

## SECOND DIVISION

[ G.R. No. 130872, March 25, 1999 ]

**FRANCISCO M. LECAROS AND LENLIE LECAROS, PETITIONERS,  
VS. SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES,  
RESPONDENTS.**

### D E C I S I O N

**BELLOSILLO, J.:**

FRANCISCO M. LECAROS and LENLIE LECAROS, father and son, were convicted by the Sandiganbayan of thirteen (13) counts of *estafa* through falsification of public documents.<sup>[1]</sup> They now seek a review of their conviction as they insist on their innocence.

Petitioner Francisco M. Lecaros was the Municipal Mayor of Santa Cruz, Marinduque, while his son, his co-petitioner Lenlie Lecaros, was the outgoing chairman of the Kabataang Barangay (KB) of Barangay Bagong Silang, Municipality of Santa Cruz, and concurrently a member of its Sangguniang Bayan (SB) representing the Federation of Kabataang Barangays.

In the 1985 election for the Kabataang Barangay Jowil Red<sup>[2]</sup> won as KB Chairman of Barangay Matalaba, Santa Cruz. Parenthetically, Lenlie Lecaros did not run as candidate in this electoral exercise as he was no longer qualified for the position after having already passed the age limit fixed by law.

Sometime in November 1985 Red was appointed by then President Ferdinand Marcos as member of the Sangguniang Bayan of Santa Cruz representing the KBs of the municipality. Imee Marcos-Manotoc, then the National Chairperson of the organization, sent a telegram to Red confirming his appointment and advising him further that copies of his appointment papers would be sent to him in due time through the KB Regional Office.<sup>[3]</sup> Red received the telegram on 2 January 1986 and showed it immediately to Mayor Francisco M. Lecaros.

On 7 January 1986, armed with the telegram and intent on assuming the position of sectoral representative of the KBs to the SB, Red attended the meeting of the Sanggunian upon the invitation of one of its members, *Kagawad* Rogato Lumawig. In that meeting, Mayor Francisco M. Lecaros informed Red that he could not yet sit as member of the municipal council until his appointment had been cleared by the Governor of Marinduque. Nonetheless, the telegram was included in the agenda as one of the subjects discussed in the meeting.

Red finally received his appointment papers sometime in January 1986.<sup>[4]</sup> But it was only on 23 April 1986, when then President Corazon C. Aquino was already in power,<sup>[5]</sup> that he forwarded these documents to Mayor Lecaros. This notwithstanding, Red

was still not allowed by the mayor to sit as sectoral representative in the Sanggunian.

Meanwhile, Mayor Lecaroz prepared and approved on different dates the payment to Lenlie Lecaroz of twenty-six (26) sets of payrolls for the twenty-six (26) *quincenas* covering the period 16 January 1986 to 30 January 1987. Lenlie Lecaroz signed the payroll for 1-15 January 1986 and then authorized someone else to sign all the other payrolls for the succeeding *quincenas* and claim the corresponding salaries in his behalf.

On 25 October 1989, or three (3) years and nine (9) months from the date he received his appointment papers from President Marcos, Red was finally able to secure from the Aquino Administration a confirmation of his appointment as KB Sectoral Representative to the Sanggunian Bayan of Santa Cruz.

Subsequently, Red filed with the Office of the Ombudsman several criminal complaints against Mayor Francisco Lecaroz and Lenlie Lecaroz arising from the refusal of the two officials to let him assume the position of KB sectoral representative. After preliminary investigation, the Ombudsman filed with the Sandiganbayan thirteen (13) Informations for estafa through falsification of public documents against petitioners, and one (1) Information for violation of Sec. 3, par. (e), of RA No. 3019, the Anti-Graft and Corrupt Practices Act, against Mayor Lecaroz alone.

On 7 October 1994 the Sandiganbayan rendered a decision finding the two (2) accused guilty on all counts of estafa through falsification of public documents and sentenced each of them to -

a) imprisonment for an indeterminate period ranging from a minimum of FIVE (5) YEARS, ELEVEN (11) MONTHS AND ONE (1) DAY of *prision correccional* to a maximum of TEN (10) YEARS AND ONE (1) DAY of *prison mayor* FOR EACH OF THE ABOVE CASES;

b) a fine in the amount of FIVE THOUSAND PESOS (P5,000) FOR EACH OF THE ABOVE CASES or a total of SIXTY-FIVE THOUSAND PESOS (P65,000), and

c) perpetual special disqualification from public office in accordance with Art. 214 of the Revised Penal Code.

x x x (and) to pay jointly and severally the amount of TWENTY-THREE THOUSAND SIX HUNDRED SEVENTY-FIVE PESOS (P23,675), the amount unlawfully obtained, to the Municipality of Sta. Cruz, Marinduque in restitution.

The Sandiganbayan ruled that since Red was elected president of the KB and took his oath of office sometime in 1985 before then Assemblywoman Carmencita O. Reyes his assumption of the KB presidency upon the expiration of the term of accused Lenlie Lecaroz was valid. Conversely, the accused Lenlie Lecaroz ceased to be a member of the KB on the last Sunday of November 1985 and, as such, was no longer the legitimate representative of the youth sector in the municipal council of Sta. Cruz, Marinduque.

In convicting both accused on the falsification charges, the Sandiganbayan elucidated -

x x x x when, therefore, accused MAYOR FRANCISCO LECAROS entered the name of his son, the accused LENLIE LECAROS, in the payroll of the municipality of Sta. Cruz for the payroll period starting January 15, 1986, reinstating accused LENLIE LECAROS to his position in the Sangguniang Bayan, he was deliberately stating a falsity when he certified that LENLIE LECAROS was a member of the Sangguniang Bayan. The fact is that even accused LENLIE LECAROS himself no longer attended the sessions of the Sangguniang Bayan of Sta. Cruz, and starting with the payroll for January 16 to 31, 1986, did not personally pick up his salaries anymore.

The accused MAYOR's acts would fall under Art. 171, par. 4, of *The Revised Penal Code* which reads:

Art. 171. *Falsification by public officer, employee or notary or ecclesiastical minister.* - The penalty of prision mayor and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary public who, taking advantage of his official position, shall falsify a document by committing any of the following acts: x x x x 4. Making untruthful statements in a narration of facts.

x x x x

Clearly, falsification of public documents has been committed by accused MAYOR LECAROS.

Likewise from these acts of falsification, his son, accused LENLIE LECAROS, was able to draw salaries from the municipality to which he was not entitled for services he had admittedly not rendered. This constitutes Estafa x x x x the deceit being the falsification made, and the prejudice being that caused to the municipality of Sta. Cruz, Marinduque for having paid salaries to LENLIE LECAROS who was not entitled thereto.

Conspiracy was alleged in the Informations herein, and the Court found the allegation sufficiently substantiated by the evidence presented.

There is no justifiable reason why accused MAYOR LECAROS should have reinstated his son LENLIE in the municipal payrolls from January 16, 1986 to January 31, 1987, yet he did so. He could not have had any other purpose than to enable his son LENLIE to draw salaries thereby. This conclusion is inescapable considering that the very purpose of a payroll is precisely that -- to authorize the payment of salaries. And LENLIE LECAROS did his part by actually drawing the salaries during the periods covered, albeit through another person whom he had authorized.

By the facts proven, there was conspiracy in the commission of Estafa between father and son.

However, with respect to the charge of violating Sec. 3, par. (e), of RA No. 3.019, the Sandiganbayan acquitted Mayor Francisco Lecaroz. It found that Red was neither authorized to sit as member of the SB because he was not properly appointed thereto nor had he shown to the mayor sufficient basis for his alleged right to a seat in the municipal council. On this basis, the court *a quo* concluded that Mayor Lecaroz was legally justified in not allowing Red to assume the position of *Kagawad*.

On 1 October 1994 the Sandiganbayan denied the motion for reconsideration of its decision filed by the accused. This prompted herein petitioners to elevate their cause to us charging that the Sandiganbayan erred:

*First*, in holding that Red had validly and effectively assumed the office of KB Federation President by virtue of his oath taken before then Assemblywoman Carmencita Reyes on 27 September 1985, and in concluding that the tenure of accused Lenlie Lecaroz as president of the KB and his coterminous term of office as KB representative to the SB had accordingly expired;

*Second*, assuming *arguendo* that the term of office of the accused Lenlie Lecaroz as youth representative to the SB had expired, in holding that accused Lenlie Lecaroz could no longer occupy the office, even in a holdover capacity, despite the vacancy therein;

*Third*, granting *arguendo* that the tenure of the accused Lenlie Lecaroz as federation president had expired, in holding that by reason thereof accused Lenlie Lecaroz became legally disqualified from continuing in office as KB Sectoral Representative to the SB even in a holdover capacity;

*Fourth*, in not holding that under Sec. 2 of the Freedom Constitution and pursuant to the provisions of the pertinent Ministry of Interior and Local Governments (MILG) interpretative circulars, accused Lenlie Lecaroz was legally entitled and even mandated to continue in office in a holdover capacity;

*Fifth*, in holding that the accused had committed the crime of falsification within the contemplation of Art. 171 of *The Revised Penal Code*, and in not holding that the crime of estafa of which they had been convicted required criminal intent and malice as essential elements;

*Sixth*, assuming *arguendo* that the accused Lenlie Lecaroz was not legally entitled to hold over, still the trial court erred in not holding - considering the difficult legal questions involved - that the accused acted in good faith and committed merely an error of judgment, without malice and criminal intent; and,

*Seventh*, in convicting the accused for crimes committed in a manner different from that alleged in the Information under which the accused were arraigned and tried.

The petition is meritorious. The basic propositions upon which the Sandiganbayan premised its conviction of the accused are: (a) although Jowil Red was duly elected KB Chairman he could not validly assume a seat in the Sanggunian as KB sectoral representative for failure to show a valid appointment; and, (b) Lenlie Lecaroz who was the incumbent KB representative could not hold over after his term expired because pertinent laws do not provide for holdover.

To resolve these issues, it is necessary to refer to the laws on the terms of office of KB youth sectoral representatives to the SB and of the KB Federation Presidents. Section 7 of BP Blg. 51 and Sec. 1 of the KB Constitution respectively provide -

*Sec. 7. Term of Office.* - Unless sooner removed for cause, all local elective officials hereinabove mentioned shall hold office for a term of six (6) years, which shall commence on the first Monday of March 1980.

In the case of the members of the sanggunian representing the association of barangay councils and the president of the federation of kabataang barangay,, their terms of office shall be coterminous with their tenure is president of their respective association and federation .

x x x x

Sec 1. All incumbent officers of the Kabataang Barangay shall continue to hold office until the last Sunday of November 1985 or such time that the newly elected officers shall have qualified and assumed office in accordance with this Constitution.

The theory of petitioners is that Red failed to qualify as KB sectoral representative to the SB since he did not present an authenticated copy of his appointment papers; neither did he take a valid oath of office. Resultantly, this enabled petitioner Lenlie Lecaroz to continue as member of the SB although in a holdover capacity since his term had already expired. The Sandiganbayan however rejected this postulate declaring that the holdover provision under Sec. 1 quoted above pertains only to positions in the KB, clearly implying that since no similar provision is found in Sec. 7 of B.P. Blg. 51, there can be no holdover with respect to positions in the SB.

We disagree with the Sandiganbayan. The concept of holdover when applied to a public officer implies that the office has a fixed term and the incumbent is holding onto the succeeding term.<sup>[6]</sup> It is usually provided by law that officers elected or appointed for a fixed term shall remain in office not only for that term but until their successors have been elected and qualified. Where this provision is found, the office does not become vacant upon the expiration of the term if there is no successor elected and qualified to assume it, but the present incumbent will carry over until his successor is elected and qualified, even though it be beyond the term fixed by law.<sup>[7]</sup>

In the instant case, although BP Blg. 51 does not say that a Sanggunian member can continue to occupy his post after the expiration of his term in case his successor fails to qualify, it does not also say that he is proscribed from holding over. Absent an express or implied constitutional or statutory provision to the contrary, an officer is entitled to stay in office until his successor is appointed or chosen and has qualified.<sup>[8]</sup> The legislative intent of not allowing holdover must be clearly expressed or at least implied in the legislative enactment,<sup>[9]</sup> otherwise it is reasonable to assume that the law-making body favors the same.

Indeed, the law abhors a vacuum in public offices,<sup>[10]</sup> and courts generally indulge in the strong presumption against a legislative intent to create, by statute, a condition which may result in an executive or administrative office becoming, for