



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated March 24, 2021 which reads as follows:

“G.R. No. 255045 – PORFIRIO C. YASAY, JR., petitioner, versus TEODORICO DELA PEÑA PADILLA, JR., OFFICE OF THE OMBUDSMAN and COURT OF APPEALS, respondents.

This is a Petition for *Certiorari*¹ (Petition) under Rule 65 of the Rules of Court, seeking to set aside the Resolutions dated 10 February 2020 and 05 November 2020 of the Court of Appeals (CA), in CA-G.R. SP No. 163757, including the Orders² of the Ombudsman which dismissed the complaint for malversation and violation of Section 3(e)³ of Republic Act No. (RA) 3019⁴ against private respondent Teodorico Dela Peña Padilla, Jr. (Padilla, Jr.). Petitioner Porfirio C. Yasay, Jr. (Yasay, Jr.) alleged that Padilla, Jr., a former Municipal Mayor of Sta. Fe, Nueva Vizcaya, unlawfully caused and approved the transfer without cost of coffee equipment belonging to the Municipality to a private entity, of which he was the Chief Executive Officer.

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* Also Teodorico Dela Pena Padilla, Jr. and Teodorico DP. Padilla, Jr. in some parts of the *rollo*.

¹ *Rollo*, pp. 3-21.

² Orders dated March 6, 2019 and August 29, 2019 in OMB-L-C-14-0047, both signed by Ombudsman Samuel R. Martires.

³ 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:

x x x x

(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.

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⁴ ANTI-GRAFT AND CORRUPT PRACTICES ACT, August 17, 1960.

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After a careful study of the allegations and the records of this case, the Court resolves to dismiss the Petition.

It bears stressing at the outset that the Court of Appeals (CA) correctly dismissed the petition filed before it for lack of jurisdiction.⁵ The remedy of an aggrieved party from a resolution of the Ombudsman finding the presence or absence of probable cause in a criminal case is to file a petition for *certiorari* under Rule 65 of the Rules of Court before this Court.⁶ This is the well-settled rule first enunciated in *Fabian v. Desierto*.⁷ The filing of a Rule 43 petition in the CA, being improper and definitely erroneous, did not toll the running of the reglementary period for the proper remedy.⁸ Consequently, this present Petition can no longer prosper considering that it was evidently filed beyond 60 days from when Yasay, Jr. was notified of the adverse Orders issued by the Office of the Ombudsman.

Moreover, the Petition failed to establish that the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner that must be so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.⁹ In ascribing grave abuse of discretion against the Ombudsman, Yasay, Jr. claims that the evidence he submitted in support of his complaint-affidavit before the Ombudsman was overwhelming and that whatever more evidence that the Ombudsman demanded could have been threshed out in the trial proper. These sweeping claims, however, do not sufficiently show how the Ombudsman acted with whimsicality, arbitrariness or capriciousness. On the contrary, the findings of the Ombudsman, to the effect that there was no probable cause for the alleged violation of malversation and Section 3(e) of RA 3019, appear correct. The pertinent portions of the assailed Order dated March 6, 2019 of the Ombudsman read:

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⁵ See Resolutions dated February 10, 2020 and November 5, 2020 in CA-G.R. SP No. 163757, both penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Germano Francisco D. Legaspi and Tita Marilyn B. Payoyo-Villordon; *rollo*, pp. 144-147.

⁶ See *Baviera v. Zoleta*, G.R. No. 169098, October 12, 2006, 504 SCRA 281, 298-299.

⁷ G.R. No. 129742 September 16, 1998, 295 SCRA 470.

⁸ See *Heirs of Liwalog Alonto v. Court of Appeals*, G.R. No. 167697, June 17, 2015 (Unsigned Resolution).

⁹ *Casing v. Ombudsman*, G.R. No. 192334, June 13, 2012, 672 SCRA 500, 508.

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Records show that the basis of the charges for malversation and graft is the alleged transfer of the coffee dehuller, coffee roasting machine and coffee grinder without cost to Nueva Vizcaya Yacon Producers Association Incorporated [(NVYPAI)], a non-stock and non-profit organization of which respondent-movant is the Chief Executive Officer. Complainant alleged that respondent-movant allowed the said transfer during his incumbency as Mayor of the Municipality of Sta. Fe, Nueva Vizcaya. In claiming that the subject equipment [were] transferred without cost, complainant relied solely on the copy of the Property Acknowledgment Receipt for Equipment where NVYPAI, represented by Carmelita M. Pugsong, received the three coffee equipment from the Municipal Agriculturist and the same was approved by respondent-movant. No other document was presented showing how the transfer without cost was actually effected.

In malversation, there must be asportation of public funds or property, akin to the taking of another's property in theft. Further, the Supreme Court ruled that Article 217 of the Revised Penal Code is designed to protect the government and to penalize erring public officials and conspiring private individuals responsible for the loss of public funds and property by reason of corrupt motives or neglect or disregard of duty.

Based on the foregoing pronouncement, the transfer of the coffee equipment to NVYPAI should have resulted to the loss of said equipment before respondent-movant can be held criminally liable for malversation under Article 217 of the Revised Penal Code. As borne by the records, there was no such loss.

As correctly argued by the respondent-movant, nothing in the Property Acknowledgment Receipt for Equipment shows that the ownership over the coffee equipment was transferred in favor of NVYPAI. The municipal government of Sta. Fe remains to be the owner of the subject coffee equipment.

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Likewise, the mere transfer of custody will not suffice to charge respondent-movant for violation of Section 3(e) of [RA] 3019. In the subject Resolution, the finding of probable cause was anchored on the alleged transfer of the coffee equipment without cost to NVYPAI thus giving the latter unwarranted benefit, advantage or preference. In the Affidavit-Complaint, respondent-movant allegedly caused undue injury to the government when he transferred to NVYPAI the coffee equipment without the valuation of the Committee on Awards and the approval of the Sanggunian Bayan.

As discussed above, the lone document evidencing transfer is a copy of the Property Acknowledgment Receipt where only the

custody and not the ownership was turned over to NVYPAI. The alleged transfer without cost was not categorically established. Prior authorization from the Sanggunian Bayan need not be secured since there was no change in the ownership of the coffee equipment. More importantly, records do not show that NVYPAI actually used the subject coffee equipment[,] neither did NVYPAI receive any benefit therefrom. What is evident from the records is that the subject coffee equipment [were] kept by a staff from the Office of the Municipal Agriculturist and [were] forcibly retrieved by the complainant from the stockroom where those equipment were kept. There was even no dispute that the three (3) coffee equipment ha[ve] been actually returned to the municipal government of Sta. Fe.¹⁰

Indeed, the elements common to all acts of malversation under Article 217 of the Revised Penal Code, as amended, are the following: (a) that the offender be a public officer; (b) that he had custody or control of funds or property by reason of the duties of his office; (c) that those funds or property were public funds or property for which he was accountable; and (d) that he appropriated, took, misappropriated or consented, or through abandonment or negligence, permitted another person to take them.¹¹ It is crystal clear that there was no evidence that either of the circumstances in the last element was attendant in this case. Specifically, there was no sufficient basis that Padilla, Jr. misappropriated or converted the coffee equipment to his personal use or allowed NVYPAI to misappropriate or take the same. The lone fact that Padilla, Jr. may have been the Chief Executive Officer of NVYPAI is, by itself, not basis to connect his approval for the turnover of the equipment to NVYPAI for his personal ultimate use. In the same manner, the Property Acknowledgment Receipt for Equipment, by itself, does not convincingly and credibly prove the purported transfer without cost of the coffee equipment to NVYPAI and, consequently, the purported consent of Padilla, Jr. to the misappropriation or taking by NVYPAI of the same. As pointed out by the Ombudsman, said receipt merely evidenced the change or transfer of custodianship over the coffee equipment to NVYPAI, and not that of their ownership. More importantly, as likewise explained by Padilla, Jr. in his Counter-Affidavit,¹² the transfer of custodianship was necessitated by and in line with the municipal government's agricultural programs under the Municipal Agriculture Office.¹³

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¹⁰ *Rollo*, pp. 23-25.

¹¹ *Zoleta v. Sandiganbayan (Fourth Division)*, G.R. No. 185224, July 29, 2015, 764 SCRA 110, 122.

¹² *Rollo*, pp. 99-102.

¹³ *Id.* at 99-100.

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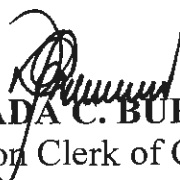
Finally, in resolving the charge for violation of Section 3(e) of RA 3019, the Ombudsman correctly applied *Sistoza v. Desierto*,¹⁴ where the Court held that the Ombudsman has the burden to determine with certainty the facts indicative of the modalities of committing a transgression of the statute.¹⁵ To be sure, it should not suffice that the elements of manifest partiality, evident bad faith, gross inexcusable negligence and of giving unwarranted benefit, advantage or preference are merely alleged in a resolution. It is imperative as well that these elements must be shown to have been committed, hand in hand, with fraudulent intent and corrupt motives.

Hence, though a finding of probable cause is regarded as preliminary, this should not deter the Ombudsman from dismissing the complaint and disallowing the case to proceed any further on the ground that from every indication, the case has no leg to stand on. In the absence of a clear case of grave abuse of discretion, this Court will not interfere with this exercise of the Ombudsman's discretion.

WHEREFORE, the Court **DISMISSES** the Petition for *Certiorari* for lack of merit.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court^{7m7/v}
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(OMB-L-C-14-0047)

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¹⁴ G.R. No. 144784, September 3, 2002, 388 SCRA 307.

¹⁵ Id. at 326.

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