



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ROLANDO Z. TIGAS,
Petitioner,

G.R. No. 180681

Present:

- versus -

SERENO, *CJ*, Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ*.

OFFICE OF THE OMBUDSMAN,
represented by MERCEDITAS N.
GUTIERREZ, in her capacity as
Ombudsman,

Promulgated:

MAR 18 2013

Respondent.

X ----- X

RESOLUTION

SERENO, *CJ*:

Before this Court are the following pleadings filed by petitioner: (1) the 3 December 2007 Petition for certiorari and prohibition with prayer for the issuance of a writ of preliminary injunction and/or a temporary restraining order;¹ (2) the 17 September 2008 Supplemental Petition;² and (3) the 05 January 2009 Second Supplemental Petition.³

Filed under Rule 65 of the Rules of Court, these pleadings assail the ruling⁴ of the Office of the Ombudsman in OMB-C-C-07-0340-G, finding probable cause to indict petitioner and his *Sangguniang Bayan* members (SB members) for violation of Section 3(b) of Republic Act No. (R.A.) 3019; as

¹ *Rollo*, pp. 3-49.

² *Id.* at 468-503.

³ *Id.* at 716-743.

⁴ *Id.* at 51-80; Resolution dated 21 August 2007 and Order dated 10 October 2007 issued by the Office of the Ombudsman

well as the Resolutions of the Fourth Division of the Sandiganbayan in CC No. SB-07-CRM-0071, denying his plea to quash⁵ the criminal Information filed against him. Petitioner also questions the resolution⁶ of the Sandiganbayan granting the prosecution's Motion to suspend him *pendente lite*.

R.A. 3019 (Anti-Graft and Corrupt Practices Act), Section 3(b) provides:

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:

(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other part, wherein the public officer in his official capacity has to intervene under the law

The facts are as follows:

In purchasing lots intended for a public market, the Municipality of Samal, Bataan, issued a check worth ₱2,923,000 to the seller. However, the SB members gave only ₱2,500,000 to the vendor, of which ₱90,000 was further deducted for capital gains tax. In effect, the SB members received ₱513,000. This amount was not accounted for by receipts or other documentary evidence.⁷

Petitioner Rolando Z. Tigas, then municipal mayor, was also involved in the transaction, to wit:⁸ (1) the SB members informed him of their intent to buy the lots; (2) he signed the 3 February 2005 Deed of Conditional Sale one day prior to the issuance of *Sangguniang Bayan* Resolution No. 05-001 dated 4 February 2005, through which they accepted the offer to sell the lots even before the provincial assessor had appraised it; and (3) he asked the provincial assessor to appraise the lot at ₱105 per square meter, notwithstanding the Philippine National Bank's appraisal thereof at ₱97 per square meter.

The National Bureau of Investigation (NBI) got wind of the transaction through an anonymous letter.⁹ After its investigation, it filed the 2 May 2007

⁵ Id. at 504-518; Resolutions dated 14 July 2008 and 2 September 2008 issued by the Fourth Division of the Sandiganbayan; penned by Associate Justice Jose R. Hernandez, with Associate Justices Gregory S. Ong and Samuel R. Martires concurring.

⁶ Id. at 796-804; Resolution dated 9 December 2008.

⁷ Id. at 64; Resolution dated 21 August 2007.

⁸ Id. at 66-67.

⁹ Id. at 91; National Bureau of Investigation Disposition Form dated 16 April 2007.

Complaint¹⁰ with respondent Office of the Ombudsman against petitioner and the SB members for violating Section 3(g) and (i) of R.A. 3019. In turn, as alleged by the OSG, the Office of the Ombudsman proceeded to conduct a preliminary investigation through Overall Deputy Ombudsman Orlando C. Casimiro, and only after then Ombudsman Merceditas N. Gutierrez had inhibited herself from the proceedings.¹¹ Subsequently, respondent issued its 21 August 2007 recommendation to the Sandiganbayan for the filing of an Information for violation of Section 3(b) of R.A. 3019 against petitioner and the SB members and of Section 3(i) against the SB members alone.¹² Hence, petitioner filed this Rule 65 petition.

Without this Court giving due course to the petition, the incidents before the Sandiganbayan continued. Specifically, the latter refused to quash the Information¹³ and even imposed a suspension *pendente lite* against petitioner.¹⁴ As a result, he filed before this Court his Supplemental Petition, followed by his Second Supplemental Petition, assailing the actions of the Sandiganbayan.

In his Rule 65 pleadings, petitioner mainly asserts that grave abuse of discretion attended his case, because then Ombudsman Gutierrez was extremely prejudiced in investigating him. He anchors his imputation of bias on irregularities consisting of the following:¹⁵ (1) his indictment for an offense different from what he was charged with; and (2) the finding of probable cause despite a dearth of evidence. He also supports his allegation of prejudice by citing the fact that the Ombudsman's brother lost in the mayoralty race against him.¹⁶ As for the errors of the Sandiganbayan, he argues that it erred in not quashing the Information and in suspending him *pendente lite*.

In its 3 June 2008 Comment,¹⁷ the Office of the Solicitor General (OSG) refutes the existence of bias on the part of the Ombudsman. The OSG also advances that the Office of the Ombudsman's finding of probable cause for violation of Section 3(b) of R.A. 3019 was based on the records and the evidence on hand. Further, in its 22 February 2009 Consolidated Comment,¹⁸ the OSG posits that a Rule 65 petition is an improper remedy to question the Sandiganbayan's refusal to quash the Information.

¹⁰ Id. at 81-89; letter-complaint dated 2 May 2007.

¹¹ Id. at 70; the 21 August 2007 Resolution contained a notation "By virtue of the Routing Slip authorizing the undersigned to handle the case."

¹² Id. at 221-223.

¹³ Id. at 504-518.

¹⁴ Id. at 796-804.

¹⁵ Id. at 25-32.

¹⁶ Id. at 34.

¹⁷ Id. at 399-424.

¹⁸ Id. at 432-463.

Hence, we discuss the pertinent issues in this case:

- I. Whether the Office of the Ombudsman gravely abused its discretion and acted with manifest partiality in finding probable cause against petitioner
- II. Whether the Sandiganbayan gravely abused its discretion in refusing to quash the Information and in imposing a suspension *pendente lite* on petitioner

Prefatorily, the Court notes that petitioner only raised the issue of bias **after** respondent promulgated the assailed rulings. His belated action weakens his claim, given the proscription that litigants cannot be permitted to speculate upon the action of a court, but only to raise an objection pertaining to bias and prejudgment after a decision has been rendered.¹⁹

To impute bias – in no less than a special civil action for certiorari – petitioner must show not only **strong** grounds stemming from extrajudicial sources,²⁰ but also palpable error that may be inferred from the decision or order itself.²¹

In this case, the alleged irregularities during the proceedings invoked by petitioner cannot be considered as irregularities in the first place.

Firstly, we have squarely held in *Galario v. Office of the Ombudsman (Mindanao)*²² that there is nothing inherently irregular or illegal in filing an indictment against the respondent for an offense different from that charged in the initiatory complaint, if the indictment is warranted by the evidence developed during the preliminary investigation.

Secondly, as regards the finding of probable cause, it appears extant that the exercise of the wide prerogative by the Office of the Ombudsman was not whimsical, capricious or arbitrary,²³ given the supporting documentary evidence it had appreciated together with the NBI and the Sandiganbayan. In the determination of probable cause, absolute certainty of evidence is not required, for opinion and reasonable belief are sufficient.²⁴ Besides, any other defense contesting the finding of probable cause that is highly factual in

¹⁹ *Chavez v. PEA AMARI*, 451 Phil. 1, 41 (2003).

²⁰ *Ong v. Basco*, G.R. No. 167899, 6 August 2008, 561 SCRA 253, 261.

²¹ *Philippine Commercial International Bank v. Spouses Dy*, G.R. No. 171137, 5 June 2009, 588 SCRA 612, 632.

²² G.R. No. 166797, 10 July 2007 citing *Avila v. Sandiganbayan and Ombudsman*, 366 Phil. 698 (1999); and *Enrile v. Salazar*, 264 Phil. 593 (1990).

²³ *Ramiscal, Jr., v. Sandiganbayan*, G.R. Nos. 172476-99, 15 September 2010, 630 SCRA 505, 517-518.

²⁴ *Ganaden v. Honorable Office of the Ombudsman*, G.R. Nos. 169359-61, 1 June 2011, 650 SCRA 76, 83.

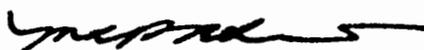
nature²⁵ must be threshed out in a full-blown trial, and not in a special civil action for certiorari before this Court.²⁶

Thirdly, petitioner's election victory over the Ombudsman's brother does not clearly establish prejudice. In *De la Cruz v. DECS*,²⁷ this Court has declared that kinship alone does not establish bias and partiality. There must be convincing proof to show bias, otherwise, the presumption of regularity in the performance of official duty prevails.

Since the imputation of bias to the Office of the Ombudsman is without support, this Petition for certiorari and prohibition, with prayer for the issuance of a writ of preliminary injunction and/or a temporary restraining order, fails. And because the first petition holds no water, his Supplemental Petition and Second Supplemental Petition have no basis to rely upon. In any event, the OSG correctly argues that a Rule 65 petition is an inappropriate remedy to question the refusal of the Sandiganbayan to quash an information and, its imposition of suspension *pendente lite*. The remedy still available to petitioners is not the filing of a special civil action for certiorari, but the continuance of the case in due course.²⁸

IN VIEW THEREOF, the 21 August 2007 Resolution and 10 October 2007 Order in OMB-C-C-07-0340-G issued by the Office of the Ombudsman, as well as the 14 July 2008, 2 September 2008 and 9 December 2008 Resolutions in No. SB-07-CRM-0071 issued by the Fourth Division of the Sandiganbayan, are **AFFIRMED**. Consequently, the 3 December 2007 Petition for certiorari and prohibition with prayer for the issuance of a writ of preliminary injunction and/or a temporary restraining order, the 17 September 2008 Supplemental Petition, and the 05 January 2009 Second Supplemental Petition filed by petitioner are hereby **DENIED** for lack of merit.

SO ORDERED.



MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

²⁵ *Odin Security Agency, Inc. v. Sandiganbayan (Second Division)*, 417 Phil. 673, 681-682.

²⁶ *Esquivel v. The Hon. Ombudsman (Third Division)*, 437 Phil. 702, 712 (2002).

²⁷ 464 Phil. 1033, 1048 (2004).

²⁸ *Rano v. Sandiganbayan*, 390 Phil. 917 (2000).

WE CONCUR:

Terésita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

Martin S. Villarama, Jr.
MARTIN S. VILLARAMA, JR.
Associate Justice

Bienvenido L. Reyes
BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Maria Lourdes P. A. Sereno
MARIA LOURDES P. A. SERENO
Chief Justice