

## EIGHTH DIVISION

**[ CA-GR SP NO. 92597, September 20, 2006 ]**

**RODOMIEL J. DOMINGO, PETITIONER, VS. OFFICE OF THE OMBUDSMAN, THE HON. MARGARITO P. GERVACIO, JR., IN HIS CAPACITY AS OVERALL DEPUTY OMBUDSMAN, KATHRYN JOY B. PAGUIO, ALLAN JAY M. ESGUERRA, NEIL PATRICK H. CELIS, RESPONDENTS.**

### **D E C I S I O N**

**DACUDAO, J.:**

This petition for review (with prayer for preliminary injunction and/or temporary restraining order) seeks to overturn the August 1, 2005 Decision<sup>1</sup> of the Office of the Ombudsman, in OMB-C-A-05-0007-A, finding the petitioner Rodomiel J. Domingo guilty of violation of Section 4 (b) of Republic Act No. 6713<sup>2</sup> and imposing upon him the penalty of suspension for a period of six (6) months.

On August 1, 2005, the Office of the Ombudsman, thru Graft Investigation and Prosecution Officer II Lourdes S. Padre Juan, rendered a Decision finding the petitioner guilty of violation of Section 4 (b) of R.A. No. 6713 and meting out against him the penalty of suspension for a period of six (6) months. It explained thus:

"Upon a careful scrutiny of the parties' allegations, together with the proofs on record, it was observed that the alleged misappropriation of the SK funds was solely supported by the Audit Observation Memorandum, dated February 9, 2004, issued by the Office of the City Auditor of Manila. However, a reading thereof disclosed that the same was merely a directive ordering the respondents to comment on its audit observations and to submit the pertinent documents listed therein, but was silent as to any finding of anomaly or misappropriation of the funds subject matter of the audit.

"Relevantly, it is worth stressing that the proper forum vested with exclusive authority to rule on the anomalous expenses of any government unit is the Commission on Audit (COA). Wanting any declaration of irregularity in the disbursement of funds from the latter, no cause of action against an erring public official shall prosper.

"In the light of the foregoing, the audit by the Office of the City Auditor on the subject barangay transactions not having been concluded yet, and viewed from the absence of any pronouncement on the alleged anomaly in issue herein, this Office finds the filing hereof based on the alleged **misappropriation** still **premature**.

**"Anent the charge for Falsification of Public Document committed allegedly by the respondent Barangay Chairman in his issuance, i.e. Justification, declaring the absence of incumbent SK officials in his barangay, despite the truth that the complainants herein are among the incumbent SK officials therein, let it be mentioned that questions pertaining to the authenticity of a signature in an instrument necessitate judicial determination. In the case at bar, considering the denial made by the respondent on the genuineness of his signature in the document in issue, the charge for Falsification of Public Document herein can not be given due course.**

**"However, as gleaned from the records the copy of the Justification allegedly issued by the respondent had been certified to be a true copy of the original on file with their office by a certain Ruben De Jesus, Chief of the Barangay Assistance Unit, Manila Barangay Bureau. Additionally, the document itself contained the handwritten entry 'Copy Budget 2004'. Thus, the conclusion that the same was submitted by the respondent's barangay in connection with its budget. Based thereon, the due existence of the said instrument has been entrenched.**

**"The failure of respondent Domingo to sufficiently controvert the certification of the Chief of the Barangay Assistance Unit as to the existence of the document rendered the same undisputed.**

**"The above observation dictates that while respondent Domingo can not as yet be held liable for Falsification of Public Document, however, he can be held administratively responsible for the irregular submission of the said falsified instrument, the existence of which has been clearly established, to the Manila Barangay Bureau in connection with his barangay's 2003 budget. It must be noted that as Barangay Chairman, one (1) of his primary duties is to prepare the annual executive and supplemental budgets of the barangay, pursuant to Section 389 (7), Chapter 3, Local Government Code. Corollary thereto is his assumption of responsibility for the regular issuance/submission of all the documents relative thereto. Thus, making him liable for the improprieties committed whether in the issuance or submission of any document pertaining to the barangay budget. Consistent therewith, and based on the respondent's admission on the incumbency of SK officials in his barangay contrary to the declaration in the disputed Justification, he can be held responsible for the irregular entry thereof to the Manila Barangay Bureau to support their barangay budget.**

**"Let it be stressed that as a public officer, it is incumbent upon the herein respondent to comply with certain norms of conduct in the discharge of his official functions, like the observance of professionalism under Section 4 (b) of Republic Act No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, which provides that 'public**

**officials and employees shall perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill. xxx. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage.'**

**"Applying the aforequoted provision in the instant suit, the failure of the respondent to observe utmost diligence and professionalism as Barangay Chairman in the preparation of the barangay budget and submission of the required supporting documents which caused the entry of the falsified Justification in connection with their 2003 budget made him answerable administratively for violation of Section 4 (b) of R.A. 6713.**

**"WHEREFORE, finding respondent Barangay Chairman Rodomiel J. Domingo of Barangay 686, Zone 75, District V, Manila, GUILTY of violation of Section 4 (b) of R.A. 6713, he should be meted (out) the penalty of suspension from office for a period of six (6) months pursuant to Section 11 of the same Act.**

"Let the charge for Dishonesty based on the alleged misappropriation of public funds against both respondents be DISMISSED without prejudice to its refiling upon finding of irregularities by the Office of the City Auditor of Manila in the barangay transactions after the completion of the audit.

"Let a copy of this Decision be furnished the Office of the City Mayor of Manila for proper implementation upon finality hereof.

"SO RESOLVED.

"Quezon City, Philippines, August 1, 2005.

"(SGD.) LOURDES S. PADRE JUAN  
"Graft Investigation and Prosecution Officer II

"Reviewed by:

"(SGD.) MARY SUSAN S. GUILLERMO  
"Director, Preliminary Investigation and  
"Administrative Adjudication Bureau-B

"Recommending Approval:

"(SGD.) PELAGIO S. APOSTOL  
"Assistant Ombudsman, PAMO

"Approved/Disapproved:

"(SGD.) MARGARITO P. GERVACIO, JR.  
"Overall Deputy Ombudsman"<sup>3</sup>

The petitioner moved for reconsideration<sup>4</sup> of the said Decision, contending thereunder that: (1) The Office of the Ombudsman erred in holding him administratively responsible for the submission to the Manila Barangay Bureau of a falsified document denominated "Justification," purportedly issued by him in support of his barangay's 2003 Budget, despite its finding that the document itself and his signature appearing thereon were falsified; (2) The Office of the Ombudsman erred in not requiring the Chief of the Barangay Assistance Unit, Manila Barangay Bureau, to verify the existence of the said "Justification" when its authenticity is a material issue in the case; (3) An expert opinion of the NBI on the authenticity of his signature appearing in the "Justification" is necessary for the proper disposition of the case; (4) The Office of the Ombudsman erred in holding him administratively liable on the basis of the handwritten entry (i.e. "Copy Budget 2004") made by the Chief of the Barangay Assistance Unit in the "Justification," wherein he had no participation whatsoever, and notwithstanding the fact that the acts complained of pertained to the 2003 Budget of his barangay; (5) He is not the custodian of the documents relative to the release of funds for special projects, and the submission of the same to the Manila Barangay Bureau rests on either the Barangay Secretary or the Barangay Treasurer; (6) If there is someone who can be considered aggrieved under the circumstances, it would be him whose signature was falsified to secure the release of the SK funds.

But in its Order<sup>5</sup> of October 11, 2005, the Office of the Ombudsman, again thru Graft Investigation and Prosecution Officer II Lourdes S. Padre Juan, denied with finality the petitioner's motion for reconsideration. It held:

"On the first argument of the respondent, this Office would like to stress that its Decision in issue ruled that:

'Anent the charge for Falsification of Public Document committed allegedly by the respondent Barangay Chairman in his issuance, i.e. Justification, declaring the absence of incumbent SK officials in his barangay, despite the truth that the complainants herein are among the incumbent SK officials therein, let it be mentioned that questions pertaining to the authenticity of a signature in an instrument necessitate judicial determination. In the case at bar, considering the denial made by the respondent on the genuineness of his signature in the document in issue, the charge for Falsification of Public Document herein can not be given due course.'

"Apparently, **the aforequoted portion of the subject Decision disclosed that the question relative to the authenticity of the respondent's signature in the contested instrument, as well as the genuineness of the document itself, was left untouched. This Office pertinent thereto left the determination thereof to the court in the proper proceedings.**

"Reiterating its previous ruling, **mere denial on the authenticity of one's signature will not controvert adequately the positive imputation that the alleged falsified document was authored by the person whose signature appeared thereon. Nonetheless, this Office at this stage is not vested with the proper authority to make judicial ascertainment thereon, as the issue on the**

**genuineness of signature and documents must be proved in the proper forum after a full-blown trial.** Grounded on the same, the dismissal of the administrative charge for falsification of public document against the herein respondent was recommended.

**"Moreover, let it be noted that the herein respondent was not made administratively liable for the falsification of the contested document but on the submission thereof to the Manila Barangay Bureau. Giving emphasis on the respondent's own admission on the presence of SK officials in his barangay, the false declaration in the disputed Justification was entrenched. Hence, its existence in the records of the Manila Barangay Bureau if not satisfactorily explained would lead to a conclusion that the same came from the respondent's office. Hence, even if the respondent later can prove that his signature therein was forged still he can be held responsible for its entry in the records of the barangay bureau.**

**"Clearly, being the Chief Executive Officer of the barangay, and primarily responsible in the preparation of the budget therefor, he legally assumes full responsibility on the propriety of all the documents supporting his proposed budget, and made part of the records of the proper agency. On the other hand, while this Office concurs with the possibility of the insertion of the said falsified document at the time the documents were already in the custody of the barangay bureau, however, the same was negated when upon having been confronted with the subject falsified document, the herein respondent did not contest the certification appearing thereon as to the existence of the assailed document in the records of the barangay bureau. Under normal circumstances, the respondent himself is expected to **make a verification** on the matter before the said office, or at the least assail the certification of the Chief of the Barangay Assistance Bureau in an appropriate pleading. In the case at bar, the respondent merely relied on the strength of his uncorroborated denial as a defense which in itself will not suffice to refute the legal presumption of regularity in the performance of duty on the part of the attesting officer being not a privy to this case.**

**"Emphasis is made on the observation that the subject certification was never put in issue by the respondent in any of the pleadings filed before this Office. Viewed therewith, the same remained uncontroverted. The respondent's failure to assail the same did not pass the obligation to disprove the veracity thereof to this Office. The fact of whether or not the same was intended for 2003 or 2004 budget is immaterial as the irregularity of its entry in the records of the barangay bureau was the issue herein.**

**"Anent the expert opinion of the NBI on the issue relative to the authenticity of the respondent's signature in the contested Justification, and the said assailed instrument itself, this Office opines that while it may be considered an evidence to controvert the charges against the respondent, however, the obligation to**