

SECOND DIVISION

[G.R. NO. 159190, May 30, 2006]

**CAYETANO A. TEJANO, JR., PETITIONER, VS. THE HON.
OMBUDSMAN AND THE HON. SANDIGANBAYAN, RESPONDENTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

This petition for certiorari under Rule 65 of the Rules of Court, with application for temporary restraining order, seeks to nullify the Ombudsman's disapproval of the memorandum^[1] dated 03 November 1999 of Special Prosecutor Jesus A. Micael of the Office of the Special Prosecutor recommending the dismissal of Criminal Case No. 21654, as well as the memorandum^[2] dated 09 June 2003 denying petitioner's motion for reconsideration.

The Facts

The instant petition stemmed from the report of Philippine National Bank (PNB) Resident Auditor Alexander A. Tan, dated 15 October 1992, on his investigation regarding an alleged unfunded withdrawal in the amount of P2.2 million by V&G Better Homes Subdivision (V&G) under Savings Account No. 365-5355-6-4.

The report, as summarized by Special Prosecution Officer III Jesus A. Micael, is as follows:^[3]

. . . [I]n the morning of 17 July 1992, Emilio P. Montesa (Bank Executive Officer of PNB Cebu) handed a note to Jane Rita Jecong (Cashier) instructing her to include her cash requisition for the day from Central Bank – Cebu, the amount of P2.2 M at P1,000.00 denomination; that on 20 July 1992 at about past 10:00 A.M., Juanito Mata (Cashier III), upon the instruction of Cayetano A. Tejano Jr. (Vice President and Branch Manager of PNB Cebu), took the P2.2 M from Ms. Jecong and delivered the same to Mr. Tejano; that at about noontime of same day, Mr. Mara handed to Ms. Jecong a pre-signed withdrawal slip against SA No. 365-535506-4 under the name of V & G Better Homes for the same amount to replace the cash withdrawn and to serve as cash-on-hand at the end of the day's transaction; that the withdrawal slip was approved by Mr. Tejano and was postdated 21 July 1992; that as of 20 July 1992 V & G Better Homes SA No. 365-535506-4 has only P33,436.78; that in the afternoon of 20 July 1992 the amount of P2,336,563.32 (consisting of P2,200,000.00 in cash; P100,000.00 in check; and P36,563.22 in withdrawal slip) was received by Teller Mary Ann Aznar as payment for the loan of V & G Better Homes for which PNB Official Receipt No. 952981E was issued; that the transaction was recognized as an increase in PNB Cebu Branch's cash-on-hand and a decrease in the loan account

of V & G Better Homes; that the PNB Cebu Credit Committee approved the loan at the rate of 23% lower than the 26% interest rate on its first renewal and 27% on its second renewal; that the loan proceeds was credited to the account of V & G Better Homes on 21 July 1992, the same day that the withdrawal slip of P2.2 M was taken by Mr. Montesa from Ms. Jecong and given to Irene Abellanosa to be taken as her transaction for the day; and that upon the instruction of Montesa, Savings Account No. 365-535506-4 of V & G Better Homes was debited and the withdrawal slip was validated by Teller Abellanosa although no actual cash withdrawal was made.

The report of Resident Auditor Alexander A. Tan implicated Vice President Cayetano A. Tejano, Jr., the petitioner herein, Executive Officer Emilio Montesa, and Supervising Branch Teller Jane Rita Jecong, all of the PNB, Cebu City Branch, including Juana dela Cruz and Vicente dela Cruz of V&G, as persons involved in the irregular withdrawal of P2.2 million of PNB funds.

In an order dated 22 December 1992, the Office of the Deputy Ombudsman for the Visayas ordered Tejano, Montesa, Jecong, Juana dela Cruz and Vicente dela Cruz to file their respective counter-affidavits.^[4]

In a resolution dated 29 March 1993, Graft Investigation Officer Edgardo G. Canton recommended the filing of the proper information for violation of Section 3(e) of Republic Act No. 3019,^[5] as amended, against petitioner Cayetano A. Tejano, Jr., Juana dela Cruz and Vicente dela Cruz of V&G.^[6] The case against Montesa and Jecong was dismissed for lack of evidence. The resolution was approved by Deputy Ombudsman for Visayas Arturo C. Mojica and then Ombudsman Conrado M. Vasquez.

The resolution was thereafter referred for review to Special Prosecutor III Orlando I. Ines of the Office of the Special Prosecutor.

In a Memorandum^[7] dated 25 October 1994, Ines affirmed the resolution of Graft Investigation Officer Edgardo G. Canton.

On 28 October 1994, Deputy Special Prosecutor Jose De G. Ferrer recommended the approval of the memorandum of Special Prosecution Officer Ines.

On 08 November 1994, Aniano A. Desierto, then the Special Prosecutor, concurred in the approval of Ferrer.^[8] Ombudsman Conrado M. Vasquez concurred thereto on 11 November 1994.

Subsequently, on 24 November 1994, an Information for violation of Section 3(e) of Rep. Act No. 3019, as amended, was filed before the Sandiganbayan, and docketed as Criminal Case No. 21654.

On 08 December 1994, petitioner filed with the Sandiganbayan an Urgent Motion for a Period of Time to File Motion for Reinvestigation.

In an order dated^[9] 12 December 1994, the Sandiganbayan granted the motion for reinvestigation.

On 22 December 1994, petitioner filed his motion for reinvestigation in the Office of the Special Prosecutor.

On 20 April 1995, the Sandiganbayan ordered the Office of the Special Prosecutor to conduct the reinvestigation.^[10] The reinvestigation was assigned to Special Prosecution Officer III Jesus Micael.

Convinced that no probable cause existed to indict petitioner Tejano, and spouses Juana and Vicente dela Cruz, Special Prosecutor Micael, in a memorandum^[11] dated 03 November 1999, recommended the dismissal of the case. The recommendation was approved by Deputy Special Prosecutor Robert E. Kallos and concurred in by Special Prosecutor Leonardo P. Tamayo.

On 10 December 1999, Ombudsman Aniano A. Desierto, who earlier participated in the initial preliminary investigation as Special Prosecutor, disapproved the recommendation for the dismissal of the case with the marginal note "*assign the case to another prosecutor to prosecute the case aggressively.*"

On 02 February 2000, Special Prosecutor Micael filed a Manifestation, to which was attached a copy of his memorandum, informing the Sandiganbayan of the disapproval by Ombudsman Desierto of his recommendation to dismiss the case.

On 10 February 2000, petitioner filed a Motion for Reconsideration of the disapproval by Ombudsman Desierto of the recommendation of Micael.

Apparently, petitioner's motion for reconsideration was not resolved on the merits because on 27 June 2000, Special Prosecution Officer III Joselito R. Ferrer filed a Motion to Set the Case for Arraignment alleging therein that the prosecution did not give due course to the motion for reconsideration on the ground that it was the second motion which is prohibited under the Ombudsman Act of 1989. He added that the results of the reinvestigation were already submitted to the respondent court before receiving the motion for reconsideration.^[12]

Petitioner manifested before the Sandiganbayan the Office of the Special Prosecutor's failure to resolve his motion for reconsideration. Thus, in a resolution^[13] dated 24 March 2003, the respondent court directed the Office of the Ombudsman to resolve the said motion.

In a memorandum^[14] dated 09 June 2003, Special Prosecutor Joselito R. Ferrer recommended the denial of the motion for reconsideration filed by petitioner. Deputy Special Prosecutor Robert E. Kallos changed his previous position and recommended that the memorandum for the dismissal of the motion for reconsideration be approved, with Special Prosecutor Dennis M. Villa-Ignacio concurring in the denial.

On 14 July 2003, Ombudsman Simeon V. Marcelo, who succeeded Ombudsman Desierto when he retired, approved Joselito Ferrer's memorandum recommending the denial of the motion for reconsideration.

Petitioner thus filed the instant petition with prayer for the issuance of a temporary

restraining order to enjoin the Sandiganbayan from taking further action in Criminal Case No. 21654.

On 25 August 2003, the First Division of this Court issued the temporary restraining order prayed for.

On 28 July 2004, the instant petition was transferred to the Second Division of this Court.

Issues

Petitioner raises the following issues:

I

WHETHER OR NOT RESPONDENT OFFICE OF THE OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT DISAPPROVED THE EARLIER RECOMMENDATION FOR THE DISMISSAL OF THE CASE AGAINST ALL THE ACCUSED WITHOUT ANY COGENT OR VERIFIABLE REASON AMOUNTING TO LACK OF JURISDICTION WHEN THEY:

1. THE OFFICE OF THE OMBUDSMAN ABUSED ITS DISCRETION IN THE DISAPPROVAL OF THE RESOLUTION DATED NOVEMBER 3, 1999 – AGAINST ALL ACCUSED FOR LACK OF PROBABLE CAUSE AS MANDATED UNDER SECTION 13 R.A. 6770 IN RELATION TO SECTION 3, RULE 112 OF THE RULES ON CRIMINAL PROCEDURE.

2. THE OFFICE OF SPECIAL PROSECUTOR DID NOT DETERMINE THE EXISTENCE OF PROBABLE CAUSE IN A RESOLUTION DENYING PETITIONER’S MOTION FOR RECONSIDERATION FOR APPROVAL BY THE NEW OMBUDSMAN.

II

WHETHER OR NOT THE CASE FILED AGAINST THE ACCUSED IS A CLEAR CASE OF PERSECUTION AND NOT PROSECUTION CONTEMPLATED UNDER R.A. 3019, AS AMENDED, OTHERWISE KNOWN AS THE ANTI-GRAFT AND CORRUPT PRACTICES ACT, REPUBLIC ACT NO. 1374 AND CHAPTER II, SECTION 2, TITLE VII, BOOK II OF THE REVISED PENAL CODE.

III

WHETHER OR NOT THE HONORABLE OMBUDSMAN HAS JURISDICTION OVER THE CASE.

Ruling of the Court

Quite apart from the above, we find a focal issue apparently glossed over by the parties - whether or not Ombudsman Desierto committed grave abuse of discretion in disapproving the 03 November 1999 memorandum of Special Prosecutor Jesus Micael recommending the dismissal of Criminal Case No. 21654 against petitioner Tezano, and spouses Juana and Vicente dela Cruz of V&G for violation of Section