

FIRST DIVISION

[G.R. NOS. 169727-28, August 18, 2006]

**BRIG. GEN. (RET.) JOSE S. RAMISCAL, JR., PETITIONER, VS.
SANDIGANBAYAN (4TH DIVISION) AND PEOPLE OF THE
PHILIPPINES, RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

Before the Court is a Petition for *Certiorari* under Rule 65 of the Rules of Court for the nullification of the Resolution^[1] of the Sandiganbayan (4th Division) in Criminal Case Nos. 28022 and 28023, as well as its Resolution denying the motion for reconsideration thereof.

In 1998, the Senate Committees on Accountability of Public Officers and Investigation (Blue Ribbon) and on National Defense and Security (collectively, Senate Blue Ribbon Committee) carried out an extensive joint inquiry into the "*coup* rumors and the alleged anomalies" in the Armed Forces of the Philippines-Philippine Retirement Benefits Systems

(AFP-RSBS). In its Report dated December 23, 1998, the Senate Blue Ribbon Committee outlined, among others, the anomalies in the acquisition of lots in Tanauan, Batangas, Calamba, Laguna and Iloilo City by the AFP-RSBS, and described the modus operandi of the perpetrators as follows:

The modus operandi in the buying of the lots was to cover the same transactions with two deeds of sale. One deed of sale would be signed only by the seller or sellers (unilateral deed). Another deed of sale would be signed by the seller or seller and the buyer, AFP-RSBS (bilateral deed).

The devious gimmicking was uncovered by your Committee which also found out that the buying prices stated in the unilateral deeds did not match those stated in the bilateral deeds. **To borrow a word from lawyers, the "consideration" (i.e., prices) in the unilateral deeds of sale and the bilateral deeds of sale did not tally even if they covered the same transaction.**

Without exception, the deed(s) signed by the seller(s) only (unilateral deeds) were the one registered with the registrar (sic) of deeds. These Unilateral Deeds of Sale recorded lower consideration paid by the System to the buyer(s) than those stated in the Bilateral Deeds. The motivation was obviously to evade payment of the correct taxes to the government and save money for the seller(s), broker(s) and who knows, probably even

for the kickbacks going to certain officials of RSBS, the buyer.

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*The bilateral deeds were kept in the dark files [of] the System over the years. They were uncovered only recently as a result of your Committee's investigation. **Your Committee submits that the reason why the bilateral deeds were kept in the vaults of the System was to justify the huge lot payments made by the System just in case any soldier-member of RSBS would be bold or curious enough to inquire about the matter directly with the System. The curious soldier would then be shown the bilateral deed to impress upon him/her that indeed the System has spent huge amounts for the purchase of the lots in question.***

*Until the investigation uncovered the anomaly, the matter of the two sets of documents covering the purchases of the same parcels of land made by the System were, like the Clinton-Lewinsky trysts, **kept from the prying eyes officials of the System but so unfair because the public continues to shoulder, in behalf of the RSBS, the payments for the pension and retirement benefits of the soldiers.***" (Emphasis supplied)

The Initial Report of the Senate Blue Ribbon Committee, which was cited by the Feliciano Commission in its Report to the President of the Philippines, included the following discussion:

Essentially, the Blue Ribbon Committee found that the real estate purchases by RSBS were uniformly documented, by two (2) sets of instruments: Firstly, a unilateral covering the same piece of land, executed both by the seller and by RSBS as buyer. The price stated in the second bilateral instrument was invariably much higher than the price reflected in the unilateral deed of sale. *The discrepancies* between the purchase price booked by RSBS and the purchase price reflected in the unilateral deed of sale actually registered in the relevant Registry of Deeds, *totaled about seven hundred three million pesos (P703 Million)*. The two sets of purchase price figures obviously could not both be correct at the same time. Either the purchase price booked and paid out by RSBS was the true purchase price of the land involved, in which case RSBS had obviously assisted or abetted the seller in grossly understating the capital gains realized by him and in defrauding the National treasury; or the purchase price in the unilateral deed of sale was the consideration actually received by the seller from RSBS, in which case, the buyer-RSBS had grossly overpaid, with the differential, in the belief of the Senate Blue Ribbon Committee, going into the pockets of RSBS officials. A third possibility was that the differential between the purchase price booked and paid by the buyer-RSBS and the selling price admitted by the seller of the land, had been shared by the buyer and seller in some undisclosed ratio.^[2]

Pursuant to the recommendation of the Senate Blue Ribbon Committee to "prosecute and/or cause the prosecution of Gen. Jose Ramiscal Jr. (Ret), past AFP-

RSBS President, who had signed the unregistered deeds of sale covering the acquisition of certain parcels of land," Ombudsman Investigators Ricardo Sullano, Rodil Buenaventura and Anatolio Alejandrino of the Office of the Deputy Ombudsman for the Military conducted a fact-finding investigation. They executed a Joint Affidavit-Complaint,^[3] stating that based on their findings, the following may be charged with falsification of public documents and violation of Section 3(e) and (g) of Republic Act (R.A.) No. 3019: petitioner B/Gen. Jose Ramiscal, Jr., former AFP-RSBS president; Atty. Meinrado Enrique Bello, Head of the AFP-RSBS Legal Department in charge of Land Acquisition; Capt. Perfecto Enrique Quilicot, AFP-RSBS Project Officer, Tanauan, Batangas, Land Acquisition; and Notaries Public Alfredo Nasser and Manuel Satuito.

The matter was further looked into by a panel of Ombudsman Investigators, which issued on March 30, 2001 a Joint Resolution^[4] finding probable cause to file the corresponding Informations for 148 counts of violation of Article 315, in relation to Article 171, paragraph 4 of the Revised Penal Code, and Section 3 (e) of R.A. No. 3019 against Meinrado Bello and Atty. Manuel Satuito. However, it was likewise recommended that the complaint against petitioner be dismissed, without prejudice to a thorough fact-finding investigation on his liability in light of this Court's ruling in *Arias v. Sandiganbayan*.^[5]

The Ombudsman did not act on this recommendation. Instead, another panel of prosecutors was directed to review the Joint Resolution and conduct a thorough investigation of the case. After conducting clarificatory hearings, the investigating panel issued a Memorandum^[6] dated June 15, 2004, recommending to the Ombudsman that petitioner be charged with 148 counts of estafa through falsification of public documents, and one count violation of Section 3(e) of R.A. No. 3019. Petitioner's allegation that he merely relied on the legal staff of the AFP-RSBS when he signed the unregistered bilateral deeds of sale was considered untenable. The panel declared that the deeds were used purposely to facilitate the payment of amounts in excess of that paid to the landowners. Moreover, petitioner, as AFP-RSBS president, could not claim that he was merely involved in top-level policy implementation.

The Memorandum also stated that the AFP-RSBS had an Investment Committee tasked to screen project proposals, which was headed by petitioner, Oscar Martinez and other AFP-RSBS officers; these potential investments were then elevated for further screening and approval to the Executive Committee, of which petitioner and Martinez were also members. The panel found that petitioner knew of the unilateral deeds of sale, considering that they were duly registered with the Register of Deeds and titles were issued on the basis thereof. The investigating panel clarified that the ruling of this Court in *Arias* does not apply because petitioner's participation consisted of signing and approving documents prepared by his subordinates relative to the transactions, from the time of conceptualization until payment by AFP-RSBS.

The panel further found that the culpability of petitioner, Quilicot, Bello and Satuito is evidenced by the fact that they signed documents in manifest bad faith, with full knowledge of the anomalous transactions. The bilateral deeds of absolute sale were prepared by the Legal Department of AFP-RSBS where Bello and Satuito were assigned, later enabling them to amass enormous profits. The investigating panel "confirmed" the observations of the Senate Blue Ribbon Committee as follows:

We have also noted that in all the 148 transactions of lot acquisition, the Bilateral Deeds of Sale never bore the marks/annotations of the Bureau of Internal Revenue and the Register of Deeds of Tanauan, Batangas, as would always appear, if they were used as basis for transfer of title. These Bilateral Deeds of Sale were attached to the payment vouchers to justify the payment of the much higher price considerations of the acquired lots, yet, no one of the respondents and the concerned AFP-RSBS officials and employees questioned the fact that the Bilateral Deeds of Sale never bore the marks and annotations of the Bureau of Internal Revenue indicative that the proper taxes have been paid nor that of the Register of Deeds of Tanauan, Batangas particularly the assigned Entry Number and the date of said entry as reflected in its Primary Entry Book.

From the concerted silence and inaction of the respondents on the glaring irregularities attendant to the transaction, we can draw the conclusion that these officers of the AFP-RSBS who passed upon the Disbursement Voucher and the Status Transaction Forms were aware of the forgeries and the result thereof. All the respondents were acting under a common design and purpose to give a semblance of regularity to the acquisition of the subject one hundred forty eight (148) lots at a price very much higher than what was actually paid to the individual lot owners. The element of conspiracy was therefore present.^[7]

The panel opined that the AFP-RSBS funds used to purchase the parcels of land were trust funds and for administration purposes.^[8] Moreover, Presidential Decree (P.D.) No. 361, the charter of the AFP-RSBS, intended to create a trust fund for the specific purpose of benefiting the members of the armed forces, hence contributions thereto were compulsory. Since soldiers and military personnel rely on the administration of the AFP-RSBS for their retirement, pension and separation benefits, petitioner and his co-officers occupy positions of trust, with obligations and responsibilities akin to those imposed on directors and officers of a corporation; and considering that the responsible officers are not mere directors but trustees, there is all the more reason to apply the fiduciary relationship principle in this case.

The Ombudsman approved the recommendation of the Panel of Prosecutors without prejudice to the liability of the landowners involved in the transactions.

Petitioner and his co-accused filed their respective Motions for Reconsideration of the investigating panel's June 15, 2004 Memorandum. Petitioner alleged the following:

1. RESPONDENT RAMISCAL'S PARTICIPATION IN THE SUBJECT SALE TRANSACTIONS, WHICH WERE DULY APPROVED BY THE RSBS BOARD, WAS PURELY MINISTERIAL AS PART OF HIS LIMITED FUNCTIONS AS PRESIDENT OF RSBS.
2. THE CONSPIRACY THEORY LINKING RESPONDENT RAMISCAL TO THE CHARGES IS DEVOID OF FACTUAL AND/OR LEGAL BASIS. IN FACT, THE MEMORANDUM FAILED TO SHOW, AS THERE IS NONE (SIC) ANY OVERT ACT OF CONSPIRACY COMMITTED BY RESPONDENT RAMISCAL.

3. IN ANY EVENT, THE CHARGES OF FALSIFICATION BASED ON THE BILATERAL DEEDS HAVE NO LEGAL LEG TO STAND ON AS AGAINST RESPONDENT RAMISCAL.
4. MORE THAN THAT, THE CHARGES OF ESTAFA AND VIOLATION OF SECTION 3(E) R.A. 3019 HAVE NO FACTUAL AND/OR LEGAL BASES INASMUCH AS THE AMOUNTS PAID BY AFP-RSBS TO THE VENDORS ARE THOSE THAT WERE INDICATED IN THE BILATERAL DEEDS OF SALE, HENCE, NO UNWARRANTED BENEFITS WERE AFFORDED THE SELLERS NOR DID THE [AFP-RSBS] AND THE GOVERNMENT SUFFER UNDUE INJURY INCIDENT THERETO.^[9]

On September 27, 2004, the Panel of Prosecutors issued a Memorandum^[10] to the Ombudsman recommending that the motion be denied, which the latter duly approved.

Thereafter, the panel of Prosecutors and the Special Prosecutors had a series of meetings with the Ombudsman, where it was agreed upon that only five Informations for estafa through falsification of public documents and five Informations for violation of Section 3(e) of R.A. No. 3019 would be initially filed with the Sandiganbayan instead of the 148 counts previously recommended by the Ombudsman. This was due to the lack of prosecutors who would handle the voluminous cases.^[11]

Of the Informations filed, two were raffled to the Fourth Division of the Sandiganbayan, one of which was docketed as Criminal Case No. 28022 for violation of Section 3(e) of R.A. No. 3019. The accusatory portion reads:

That on April 23, 1997 and sometime prior or subsequent thereto, in the Province of Batangas and Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused public officers, namely: **Brigadier General Jose Servando Ramiscal, Jr.**, a high-ranking public official, being then the President of the Armed Forces of the Philippines-Retirement, Separation and Benefit System (AFP-RSBS); **Atty. Meinrado Enrique A. Bello**, Head of Legal Division; **Atty. Manuel Se Satuito**, Chief of Documentation, Legal Division; **Captain Perfecto O. Quilicot, Jr.**, Project Officer, and certain John and John Does, also of the AFP-RSBS, a government entity, being a government owned or controlled corporation, while in the performance of their official functions and committing the offense in relation to their office, acting with evident bad faith, conspiring, confederating and mutually helping one another, with private individuals **John Does and Jane Does**, did then and there willfully, unlawfully and criminally cause undue injury to AFP-RSBS and its members by purchasing a parcel of land covering an area of seven thousand five hundred eighty-two square meters (7,582 sq. m.), more or less, situated at Tanauan, Batangas, registered in the name of Marianito V. Plaza, Glicerio V. Plaza and Petra Maunahan and covered by OCT-11835 and TCT 65973 of the Registry of Deeds of Tanauan, Batangas, under a bilateral Deed of Absoute Sale dated April 23, 1997, making it appear therein that the afore-described real property was sold by the said owners and purchased by the AFP-RSBS, represented by accused **BGen. Jose Servando Ramiscal, Jr.**, for the