

SYLVIA ALINDAYU, PETITIONER, VS. OFFICE OF THE OMBUDSMAN, OFFICE OF THE OVERALL DEPUTY OMBUDSMAN, ATTY. EUGENIO INSIGNE, RESPONDENTS.

Ponente: BALTAZAR-PADILLA, J.

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BALTAZAR-PADILLA, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court questioning the Review[1] issued by the Office of the Ombudsman dated November 12, 2012 approving the Resolution[2] of the Office of the City Prosecutor recommending the dismissal of the charges filed by Sylvia Alindayu (petitioner) for Direct Bribery, Violation of the Anti-Graft Practices Act, Grave Threats and Attempted Robbery/Extortion against Atty. Eugenio Insigne, in his capacity as the former Chairman of the National Commission on Indigenous People (NCIP), for insufficiency of evidence. The denial of petitioner's motion for reconsideration in an Order[3] dated October 11, 2013 is also being assailed.

Notably, the impugned Review and Order were issued by the Office of Ombudsman in criminal cases.

It is well settled that it is the nature of the case that determines the proper remedy to be filed and the appellate court where such remedy should be filed by a party aggrieved by the decisions or orders of the Office of the Ombudsman.[4]

In this case, although petitioner availed of the proper remedy of petition for certiorari under Rule 65, she erred in filing the same before US and not before the Supreme Court.

The procedure set out in *Kuizon vs. Ombudsman*[5] is still the prevailing rule, that is, decisions or orders of the Office of the Ombudsman in an administrative case should be appealed to this Court under Rule 43 of the Rules of Court but if issued in a criminal case, the proper remedy is to file with the Supreme Court an original petition for certiorari under Rule 65.[6]

As ruled in *Kuizon*, viz ---

“In dismissing petitioners' petition for lack of jurisdiction, the Court of Appeals cited the case of *Fabian vs. Desierto*. The appellate court correctly ruled that its jurisdiction extends only to decisions of the Office of the Ombudsman in administrative cases. In the *Fabian* case, we ruled that appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under Rule 43 of the 1997 Rules of Civil Procedure. It bears stressing that when we declared Section 27 of Republic Act No. 6770 as unconstitutional, we categorically stated that said provision is involved only whenever an appeal by certiorari under Rule 45 is taken from a decision in an administrative disciplinary action. It cannot be taken into account where an original action for certiorari under Rule 65 is resorted to as a remedy for judicial review, such as from an incident in a criminal action. In fine, we hold that the present petition should have been filed with this Court.” (Citations omitted)

WHEREFORE, for want of jurisdiction, the instant petition is hereby DISMISSED.

SO ORDERED.

Tijam, N.G., Chairperson and [*]Sorongon, E.D., JJ., concur.

[*] Vice J. Agnes Reyes Carpio, per Office Order No. 200-14-ABR, dated May 9, 2014.

[1] Rollo, p. 36.

[2] Id., p. 33.

[3] Id., p. 176.

[4] Perez vs. Office of the Ombudsman, G.R. No. 131445, May 27, 2004.

[5] G.R. Nos. 140619-24, March 9, 2001.

[6] See also Quarto vs. Ombudsman Marcelo, G.R. No. 169042, October 5, 2011; Office of the Ombudsman vs. Heirs of vda. De Ventura, G.R. No. 151800, November 5, 2009.

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