

FIRST DIVISION

[G.R. No. 127370, September 14, 1999]

**P N B - REPUBLIC BANK, PETITIONER, VS. COURT OF APPEALS
AND, PLANTERS DEVELOPMENT BANK, RESPONDENTS.**

DECISION

YNARES-SANTIAGO, J.:

Petitioner bought Treasury Bills (T-Bills) worth P56 million from private respondent PDB. After paying the purchase price and despite several demands, respondent PDB never delivered the T-Bills. An officer of petitioner referred the matter of the undelivered T-Bills to the National Bureau of Investigation (NBI) for investigation. The NBI found that Bernardo Ng, Jimmy Dumlao and Patricio Tagulinao, who are all officers of respondent PDB conspired with Romeo D. Macaranas, an officer of petitioner PNB, in acquiring the proceeds of the T-Bills. Thus, on October 10, 1994, the NBI filed before the Office of the Ombudsman a criminal case for estafa and violation of the Anti-Graft Law against the said four bank officers. Thereafter, petitioner filed with the Regional Trial Court (RTC) a complaint for specific performance/sum of money against respondent PDB. The latter moved to dismiss the complaint on the grounds of forum shopping and that the complaint states no cause of action, since the same T-Bills are the subject of the criminal action pending before the Ombudsman. The trial court granted the motion to dismiss.^[1] When its motion for reconsideration was denied,^[2] petitioner elevated the case to this Court thru a petition for review which was, however, referred to the Court of Appeals (CA). Thereafter, the CA rendered judgment affirming the trial court's order of dismissal.^[3]

Hence, this petition where the issue is whether the filing of the specific performance case before the RTC violates the rule on forum shopping in the light of the criminal cases for estafa and violation of the Anti-Graft Law pending before the Ombudsman.

Forum shopping consists in the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another (and possibly favorable) opinion in another forum (other than by appeal or by special civil action of certiorari), or the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.^[4]

In the case at bar, petitioner did not avail of different forums to ventilate the same grievance. It did not file any case before the Ombudsman or before the *Sandiganbayan*. The Ombudsman has not yet released any resolution on the criminal case filed before it by the NBI involving the T-Bills. A case pending before the Ombudsman cannot be considered for purposes of determining if there was forum shopping. The power of the Ombudsman is only investigatory in character and its resolution cannot constitute a valid and final judgment because its duty, assuming it determines that there is an actionable criminal or non-criminal act or