

FIRST DIVISION

[G.R. No. 130319, October 21, 1998]

**ERIBERTO L. VENUS, PETITIONER, VS. HON. ANIANO DESIERTO,
IN HIS OFFICIAL CAPACITY AS OMBUDSMAN; SANDIGANBAYAN**

**[THIRD DIVISION]; MARS REGALADO AND HARRY ABAYON,
RESPONDENTS.**

D E C I S I O N

DAVIDE, JR., J.:

In this is petition for prohibition under Rule 65 of the Rules of Court, with application for a temporary restraining order and writ of preliminary injunction, petitioner urges us to (1) annul and set aside (a) the Ombudsman's approval, granted on 26 April 1996, of the Memorandum of 22 February 1996^[1] of Special Prosecution Officer III Orlando I. Ines finding reasonable ground to charge herein petitioner for violation of Section 3(e) of R.A. No. 3019, as amended; (b) the Information^[2] thereafter filed before respondent Sandiganbayan, docketed therein as Criminal Case No. 23332; and (c) the disapproval of 1 August 1997 by the Ombudsman of the Order^[3] of 15 July 1997 of Special Prosecution Officer III Victor A. Pascual recommending the dismissal of the case for lack of probable cause; (2) prohibit the Ombudsman from further prosecuting the case; and (3) prohibit the Sandiganbayan from acting on and trying Criminal Case No. 23332.

Acting on petitioner's urgent motion to resolve his application for a temporary restraining order, oral arguments were held on 27 October 1997. On that occasion, petitioner stressed the absence of a prima facie case for the offense for which he was charged, and argued that unless injunctive relief was granted, his suspension from office was almost inevitable in light of the mandatory language of the law. Assistant Solicitor General Pio Guerrero opposed the application, alleging that there was a paucity of material facts and that the propriety of determining the presence or absence of bad faith lay with the Ombudsman. Arguing for the Ombudsman, Special Prosecutor Carlos Montemayor characterized the application as premature as petitioner had not yet been arraigned and suspension from office could only be ordered after arraignment.

After the filing of the required memoranda^[4] by the parties, except the Office of the Solicitor General which was excused from filing any further pleadings in this case, we issued a temporary restraining order on 12 January 1998, effective during the pendency of this case or until further orders, enjoining public respondents, their agents, representatives and persons acting upon their orders or in their place or stead from prosecuting Criminal Case No. 23332 and from conducting further proceedings thereon.

Thereafter, in compliance with the resolution of 2 February 1998, the parties

informed us that they were submitting this case for decision on the basis of the pleadings already filed.

The antecedents are not complicated.

On and prior to 2 September 1988, petitioner was the Municipal Mayor of New Washington, Aklan, while private respondents Mars C. Regalado and Harry P. Abayon were members of the Sangguniang Bayan (SB) of said municipality.

At its sixteenth regular session on 2 September 1988, the SB of New Washington passed Resolution No. 19, S. 1988 authorizing petitioner to:

Negotiate And/or Inter (sic) Into A Contract With the Board of Liquidators, Office of The President of The Philippines In The Acquisition Of The Garcia-Diapo Enterprise, Lot No. 2, PSU-134402 Tax Declaration No. 154 Which Is At Present In the Position (sic) Of The Board of Liquidators Scheduled For Public Bidding On September 19, 1988.^[5]

Pursuant to the resolution, petitioner proceeded to Manila on 6 September 1988 and submitted to one Wenceslao Buenaventura, a Director and the General Manager of the Board of Liquidators, a copy of Resolution No. 19 S. 1998, together with petitioner's letter-proposal wherein, on behalf of the Municipality of New Washington and pursuant to his authority under the Resolution, he offered to buy the lot on a government-to-government basis at a price mutually acceptable to the parties.

On 8 September 1988, petitioner's offer to purchase the lot for the Municipality of New Washington, as well as that of a certain Tomas Manalang, was deliberated upon by the Board of Liquidators. The Board rejected both offers by way of Resolution No. 420, Series of 1988, which reads:

RESOLVED, to reject the offer of the Sangguniang Bayan of New Washington, Province of Aklan, and Mr. Tomas Manalang to purchase the parcel of land covered by TCT No. 3278 located in New Washington, Aklan, and instead, the Ad Hoc Committee on Bids shall conduct a public bidding over said land on 19 September 1988.^[6]

Petitioner returned to New Washington and informed the SB thereof of the denial. He likewise submitted to the Municipal Treasurer his voucher for P1,401.00 for the transportation expenses he incurred for the trip, which was covered by an itinerary of travel. He then sought the opinion of the Provincial Auditor, Atty. Antonio Tabang, as regards the municipality's participation in the bidding. The latter informed the municipality of the requirements in order that a municipal government validly participate in a public bidding, which he set forth in his affidavit as quoted in the Order of 15 July 1997 of Special Prosecution Officer III Pascual, thus:

[I]n order that a municipal government can participate in a public bidding it has to get a Sangguniang Bayan Resolution authorizing him [sic] to participate in a public bidding and to appropriate an amount needed for the bidding representing the Municipality, although I mentioned that this is a rare case where a Municipality will participate in a public bidding; that said resolution ha[s] to be reviewed and approved by the Sangguniang Panlalawigan in accordance with the existing law and regulation; that I further told Mayor Venus that for him to draw a cash

advance needed for the purpose, the Resolution must be approved by the authority concerned and the cash advance must be pre-audited by my office before the municipal Treasurer release[s] the payment, and that this procedure/requirements [sic] will take time, not less than two (2) weeks at most [sic], and cannot meet the scheduled date of the bidding set [for] 19 September 1988.^[7]

In view of the numerous requirements, the SB doubted whether New Washington could participate in the public bidding.

Nevertheless, on 19 September 1988, petitioner went to Manila at his personal expense and submitted a letter-request to the Board of Liquidators that the public bidding be postponed to another date. However, the Board did not accede. Petitioner then submitted his personal bid, which turned out to be the highest bid. The property was thus sold to him and a Deed of Absolute Sale executed on 3 October 1988. Thereafter, he introduced improvements thereon at his expense. During his incumbency as Mayor, he allowed a portion of the lot to be used, without charge, as a garage for the municipality's fire truck and for the municipality's mushroom culture laboratory.

Private respondents filed a sworn letter-complaint with the Office of the Provincial Prosecutor of Kalibo, Aklan, charging petitioner with violation of paragraph (h) of Section 3 of R.A. No. 3019 (Anti-Graft and Corrupt Practices Act), as amended. The case was docketed as I.S. No. 92-2449. The case was forwarded to the Office of the Deputy Ombudsman for the Visayas in Cebu City, which docketed the complaint as Case No. OMB-2-92-2584.

Private respondents alleged in their letter-complaint, thus:

That on or about the period from September to October, 1988, in the Municipality of New Washington, Province of Aklan, Philippines, and City of Manila, Philippines, and within the jurisdiction of this Honorable Office, the above-named respondent being then the duly elected Mayor of New Washington, Aklan, did then and there wilfully, unlawfully and feloniously having been previously authorized to negotiate and/or enter into a contract with the Board of Liquidators, Office of the President of the Philippines, in the acquisition of the Garcia-Diapo Lot No. 2, PSU-134402, Tax Declaration No. 154 and covered with TCT No. T-16837 which was already then acquired by the Board of Liquidators and scheduled for public bidding on September 19, 1988 and further, having withdrawn money from the Municipality Treasury for said purpose as expenses thereof in the amount of P1,401.00, to the prejudice of the Municipality of New Washington and for his own personal benefit, entered into a Contract of Sale with the Board of Liquidators in his own name and purchased the aforementioned lot for and in his own behalf in contravention with [sic] the Anti-Graft and Corrupt Practices [Act] (Republic Act No. 3019, As Amended, Section 3, Par. H thereof).^[8]

In their Joint Affidavit in support of the complaint, private respondents alleged that in contravention of the resolution and authority, in evident bad faith and for the sole purpose of self-interest, petitioner bought the lot in his name and for personal gain, and that they never suspected otherwise because from 1988 up to May 1990, the lot

was utilized as a garage for fire trucks and for the municipal mushroom culture laboratory. It was only when petitioner lost in the 1992 elections and "ejected the Municipal Firetruck" that they came to know that petitioner bought the land in his name and not for the municipality.^[9]

In his Counter-Affidavit, petitioner summarized the facts stated above prior to the filing of the letter-complaint. He averred that the filing of the complaint was pure harassment in retaliation for an election protest he filed earlier.

In a resolution^[10] dated 20 October 1993, issued after due proceedings, the Office of the Deputy Ombudsman for the Visayas recommended the dismissal of the complaint on the ground that there existed no case for violation of paragraph (h) of Section 3 of R.A. No. 3019, as amended, thus:

After a meticulous examination of the pleadings of both parties, giving due consideration to documentary evidences [sic] respectively submitted in support of their contending [sic] allegations, the undersigned investigator determines to be of no sufficient basis the present charge [for] violation of Section 3, paragraph (h), of R.A. 3019, the pertinent provision of which reads as follows:

"h. Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest."

It would be of some worth citing the case of *Trieste, Sr. vs. Sandiganbayan*, 145 SCRA 508, to clarify the application of the above-pertinent provision wherein the Supreme Court said: "What is contemplated in Section 3(h) of the anti-graft law is the actual intervention in the transaction in which one has financial or pecuniary interest in order that liability may attach (Opinion No. 306, Series 1961 and Opinion No. 94, Series 1972 of the Secretary of Justice). xxxx. For the law aims to prevent dominant use of influence, authority and power (Deliberation on Senate Bill 293, May 6, 1959, Constitutional Record, Vol. II, page 603)." And as was cited in *Macariola vs. Asuncion*, 114 SCRA 77, regarding a ruling in one case involving the application of Article 216 of the Revised Penal Code which has a similar prohibition [against] public officers [from] directly or indirectly becoming interested in any contract or business in which it is his official duty to intervene, "(I)t is not enough to be a public official to be subject to this crime; it is necessary that by reason of his office, he has to intervene in said contracts or transactions; and hence, the official who intervene [sic] in contracts or transactions which have no relation to his office cannot commit this crime" (*People vs. Meneses*, C.A. 40 O.G. 11th Supp. 134, cited by Justice Ramon C. Aquino; Revised Penal Code, p. 1174, Vol. II 1976).

Evidently, the above citations find appropriate application [so] as to dismiss the charge in the instant case. The representation made by the respondent former mayor Eriberto L. Venus before the Board of Liquidators pursuant to the authority given him by the Sangguniang Bayan of New Washington, Aklan, per Resolution No. 19, s. 1988, to

negotiate and/or enter into a contract with the Board for the purchase by the municipality of New Washington of the subject lot, did not constitute actual intervention as contemplated in the aforesaid provision of the anti-graft law. What the same respondent did was merely to make arrangement [sic] or bargain with the Board regarding the offer of the Sangguniang Bayan of New Washington. He was not a member of the Board of Liquidators, and his being the authorized representative of the municipality of New Washington to deal with the Board or his capacity as mayor of New Washington, Aklan, were not reasons for him to intervene in the transaction of the Board. The respondent was not in the position to intercede in whatever official capacity in the Board's deliberation/meeting to decide on whether to accept or reject the offer made. The decision was purely the exclusive prerogative of the Board, which in fact rejected the offer per its Resolution No. 420, s. 1988. And there was absolutely no evidence that the respondent had, in his capacity as then Mayor, used his influence, power, and authority in the rejection of the offer of the municipality of New Washington, Aklan, and in the award to him of the contract for the sale of [the] subject lot when he subsequently tendered his own personal bid. Hence, no legal prohibition exists against the respondent's acquisition of the property in question.

The complainants charge that the municipality of New Washington was prejudiced when the respondent, having been previously authorized to negotiate and/or enter into a contract with the Board of Liquidators for the acquisition of the subject lot and having withdrawn money from the Municipal Treasury for said purpose as expenses thereof in the amount of P1,401.00, entered into a Contract of Sale with the Board of Liquidators on his own behalf and for his personal benefit. It need be pointed out, however, that pursuant to the authority given him the respondent had in fact made negotiations by manifesting the offer of the municipality of New Washington through a letter to the Director & General Manager, Wenceslao M. Buenaventura, of the Board of Liquidators dated September 7, 1988 (Annex "C" of counter-affidavit). Unluckily, aforesaid offer was rejected by the Board, per its Resolution No. 420, s. 1988 (Annex "E"), which decided that the Ad Hoc Committee on Bids should instead conduct a public bidding over [the] subject lot on September 19, 1988. Accordingly, the members of the Sangguniang Bayan of New Washington were informed by the respondent of the rejection of their offer. And having done what he had been mandated and authorized to do, although unsuccessfully, the respondent reasonably claimed reimbursement for his actual expenses in connection thereof in the amount of P1,401.00 as justified by him in his Itinerary of Travel dated September 12, 1988 (Annex "C" of complaint or Annex "A" of respondent's reply to complainant's rejoinder), for which Disbursement Voucher No. 101-88-09-632 (Annex "B" of complaint) was duly prepared and approved.

Considering that the authority given the respondent was "to negotiate and/or enter into a contract with the Board of Liquidators", and that the negotiated transaction or offer pursuant thereof had been rejected by the Board and instead a public bidding was called, no contract for the sale of subject lot to the municipality of New Washington could possibly be