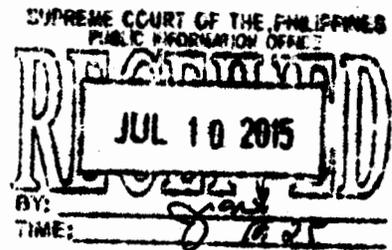




Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated June 17, 2015 which reads as follows:

“G.R. No. 167697 – HEIRS OF LIWALOG ALONTO, represented by Attorney-in-fact, PROF. MAMA UDAYE C. ALONTO and PROF. MAMA UDAYE C. ALONTO, Petitioners, v. COURT OF APPEALS, HON. SIMEON V. MARCELO as Ombudsman, ARTHUR C. ABAMONGA, Respondents.- The letter dated April 22, 2015 of the Judicial Records Division, Court of Appeals, Manila, transmitting the Court of Appeals rollo in CA-G.R. SP No. 87435 consisting of 281 pages is **NOTED.**

The petitioners hereby assail the dismissal of the criminal complaint for violation of Section 1 and Section 3(a), (e) and (j) of Republic Act No. 3019¹ they had filed against respondent Arthur C. Abamonga (Abamonga) in his capacity as the Register of Deeds of Lanao del Norte accusing him of illegally issuing spurious free patents affecting properties left by the late Liwalog Alonto (Alonto) and causing their registration under the names of his surviving spouse, Sarandang Macarambon Alonto, and her children to the prejudice of the petitioners who were the deceased’s collateral relatives. The criminal complaint was initially in the Office of the City Prosecutor of Quezon City but was later endorsed to the Office of the Ombudsman–Mindanao and docketed as OMB-M-C-02-0334-F.

On March 28, 2003, the Deputy Ombudsman for Mindanao approved the resolution² of Graft Investigation Officer II, Milagros De Jesus-Macaraig dismissing the criminal complaint upon the finding that an action for reconveyance or for the declaration of nullity of the free patents

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¹ Rollo, p. 13.

² CA rollo, pp. 148-155.

was the more appropriate remedy to assail the validity of the free patents. The investigating officer stressed that the free patents were merely issued in the exercise of the ministerial duty of the Register of Deeds after examining the accompanying documents required by law; hence, the elements of the violation of Republic Act No. 3019 charged were not present.

The petitioners filed a *Motion for Reconsideration with Manifestation*,³ alleging that the March 28, 2003 resolution was void because the Deputy Ombudsman had no authority to approve the dismissal of the criminal complaint, his power being merely recommendatory under Administrative Order No. 08; that respondent Abamonga had issued free patent titles that contained defects; and that the Deputy Ombudsman had no authority to pass upon the issues raised in the complaints filed by the petitioners against Abamonga in the Land Registration Authority and the Integrated Bar of the Philippines.

In the order dated May 13, 2003,⁴ which was approved by the Deputy Ombudsman, the petitioners' motion for reconsideration was denied, with the investigating officer explaining that although the charge was for the violation of Republic Act No. 3019, the case did not fall within the jurisdiction of the Sandiganbayan because Abamonga's salary grade was below Grade 27;⁵ that the resolution of the case filed against him – whether for his indictment or for the dismissal of the case – was to be approved by the Deputy Ombudsman for Mindanao;⁶ that the free patent titles came from the Bureau of Lands;⁷ that Abamonga's participation was merely to register the titles in the exercise of his ministerial functions;⁸ and that it was not within the powers and functions of the Office of the Ombudsman to direct the cancellation and confiscation of the free patent titles and to order annotations to be made therein.⁹

The petitioners then filed a petition for review in the Office of the Ombudsman, which denied the petition with finality through the order dated October 28, 2003.¹⁰

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³ Id. at 157-181.

⁴ Id. at 188-192.

⁵ Id. at 189-190.

⁶ Id. at 190.

⁷ Id. at 190-191.

⁸ Id.

⁹ Id. at 192.

¹⁰ Id. at 55-66.

Nonetheless, the petitioners still filed a *Motion for Reconsideration with Manifestation*¹¹ in the Office of the Ombudsman, which simply denied the motion in its order dated May 19, 2004.¹²

Hence, the petitioners went to the Court of Appeals (CA) via petition for *certiorari*, prohibition and *mandamus*.¹³

On October 7, 2004, the CA promulgated its following resolution,¹⁴ to wit:

Prefatorily, petitioners' Ex-Parte Application/Motion to Litigate as Indigent Party is **GRANTED**.

However, as filed, the instant Petition for Certiorari, Prohibition and Mandamus under *Rule 65*, filed on September 24, 2004, is ordered **DISMISSED**, for being fatally flawed, because:

- (a) It fails to contain the mandatory requirement of a non-forum shopping certification; and
- (b) More importantly, the assailed Order dated October 28, 2003, was issued by the Office of the Ombudsman against which the proper remedy is a Petition for Review under *Rule 43 of the 1997 Rules of Civil Procedure*, within fifteen (15) days from receipt of the challenged order which expired on August 21, 2004, not a petition for certiorari under *Rule 65*.

SO ORDERED.

The petitioners' motion for reconsideration was denied by the CA on December 10, 2004,¹⁵ viz.:

x x x We agree with the petitioner that pp. 4 and 5 of this petition (pp. 10-11, Rollo), contain the forum shopping certification and so the dismissal on this ground is hereby RECALLED. Nonetheless, the instant petition for certiorari is just the same dismissible because what is being assailed are the Orders of the Office of the Ombudsman in OMB-M-C-02-0334-F for violation of Sections 3(e) and (j), Republic Act No. 3019, which are criminal cases in nature. Under the law, review of decisions or resolutions in criminal cases decided by the Office of the Ombudsman must be filed before the Supreme Court, and not this Court (*Kuizon v.*

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¹¹ Id. at 68-89.

¹² Id. at 90-92

¹³ Id. at 7-54.

¹⁴ *Rollo*, pp. 35-36; penned by Associate Justice Conrado M. Vasquez, Jr., (later Presiding Justice, now deceased) with Associate Justice Edgardo F. Sundiam (deceased) and Associate Justice Fernanda Lampas Peralta concurring.

¹⁵ Id. at 38-39.

Desierto, 354 SCRA 158 [2001]). It is the appeal in administrative disciplinary action of the Ombudsman that falls within the jurisdiction of this court under Rule 43 (*Fabian v. Desierto*, 295 SCRA 470 [1998]). Perforce, the present petition for certiorari filed with this Court is a wrong mode of appeal and therefore the petition must just the same be DISMISSED.

ACCORDINGLY, petitioners' Motion for Reconsideration dated November 24, 2004, is DENIED.

SO ORDERED.

The petitioners come to the Court *via* petition for *certiorari*, prohibition and *mandamus*,¹⁶ alleging grave abuse of discretion on the part of the CA in not reversing and setting aside the questioned resolutions of the Office of the Ombudsman dismissing their criminal complaint against Abamonga.

The issues to be resolved are: (1) whether the petition for *certiorari* filed in the CA was the proper remedy to assail the resolution of the Office of the Ombudsman; and (2) whether the Office of the Ombudsman committed grave abuse of discretion amounting to excess or lack of jurisdiction in dismissing the criminal complaint of the petitioners for lack of probable cause.

Anent the first issue, the petition deserves outright dismissal for being the wrong remedy. According to *Cortes v. Office of the Ombudsman (Visayas)*,¹⁷ which reiterated the ruling in *Fabian v. Desierto*:¹⁸

x x x [A]ppeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under the provisions of Rule 43, in line with the regulatory philosophy adopted in appeals from quasi-judicial agencies in the 1997 Revised Rules of Civil Procedure.

Jurisprudence accords a different treatment with respect to an appeal in a criminal case filed with the Office of the Ombudsman. We made the pronouncement in *Acuña v. Deputy Ombudsman for Luzon* that the remedy of an aggrieved party in criminal complaints before the Ombudsman is to file with this Court a petition for *certiorari* under Rule 65. (Emphasis supplied.)

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¹⁶ Id. at 5-33.

¹⁷ G.R. No. 187896-97, June 10, 2013, 698 SCRA 129, 133.

¹⁸ G.R. No. 129742, September 16, 1998, 295 SCRA 470, 487.

With the matter concerned having arisen from a criminal complaint, the petitioners' remedy was to directly file a petition for *certiorari* in this Court. The filing of the petition for *certiorari* in the CA, being improper and definitely erroneous, did not toll the running of the period.¹⁹ As such, the petition for *certiorari* filed in this Court could not prosper considering that it was filed beyond 60 days from when the petitioners were notified of the adverse resolutions issued by the Office of the Ombudsman. Specifically, the petitioners received on August 6, 2004 the May 19, 2004 order denying their motion for reconsideration,²⁰ but the petition for *certiorari* was brought only on March 11, 2005,²¹ clearly more than 60 days from August 6, 2004.

Moreover, the petition did not establish that the public respondents 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.²² Yet, the petitioners did not sufficiently show how the public respondents could have been guilty of such whimsicality, arbitrariness or capriciousness.

Indeed, the resolutions of the Office of the Ombudsman to the effect that there was no probable cause for the alleged violation of Republic Act No. 3019 appeared to be correct, as the following pertinent portions of the resolutions show, to wit:

Sarandang Macarambon and her children/heirs resorted to the administrative mode for confirmation of titles and appear to have complied with the corresponding requirements as evidenced by the free patents issued in their favor by the Bureau of Lands (Records, pp. 63-80) which were subsequently forwarded to respondent for registration and issuance of titles.

As held by the LRA in its aforementioned Decision in Adm. Case No. 98-40 (*supra*), and partly echoed by the Court of Appeals in its aforementioned Resolution in CA GR SP No. 63859 (*supra*), the registration of the free patents and the issuance of OCTs is ministerial on the part of respondent. In this regard, the Ombudsman-Mindanao properly took cognizance of the findings of the LRA in the aforementioned administrative case, the latter having acquired the expertise on the subject matter of the complaint.

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¹⁹ *Kuizon v. Desierto*, G.R. No. 140619-24, March 9, 2001, 354 SCRA 158, 173.

²⁰ *CA rollo*, p. 9.

²¹ *Rollo*, p. 5.

²² *Baviera v. Zoleta*, G.R. No. 169098, October 12, 2006, 504 SCRA 281, 303.

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If there are perceived irregularities in the issuance of the free patents or in the processing of application and related documents, the proper recourse is to file an action for reconveyance or declaration of nullity before the appropriate court. As pointed out by the Court of Appeals in its aforementioned Resolution, and as amply supported by prevailing jurisprudence, a certificate of title cannot be subject to collateral attack and can be altered, modified or cancelled only in a direct proceeding in accordance with law (*Carreon v. CA*, 291 SCRA 304).

Anent the questioned authority of the Deputy Ombudsman for Mindanao to approve the assailed Resolution and Order, Office Order No. 07-03 Series of 2003 issued on 14 January 2003 expressly provides, thus:

“Except when otherwise ordered by the Ombudsman, in the disposition of cases involving public officials categorized as low ranking consistent with R.A. No. 8249, the Deputy Ombudsman of the Area/Sector concerned and the Overall Deputy Ombudsman for the National Capital Region shall be the approving authority for their respective offices.

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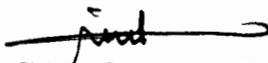
Anent the prayer of complainant for the issuance of an Order canceling the subject free patent titles and directing the inscription, in the Primary Entry Book of the Register of Deeds of Lanao del Norte, of LRC No. N-65/LRCR No. 9871 as well as the Order dated 31 May 1967 in Special Proceeding No. 1373, the same is beyond the statutory authority of the Office of the Ombudsman under R.A. No. 6770.²³

In the absence of a clear case of abuse of discretion, this Court does not interfere with the exercise of the Ombudsman’s discretion to either dismiss a criminal complaint or to proceed with it.

WHEREFORE, the Court **DISMISSES** the petition for *certiorari*, prohibition and *mandamus* for utter lack of merit; and **ORDERS** the petitioners to pay the costs of suit.

SO ORDERED.”

Very truly yours,


EDGAR O. ARICHETA
Division Clerk of Court

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²³ CA rollo, pp. 64-66.

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Diliman 1128 Quezon City
(OMB-M-C-02-0334-F)

The Solicitor General (x)
Makati City

The Register of Deeds
Provincial Capitol
Tubod 9209 Lanao del Norte

Public Information Office (x)
Library Services (x)
Supreme Court
(For uploading pursuant to A.M.
No. 12-7-1-SC)

Judgment Division (x)
Supreme Court

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