

## TWENTY-SECOND DIVISION

[ CA-G.R. SP NO. 04365 - MIN, June 11, 2014 ]

**JED PAGUE, PETITIONER, VS. ROY T. LOPEZ, REGIONAL  
MANAGER, HOUSING AND LAND USE REGULATORY BOARD,  
DAVAO CITY AND OFFICE OF THE OMBUDSMAN, RESPONDENTS.**

### D E C I S I O N

**INTING, J.:**

This a Petition for Review<sup>[1]</sup> filed under Rule 43 of the Rules of Civil Procedure assailing the Resolution<sup>[2]</sup> dated February 26, 2010 of the Office of the Ombudsman- Mindanao, Davao City in Case No. OMB-M-C-07-0360-J for "*Violation of Section 3 (e & f) of Republic Act No. 3019 and Grave Slander*", as well as the Order<sup>[3]</sup> dated April 18, 2011 denying petitioner's Motion for Reconsideration.

The facts of the case are as follows:

Petitioner, Jed Pague, is an employee of the Housing and Land Use Regulatory Board (HLURB for brevity), holding the position of Housing Homesite Regulation Officer II. Private respondent Roy T. Lopez is the Regional Officer of HLURB and the superior officer of petitioner.

On September 25, 2007, petitioner filed a complaint against private respondent for alleged violation of Section 3 (e & f) of Republic Act No. 3019 otherwise known as the Anti-Graft and Corrupt Practices Act and for alleged grave slander.

In his affidavit-complaint<sup>[4]</sup>, petitioner alleged, *inter alia*: a) that he was assigned to inspect and recommend the issuance of a Certificate of Completion (COC) for the Newpoint Realty Subdivision/Villa Clementa subdivision project in Kapalong, Davao del Norte. However, he found out that that the subdivision project does not have an approved development plan nor a proper drainage system; b) that instead of ordering the developer to remedy the problem, private respondent instructed him to recommend the issuance of COC; c) that upon seeing that petitioner will not follow his order, private respondent re-assigned the work to petitioner's co-employee; d) that in another subdivision, Jade Valley Subdivision and Teacher's Village in Talomo, Davao City, these areas have been a flood prone area, yet, private respondent allowed the project to be developed and issued the corresponding Preliminary Approval/Locational Clearance and the Development Permit, including the Certificate of Registration and License to Sell; e) that in a cease and desist order regarding another case, the former regional director imposed fines against Robern Dev't Corp. for certain violations but private respondent failed to collect the fines imposed; f) in a similar case involving Rachoville Dev't Project, private respondent again did not pursue the collection of fines; g) that since January 2006, petitioner together with Eng. Vargas were stripped of their duties and responsibilities as Homesite Housing Regulations Officers; and h) that private respondent had been padding the

accomplishment reports he had been submitting to the head office and that he had also displayed gross incompetence on several occasions.

On September 21, 2007, petitioner filed an Ex-Parte Manifestation with Motion for Ocular Inspection and Subpoena Duces Tecum<sup>[5]</sup>.

In his counter-affidavit<sup>[6]</sup>, private respondent denied all the accusations against him. He countered that the allegations in the complaint filed by petitioner were not backed up by undisputable evidence; and that petitioner has no personality to file the complaint because he is not the developer nor a lot owner of the subdivisions mentioned in the complaint.

On February 26, 2010, the Ombudsman issued a Resolution, the dispositive portion of which provides:

WHEREFORE, for lack of probable cause, the instant case is hereby dismissed.

SO ORDERED.

Petitioner filed a Motion for Reconsideration<sup>[7]</sup> but the Ombudsman denied it in an Order dated April 18, 2011.

Hence, the instant petition.

Petitioner now comes before Us raising the following assignment of errors<sup>[8]</sup>:

I.

WHETHER OR NOT THE OFFICE OF THE OMBUDSMAN ERRED IN HOLDING NO PROBABLE CAUSE EXIST TO INDICT RESPONDENT OF VIOLATION OF SECTION 3 (E) AND (F) OF RA 3019 AND GRAVE SLANDER;

II.

WHETHER OR NOT THE OFFICE OF THE OMBUDSMAN IN DISMISSING PETITIONER'S COMPLAINT VIOLATED HIS RIGHT TO DUE PROCESS OF LAW;

**Our Ruling**

The petition is bereft of merit.

First, petitioner contends that private respondent's counter-affidavit only made general denials of the allegations contained in his affidavit-complaint. Also, private respondent did not answer the allegations of petitioner regarding the failure to

impose legal sanctions against certain development corporation. He could have readily attached documentary evidence which will show that he has undertaken actions with respect to such violations.

Petitioner also argues that there is a violation of his right to due process. The Office of the Ombudsman issued the assailed resolution without first resolving the motion for ocular inspection and subpoena *duces tecum* filed by him. The act of the Ombudsman allegedly constitute a serious desecration of the constitutionally enshrined right to due process of law to which petitioner is entitled.

In a Memorandum<sup>[9]</sup> dated April 13, 2012 filed by the Office of the Ombudsman, it argued, *inter alia*, that the petition of herein petitioner ought to be dismissed outright. Petitioner brought the instant petition for review under Rule 43 before this Court in violation of settled jurisprudence that appeals or petitions on resolutions and orders emanating from the Office of the Ombudsman in criminal cases are to be brought before the Supreme Court.

Furthermore, the Ombudsman argued that in the case of *Estrada v. Desierto, et. al.* <sup>[10]</sup>, the Supreme Court held that when the aggrieved party is questioning the Office of the Ombudsman's finding of lack of probable cause, there is likewise the remedy of certiorari under Rule 65 to be filed with the Supreme Court.

First, We need to take a look on the propriety of the recourse taken by petitioner.

To recall, petitioner charged private respondent with a violation of Section 3 (e & f) of Republic Act No. 3019 and Article 358 of the Revised Penal Code, the provisions of which read:

**Section 3. Corrupt practices of public officers.** In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

(f) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue