

FIRST DIVISION

[G.R. No. 149069, September 20, 2004]

ENRICO P. QUIAMBAO, PETITIONER, VS. HON. ANIANO DESIERTO, IN HIS OFFICIAL CAPACITY AS OMBUDSMAN, SANDIGANBAYAN (FIRST DIVISION), AND CIELO MACAPAGAL-SALGADO, RESPONDENTS.

DECISION

YNARES-SANTIAGO, J.:

This petition for certiorari seeks to annul and set aside (a) the Ombudsman's Memorandum dated June 14, 2001 denying petitioner's motion for reconsideration of Ombudsman Prosecutor II Raymundo Julio A. Olaguer's Memorandum dated November 9, 1998; (b) the Ombudsman's Order dated August 17, 2000 disapproving the Special Prosecutor's Memorandum dated November 9, 1999 recommending the dismissal of the charge against all the accused; and (c) the Amended Information dated January 13, 1999 filed before the respondent Sandiganbayan, which was docketed as Criminal Case No. 24790. This is also a petition for prohibition to enjoin the Ombudsman from further prosecuting the case and the Sandiganbayan from hearing Criminal Case No. 24790.^[1]

Petitioner Enrico P. Quiambao served as Provincial Administrator of Pampanga from July 1, 1995 until June 30, 1998. During his term, the Provincial Government of Pampanga, headed by its then Governor Manuel M. Lapid, embarked on a low-cost housing project to benefit the provincial employees of Pampanga who were displaced by the Mt. Pinatubo eruption in 1991. On October 13, 1997, the *Sangguniang Panlalawigan* of Pampanga passed the following Resolutions:

RESOLUTION NO. 340

A RESOLUTION AUTHORIZING HON. MANUEL M. LAPID, GOVERNOR, PROVINCE OF PAMPANGA TO NEGOTIATE FOR THE PURCHASE OF A PARCEL OF LAND WITHIN SAN FERNANDO, PAMPANGA SUITABLE FOR LOW-COST HOUSING PROJECT FOR PROVINCIAL EMPLOYEES.

THE SANGGUNIAN PANLALAWIGAN OF PAMPANGA, in session assembled:

RESOLVED, as it hereby resolved that the Sangguniang Panlalawigan of Pampanga authorizes, as it hereby authorizes Hon. Manuel M. Lapid, Governor, Province of Pampanga to negotiate for the purchase of a parcel of land within San Fernando, Pampanga suitable for low-cost housing project for provincial employees.

RESOLVED FINALLY, that copies of this Resolution be furnished the

Provincial Governor, the Provincial Treasurer, the Provincial Budget Officer and the Provincial Auditor, all of San Fernando, Pampanga for information and guidance.

APPROVED.^[2]

RESOLUTION NO. 341

A RESOLUTION AUTHORIZING HON. MANUEL M. LAPID, GOVERNOR, PROVINCE OF PAMPANGA TO ENTER INTO A CONTRACT OF LOAN WITH THE PHILIPPINE NATIONAL BANK OR WITH ANY FINANCING INSTITUTION FOR A LOW COST HOUSING PROJECT FOR PROVINCIAL EMPLOYEES AND FOR OTHER PURPOSES.

THE SANGGUNIAN PANLALAWIGAN OF PAMPANGA, in session assembled:

RESOLVED, as it is hereby resolved, that the Sanggunian Panlalawigan of Pampanga authorizes, as it hereby authorizes Hon. Manuel M. Lapid, Governor, Province of Pampanga to enter into a contract of loan with the Philippine National Bank or with any financing institution for a low cost housing project for provincial employees and for other purposes.

RESOLVED FINALLY, that copies of this Resolution be furnished the Provincial Governor, the Provincial Treasurer, the Provincial Auditor, the Provincial Budget Officer, the Provincial Accountant and the Philippine National Bank, all of San Fernando, Pampanga for information.

APPROVED.^[3]

Negotiations began for the acquisition of the properties to be used for the project. On October 30, 1997, Governor Lapid wrote the Philippine National Bank (PNB), San Fernando Branch, requesting for a loan in the amount of One Hundred Four Million Pesos (P104,000,000.00) to be secured by a "hold-out" on the province's deposit with the bank amounting to P130 Million. PNB eventually granted the loan. The documents for the loan application as well as the promissory note covering the P104 Million loan were executed on November 3, 1997.

On the same date, November 3, 1997, the property owners, through their attorney-in-fact Abelardo Miranda, Jr., executed the corresponding Deed of Absolute Sale for the two parcels of land totaling 40 hectares for the consideration of P104 Million. Petitioner Quiambao, as Provincial Administrator, and Provincial Treasurer Jovito Sabado prepared and signed the P104 Million check paid to Miranda. Governor Lapid signed the Deed of Sale as representative of the province of Pampanga. While the boundaries and descriptions of the subject lots were indicated in the deed, the exact numbers of the Transfer Certificates of Title (TCT) were initially left blank and filled only on November 20, 1997, when TCT No. 439720-R and TCT No. 439721-R were issued in the name of the Municipality of San Fernando, Pampanga.

Records show, however, that the sellers, through Abelardo Miranda, Jr., executed a second Deed of Absolute Sale on November 17, 1997, wherein the amount of the consideration was pegged at only Five Million Pesos (P5,000,000.00). The two lots

were reflected in this deed to be part of a mother title described as TCT No. 290669. Moreover, this deed was used as basis for payment of the transfer tax, registration fees and capital gains tax. The signature of Governor Lapid or any representative of the Province of Pampanga did not appear on the face of the second deed of sale.

On January 28, 1998, then Vice-Governor Cielo Macapagal-Salgado, along with three members of the *Sangguniang Panlalawigan*, wrote a letter to Ombudsman Aniano P. Desierto requesting for an investigation of Governor Lapid, petitioner Quiambao in his capacity as Provincial Administrator, and Provincial Treasurer Jovito Sabado, for "any act of impropriety, dishonesty, irregularity or misconduct"^[4] in the purchase of the lots in question.

In a letter dated February 3, 1998, the *Sangguniang Panlalawigan* informed Governor Lapid that under Resolution Nos. 340 and 341, he was given "full powers to initiate, undertake, negotiate and consummate the purchase of the 40-hectare property, including the contract with the Philippine National Bank, which, indeed, was the purpose, aim, in substance and in fact of the two resolutions"^[5] On February 24, 1998, the *Sangguniang Panlalawigan* likewise wrote the PNB informing it that Governor Lapid was duly authorized to take out the loan from the Bank to pay for the lots and use the deposits of the Provincial Government of Pampanga as hold-out against the loan.^[6]

Not content with the foregoing letters, the *Sangguniang Panlalawigan* passed Resolution No. 118 and Ordinance No. 5 both dated April 22, 1998, which provide:

RESOLUTION NO. 118

A RESOLUTION RATIFYING AND ACCEPTING THE TERMS AND CONDITIONS OF THE CONTRACT OF LOAN SET FORTH BY THE PHILIPPINE NATIONAL BANK IN CONNECTION WITH THE LOAN APPLICATION OF THE PROVINCE FOR A LOAN AS DEPOSIT HOLD-OUT FOR AND IN BEHALF OF THE PROVINCE OF PAMPANGA.

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WHEREAS, in Sangguniang Panlalawigan letter dated February 24, 1998 addressed to VP Largion Najera of PNB, the approving members confirmed that they gave full power and authority to Gov. Lapid to initiate, undertake, negotiate and consummate the purchase of the subject 40-hectare property including the authority to enter into that contract of loan with PNB for P104 Million and to do other acts necessary and proper to implement the project such as but not limited to the use of the deposits of the Provincial Government of Pampanga with PNB San Fernando Branch as hold-out against the loan and the payment of the lot from the proceeds of the said loan.

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THE SANGGUNIANG PANLALAWIGAN OF PAMPANGA, in session assembled:

RESOLVED, as it is hereby resolved, that the Sangguniang Panlalawigan of Pampanga ratifies and accepts, as it hereby ratifies and accepts the terms and conditions of the contract of loan set forth by the Philippine National Bank in connection with the loan application of the Province of Pampanga for a loan vs. deposit hold-out for and in behalf of the Province of Pampanga.

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RESOLVED FINALLY, that the loan be guaranteed by the Savings Account of the Province deposited in the PNB San Fernando, Pampanga Branch under Account No. 470-542111(illegible).

APPROVED.^[7]

ORDINANCE NO. 05

AN ORDINANCE AFFIRMING THE LOAN GRANTED BY THE PHILIPPINE NATIONAL BANK TO THE PROVINCIAL GOVERNMENT OF PAMPANGA AMOUNTING TO P104,000,000.00 FOR THE PAYMENT OF THE PURCHASE OF LOT INTENDED FOR LOW-COST HOUSING FOR PROVINCIAL OFFICIALS, EMPLOYEES AND OTHERS.

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Section 1. It is hereby appropriated that the amount of One Hundred Four Million (P104,000,000.00) Pesos representing the loan from the Philippine National Bank is appropriated and disbursed for the payment of lot located at Maimpis, San Fernando, Pampanga, including the use of the deposits of the Provincial Government with the said bank as hold-out against the loan.

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APPROVED.^[8]

On August 21, 1998, an Information for violation of Section 3(e) of Republic Act No. 3019^[9] was filed by the Ombudsman against petitioner, Governor Lapid and Provincial Treasurer Sabado. On January 13, 1999, the Ombudsman filed before the Sandiganbayan an Amended Information impleading other provincial officials of Pampanga, the sellers of the lots and their agent, Abelardo Miranda, Jr. The case was docketed as Criminal Case No. 24790 entitled "*People of the Philippines, plaintiff v. Manuel M. Lapid, et al., accused*". As filed, the Amended Information read:

That in the month of November, 1997, or sometime prior or subsequent thereto, in San Fernando, Province of Pampanga, and within the jurisdiction of this Honorable Court, above-named accused MANUEL M. LAPID, ENRICO P. QUIAMBAO, JOVITO S. SABADO, BENJAMIN G. YUZON, NIDA P. MANALAD, BIENVENIDO C. OCAMPO, LUZVIMINDA R. SORIANO and MA. LUISA R. SAN ANTONIO, all public officers, being then the

Provincial Governor, Provincial Administrator, Provincial Treasurer, Provincial Accountant, and Budget Officer of the Provincial Government of Pampanga, and Registrar of Deeds, Chief, Assessment Division, and Clerk of the Bureau of Internal Revenue (BIR), Pampanga, respectively, conspiring and confederating with one another and with accused private citizens ABELARDO C. MIRANDA, JR., FELIPE S. CUYUGAN, SR., VIRGINIA H. CUYUGAN, GERVACIO SINGIAN, FRANCISCA G. SINGIAN, WILFREDO VERGARA and PILAR P. VERGARA, committing the crime herein charged in relation to, and taking advantage of, their official functions, acting with manifest partiality, evident bad faith, and gross inexcusable negligence, did then and there willfully, unlawfully and criminally cause undue injury to the Provincial Government as a whole and to the public interest, by then and there causing the approval and subsequent release of the amount of ONE HUNDRED FOUR MILLION (P104,000,000.00) PESOS, Philippine Currency, in public funds, as contained in PNB Check No. 000219301 dated November 3, 1997 obtained through a loan from Philippine National Bank (PNB), to accused ABELARDO C. MIRANDA, JR., Attorney-in-Fact for the vendors, accused FELIPE S. CUYUGAN, SR., VIRGINIA H. CUYUGAN, GERVACIO SINGIAN, FRANCISCA G. SINGIAN, WILFREDO VERGARA and PILAR P. VERGARA, of a 40-hectare property located in San Fernando, Pampanga, as purported consideration for the purchase of the aforesaid property despite the following facts known to the accused: *first*, that the November 3, 1997 Deed of Sale which purports to convey to the Province of Pampanga title over properties was conspicuously defective as it left blank the transfer certificate(s) of titles and lots it referred to; *second*, that it was **not** by virtue of the said November 3, 1997 Deed of Sale that the ownership over the property was transferred to the Province of Pampanga, but, instead, by virtue of a Deed of Sale dated November 17, 1997, which stipulated the purchase price of FIVE MILLION (P5,000,000.00) PESOS, which November 17, 1997 Deed of Sale was used for registration and tax purposes, depriving the government of the correct taxes due on the ONE HUNDRED FOUR MILLION (P104,000,000.00) PESOS actually paid for said acquisition; *third*, that accused MANUEL M. LAPID was not authorized to purchase the property as his authority under Resolution No. 340 of the Provincial Board of Pampanga dated October 13, 1997 was only to negotiate for the purchase of a parcel of land within San Fernando, Pampanga; *fourth*, that accused MANUEL M. LAPID was not authorized to use the ONE HUNDRED FOUR MILLION (P104,000,000.00) PESOS loan obtained from PNB as payment for the said lot acquisition, thereby depriving the use of the said government fund for the purposes it was intended, as his authority under Resolution No. 341 of the Provincial Board of Pampanga dated October 13, 1997 was merely to enter into a contract of loan with the PNB or any financial institution; and *fifth*, that the public fund in the amount of ONE HUNDRED FOUR MILLION (P104,000,000.00) PESOS was disbursed without the required duly approved voucher and certificate of availability of funds; to the damage and prejudice of the government.

CONTRARY TO LAW.^[10]

On September 20, 1999, petitioner filed before the Office of the Ombudsman a Motion for Reconsideration of the November 9, 1998 Memorandum recommending