

THIRD DIVISION

[G.R. NO. 136433, December 06, 2006]

**ANTONIO B. BALTAZAR, PETITIONER, VS. HONORABLE
OMBUDSMAN, EULOGIO M. MARIANO, JOSE D. JIMENEZ, JR.,
TORIBIO E. ILAO, JR. AND ERNESTO R. SALENGA,
RESPONDENTS.**

DECISION

VELASCO, JR., J.:

The Case

Ascribing grave abuse of discretion to respondent Ombudsman, this Petition for Review on Certiorari,^[1] under Rule 45 pursuant to Section 27 of RA 6770,^[2] seeks to reverse and set aside the November 26, 1997 Order^[3] of the Office of the Special Prosecutor (OSP) in OMB-1-94-3425 duly approved by then Ombudsman Aniano Desierto on August 21, 1998, which recommended the dismissal of the Information^[4] in Criminal Case No. 23661 filed before the Sandiganbayan against respondents Pampanga Provincial Adjudicator Toribio E. Ilao, Jr., Chief Legal Officer Eulogio M. Mariano and Legal Officer Jose D. Jimenez, Jr. (both of the DAR Legal Division in San Fernando, Pampanga), and Ernesto R. Salenga. The petition likewise seeks to set aside the October 30, 1998 Memorandum^[5] of the OSP duly approved by the Ombudsman on November 27, 1998 which denied petitioner's Motion for Reconsideration.^[6] Previously, the filing of the Information against said respondents was authorized by the May 10, 1996 Resolution^[7] and October 3, 1996 Order^[8] of the Ombudsman which found probable cause that they granted unwarranted benefits, advantage, and preference to respondent Salenga in violation of Section 3 (e) of RA 3019.^[9]

The Facts

Paciencia Regala owns a seven (7)-hectare fishpond located at Sasmuan, Pampanga. Her Attorney-in-Fact Faustino R. Mercado leased the fishpond for PhP 230,000.00 to Eduardo Lapid for a three (3)-year period, that is, from August 7, 1990 to August 7, 1993.^[10] Lessee Eduardo Lapid in turn sub-leased the fishpond to Rafael Lopez for PhP 50,000.00 during the last seven (7) months of the original lease, that is, from January 10, 1993 to August 7, 1993.^[11] Respondent Ernesto Salenga was hired by Eduardo Lapid as fishpond watchman (*bante-encargado*). In the sub-lease, Rafael Lopez rehired respondent Salenga.

Meanwhile, on March 11, 1993, respondent Salenga, through a certain Francis Lagman, sent his January 28, 1993 demand letter^[12] to Rafael Lopez and Lourdes Lapid for unpaid salaries and non-payment of the 10% share in the harvest.

On June 5, 1993, sub-lessee Rafael Lopez wrote a letter to respondent Salenga informing the latter that for the last two (2) months of the sub-lease, he had given the rights over the fishpond to Mario Palad and Ambit Perez for PhP 20,000.00.^[13]

This prompted respondent Salenga to file a Complaint^[14] before the Provincial Agrarian Reform Adjudication Board (PARAB), Region III, San Fernando, Pampanga docketed as DARAB Case No. 552-P'93 entitled *Ernesto R. Salenga v. Rafael L. Lopez and Lourdes L. Lapid* for Maintenance of Peaceful Possession, Collection of Sum of Money and Supervision of Harvest. The Complaint was signed by respondent Jose D. Jimenez, Jr., Legal Officer of the Department of Agrarian Reform (DAR) Region III Office in San Fernando, Pampanga, as counsel for respondent Salenga; whereas respondent Eulogio M. Mariano was the Chief Legal Officer of DAR Region III. The case was assigned to respondent Toribio E. Ilao, Jr., Provincial Adjudicator of DARAB, Pampanga.

On May 10, 1993, respondent Salenga amended his complaint.^[15] The amendments included a prayer for the issuance of a temporary restraining order (TRO) and preliminary injunction. However, before the prayer for the issuance of a TRO could be acted upon, on June 16, 1993, respondent Salenga filed a Motion to Maintain Status Quo and to Issue Restraining Order^[16] which was set for hearing on June 22, 1993. In the hearing, however, only respondent Salenga with his counsel appeared despite notice to the other parties. Consequently, the *ex-parte* presentation of respondent Salenga's evidence in support of the prayer for the issuance of a restraining order was allowed, since the motion was unopposed, and on July 21, 1993, respondent Ilao, Jr. issued a TRO.^[17]

Thereafter, respondent Salenga asked for supervision of the harvest, which the board sheriff did. Accordingly, defendants Lopez and Lapid received their respective shares while respondent Salenga was given his share under protest. In the subsequent hearing for the issuance of a preliminary injunction, again, only respondent Salenga appeared and presented his evidence for the issuance of the writ.

Pending resolution of the case, Faustino Mercado, as Attorney-in-Fact of the fishpond owner Paciencia Regala, filed a motion to intervene which was granted by respondent Ilao, Jr. through the November 15, 1993 Order. After the trial, respondent Ilao, Jr. rendered a Decision on May 29, 1995 dismissing the Complaint for lack of merit; but losing plaintiff, respondent Salenga, appealed the decision before the DARAB Appellate Board.

Complaint Before the Ombudsman

On November 24, 1994, pending resolution of the agrarian case, the instant case was instituted by petitioner Antonio Baltazar, an alleged nephew of Faustino Mercado, through a Complaint-Affidavit^[18] against private respondents before the Office of the Ombudsman which was docketed as OMB-1-94-3425 entitled *Antonio B. Baltazar v. Eulogio Mariano, Jose Jimenez, Jr., Toribio Ilao, Jr. and Ernesto Salenga* for violation of RA 3019. Petitioner charged private respondents of conspiracy through the issuance of the TRO in allowing respondent Salenga to retain possession of the fishpond, operate it, harvest the produce, and keep the sales under the safekeeping of other private respondents. Moreover, petitioner maintains

that respondent Ilao, Jr. had no jurisdiction to hear and act on DARAB Case No. 552-P'93 filed by respondent Salenga as there was no tenancy relation between respondent Salenga and Rafael L. Lopez, and thus, the complaint was dismissible on its face.

Through the December 14, 1994 Order,^[19] the Ombudsman required private respondents to file their counter-affidavits, affidavits of their witnesses, and other controverting evidence. While the other respondents submitted their counter-affidavits, respondent Ilao, Jr. instead filed his February 9, 1995 motion to dismiss, February 21, 1995 Reply, and March 24, 1995 Rejoinder.

Ombudsman's Determination of Probable Cause

On May 10, 1996, the Ombudsman issued a Resolution^[20] finding cause to bring respondents to court, denying the motion to dismiss of respondent Ilao, Jr., and recommending the filing of an Information for violation of Section 3 (e) of RA 3019. Subsequently, respondent Ilao, Jr. filed his September 16, 1996 Motion for Reconsideration and/or Re-investigation^[21] which was denied through the October 3, 1996 Order.^[22] Consequently, the March 17, 1997 Information^[23] was filed against all the private respondents before the Sandiganbayan which was docketed as Criminal Case No. 23661.

Before the graft court, respondent Ilao, Jr. filed his May 19, 1997 Motion for Reconsideration and/or Re-investigation which was granted through the August 29, 1997 Order.^[24] On September 8, 1997, respondent Ilao, Jr. subsequently filed his Counter-Affidavit^[25] with attachments while petitioner did not file any reply-affidavit despite notice to him. The OSP of the Ombudsman conducted the re-investigation; and the result of the re-investigation was embodied in the assailed November 26, 1997 Order^[26] which recommended the dismissal of the complaint in OMB-1-94-3425 against all private respondents. Upon review, the Ombudsman approved the OSP's recommendation on August 21, 1998.

Petitioner's Motion for Reconsideration^[27] was likewise denied by the OSP through the October 30, 1998 Memorandum^[28] which was approved by the Ombudsman on November 27, 1998. Consequently, the trial prosecutor moved orally before the Sandiganbayan for the dismissal of Criminal Case No. 23661 which was granted through the December 11, 1998 Order.^[29]

Thus, the instant petition is before us.

The Issues

Petitioner raises two assignments of errors, to wit:

THE HONORABLE OMBUDSMAN ERRED IN GIVING DUE COURSE A MISPLACED COUNTER-AFFIDAVIT FILED AFTER THE TERMINATION OF THE PRELIMINARY INVESTIGATION AND/OR THE CASE WAS ALREADY FILED BEFORE THE SANDIGANBAYAN.

ASSUMING OTHERWISE, THE HONORABLE OMBUDSMAN LIKEWISE

ERRED IN REVERSING HIS OWN RESOLUTION WHERE IT WAS RESOLVED THAT ACCUSED AS PROVINCIAL AGRARIAN ADJUDICATOR HAS NO JURISDICTION OVER A COMPLAINT WHERE THERE EXIST [sic] NO TENANCY RELATIONSHIP CONSIDERING [sic] COMPLAINANT IS NOT A TENANT BUT A "BANTE-ENCARGADO" OR WATCHMAN-OVERSEER HIRED FOR A SALARY OF P3,000.00 PER MONTH AS ALLEGED IN HIS OWN COMPLAINT.^[30]

Before delving into the errors raised by petitioner, we first address the preliminary procedural issue of the authority and *locus standi* of petitioner to pursue the instant petition.

Preliminary Issue: Legal Standing

Locus standi is defined as "a right of appearance in a court of justice x x x on a given question."^[31] In private suits, standing is governed by the "real-parties-in interest" rule found in Section 2, Rule 3 of the 1997 Rules of Civil Procedure which provides that "every action must be prosecuted or defended in the name of the real party in interest." Accordingly, the "real-party-in interest" is "the party who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit."^[32] Succinctly put, the plaintiffs' standing is based on their own right to the relief sought.

The records show that petitioner is a non-lawyer appearing for himself and conducting litigation in person. Petitioner instituted the instant case before the Ombudsman in his own name. In so far as the Complaint-Affidavit filed before the Office of the Ombudsman is concerned, there is no question on his authority and legal standing. Indeed, the Office of the Ombudsman is mandated to "investigate and prosecute on its own or **on complaint by any person**, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient (emphasis supplied)."^[33] The Ombudsman can act on anonymous complaints and *motu proprio* inquire into alleged improper official acts or omissions from whatever source, e.g., a newspaper.^[34] Thus, any complainant may be entertained by the Ombudsman for the latter to initiate an inquiry and investigation for alleged irregularities.

However, filing the petition in person before this Court is another matter. The Rules allow a non-lawyer to conduct litigation in person and appear for oneself only when he is a party to a legal controversy. Section 34 of Rule 138 pertinently provides, thus:

SEC. 34. By whom litigation conducted. – In the court of a justice of the peace a party may conduct his litigation in person, with the aid of an agent or friend appointed by him for that purpose, or with the aid of an attorney. In any other court, a party may conduct his litigation personally or by aid of an attorney, and his appearance must be either personal or by a duly authorized member of the bar (emphases supplied).

Petitioner has no legal standing

Is petitioner a party or a real party in interest to have the *locus standi* to pursue the

instant petition? We answer in the negative.

While petitioner may be the complainant in OMB-1-94-3425, he is not a real party in interest. Section 2, Rule 3 of the 1997 Rules of Civil Procedure stipulates, thus:

SEC. 2. *Parties in interest.* – A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

The same concept is applied in criminal and administrative cases.

In the case at bar which involves a criminal proceeding stemming from a civil (agrarian) case, it is clear that petitioner is not a real party in interest. Except being the complainant, the records show that petitioner is a stranger to the agrarian case. It must be recalled that the undisputed owner of the fishpond is Paciencia Regala, who intervened in DARAB Case No. 552-P'93 through her Attorney-in-Fact Faustino Mercado in order to protect her interest. The motion for intervention filed by Faustino Mercado, as agent of Paciencia Regala, was granted by respondent Provincial Adjudicator Ila, Jr. through the November 15, 1993 Order in DARAB Case No. 552-P'93.

Agency cannot be further delegated

Petitioner asserts that he is duly authorized by Faustino Mercado to institute the suit and presented a Special Power of Attorney^[35] (SPA) from Faustino Mercado. However, such SPA is unavailing for petitioner. For one, petitioner's principal, Faustino Mercado, is an agent himself and as such cannot further delegate his agency to another. Otherwise put, an agent cannot delegate to another the same agency. The legal maxim *potestas delegata non delegare potest*; a power once delegated cannot be re-delegated, while applied primarily in political law to the exercise of legislative power, is a principle of agency.^[36] For another, a re-delegation of the agency would be detrimental to the principal as the second agent has no privity of contract with the former. In the instant case, petitioner has no privity of contract with Paciencia Regala, owner of the fishpond and principal of Faustino Mercado.

Moreover, while the Civil Code under Article 1892^[37] allows the agent to appoint a substitute, such is not the situation in the instant case. The SPA clearly delegates the agency to petitioner to pursue the case and not merely as a substitute. Besides, it is clear in the aforesaid Article that what is allowed is a substitute and not a delegation of the agency.

Clearly, petitioner is neither a real party in interest with regard to the agrarian case, nor is he a real party in interest in the criminal proceedings conducted by the Ombudsman as elevated to the Sandiganbayan. He is not a party who will be benefited or injured by the results of both cases.

Petitioner: a stranger and not an injured private complainant

Petitioner only surfaced in November 1994 as complainant before the Ombudsman.