

SIXTH DIVISION

[CA-G.R. SP No. 129635, November 13, 2014]

**BRENDA K. SALALIMA AND ANTHONY ERA, PETITIONERS, VS.
PEPITO P. LO, RESPONDENT.**

DECISION

TIJAM, J.:

This Petition for Review filed under Rule 43 of the Rules of Court seeks to set aside the Office of the Ombudsman's Decision,^[1] dated February 7, 2013 and the Order,^[2] dated March 18, 2013 finding Petitioners guilty of grave misconduct.

The facts of the case are as follows:

On June 18, 2008, Respondent Pepito Lo, then Municipal Mayor of Mercedes, Camarines Norte, filed with the Office of the Ombudsman a complaint for violation of Section 3 (c) of Republic Act (RA) No. 3019^[3] in relation to Section 24 of R.A. No. 6770^[4] and Administrative Complaint for violation of Section 7 (d) of R.A. No. 6713^[5], in relation to Section 3 (c) of R.A. No. 3019 and Section 19 (1 & 6) and Section 24 of R.A. No. 6770, against then Vice Mayor Brenda King-Salalima (Salalima), and municipal councilors, namely: Francisco Ramos Jr. (Ramos), Wenefredo Abanto (Abanto), Anthony Era (Era) and Juanito Palmero (Palmero). Private individuals, Roberto Salalima, Sr. and Sherwin Dayaon were also impleaded in the complaint as principals by direct participation and indispensable cooperation.

Respondent alleged that, on April 13, 2008, he received a letter from Lino Pastoral (Pastoral), the Assistant Manager and Head of Site Acquisition Division and Vincent Marbella (Marbella), the Assistant Head Site Acquisition Division of Argus Development Corporation (ADC), a subcontractor for Digitel Mobile Philippines, involved in the construction of Suncellular cell site. Pastoral, in his letter, requested from Respondent for assistance as Salalima, Ramos, Abanto, Era and Palmero allegedly demanded from them several units of cellular phone to be issued in exchange for the passage and approval of a Sangguniang Bayan (SB) Resolution that will allow and grant ADC the authority or license to construct a cell site in Mercedes, Camarines Norte. Allegedly, Salalima and Ramos made some representations that Respondent was always in Manila, and that he would be soon suspended by the Ombudsman. Pastoral's letter to Respondent allegedly indicated that per the advise of Salalima, Ramos, Abanto, Era and Palmero, it will be more prudent for ADC to transact business directly with them while Respondent was away.

Respondent further alleged that he was informed that Salalima and Ramos set meetings at different restaurants in Daet, Camarines Norte and obliged ADC employees to pay for the bills; that ADC issued to Salalima and Ramos three (3) units of N70 cellular phones (allegedly for Respondent, Salalima, and Ramos) and

nine (9) units of Nokia 2630 for the SB members. These cellular phones were received by Ramos, who in turn, promised to personally give the N70 to Respondent. The latter, however, denied the receipt of said cellular phone.

Respondent claimed that Rijadin Sare, an employee of ADC, told him that Ramos returned the four (4) units of Nokia 2630 as they were all defective; but the truth was that they were demanding for high end cellular phones. According to Respondent, Salalima and Ramos were simply extorting from ADC.

Respondent asseverated that ADC was constrained to give cellular phones to aforementioned SB officials as Salalima and Ramos kept on telling them that the SB session for the passage and approval of the resolution will only start the moment ADC delivers to them the said units; that Ramos also misappropriated three (3) Nokia 2630 units intended for the minority members of the SB; and that Salalima and Ramos obliged the ADC employees to pay the restaurant bills incurred on 5 different occasions; that ADC gave Ramos, Salalima, Abanto, Palermo and Era an ultimatum until May 20, 2008 within which to pass the necessary SB Resolution. The SB fortunately had beaten the deadline and passed the Resolution in favor of ADC on May 20, 2008.

Considering the foregoing allegations against Salalima and the aforementioned SB members, Respondent claimed that their felonious acts constituted dishonesty, grave misconduct and grave abuse of authority which warrant their removal from public office. Moreover, these public officers should be meted out a perpetual disqualification from holding elective and appointive office inasmuch as the crimes they have committed were impressed with moral turpitude.

Respondent's allegations in the complaint were corroborated by the Sworn Statements of Pastoral, Marbella and Sare.

In their respective Counter-affidavits to the Complaint, Ramos, Salalima and Abanto Jr. denied the accusations against them particularly that they asked for cellphones from ADC in exchange for passage of the SB resolution allowing the installation and operation of a cell site in Barangay San Roque.

On the part of Ramos, he averred that in March 2008, his brother told him that a man came to their house and left a white plastic bag containing a box of cellphone (N70) but he returned it to Sare. Ramos denied the allegation that he received a cellular phone from ADC in exchange for the passage and approval of a resolution granting ADC's project. Ramos claimed that the filing of the complaint was a form of political harassment against him.

On his part, Salalima denied the accusation leveled against her for being hearsay and a form of political harassment. She denied making misrepresentations to the ADC that Respondent was about to be suspended by the Ombudsman. She contended that it was the Respondent, in his capacity as mayor, who has the final say whether or not to issue a permit for the construction of the Suncellular Tower in Barangay San Roque. She further claimed that she was absent during the deliberations and passage of the subject SB Resolution No.104-2008.

Abanto, on the other hand, claimed that, in the sworn statement of Pastoral and Marabella, his name was never mentioned as among those who demanded for

cellphones in consideration of the passage of a resolution. He stressed that he was not present during the first, third and last meeting between ADC employees, Salalima and Ramos. While he admitted that he was present during a meeting with the ADC employees at King Fisher Restaurant; he claimed it was a pure gesture of courtesy to the ADC's invitation. During said meeting, ADC did not discuss the proposed project. Palmero and Era agreed to the same explanation of Abanto.

Salalima and Era (collectively referred to as Petitioners) insisted that Respondent had no direct and personal knowledge of the alleged extortion committed by them as he merely relied on the affidavits of the ADC employees. They claimed that, if all meetings of officials with private individuals outside their offices will be construed as opportunities to extort, it will be tantamount to depriving public officials their right to engage in social activities. They argued that there is no law or jurisprudence that automatically make a case of grave misconduct whenever public official is invited to a meeting outside of his office. They argued that if they were motivated to extort from ADC, they would not hold meetings in places such as restaurants where almost all locals know them.

On February 7, 2013, the Ombudsman rendered a Decision convicting the Petitioners, the dispositive portion of the said decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered finding respondents BRENDA K. SALALIMA and ANTHONY ERA guilty of **Grave Misconduct** and is meted the penalties accessory to dismissal from the service, including perpetual disqualification to hold public office, cancellation of eligibility and forfeiture of retirement benefits, if any. While the administrative complaint against respondents FRANCISCO RAMOS, JR., WENEFREDO ABANTO, JR., and JUANITO PALMERO is **Dismissed** for being moot and academic.

The Honorable Secretary of the Department of Interior and Local Government (DILG) is hereby directed to implement this DECISION immediately upon receipt thereof pursuant to Section 7, Rule III of the Administrative Order No.07, as amended by Administrative Order No. 17 (Ombudsman Rules of Procedure) in relation to Memorandum Circular No. 1, series of 2006, dated 11 April 2006 and to promptly inform this Office of the action taken thereon.

SO DECIDED."

Hence, Petitioners filed a motion for partial reconsideration^[6] and supplemental motion for partial reconsideration of the foregoing Decision but the Ombudsman in its Order, dated March 18, 2013 denied them and affirmed its decision.

Hence, Petitioners filed this petition for review raising this lone issue, to wit:

"ARE THE ALLEGATIONS AND THE EVIDENCES PRESENTED BY THE COMPLAINANT-APPELLEE STRONG ENOUGH TO PROVE GRAVE MISCONDUCT ON THE PART OF THE RESPONDENTS-APPELLANTS."

Pending resolution of the present petition, Salalima filed a Manifestation^[7] with attached copy of *Certificate of Canvass of Votes and Proclamation of Winning Candidates for Mercedes Mayor and Vice Mayor*^[8] issued by the Municipal Board of Canvassers.

The re-election of Vice-Mayor Salalima during the May 2013 election did not condone her previous misconduct.

Records show that the complained wrongful acts allegedly done by the Petitioners were committed sometime in September 2007. During the 2010 local elections, Petitioners were not re-elected to their positions; it was only Ramos, Abanto and Palmero, who were re-elected necessitating the dismissal of the administrative complaint filed against them for being moot and academic.^[9] In a twist of events, while Petitioners' appeal is pending resolution, during the May 13, 2013 local election, Salalima won as Vice-Mayor of the Municipality of Mercedes, Camarines Norte.^[10]

In the case of *Salumbides vs. Office of the Ombudsman*,^[11] the Supreme Court reiterated their landmark ruling pertaining to the doctrine of condonation, to wit:

"More than 60 years ago, the Court in *Pascual v. Hon. Provincial Board of Nueva Ecija*^[12] issued the landmark ruling **that prohibits the disciplining of an elective official for a wrongful act committed during his immediately preceding term of office. The Court explained that "[t]he underlying theory is that each term is separate from other terms, and that the reelection to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor."**

The Court should never remove a public officer for acts done prior to his present term of office. To do otherwise would be to deprive the people of their right to elect their officers. When the people elect[e]d a man to office, it must be assumed that they did this with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any. It is not for the court, by reason of such faults or misconduct[,] to practically overrule the will of the people. (Underscoring Supplied).

Illustrative also are the cases of *Aguinaldo v. Comelec*,^[13] *Aguinaldo v. Santos*^[14] and in *Salalima v. Guingona*^[15] where the Supreme Court laid down the doctrine that a public official cannot be removed for administrative misconduct committed during a prior term, since his re-election to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove therefor. This doctrine of forgiveness or condonation cannot apply to criminal acts which the re-elected official may have committed during his previous term. The administrative liability of a public officer is separate and distinct from his penal