

## ONOFRE M. MAYO, PETITIONER, VS. CARLITO MAPA, RESPONDENT.

Ponente: BARRIOS, J.

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### BARRIOS, J.:

The petitioner Onofre M. Mayo (or Mayo for brevity) by this petition for review assails the Decision of the Office of the Deputy Ombudsman for Luzon (or the Deputy Ombudsman) finding him guilty of Gross Neglect of Duty and imposing the penalty of suspension for six (6) months without pay.

On December 6, 2002, the respondent Carlito Mapa (or Mapa) filed a complaint for Falsification of Public Document against Mayo before the National Bureau of Investigation (or NBI), Dagupan District Office. The complaint charged Mayo, the Municipal Assessor of Infanta, Pangasinan, of intentionally altering the lot area as contained in Tax Declaration No. 2639 (or TD 2639) by making it appear that the real property owned by Mapa has an area of only 766 square meters when its actual area is 1,493 square meters. It also alleged that Mayo refused to make the necessary correction in TD 2639 when his attention was called regarding the said discrepancy appearing in the tax declaration which he issued.

On September 22, 2003, the NBI submitted to the Deputy Ombudsman its recommendation for the criminal and administrative prosecution of Mayo for Falsification of Public Document and Grave Misconduct respectively.

In his Counter Affidavit with Motion to Dismiss submitted to the Deputy Ombudsman, Mayo claimed that Mapa is engaged in forum shopping warranting the dismissal of the complaint. According to him, Mapa and eight (8) other individuals have filed a complaint against him before the Office of the Secretary of Finance on May 12, 2003. Mapa thereafter commenced the filing of the complaint with the NBI on August 19, 2003 as shown in his sworn statement submitted to the NBI. Mayo claimed that the charges against him in the complaint filed before the Office of the Secretary of Finance included the alleged acts complained of in the case before the NBI.

On January 10, 2005, the Deputy Ombudsman rendered the assailed Decision in the administrative case, the decretal portion of which reads:

WHEREFORE, PREMISES CONSIDERED, Respondent ONOFRE M. MAYO is hereby found guilty of Gross Neglect of Duty for which the penalty of Suspension for Six (6) months without pay is recommended pursuant to Section 10, Rule III of the Administrative Order No. 07, this Office, in relation to Section 25 of Republic Act No. 6770.

SO DECIDED. (p. 32, rollo)

The Motion for Reconsideration filed by Mayo was likewise struck down in an Order dated July 7, 2005, disposing that:

WHEREFORE, premises considered, it is respectfully recommended that the motion for the reconsideration of the Decision of January 10, 2005 be denied for lack of merit. Accordingly, the said decision is affirmed.

SO ORDERED. (p. 35, rollo)

Hence this petition, with Mayo raising as errors the following:

I

THE HONORABLE DEPUTY OMBUDSMAN FOR LUZON COMMITTED A REVERSIBLE ERROR IN FINDING THAT THE ADMINISTRATIVE CASE IS BARRED BY THE PROSCRIPTION AGAINST FORUM SHOPPING.

II

THE HONORABLE DEPUTY OMBUDSMAN FOR LUZON COMMITTED A REVERSIBLE ERROR IN FINDING THE PETITIONER GUILTY OF GROSS NEGLIGENCE OF DUTY.

III

THE HONORABLE DEPUTY OMBUDSMAN FOR LUZON COMMITTED A REVERSIBLE ERROR IN FAILING TO AFFORD THE PETITIONER DUE PROCESS. (p. 6, rollo)

On the first issue raised, Mayo maintains that Mapa's act of initiating an administrative complaint before the Office of the Secretary of Finance, which referred this to the Regional Director of the Bureau of Local Government Finance who thereafter conducted a clarificatory conference and rendered a Resolution, precludes the Deputy Ombudsman from conducting another administrative investigation on a matter deemed included in the allegations in the letter complaint. This according to Mayo constitutes forum shopping.

Forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. A party violates the rule against forum shopping if the elements of *litis pendentia* are present; or if a final judgment in one case would amount to *res judicata* in the other. There is forum shopping when the following elements are present: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, is such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration; said requisites [are] also constitutive of the requisites for *auter action pendant* or *lis pendens* (*San Juan vs. Arambulo*, G. R. No. 143217, Dec. 4, 2005).

The cause of action before the Deputy Ombudsman is the alleged alteration and refusal of Mayo to make the necessary correction in the data contained in TD 2639 in order to reflect the true area of Mapa's lot. On the other hand, the administrative complaint filed against Mayo by Mapa and eight (8) other individuals before the Office of the Secretary of Finance, was anchored on several causes of action because of the alleged irregularities committed by Mayo as: (a) registering in his name the real properties of the complainants without their knowledge and without proof of transfer of ownership; (b) altering the records in the Municipal Assessor's Office by changing the entries in the tax declarations with respect to the boundaries and areas of the real properties, as well as the name of owners by using falsified deeds of sale; (c) refusing to explain and clarify the changes in the entries in the tax declarations; and (d) collecting real property taxes which are higher than the actual and correct assessed values of the properties and without issuing official receipts. There could be no forum shopping because of the obvious lack of identity and even diversity in the said causes of action raised.

Another issue raised by Mayo was that he was denied the right to due process of law because his counsel was not furnished (a) a copy of the Order of the Deputy Ombudsman requiring him to file his Position Paper; (b) a copy of the Position Paper filed by Mapa; and (c) the Decision dated January 10, 2005. Copies of these were instead furnished to Mayo himself.

The general rule as provided for under Section 2 of Rule 27 (now Section 2, Rule 13) of the Rules of Court is that all notices must be served upon counsel and not upon the party. This is so because the attorney of a party is the agent of the party and is the one responsible for the conduct of the case in all its procedural aspects; hence, notice to counsel is notice to party. The purpose of the rule is obviously to maintain a uniform procedure calculated to place in competent hands the orderly prosecution of a party's case (*Duque vs. Court of Appeals*, 383 SCRA 520). But this is not a hard and fast rule. While as a rule, notice or service made upon a party who is represented by counsel is a nullity, this admits of exceptions, as when the court or tribunal orders service upon the party or when the technical defect is waved (*Hagerty vs. Court of Appeals*, 409 SCRA 285). An exception should apply too in this case where the issuances were simple and easily within the ken of the educated Mayo for him to take an early reaction to these aside from informing his counsel about them. Moreover, Mayo was afforded ample opportunity to present his defense to the charges against him. The records show that he was able to submit his counter-affidavit as required by the Deputy Ombudsman. He was also able to timely file a motion for reconsideration of the Decision where he advanced his defenses and submitted evidence to confute the allegations in the complaint.

It has been consistently held that the essence of due process is simply an opportunity to be heard, or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek for a reconsideration of the action or ruling complained of. And any seeming defect in its observance is cured by the filing of a motion for reconsideration. A formal or trial-type hearing is not at all times and in all instances essential. The requirements are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. What is frowned upon is the absolute lack of notice and hearing (*Zacarias vs. National Police Commission*, 414 SCRA 387).

Coming now to the issue of whether or not Mayo is guilty of gross neglect of duty, while factual findings of administrative and quasi-judicial agencies are generally accorded not only respect but at times finality (*Marcopper Mining Corporation vs. Bumolo*, 348 SCRA 656), this holds true only when they are supported by substantial evidence.

The Deputy Ombudsman's finding that he is guilty of gross neglect of duty, was anchored on the charge that he refused to make the necessary correction in the data contained in TD 2639 for it to reflect the true area of Mapa's landholdings based on the tax declaration issued by the Provincial Assessor. But the pleadings, evidence and all other documents having bearing on this case, are not sufficient to hold Mayo guilty of gross neglect of duty.

Based on the evidence on record, Mayo was justified in refusing to make a correction of the area indicated in TD 2639 because at the time Mapa obtained a certified true copy of TD 2639 from the Municipal Assessor on September 23, 2002 and on May 31, 2003, the said TD 2639 had already been earlier superseded by TD 5357. This was issued on September 11, 2002 yet as a result of a tax mapping operation conducted by the Municipal Assessor's Office. It is also notable that TD 5357 reflects the entire remaining landholding of Mapa which is 2,815.70 square meters, or more than his claim of 1,493 square meters. It must also be pointed out that TD 2639 issued by the Municipal Assessor's Office and which contains an area of 766 square meters pertains to the same land covered by Original Certificate of Title No. 14622 (p. 86, rollo) issued on May 3, 1994 and which provides an area of 4,200 square meters. Yet, in spite of his knowledge since 1994 that his entire landholding is 4,200 square meters based on his original title, Mapa has been paying for real estate taxes based on TD 2639 which states that his land has an area of only 766 square meters.

Thus, while substantial evidence, which is more than a mere scintilla but is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, suffices to hold one administratively liable, the substantial evidence rule does not authorize any finding to be made just as long as there is any evidence to support it; it does

not excuse administrative agencies from taking into account countervailing evidence which fairly detracts from the evidence supporting a finding (Baylon vs. Fact-finding Intelligence Bureau, 394 SCRA 21). The evidence in support of the Deputy Ombudsman's findings does not at all amount to substantial evidence, and calls for correction.

WHEREFORE, the petition is GIVEN DUE COURSE and GRANTED. The assailed Decision dated January 10, 2005 and the Order dated July 7, 2005 of the Deputy Ombudsman are SET ASIDE and VACATED, and the complaint against Mayo is DISMISSED.

SO ORDERED.

Lampas peralta and Romilla-lontok, JJ., concur.

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