# BRENDA K. SALALIMA AND ANTHONY ERA, PETITIONERS, VS. PEPITO P. LO, RESPONDENT.

Ponente: TIJAM, J.

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**TIJAM, J.:**

This Petition for Review filed under Rule 43 of the Rules of Court seeks to set aside the Office of the Ombudsman's Decision,[1] dated February 7, 2013 and the Order,[2] dated March 18, 2013 finding Petitioners guilty of grave misconduct.

The facts of the case are as follows:

On June 18, 2008, Respondent Pepito Lo, then Municipal Mayor of Mercedes, Camarines Norte, filed with the Office of the Ombudsman a complaint for violation of Section 3 (c) of Republic Act (RA) No. 3019[3] in relation to Section 24 of R.A. No. 6770[4] and Administrative Complaint for violation of Section 7 (d) of R.A. No. 6713[5], in relation to Section 3 (c) of R.A. No. 3019 and Section 19 (1 & 6) and Section 24 of R.A. No. 6770, against then Vice Mayor Brenda King-Salalima (Salalima), and municipal councilors, namely: Francisco Ramos Jr. (Ramos), Wenefredo Abanto (Abanto), Anthony Era (Era) and Juanito Palmero (Palmero). Private individuals, Roberto Salalima, Sr. and Sherwin Dayaon were also impleaded in the complaint as principals by direct participation and indispensable cooperation.

Respondent alleged that, on April 13, 2008, he received a letter from Lino Pastoral (Pastoral), the Assistant Manager and Head of Site Acquisition Division and Vincent Marbella (Marbella), the Assistant Head Site Acquisition Division of Argus Development Corporation (ADC), a subcontractor for Digitel Mobile Philippines, involved in the construction of Suncellular cell site. Pastoral, in his letter, requested from Respondent for assistance as Salalima, Ramos, Abanto, Era and Palmero allegedly demanded from them several units of cellular phone to be issued in exchange for the passage and approval of a Sangguniang Bayan (SB) Resolution that will allow and grant ADC the authority or license to construct a cell site in Mercedes, Camarines Norte. Allegedly, Salalima and Ramos made some representations that Respondent was always in Manila, and that he would be soon suspended by the Ombudsman. Pastoral's letter to Respondent allegedly indicated that per the advise of Salalima, Ramos, Abanto, Era and Palmero, it will be more prudent for ADC to transact business directly with them while Respondent was away.

Respondent further alleged that he was informed that Salalima and Ramos set meetings at different restaurants in Daet, Camarines Norte and obliged ADC employees to pay for the bills; that ADC issued to Salalima and Ramos three (3) units of N70 cellular phones (allegedly for Respondent, Salalima, and Ramos) and nine (9) units of Nokia 2630 for the SB members. These cellular phones were received by Ramos, who in turn, promised to personally give the N70 to Respondent. The latter, however, denied the receipt of said cellular phone.

Respondent claimed that Rijadin Sare, an employee of ADC, told him that Ramos returned the four (4) units of Nokia 2630 as they were all defective; but the truth was that they were demanding for high end cellular phones. According to Respondent, Salalima and Ramos were simply extorting from ADC.

Respondent asseverated that ADC was constrained to give cellular phones to aforementioned SB officials as Salalima and Ramos kept on telling them that the SB session for the passage and approval of the resolution will only start the moment ADC delivers to them the said units; that Ramos also misappropriated three (3) Nokia 2630 units intended for the minority members of the SB; and that Salalima and Ramos obliged the ADC employees to pay the restaurant bills incurred on 5 different occasions; that ADC gave Ramos, Salalima, Abanto, Palermo and Era an ultimatum until May 20, 2008 within which to pass the necessary SB Resolution. The SB fortunately had beaten the deadline and passed the Resolution in favor of ADC on May 20, 2008.

Considering the foregoing allegations against Salalima and the aforementioned SB members, Respondent claimed that their felonious acts constituted dishonesty, grave misconduct and grave abuse of authority which warrant their removal from public office. Moreover, these public officers should be meted out a perpetual disqualification from holding elective and appointive office inasmuch as the crimes they have committed were impressed with moral turpitude.

Respondent's allegations in the complaint were corroborated by the Sworn Statements of Pastoral, Marbella and Sare.

In their respective Counter-affidavits to the Complaint, Ramos, Salalima and Abanto Jr. denied the accusations against them particularly that they asked for cellphones from ADC in exchange for passage of the SB resolution allowing the installation and operation of a cell site in Barangay San Roque.

On the part of Ramos, he averred that in March 2008, his brother told him that a man came to their house and left a white plastic bag containing a box of cellphone (N70) but he returned it to Sare. Ramos denied the allegation that he received a cellular phone from ADC in exchange for the passage and approval of a resolution granting ADC's project. Ramos claimed that the filing of the complaint was a form of political harassment against him.

On his part, Salalima denied the accusation leveled against her for being hearsay and a form of political harassment. She denied making misrepresentations to the ADC that Respondent was about to be suspended by the Ombudsman. She contended that it was the Respondent, in his capacity as mayor, who has the final say whether or not to issue a permit for the construction of the Suncellular Tower in Barangay San Roque. She further claimed that she was absent during the deliberations and passage of the subject SB Resolution No.104-2008.

Abanto, on the other hand, claimed that, in the sworn statement of Pastoral and Marabella, his name was never mentioned as among those who demanded for cellphones in consideration of the passage of a resolution. He stressed that he was not present during the first, third and last meeting between ADC employees, Salalima and Ramos. While he admitted that he was present during a meeting with the ADC employees at King Fisher Restaurant; he claimed it was a pure gesture of courtesy to the ADC's invitation. During said meeting, ADC did not discuss the proposed project. Palmero and Era agreed to the same explanation of Abanto.

Salalima and Era (collectively referred to as Petitioners) insisted that Respondent had no direct and personal knowledge of the alleged extortion committed by them as he merely relied on the affidavits of the ADC employees. They claimed that, if all meetings of officials with private individuals outside their offices will be construed as opportunities to extort, it will be tantamount to depriving public officials their right to engage in social activities. They argued that there is no law or jurisprudence that automatically make a case of grave misconduct whenever public official is invited to a meeting outside of his office. They argued that if they were motivated to extort from ADC, they would not hold meetings in places such as restaurants where almost all locals know them.

On February 7, 2013, the Ombudsman rendered a Decision convicting the Petitioners, the dispositive portion of


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the said decision reads:

> "WHEREFORE, premises considered, judgment is hereby rendered finding respondents BRENDA K. SALALIMA and ANTHONY ERA guilty of Grave Misconduct and is meted the penalties accessory to dismissal from the service, including perpetual disqualification to hold public office, cancellation of eligibility and forfeiture of retirement benefits, if any. While the administrative complaint against respondents FRANCISCO RAMOS, JR., WENEFREDO ABANTO, JR., and JUANITO PALMERO is Dismissed for being moot and academic.
>
> The Honorable Secretary of the Department of Interior and Local Government (DILG) is hereby directed to implement this DECISION immediately upon receipt thereof pursuant to Section 7, Rule III of the Administrative Order No.07, as amended by Administrative Order No. 17 (Ombudsman Rules of Procedure) in relation to Memorandum Circular No. 1, series of 2006, dated 11 April 2006 and to promptly inform this Office of the action taken thereon.
>
> SO DECIDED."

Hence, Petitioners filed a motion for partial reconsideration[6] and supplemental motion for partial reconsideration of the foregoing Decision but the Ombudsman in its Order, dated March 18, 2013 denied them and affirmed its decision.

Hence, Petitioners filed this petition for review raising this lone issue, to wit:

> "ARE THE ALLEGATIONS AND THE EVIDENCES PRESENTED BY THE COMPLAINANT-APPELLEE STRONG ENOUGH TO PROVE GRAVE MISCONDUCT ON THE PART OF THE RESPONDENTS-APPELLANTS."

Pending resolution of the present petition, Salalima filed a Manifestation[7] with attached copy of Certificate of Canvass of Votes and Proclamation of Winning Candidates for Mercedes Mayor and Vice Mayor[8] issued by the Municipal Board of Canvassers.

The re-election of Vice-Mayor
Salalima during the May 2013
election did not condone
her previous misconduct.

Records show that the complained wrongful acts allegedly done by the Petitioners were committed sometime in September 2007. During the 2010 local elections, Petitioners were not re-elected to their positions; it was only Ramos, Abanto and Palmero, who were re-elected necessitating the dismissal of the administrative complaint filed against them for being moot and academic.[9] In a twist of events, while Petitioners' appeal is pending resolution, during the May 13, 2013 local election, Salalima won as Vice-Mayor of the Municipality of Mercedes, Camarines Norte.[10]

In the case of Salumbides vs. Office of the Ombudsman,[11] the Supreme Court reiterated their landmark ruling pertaining to the doctrine of condonation, to wit:

> "More than 60 years ago, the Court in Pascual v. Hon. Provincial Board of Nueva Ecija[12] issued the landmark ruling that prohibits the disciplining of an elective official for a wrongful act committed during his immediately preceding term of office. The Court explained that "[t]he underlying theory is that each term is separate from other terms, and that the reelection to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor."
>
> The Court should never remove a public officer for acts done prior to his present term of office. To do

> otherwise would be to deprive the people of their right to elect their officers. When the people elect[e]d a man to office, it must be assumed that they did this with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any. It is not for the court, by reason of such faults or misconduct[,] to practically overrule the will of the people. (Underscoring Supplied).

Illustrative also are the cases of Aguinaldo v. Comelec,[13] Aguinaldo v. Santos[14] and in Salalima v. Guingona[15] where the Supreme Court laid down the doctrine that a public official cannot be removed for administrative misconduct committed during a prior term, since his re-election to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove therefor. This doctrine of forgiveness or condonation cannot apply to criminal acts which the re-elected official may have committed during his previous term. The administrative liability of a public officer is separate and distinct from his penal liability.[16]

Evidence shows that Petitioners were not re-elected during the 2010 local elections. Jurisprudence explicitly requires that for the doctrine of forgiveness to apply, the misconduct committed by the elective official must be done during his immediately preceding term of office. True, Salalima's misconduct was committed during her previous term of office specifically in 2007. However, in order to benefit with the doctrine, Salalima should be re-elected immediately or during the 2010 local election, which is the supposed term of office immediately after the term when she committed the subject wrongful act. Salalima's election as vice-mayor during the 2013 local election did not operate as condonation of her previous misconduct as it does not amount to re-election to office which the jurisprudence requires. Hence, We do not find as proper the application of the foregoing doctrine in the instant case and the Ombudsman correctly found Petitioners guilty of grave misconduct.

Grave Misconduct was duly proven
by the Office of the Ombudsman against
the subject SB officials.

Misconduct is defined as a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence. As distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in a charge of grave misconduct.[17]

To sustain a finding of administrative culpability, only substantial evidence is required, not overwhelming or preponderant, and very much less than proof beyond reasonable doubt as required in criminal cases. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[18]

We quote with approval the findings of the Ombudsman that the Respondents in OMB-L-A08-0384-F are indeed guilty of grave misconduct, ratiocinating in this wise:

> "As the case records bear, the respondent SB members on several occasions had meetings with the employees of Argus Development Corporation (ADC) even before passing and approving SB Resolution No. 104-2008 granting Sun Cellular an authority to construct, install and operate cell site. During said meeting, the respondent SB members and ADC employees discussed about the proposed project of the company to construct, install and operate cell site within the Municipality of Mercedes, Camarines Norte. It also appears that their meetings were held in the different restaurants wherein the ADC employees paid the restaurant bills. This fact was never belied by the respondents.

> The argument of the respondents that it was the ADC which invited them for the said meetings is a flimsy explanation which deserves scant consideration. Granting that it was the ADC employees who initiated the meetings/negotiations, the respondent SB members should have rejected the invitations even if the topic was official business to dispel any perceived irregularity, especially that the ADC had business proposal for the Municipality of Mercedes wherein respondents' intervention was indispensable. Records also shows (sic) that said meetings happened not only once, but five times. Since LINO PASTORAL, VINCENT MARABELLA and RIFADIN SARE, employees Argus Corporation, had previously visited the SB office where they were informed by the respondents about the requirements for their proposal, we find no reason for them to meet again for several times outside the SB office. From this fact, we could reasonably conclude that the meetings between the respondents and the ADC employees held outside the SB office were not purely on the matter of discussing the proposed project. It was also an opportunity for the respondents to demand something of value in exchange for the grant of license or authority to construct, install and operate the said cell site within the Municipality of Mercedes. In addition, the fact that respondents met the ADC employees in public places would have accorded them better opportunity to demand something of value in exchange for the proposed project as no one would doubt that there was an on-going illicit transaction between them.
>
> Moreover, the records contain evidence to support the accusation that respondent SB members demanded and received cellphones from the ADC employees in exchange for the passage and approval of SB Resolution granting authority or license for said company to construct, install and operate a cell site, the same was fully supported by evidence. The positive claim of the ADC employees that nine (9) units of Nokia 2630 and three (3) units of Nokia N70 were given to the respondents jibed with the delivery receipt dated 22 February 2008 issued by Hosni Telecom Marketing showing the purchase of said items. Moreover, respondents' denial of the respondents (sic) that they did not demand and/or receive cellphones from the ADC are neither supported by any single documentary evidence nor corroborated by sworn statements of independent witnesses. Hence, the same cannot be given much weight for being self-serving.
>
> Even on the assumption that the cellphones were delivered to the respective houses of the respondent SB members and the same were mere gifts from the ADC, the same would not negate the fact that they received something of value from the ADC in exchange for the approval of the proposed project. It is also natural that respondent would not have signed the delivery receipts for cellphones to avoid any trace of their receipt. What is more alarming is that despite the supposed attempt of the ADC to bribe them, respondent passed and approved SB Resolution No. 104-2008 which granted authority or license to ADC to construct, install and operate cell site in the Municipality of Mercedes, Camarines Norte. Noteworthy that the alleged gifts were delivered to the respondents prior to the passage and approval of the said SB resolution. Neither did they take any action or institute any charge against the ADC for their supposed attempt to bribe them. Further, we find no ulterior motive for the ADC to impute charges against the respondents if the foregoing accusations did not happen.
>
> Undoubtedly, respondents act of soliciting or demanding and receiving cellphone units from the ADC employees in consideration of the approval of SB Resolution authorizing the ADC to construct, install and operate cell site in Mercedes, Camarines Norte appears inimical to the best interest of the service. Such unwarranted act of the respondents is not only unethical, but also criminal. It also undermines the integrity and dignity of public office. From the very nature of their functions as public officers, respondent must avoid the appearance of being corrupt or influenced, persuaded or induced by other person in the conduct of their official functions. Verily, their acts constitute grave misconduct which this office cannot countenance. xxx"[19]

In administrative proceedings, as in the instant case, it is not legally objectionable to resolve a case based solely on position papers, affidavits or documentary evidence submitted by the parties considering that affidavits of witnesses may take the place of their direct testimony.[20]

Based on the foregoing disquisition, the Ombudsman correctly found the said SB members guilty of grave


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misconduct. It was established and proven by the joint affidavit[21] of the ADC employees that they transacted with these SB members for the passage of the ordinance authorizing them to construct, install and operate cell site in Mercedes, Camarines Norte. In exchange thereof, ADC obligated itself to deliver several units of cellphones as a condition to the passage and eventual approval of the resolution.

Evidently, Petitioners did not deny the meetings they had with the ADC employees in different restaurants. We agree with the Ombudsman that these meetings with the ADC employees outside the SB office were patently amounting to inappropriate acts of the SB members. These SB members have their own office to transact their business. We find their meetings with the ADC employees in different restaurants are tainted with irregularity.

Furthermore, the ADC employees' claim that the said SB members demanded cellphones from them were substantiated by evidence on record thru the delivery receipt,[22] dated February 22, 2008, issued by Hosni Telecom Marketing. This delivery receipt corroborates the ADC employees' claim that they gave cellular phones to SB members. On one hand, We do not give credence to Petitioners' claim that there was nothing in the said receipt showing that the said cellphones were directly delivered to the Petitioners. On the other hand, We agree with the Ombudsman's ratiocination on this issue that, it is natural that respondents would not have signed the delivery receipt for the cellphones to avoid any trace of their receipt.

It is settled that denial is inherently a weak defense. To be believed, it must be buttressed by strong evidence of non-culpability; otherwise, such denial is purely self-serving and is with nil evidentiary value.[23] Petitioners failed to substantiate their claim that there was no grave misconduct committed, that they did not purposely set the meetings outside their office with the ADC employees to demand cellphones in exchange of passing an ordinance. We concur with the Ombudsman that ADC employees have no ulterior motive to implicate Petitioners in the said malfeasance if their statements were not true.

Public service requires integrity and discipline. For this reason, public servants must exhibit at all times the highest sense of honesty and dedication to duty. By the very nature of their duties and responsibilities, public officers and employees must faithfully adhere to hold sacred and render inviolate the constitutional principle that a public office is a public trust; and must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency.[24] No less than the Constitution mandates that "public office is a public trust." Service with loyalty, integrity and efficiency is required of all public officers and employees, who must, at all times, be accountable to the people.[25]

WHEREFORE, the petition is DISMISSED. The Ombudsman's Decision, dated February 7, 2013 and the Order, dated March 18, 2013, are hereby AFFIRMED.

**SO ORDERED.**

Baltazar-Padilla, and Reyes-Carpio, JJ., concur.

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[1] Annex D, Rollo, pp. 43-63.

[2] Annex A, Rollo, pp. 18-28.

[3] Known as Anti-Graft and Corrupt Practices Act.

[4] Known as the Ombudsman Act of 1989.

[5] Known as the Code of Conduct and Ethical Standards for Public Officials and Employees.

[6] Annex B, Rollo, pp. 29-38.

[7] Rollo, pp. 85-86

[8] Rollo, p. 87.

[9] See Ombudsman Decision dated Feb. 7, 2013. Rollo, pp. 43-63.

[10] See, Certificate of Canvass of Votes and Proclamation of Winning Candidates for Mercedes Mayor and Vice Mayor, Rollo, p. 87.

[11] G.R. No. 180917, April 23, 2010.

[12] 106 Phil. 406 (1959).

[13] G.R. No. 53953, Jan. 5, 1981.

[14] G.R No. 94115, August 21, 1992.

[15] G.R. Nos. 117589-92. May 22, 1996.

[16] People vs. Jalosjos, G.R. Nos. 132875-76, February 3, 2000. (emphasis supplied).

[17] Administrative charge of Misconduct Relative to the Alleged Use of Prohibited Drugs of Reynald B. Castor, A.M. No. 2013-08-SC, October 8, 2013. (emphasis supplied).

[18] Office of the Ombudsman vs. Torres, et, al., G.R. No. 168309, January 29, 2008.

[19] See Rollo, pp. 56-60.

[20] See, NBI vs. Adaoag, A.M. No. MTJ-03-1503, November 16, 2006.

[21] Annex F, Rollo, pp. 75-78.

[22] Annex G, Rollo, p. 79.

[23] Baygar vs. Judge Panontongan, A.M. No. MTJ-08-1699, March 17, 2009.

[24] Salumbides vs. Office of the Ombudsman, G.R. No. 180917, April 23, 2010.

[25] Office of the Court Administrator Recio, et. al., A.M. No. P-04-1813, May 31, 2011.


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