

FILOMENA L. VILLANUEVA, RUBEN M. CONTI, FELIX P. MALTU, AND ENGR. ERNI G. BAGGAO, PETITIONERS, VS. OFFICE OF THE OMBUDSMAN AND LAZARO G. JAVIER, JR., RESPONDENTS.

Ponente: PERALTA, JR., E. B., J.

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PERALTA, JR., E. B., J.:

Before Us is a Petition for Review[1] under Rule 43 of petitioner Filomena L. Villanueva which was intended to impugn the Resolution dated May 17, 2010 of the Ombudsman in OMB-L-C-07-0085-A, insofar as the prospect of indicting petitioner for one (1) count of violation of Section 3 paragraph (e) of Republic Act (R.A.) No. 3019 and one (1) count of Estafa under Article 315 paragraph 1(b) of the Revised Penal Code,[2] and its subsequent April 28, 2011 Order, concerning the rejection of petitioner's Motion for Reconsideration.[3]

THE FACTS:

A letter-complaint dated May 8, 2006 was filed by private respondent Lazaro Javier, Jr. (Lazaro, Jr.) with the Office of the Deputy Ombudsman for Luzon against Filomena L. Villanueva (Filomena), Ruben Conti (Ruben), Felix P. Maltu (Felix) and Engineer Erni Baggao (Erni). In his Complaint, private respondent alleged an anomaly in the award of one (1) Mitsubishi Canter Refrigerated Van to KKK Multi-Purpose Cooperative Incorporated of Ilagan, Isabela through its Chairman, Erni Baggao and one (1) Isuzu Forward Truck to the Sta. Maria Multi-Purpose Cooperative (Sta. Maria MPC), Ilagan, Isabela through its Chairman, Felix Maltu. Both trucks were owned and registered in the name of Cooperative Development Authority (CDA).[4]

Subsequently, the Office of the Ombudsman issued its assailed Resolution dated May 17, 2010 relative to probable cause towards the corresponding indictment:[5]

“WHEREFORE, premises considered, it is respectfully recommended that respondents FILOMENA L. VILLANUEVA, RUBEN M. CONTI, FELIX P. MALTU, and ERNI G. BAGGAO be indicted for one (1) count of violation of Section 3 par. (e) of Republic Act No. 3019, respondent RUBEN M. CONTI for (two) (sic) counts of falsification of public documents and respondents FELIX P. MALTU and ERNI G. BAGGAO for one (1) count of falsification of public document under Article 171 No. 4 of the Revised Penal Code and respondents FILOMENA L. VILLANUEVA and RUBEN M. CONTI for one (1) count of estafa under Article 315 par.1 (b) of the same Code. Accordingly, it is further recommended that the corresponding Information be filed against them with the proper court.

SO RESOLVED.

On December 28, 2010, Filomena filed a Motion for Reconsideration but it was denied by the Office of the Deputy Ombudsman for Luzon in its Order dated April 28, 2011.[6]

Hence, petitioner utilized the current Petition raising the following issues:[7]

I.

WHETHER OF NOT, (sic) THE HONORABLE OFFICE OF THE OMBUDSMAN THEN HEADED BY

FORMER OMBUDSMAN MA. MERCEDITAS NAVARRO-GUTIERREZ COMMITTED A REVERSIBLE ERROR WHEN THE LATTER APPROVED WITHOUT AUTHORITY THE RECOMMENDED FILING OF AN INFORMATION AGAINST PETITIONER FILOMENA L. VILLANUEVA FOR THE FOLLOWING OFFENSES:

A. ONE (1) COUNT OF ESTAFA UNDER ARTICLE 315, PAR. 1 (B) OF THE REVISED PENAL CODE; and

B. ONE (1) COUNT OF VIOLATION OF SECTION 3, PAR.E OF REPUBLIC ACT NO. 3019

II.

WHETHER OR NOT, (sic) THE HONORABLE OFFICE OF THE OMBUDSMAN COMMITTED AN ERROR IN NOT CONSIDERING THE CONTENTIONS OF PETITIONER FILOMENA L. VILLANUEVA IN HER PLEADINGS A QUO ANENT THE FACT THAT THE OFFENSES BEING CHARGED IN OMB-L-A-0085-A HAVE ALREADY BEEN DISMISSED EARLIER THAT DOCKETED BY THE HONORABLE OFFICE AS OMB-L-A 06-0575-G FOR VIOLATION OF ANTI-GRAFT AND CORRUPT PRACTICES ACT.

III.

ON QUESTIONS OF LAW AND JURISPRUDENCE; (sic) NOTABLY:

A.) THE LACK OF AUTHORITY OF FORMER OMBUDSMAN MA. MERCEDITAS NAVARRO-GUTIERREZ TO ACT ON THIS CASE FOLLOWING THE EXPIRATION OF THE SEVEN (7) YEAR TERM OF THE FORMER OMBUDSMAN SIMEON MARCELO, THE BALANCE OF SAID TERM ASSUMED BY THE FORMER OMBUDSMAN MA. MERCEDITAS NAVARRO-GUTIERREZ

B.) THE NULLITY OF THE ORDER DATED APRIL 28, 2011, IN EFFECT AFFIRMING THE NULL AND VOID RESOLUTION DATED MAY 17, 2010.

THIS COURT’S RULING:

It must be underscored that what was assailed with this Court was the May 17, 2010 Resolution and April 28, 2011 Order in regard to the Office of the Ombudsman’s evaluation of the criminal aspect of the charge. Hence, the remedy to challenge it is via a Petition for Certiorari under Rule 65 of the Rules of Court with the Supreme Court[8] as reiterated in Tirol, Jr. v. Sandiganbayan:[9]

Section 27 of R.A. No. 6770 provides that orders, directives and decisions of the Ombudsman in administrative cases are appealable to the Supreme Court via Rule 45 of the Rules of Court. However, in *Fabian v. Desierto*, we declared that Section 27 is unconstitutional since it expanded the Supreme Court’s jurisdiction, without its advice and consent, in violation of Article VI, Section 30 of the Constitution. Hence, all appeals from decision of the Ombudsman in administrative disciplinary cases may be taken to the Court of Appeals under Rule 43 of the 1997 Rules of Civil Procedure.

True, the law is silent on (sic) remedy of an aggrieved party in case the Ombudsman found sufficient cause to indict him in criminal or non-administrative cases. We cannot supply such deficiency if none has been provided in the law. We have held that the right to appeal is a mere statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of law. Hence, there must be a law expressly granting such privilege. The Ombudsman Act specifically deals with the remedy of an aggrieved party from orders, directives and decisions of the Ombudsman in administrative disciplinary cases. As we ruled in *Fabian*, the aggrieved party is given the right to appeal to the Court of Appeals. Such right of appeal is not granted to parties aggrieved by orders and decisions of the Ombudsman in criminal cases, like finding probable cause to indict accused persons.

However, an aggrieved party is not without recourse where the finding of the Ombudsman as to the existence of probable cause is tainted with grave abuse of discretion, amounting to lack of excess of jurisdiction. An aggrieved party may file a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure.

WHEREFORE, premises considered, the Petition for Review under Rule 43 dated June 29, 2011 is hereby DISMISSED.

SO ORDERED.

Reyes, Jr., J. C., Chairperson, and Acosta, F. P., JJ., concur.

[*] Per Office Order No. 15-15-ABR dated January 20, 2015, effective February 2, 2015.

[**] Was ordered dropped as party-respondent in the instant case per Resolution dated February 24, 2012 of the Tenth Division of this Court, Rollo, page 157, “The Office of the Solicitor General's Manifestation and Motion be GRANTED,” See also Manifestation and Motion of the Office of the Solicitor General, Rollo, page 138, “WHEREFORE, premises considered, it is respectfully prayed that the Office of the Ombudsman be dropped as party-respondent in the instant case

xxx”

[1] Dated June 2011; Rollo, pp. 10-20.

[2] See Resolution dated May 17, 2010, “WHEREFORE, premises considered, it is respectfully recommended that respondents FILOMENA L. VILLANUEVA, RUBEN M. CONTI, FELIX P. MALTU and ERNI G. BAGGAO be indicted for one (1) count of violation of Section 3. par. (e) of Republic Act No. 3019, respondent RUBEN M. CONTI for two (2) counts of falsification of public documents and respondents FELIX P. MALTU and ERNI G. BAGGAO for one (1) count of falsification of public document under Article 171 no. 4 of the Revised Penal Code and respondents FILOMENA L. VILLANUEVA and RUBEN M. CONTI for one (1) count of estafa under Article 315 par. (b) of the same Code. Accordingly, it is further recommended that the corresponding informations be filed against them with the proper court.

SO RESOLVED” (Emphasis Supplied)

[3] Rollo, page 42.

[4] See Petition, Rollo, page 12; See also Resolution dated May 17, 2010, Rollo, page 25; See also Fact Finding Report, marked as Annex “A”, Rollo, page 74.

[5] See Petition, Rollo, page 12-13; See also Resolution dated May 17, 2010, Rollo, page 39-40.

[6] See Petition, Rollo, page 13; See also Order dated April 28, 2011, Rollo, page 42.

[7] See Petition, Rollo, pp.15-16.

[8] *Pontejos v. Office of the Ombudsman et al.*, G.R. No. 158613-14, February 22, 2006, “The remedy to challenge the OMB’s orders or resolutions in criminal cases is through a petition for certiorari under Rule 65 to this Court (Supreme Court)”.

[9] G.R. No. 135913. November 4, 1999; cf. *Enemecio vs. Office of the Ombudsman*, G.R. No. 146731, January 13, 2014, *Contes vs. Office of the Ombudsman*, G.R. No. 187896-97, June 10, 2013.

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