



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

NEMIA T. MAGALUNA,
ANECIA C. PORE, EDELYN D.
ESPEJON, HERMES P.
FORCADILLA, EUTIQUIO C.
PALER, CHARLITO B. PLAZA
and GLENDALE F.
ESCATRON,

Petitioners,

- versus -

OFFICE OF THE
OMBUDSMAN (MINDANAO),
represented by HON. RODOLFO
M. ELMAN, Deputy
Ombudsman for Mindanao,
HON. MARCO ANACLETO P.
BUENA, Officer-in-Charge,
Evaluation and Investigation
Bureau-B, HON. QUINTIN J.
PEDRERO, JR., Graft
Investigation and Prosecution
Officer II and HON.
RANDOLPH C. CADIOGAN,
JR., Graft Investigation and
Prosecution Officer I and
NICASIO E. SULAPAS (former
Sangguniang Bayan Member of
General Luna, Surigao Del
Norte),

Respondents.

G.R. No. 214747

Present:
LEONEN, S.A.J.; Chairperson,
LAZARO-JAVIER,
M. LOPEZ,
J. LOPEZ, and
KHO, JR., JJ.

Promulgated:

JUL 18 2022

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DECISION

KHO, JR., J.:

Assailed in this Petition for *Certiorari* with prayer for temporary restraining order and/or preliminary injunction¹ are the Resolution² dated April 14, 2014 and the Order³ dated August 4, 2014, both issued by the Office of the Ombudsman for Mindanao (Ombudsman Mindanao) finding probable cause to indict petitioners Nemia T. Magaluna, Anecia C. Pore, Edelyn D. Espejon, Hermes P. Forcadilla, Eutiquio C. Paler, Glendale F. Escatron, Charlito B. Plaza (petitioners) and Juanito A. Antolin for violation of Article 171, paragraph 4, of the Revised Penal Code.

The Facts

On July 21, 2006, former Sangguniang Bayan (SB) of General Luna Surigao del Norte member, Nicasio E. Sulapas (Sulapas), filed a verified letter-complaint⁴ with the Office of the Ombudsman for Mindanao against Vice Mayor Nemia T. Magaluna (Magaluna), along with other members of the SB, namely, Anecia C. Pore (Pore), Charlito B. Plaza (Plaza), Edelyn D. Espejon (Espejon), Hermes P. Forcadilla (Forcadilla), Eutiquio C. Paler (Paler), Glendale F. Escatron (Escatron), and former SB acting secretary Juanito A. Antolin (Antolin).⁵ Sulapas also included Barangay Captain Erlinita B. Sta. Romana (Sta. Romana) in the letter complaint.⁶

In his letter-complaint, Sulapas alleged that on January 25, 2004, the Sangguniang Barangay of Tawin-Tawin of General Luna, Surigao del Norte passed Brgy. Resolutions No. 1 and 2, series of 2004, requesting that Lot No. 2874 and Lot No. 2872, respectively, be certified and identified as barangay sites.⁷

On February 23, 2004, the SB of General Luna passed SB Resolution Nos. 3 and 4 which certified and identified Lot No. 2874 and Lot No. 2872 as barangay sites, respectively. In both resolutions, petitioners affixed their signatures, certifying that the minutes for the resolutions were duly taken up,

¹ *Rollo*, p. 3-50.

² *Id.* at 69-80. Signed by Graft Investigation and Prosecution Officer II Quintin J. Pedrido, Jr. and approved by Deputy Ombudsman for Mindanao Rodolfo M. Elman.

³ *Id.* at 81-87. Signed by Graft Investigation and Prosecution Officer I Randolph C. Cadiogan, Jr. and approved by Deputy Ombudsman for Mindanao Rodolfo M. Elman.

⁴ *Id.* at 217-218.

⁵ *Id.*

⁶ *Id.* at 217.

⁷ *Id.* at 217-222.

passed and approved in the regular session of the SB members.⁸ Antolin, being the SB secretary, signed the resolutions, certifying their correctness.⁹

On September 23, 2004, SB Resolution Nos. 3 and 4 was submitted to the Department of Environment and Natural Resources (DENR) while SB Resolution No. 4 was submitted on September 28, 2004 in the same office.

On November 30, 2004, the Sangguniang Barangay of Tawin-Tawin submitted another resolution dated November 25, 2004 to the DENR for the subdivision of the two lots.¹⁰ On December 6, 2004, acting on SB Resolution Nos. 3 and 4, DENR subdivided the lots.¹¹

Sulapas claimed that petitioners, along with Sta. Romana, committed two counts of Falsification of Official Documents when they passed SB Resolution Nos. 3 and 4 since the said resolutions were never mentioned in the February 23, 2004 minutes of meeting¹². Furthermore, they were submitted to the DENR without the Municipal Mayor's approval.¹³

Moreover, in both SB Resolutions, Magaluna, Pore, Plaza, Espejon, Forcadilla, Paler, and Escatron were marked as present, while Sulapas, Nilo Bordas (Bordas), Rito P. Lim (Lim), and Oscar Navarro (Navarro) were marked absent.¹⁴ However, in the minutes for the SB session for that day, Sulapas, Lim, and Navarro were declared present.¹⁵

Upon receipt of the letter-complaint, the Central Records Division of the Ombudsman Mindanao conducted a pre-evaluation of the same and indicated therein the following petitioners: (1) Magaluna, (2) Pore, (3) Espejon, (4) Forcadilla, (5) Paler, (6) Escatron, (7) Antolin, and (8) Sta. Romana. Plaza was not named in the pre-evaluation.¹⁶

On August 3, 2006, acting on the letter-complaint, Ombudsman Mindanao initiated a fact-finding investigation, through its Fact-Finding Investigation Unit (FFIU).¹⁷ On September 11, 2006, the FFIU issued a *subpoena duces tecum*¹⁸ directing the SB secretary to submit the original copy of the following documents:

⁸ Id. at 223-226.

⁹ Id. at 224 and 226.

¹⁰ Id. at 230-231.

¹¹ Id. at 217-218.

¹² Id. at 218.

¹³ Id. at 217.

¹⁴ Id. at 177.

¹⁵ Id. at 218.

¹⁶ Id. at 178.

¹⁷ Id.

¹⁸ Id. at 234.

1. SB Resolution No. 3 Series of 2004 dated 23 February 2004.
2. SB Resolution No. 4 Series of 2004 dated 23 February 2004.
3. Minutes of meeting of the Regular Session of the SB Members of General Luna, Surigao del Norte held on 23 February 2004.

On September 29, 2006, SB Secretary Peejay B. Gorgonio (Gorgonio) submitted a certified true copy of the February 23, 2004 minutes and a letter explaining that he cannot submit the original thereof as there is only one copy left in his office.¹⁹ He also executed and submitted an affidavit²⁰ stating that SB Resolution Nos. 3 and 4 do not exist in record and that the February 23, 2004 minutes never mentioned them nor were they passed upon during the session for that day. To further prove the non-existence of SB Resolution Nos. 3 and 4, Gorgonio said that SB Resolution No. 19, Series of 2004 was passed on January 12, 2004, or on a date even prior to when SB Resolution Nos. 3 and 4 were allegedly passed.²¹

Due to Gorgonio's disclosure, the FFIU issued, on March 11, 2008, another *subpoena duces tecum*²² directing Gorgonio to submit the original copy of SB Resolution No. 19, series of 2004 dated January 12, 2004.²³ On the same date, it also issued another *subpoena duces tecum*²⁴ directing Ulpiano D. Dasilao (Dasilao) of the Community Environment and Natural Resources Office (CENRO) of Dapa, Surigao del Norte to submit the original copies of SB Resolution Nos. 3 and 4.²⁵

On March 31, 2008, Gorgonio submitted a certified true copy of SB Resolution No. 19, series of 2004 since he had only one original copy on file.²⁶

On April 3, 2008, Dasilao submitted a March 25, 2008 letter requesting for an extension of another five (5) days to submit the originals of SB Resolution Nos. 3 and 4, Series of 2004 due to his reassignment to DENR-CENRO of Surigao City.²⁷

On April 18, 2008, the CENRO of Dapa, Surigao del Norte submitted the originals of SB Resolution Nos. 3 and 4 dated February 23, 2004 to FFIU.²⁸

¹⁹ Id. at 235.

²⁰ Id. at 239.

²¹ Id.

²² Id. at 240.

²³ Id.

²⁴ Id. at 241.

²⁵ Id.

²⁶ Id. at 242-244.

²⁷ Id. at 245.

²⁸ Id. at 181.

On April 7, 2009, upon review of the evidence, FFIU released its Memorandum²⁹ declaring that since the necessary documentary evidence were on hand, the fact-finding investigation was terminated, and the conduct of preliminary investigation was now proper.³⁰ It then recommended the preliminary investigation of the case for Falsification of Public Documents as defined in Article 171 of the Revised Penal Code (RPC) against Magaluna, Pore, Espejon, Forcadilla, Paler, Escatron, Antolin, and Sta. Romana, excluding Plaza.³¹ Thus, in April 2009, Sulapas' letter-complaint was docketed as Case No. OMB-M-C-09-0168-D.³²

Ombudsman Mindanao issued an Order³³ dated May 4, 2009 directing Magaluna, Pore, Espejon, Forcadilla, Paler, Escatron, Antolin, and Sta. Romana to submit their counter-affidavits and controverting evidence to Sulapas' letter-complaint within ten (10) days from receipt of notice.³⁴

As such, petitioners, with the exception of Plaza, filed a joint counter-affidavit dated June 9, 2009.³⁵ In the said counter-affidavit, they contend that no falsification occurred because (1) they actually deliberated upon the matter prior to the start of the formal session; and (2) their signatures are genuine.³⁶

On July 19, 2009, Sulapas filed his Reply.³⁷

On January 13, 2014, Ombudsman Mindanao issued an Order, imploding Plaza and directed the latter to file his counter-affidavit.³⁸ Ombudsman Mindanao admitted that Plaza was one of the individuals charged in Sulapas' letter-complaint but was inadvertently omitted in the Order dated May 4, 2009.³⁹

On February 11, 2014, in compliance with Ombudsman Mindanao's Order, Plaza filed his counter-affidavit.⁴⁰ In it, Plaza asserted that his right to speedy disposition of case was violated.⁴¹ He provides:

"11. Let it be pointed out also that our respective constitutional rights to a Speedy Disposition of our Case have already been violated; Section 16, Article III of the 1987 Constitution provides that "*All persons shall have the right to a speedy disposition of their cases before all judicial and*

²⁹ Id. at 246-248.

³⁰ Id.

³¹ Id. at 248.

³² Id. at 182.

³³ Id. at 125-126.

³⁴ Id. at 125.

³⁵ Id. at 129-133.

³⁶ Id. at 130-131.

³⁷ Id. at 249-251.

³⁸ Id. at 127-128.

³⁹ Id. at 333.

⁴⁰ Id. at 137-142.

⁴¹ Id. at 139-142.

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quasi-judicial or administrative bodies.” In the landmark case of *Tatad vs. Sandiganbayan, No. L-72335-39, 21 March 1988*, the Supreme Court explained that inordinate delay in the disposition of cases is a violation of the constitutional right of the accused to due process of law...⁴²

On April 25, 2014, Ombudsman Mindanao approved a Resolution dated April 14, 2014,⁴³ the dispositive portion of which reads:

“WHEREFORE, as for SB Resolution No. 03, this Office finds probable cause to indict respondents Nemia T. Magaluna, Anecia C. Pore, Edelyn D. Espejon, Hermes P. Forcadilla, Eutiquio C. Paler, Glendale F. Escatron, Charlito B. Plaza and Juanito A. Antolin for violation of Article 171, paragraph 4, of the Revised Penal Code.

As for SB Resolution No. 04, this Office finds probable cause to indict respondents Nemia T. Magaluna, Anecia C. Pore, Edelyn D. Espejon, Hermes P. Forcadilla, Eutiquio C. Paler, Charlito B. Plaza and Juanito A. Antolin.

The case is dismissed as for respondent Erlinita B. Sta. Romana for lack of probable cause.

SO RESOLVED.”⁴⁴

On May 26, 2014, Plaza filed his Motion for Reconsideration (MR), in which he again asserted his right to speedy disposition of case.⁴⁵

On the other hand, on May 30, 2014, Magaluna, Pore, Paler, Espejon, and Forcadilla jointly filed their own Motion for Reconsideration contending that (1) the matter was actually deliberated upon; (2) affixing their signature on the pre-prepared resolutions was a usual practice; (3) the resolutions were *ultra vires* since designation of barangay sites are made through an ordinance and not resolution; and, (4) they acted in good faith.⁴⁶ **In their Motion for Reconsideration, they did not invoke their right to speedy disposition of cases.**

On June 4, 2014, Sulapas filed an Affidavit of Desistance⁴⁷ wherein he declared:

“4. The truth of the matter is that the case is just a product of political conflict. x x x

5. After long consideration of the circumstances and facts surrounding the case, I can honestly say that what arose was a simple misapprehension

⁴² Id. at 139-140.

⁴³ Id. at 69-80.

⁴⁴ Id. at 78-79.

⁴⁵ Id. at 88-102.

⁴⁶ Id. at 113-120.

⁴⁷ Id. at 143-144.

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of facts. That the respondents in question had no intention to falsify the document."⁴⁸

Despite such Affidavit, Ombudsman Mindanao issued an Order dated August 4, 2014 denying petitioners' motion for reconsideration.⁴⁹

Hence, this petition assailing Ombudsman Mindanao's Resolution dated April 14, 2014 and the Order dated August 4, 2014.

The Issue Before the Court

The sole issue for the Court's resolution is whether petitioners right to speedy disposition of cases was violated by Ombudsman Mindanao in the latter's issuance of the Resolution dated April 14, 2014 and the Order dated August 4, 2014.

The Court's Ruling

Petitioners argue that the constitutional right of a person to a speedy disposition of cases is available to all parties in all cases, be it criminal, civil or administrative in nature, including quasi-judicial proceedings.⁵⁰ Hence, it may be invoked in a proceeding before the Ombudsman.

They contend that the delay of eight (8) years, from the filing of the letter-complaint on July 21, 2006 until the resolution of the case, on April 25, 2014, is inordinate and oppressive especially since the case is criminal in nature.⁵¹

In addition, more than twelve (12) years have passed since the time the alleged crime occurred up to the time of writing of petitioners' memorandum. The Ombudsman Mindanao did not present any justification as to why it took so long to resolve the case.⁵² As such, petitioners are having difficulties in gathering evidence that could help prove their innocence.⁵³

Petitioners also contend that they could not have asserted their right to a speedy disposition of cases because they were unaware that the investigation against them was still on-going.⁵⁴ The assailed Resolution only came out eight (8) years after the letter-complaint was filed or five (5) years from the time

⁴⁸ Id. at 143.

⁴⁹ Id. at 81-87.

⁵⁰ Id. at 395.

⁵¹ Id. at 396.

⁵² Id. at 403.

⁵³ Id. at 397.

⁵⁴ Id. at 403.

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they, except for Plaza, filed their joint count-affidavit.⁵⁵ Hence, they assumed that the case against them was already dismissed.⁵⁶ As for Plaza, he cannot be deemed to have slept on his right since he was only impleaded on January 13, 2014.⁵⁷

On the other hand, Ombudsman Mindanao asserts that no violation to petitioners' right to speedy disposition of cases was made. The entire seven and a half (7 ½) years should not be counted as a preliminary investigation since the letter-complaint was still subject to a fact-finding investigation.⁵⁸ Preliminary investigation only began on April 2009 after the Ombudsman Mindanao obtained the original copies of the SB Resolutions and when the Memorandum docketing the case for preliminary investigation was issued.⁵⁹

Ombudsman Mindanao further argues that delay should only be counted from the "date of receipt of the last pleading (*i.e.*, Sulapas' Reply) on July 19, 2009 until the approval of the assailed resolution on April 2014, which took a period of more than four and one-half (4 ½) years due to the voluminous number of cases being handled by its assigned investigating officer."⁶⁰

Ombudsman Mindanao also contends that petitioners, except for Plaza who prematurely invoked his right, never once invoked their right to a speedy disposition of their case.⁶¹ The petitioners also did not suffer any actual prejudice impaired by the perceived delay.⁶²

In *Cagang v. Sandiganbayan (Cagang)*,⁶³ this Court laid down a set of guidelines on how to resolve questions involving the right to speedy disposition of cases. The guidelines provide:

First, the right to speedy disposition of cases is different from the right to speedy trial. While the rationale for both rights is the same, the right to speedy trial may only be invoked in criminal prosecutions against courts of law. The right to speedy disposition of cases, however, may be invoked before any tribunal, whether judicial or quasi-judicial. What is important is that the accused may already be prejudiced by the proceeding for the right to speedy disposition of cases to be invoked.

Second, a case is deemed initiated upon the filing of a formal complaint prior to a conduct of a preliminary investigation. This Court acknowledges, however, that the Ombudsman should set reasonable periods

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Id. at 404.

⁵⁸ Id. at 338.

⁵⁹ Id. at 341-342.

⁶⁰ Id. at 343-344.

⁶¹ Id. at 348.

⁶² Id.

⁶³ 837 Phil. 815 (2018).

for preliminary investigation, with due regard to the complexities and nuances of each case. Delays beyond this period will be taken against the prosecution. The period taken for fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay.

Third, courts must first determine which party carries the burden of proof. If the right is invoked within the given time periods contained in current Supreme Court resolutions and circulars, and the time periods that will be promulgated by the Office of the Ombudsman, the defense has the burden of proving that the right was justifiably invoked. If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay.

If the defense has the burden of proof, it must prove *first*, whether the case is motivated by malice or clearly only politically motivated and is attended by utter lack of evidence, and *second*, that the defense did not contribute to the delay.

Once the burden of proof shifts to the prosecution, the prosecution must prove *first*, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; *second*, that the complexity of the issues and the volume of evidence made the delay inevitable; and *third*, that no prejudice was suffered by the accused as a result of the delay.

Fourth, determination of the length of delay is never mechanical. Courts must consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised.

An exception to this rule is if there is an allegation that the prosecution of the case was solely motivated by malice, such as when the case is politically motivated or when there is continued prosecution despite utter lack of evidence. Malicious intent may be gauged from the behavior of the prosecution throughout the proceedings. If malicious prosecution is properly alleged and substantially proven, the case would automatically be dismissed without need of further analysis of the delay.

Another exception would be the waiver of the accused to the right to speedy disposition of cases or the right to speedy trial. If it can be proven that the accused acquiesced to the delay, the constitutional right can no longer be invoked.

In all cases of dismissals due to inordinate delay, the causes of the delays must be properly laid out and discussed by the relevant court.

Fifth, the right to speedy disposition of cases or the right to speedy trial must be timely raised. The respondent or the accused must file the appropriate motion upon the lapse of the statutory or procedural periods. Otherwise, they are deemed to have waived their right to speedy disposition of cases.⁶⁴

The Court applies these rules to the case at bar.

⁶⁴ *id.*

There was inordinate delay in the preliminary investigation

Based on the records, below is the timeline of the events leading to the filing of this case:

February 23, 2004	Petitioners passed SB Resolution Nos. 3 and 4
July 21, 2006	Letter-complaint by Sulapas filed before the Ombudsman Mindanao
August 3, 2006	Ombudsman Mindanao initiated fact-finding investigation
September 11, 2006	Ombudsman Mindanao issued <i>subpoena duces tecum</i> directing SB secretary to submit originals of SB Resolution Nos. 3 and 4.
September 29, 2006	SB Secretary wrote a letter stating SB Resolution Nos. 3 and 4 do not exist.
March 11, 2008	Ombudsman Mindanao issued <i>subpoena duces tecum</i> directing CENRO Dapa, Surigao del Norte to submit originals of SB Resolution Nos. 3 and 4.
April 18, 2008	Ombudsman Mindanao received originals of SB Resolution Nos. 3 and 4.
April 7, 2009	Ombudsman Mindanao issued memorandum terminating fact-finding investigation and the start of preliminary investigation.
May 4, 2009	Ombudsman Mindanao Order directed petitioners, except Plaza, to submit counter-affidavits.
June 9, 2009	Petitioners, except Plaza, filed their joint counter-affidavit
July 19, 2009	Reply filed by complainant Sulapas
January 13, 2014	Ombudsman Mindanao impleaded Plaza directing him to file counter-affidavit
February 11, 2014	Plaza filed his counter-affidavit and asserted his right to speedy disposition
April 25, 2014	Ombudsman Mindanao issued resolution finding probable cause to indict petitioners
May 26, 2014	Plaza filed his MR asserting his right to speedy disposition
May 30, 2014	Petitioners, other than Plaza, filed their MR without invoking their right to speedy disposition of cases.
June 4, 2014	Sulapas filed an Affidavit of Desistance
August 4, 2014	Ombudsman Mindanao denied petitioners' MR

As previously mentioned, *Cagang* provides that a case is deemed initiated upon the filing of a formal complaint prior to the conduct of a preliminary investigation. However, the period taken for fact-finding

investigations before the Ombudsman prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay.⁶⁵

Hence, in this case, the reckoning point is on April 7, 2009 when the Ombudsman Mindanao terminated the fact-finding investigation and commenced the preliminary investigation.⁶⁶ The period prior to this is not counted since it falls under the fact-finding investigation phase.

When the preliminary investigation began up to the approval of the assailed resolution, or from April 7, 2009 to April 25, 2014, five (5) years have already passed.

The prosecution had the burden to explain the delay in the preliminary investigation

Cagang recommends that the Ombudsman set a reasonable period within which the preliminary investigation should be completed. However, no such specific period exists in the Ombudsman's Rules of Procedure at the time this case was undergoing preliminary investigation.⁶⁷ In this connection, Section 4, Rule II and Section 3, Rule V of Ombudsman Administrative Order No. 7 provides:

RULE II
PROCEDURE IN ADMINISTRATIVE CASES

Section 4. Procedure – The preliminary investigation of cases falling under the jurisdiction of the Sandiganbayan and Regional Trial Courts shall be conducted in the manner prescribed in Section 3, Rule 112 of the Rules of Court x x x

x x x x

RULE V
GENERAL PROVISIONS

Section 3. Rules of Court, application. – In all matters not provided in these rules, the Rules of Court shall apply in a suppletory character, or by analogy whenever practicable and convenient.

Thus, the Rules of Court shall apply in a suppletory manner.⁶⁸

⁶⁵ Supra note 63.

⁶⁶ *Rollo*, p. 182.

⁶⁷ See Section 4, Rule II, Ombudsman Administrative Order No. 7, as amended, April 10, 1990.

⁶⁸ See Section 3, Rule V, Ombudsman Administrative Order no. 7, as amended, April 10, 1990.

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Section 3, Rule 112 of the Revised Rules of Criminal Procedure provide for the procedure of the conduct of preliminary investigation. In Section 3(f) of Rule 112, the investigating officer has ten (10) days after investigation to determine whether or not there is sufficient ground to hold the respondent for trial.⁶⁹ By its own admission, it took Ombudsman Mindanao four and a half (4 ½) years from its receipt of the last pleading to issue the assailed resolution.⁷⁰ Clearly, Ombudsman Mindanao went beyond the ten (10) day period. As such, the burden of proof shifted towards the Ombudsman Mindanao to prove that the delay was not unreasonable.

Ombudsman Mindanao's excuse that the delay was due to the voluminous number of cases being handled by the assigned investigating officer is untenable. Absent any proof of how the steady stream of cases or heavy workload affected the resolution of a case,⁷¹ such cannot be considered a valid excuse.

⁶⁹ See Section 3, Rule 112, Rules of Court.

SECTION 3. *Procedure.*— *The preliminary investigation shall be conducted in the following manner:*

- (a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or in their absence or unavailability, before a notary public, each of whom must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.
- (b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.
The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense.
Objects as evidence need not be furnished a party but shall be made available for examination, copying, or photographing at the expense of the requesting party.
- (c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.
- (d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10)-day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.
- (e) The investigating officer may set a hearing if there are facts and issues to be clarified from a party or a witness. The parties can be present at the hearing but without the right to examine or cross-examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned.
The hearing shall be held within ten (10) days from submission of the counter-affidavits and other documents or from the expiration of the period for their submission. It shall be terminated within five (5) days.
- (f) **Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.** (Emphasis supplied)

⁷⁰ *Rollo*, p. 344.

⁷¹ See *Catamco v. Sandiganbayan*, G.R. Nos. 243560-62 & 243261-63, July 28, 2020.

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Furthermore, what is involved here is a simple crime of falsification of document. The issue is not of extraordinary complication that justifies Ombudsman Mindanao's inordinate delay in resolving the case.⁷²

Petitioners, except for Plaza, acquiesced to the delay and failed to timely raise their right

Despite the inordinate delay committed by Ombudsman Mindanao, petitioners, except for Plaza, failed to timely invoke their right to speedy disposition of cases.

The guidelines set forth in *Cagang* specifies that the right may no longer be invoked if the person being investigated acquiesced to the delay or failed to timely raise it.

The case of *Dela Peña v. Sandiganbayan*,⁷³ expounds the concept of acquiescing to the delay, to wit:

“Moreover, it is worthy to note that it was only on 21 December 1999, after the case was set for arraignment, that petitioners raised the issue of the delay in the conduct of the preliminary investigation. As stated by them in their Motion to Quash/Dismiss, “[o]ther than the counter-affidavits, [they] did nothing.” Also, in their petition, they averred: “Aside from the motion for extension of time to file counter-affidavits, petitioners in the present case did not file nor send any letter-queries addressed to the Office of the Ombudsman for Mindanao which conducted the preliminary investigation.” **They slept on their right – a situation amounting to laches.** The matter could have taken a different dimension if during all those four years, they showed signs of asserting their right to a speedy disposition of their cases or at least made some overt acts, like filing a motion for early resolution, to show that they were not waiving that right. Their silence may, therefore be interpreted as a waiver of such right.”⁷⁴ (Emphasis supplied)

Here, petitioners, except for Plaza, cannot deny that they knew that the preliminary investigation was still ongoing as they were asked to file counter-affidavits as early as May 2009. They submitted their counter-affidavits and did nothing until the resolution of the case on April 2014 or five (5) years later. Petitioners, except for Plaza, slept on their rights amounting to laches.

Petitioners also failed to timely raise their right. Following *Cagang*, they failed to file the appropriate motion upon the lapse of the statutory or procedural periods or within ten (10) days after the investigation.⁷⁵ They even

⁷² See *Coscolluela v. Sandiganbayan*, 714 Phil. 55 (2013).

⁷³ *Dela Peña v. Sandiganbayan*, 412 Phil. 921 (2001).

⁷⁴ *Id.* at 932.

⁷⁵ See Section 3 and 4, Rule 112 of the Rules of Court.

failed to raise the right in their motion for reconsideration before the Ombudsman Mindanao. Petitioners for the first time invoked their right to speedy disposition of cases in their Petition for *Certiorari* before this Court. Hence, the Court finds that petitioners, except for Plaza, waived their right to a speedy disposition of case.

With that said, Ombudsman Mindanao did not commit grave abuse of discretion in issuing the Resolution dated April 14, 2014 and the Order dated August 4, 2014 finding probable cause to indict petitioners, with the exception of Plaza.

Respondent committed grave abuse of discretion in indicting petitioner Plaza

Plaza's circumstance is different. Unlike the other petitioners, Plaza was only informed of the pending complaint against him in 2014 when he received an order to file his counter-affidavit. He was unaware of the ongoing investigation for a period of almost five (5) years, or from the time when the preliminary investigation began on April 7, 2009 until its termination in April 2014. By Ombudsman Mindanao's own admission, it failed to implead Plaza due to inadvertence. There was no way Plaza could have asserted his right to a speedy disposition of cases or filed the proper motion.

Moreover, Plaza timely invoked his right to a speedy disposition of cases. As early as his counter-affidavit, he already asserted his right and kept doing so in his motion for reconsideration and this petition for review.

Applying the *Cagang* rules to Plaza's situation, we find that Ombudsman Mindanao violated his right to speedy disposition of cases.

ACCORDINGLY, the petition is **PARTIALLY GRANTED**. The assailed Resolution dated April 14, 2014 and the Order dated August 4, 2014 of the Office of the Ombudsman for Mindanao is **ANNULLED** and **SET ASIDE** in so far as petitioner Charlito B. Plaza is concerned, in view of the violation of his right to a speedy disposition of cases. The Office of the Ombudsman for Mindanao is hereby enjoined from filing an Information against petitioner Charlito B. Plaza. The petition is hereby **DENIED** with respect to petitioners Nemia T. Magaluna, Anecia C. Pore, Edelyn D. Espejon, Hermes P. Forcadilla, Eutiquio C. Paler, and Glendale F. Escatron.


Atty

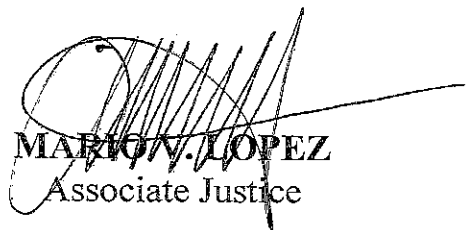
SO ORDERED.


ANTONIO T. KHO, JR.
Associate Justice

WE CONCUR:


MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson



AMY C. LAZARO-JAVIER
Associate Justice


MARIO V. LOPEZ
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice

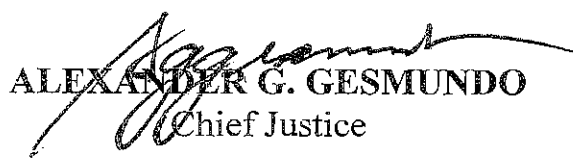
ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

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


ALEXANDER G. GESMUNDO
Chief Justice

