and prosecutorial powers of the Ombudsman relate to cases rightfully falling within the jurisdiction of the Sandiganbayan under Section 15 (1) of R.A. 6770 ("An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for other purposes") which vests upon the Ombudsman "primary jurisdiction over cases cognizable by the Sandiganbayan ..." And this is further buttressed by Section 11(4a) of R.A. 6770 which emphasizes that the Office of the Special Prosecutor shall have the power "to conduct preliminary investigation and prosecute criminal cases within the jurisdiction of the Sandiganbayan." Thus, repeated references to the Sandiganbayan's jurisdiction clearly serve to limit the Ombudsman's and Special Prosecutor's authority to cases cognizable by the Sandiganbayan."*

Apparently not yet aware of the trial court's aforementioned order of dismissal, the Office of the Ombudsman-Mindanao filed an Opposition <sup>[6]</sup> dated September 8, 2000, therein opposing and basically praying for the denial of Salvador's *Motion to Quash* on the argument that –

1. While it is true that the Supreme Court has ruled in the case of George Uy vs. Sandiganbayan, et. al., G.R. Nos. 105965-70, that "*it is the prosecutor, not the Ombudsman, who has authority to file the corresponding information/s against petitioner in the Regional Trial Court*" and "the Ombudsman exercises prosecutorial powers only in cases cognizable by the Sandiganbayan", it is equally true that said decision rendered on 09 August 1999 and followed by a Resolution dated 22 February 2000 has never been final and, therefore, premature as of this moment to consider the same as judicial precedent;

Also, seemingly unaware, too, of the dismissal of the case, private respondent Saldaña filed his own *Motion to Quash*,<sup>[7]</sup> dated September 11, 2000, therein likewise citing *George Uy*.

Apprised later of the dismissal of Criminal Case No. 45, 505-2000, petitioner filed a

Motion for Reconsideration<sup>[8]</sup> which the trial court denied *via* its other assailed Order<sup>[9]</sup> dated September 29, 2000.

On November 29, 2000, petitioner filed the present recourse on the submission that respondent judge acted without or in excess of jurisdiction and/or with grave abuse of discretion when:

- I. HE TOOK COGNIZANCE OF PRIVATE RESPONDENT SALVADOR'S FATALLY DEFECTIVE MOTION TO QUASH AND CONSIDERED IT "SUBMITTED FOR RESOLUTION WITHOUT OPPOSITION";
- II. HE ADOPTED THE GEORGE UY RULING AND DISMISSED CRIMINAL CASE NO. 45, 505-2000 ON THE GROUND THAT THE OFFICER WHO FILED THE INFORMATION HAD NO AUTHORITY TO DO SO, THEREBY DISREGARDING THE FOLLOWING VITAL CONSIDERATIONS:
  - A. THE JURISDICTION OF THE HONORABLE SANDIGANBAYAN IS NOT PARALLEL TO, OR TO BE EQUATED WITH, THE BROADER JURISDICTION OF THE OFFICE OF THE OMBUDSMAN;
  - B. THE PHRASE "PRIMARY JURISDICTION OF THE OFFICE OF THE OMBUDSMAN OVER CASES COGNIZABLE BY THE SANDIGANBAYAN" IS NOT A DELIMITATION OF ITS JURISDICTION SOLELY TO SANDIGANBAYAN CASES; AND
  - C. THE AUTHORITY OF THE OFFICE OF THE SPECIAL PROSECUTOR TO PROSECUTE CASES BEFORE THE SANDIGANBAYAN CANNOT BE CONFUSED WITH THE BROADER INVESTIGATORY AND PROSECUTORIAL POWERS OF THE OFFICE OF THE OMBUDSMAN; AND
- III. HE DISREGARDED THE PENDENCY OF PETITIONER'S MOTION FOR FURTHER CLARIFICATION IN THE GEORGE UY CASE BEFORE THIS HONORABLE COURT.

We find merit in the petition.

At the core of the controversy is the perceived overlapping of jurisdiction between the Office of the Ombudsman and the Department of Justice in the investigation and prosecution of offenses committed by public officers and employees. The confusion came about as an aftermath of a series of enactments restructuring the offices of the Ombudsman and Sandiganbayan, specifically, the following: Rep. Act No. 6770, the *Ombudsman Act of 1989*, reorganizing the Office of the Ombudsman; Rep. Act No. 7975, reorganizing the Sandiganbayan; and Rep. Act No. 8249, defining the Sandiganbayan's jurisdiction.

As may be recalled, it was amidst the foregoing backdrop of legislative enactments when this Court promulgated on August 9, 1999 its Decision<sup>[10]</sup> in the *George Uy* case. In the penultimate paragraph of that Decision, the Court stated "*... it is the prosecutor, not the Ombudsman, who has the authority to file the corresponding information/s against petitioner in the regional trial court. The Ombudsman exercises prosecutorial powers only in cases cognizable by the Sandiganbayan.*"