

SPECIAL FIFTH DIVISION

[CA-G.R. SP NO. 90982, June 21, 2006]

**ONOFRE M. MAYO, PETITIONER, VS. CARLITO MAPA,
RESPONDENT.**

DECISION

BARRIOS, J.:

The petitioner Onofre M. Mayo (or Mayo for brevity) by this petition for review assails the Decision of the Office of the Deputy Ombudsman for Luzon (or the Deputy Ombudsman) finding him guilty of *Gross Neglect of Duty* and imposing the penalty of suspension for six (6) months without pay.

On December 6, 2002, the respondent Carlito Mapa (or Mapa) filed a complaint for *Falsification of Public Document* against Mayo before the National Bureau of Investigation (or NBI), Dagupan District Office. The complaint charged Mayo, the Municipal Assessor of Infanta, Pangasinan, of intentionally altering the lot area as contained in Tax Declaration No. 2639 (or TD 2639) by making it appear that the real property owned by Mapa has an area of only 766 square meters when its actual area is 1,493 square meters. It also alleged that Mayo refused to make the necessary correction in TD 2639 when his attention was called regarding the said discrepancy appearing in the tax declaration which he issued.

On September 22, 2003, the NBI submitted to the Deputy Ombudsman its recommendation for the criminal and administrative prosecution of Mayo for *Falsification of Public Document* and *Grave Misconduct* respectively.

In his Counter Affidavit with Motion to Dismiss submitted to the Deputy Ombudsman, Mayo claimed that Mapa is engaged in forum shopping warranting the dismissal of the complaint. According to him, Mapa and eight (8) other individuals have filed a complaint against him before the Office of the Secretary of Finance on May 12, 2003. Mapa thereafter commenced the filing of the complaint with the NBI on August 19, 2003 as shown in his sworn statement submitted to the NBI. Mayo claimed that the charges against him in the complaint filed before the Office of the Secretary of Finance included the alleged acts complained of in the case before the NBI.

On January 10, 2005, the Deputy Ombudsman rendered the assailed Decision in the administrative case, the decretal portion of which reads:

WHEREFORE, PREMISES CONSIDERED, Respondent **ONOFRE M. MAYO** is hereby found guilty of **Gross Neglect of Duty** for which the penalty of **Suspension for Six (6) months** without pay is recommended pursuant to Section 10, Rule III of the Administrative Order No. 07, this Office, in relation to Section 25 of Republic Act No. 6770.

SO DECIDED. (p. 32, rollo)

The Motion for Reconsideration filed by Mayo was likewise struck down in an Order dated July 7, 2005, disposing that:

WHEREFORE, premises considered, it is respectfully recommended that the motion for the reconsideration of the Decision of January 10, 2005 be **denied** for lack of merit. Accordingly, the said decision is **affirmed**.

SO ORDERED. (p. 35, rollo)

Hence this petition, with Mayo raising as errors the following:

I

THE HONORABLE DEPUTY OMBUDSMAN FOR LUZON COMMITTED A REVERSIBLE ERROR IN FINDING THAT THE ADMINISTRATIVE CASE IS BARRED BY THE PROSCRIPTION AGAINST FORUM SHOPPING.

II

THE HONORABLE DEPUTY OMBUDSMAN FOR LUZON COMMITTED A REVERSIBLE ERROR IN FINDING THE PETITIONER GUILTY OF GROSS NEGLIGENCE OF DUTY.

III

THE HONORABLE DEPUTY OMBUDSMAN FOR LUZON COMMITTED A REVERSIBLE ERROR IN FAILING TO AFFORD THE PETITIONER DUE PROCESS. (p. 6, rollo)

On the first issue raised, Mayo maintains that Mapa's act of initiating an administrative complaint before the Office of the Secretary of Finance, which referred this to the Regional Director of the Bureau of Local Government Finance who thereafter conducted a clarificatory conference and rendered a Resolution, precludes the Deputy Ombudsman from conducting another administrative investigation on a matter deemed included in the allegations in the letter complaint. This according to Mayo constitutes forum shopping.

Forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. A party violates the rule against forum shopping if the elements of *litis pendentia* are present; or if a final judgment in one case would amount to *res judicata* in the other. There is forum shopping when the following elements are present: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, is such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration; said requisites [are] also constitutive of the requisites for *auter action pendant* or *lis pendens* (San Juan vs. Arambulo, G. R. No. 143217, Dec. 4, 2005).