

JASON VINCENT MELENDEZ DAMASCO, PETITIONER, VS. OFFICE OF THE OMBUDSMAN – MINDANAO, PUBLIC RESPONDENT,

Ponente: CONTRERAS, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/e0bf6c3b5739/>

CONTRERAS, J.:

This Petition for Review[1] seeks the reversal of the Decision[2] dated January 30, 2012 of the Office of the Ombudsman in Mindanao finding petitioner Jason Vincent Damasco administratively liable for Misconduct in OMB-M-A-10-307-I as well as its Resolution[3] dated January 30, 2012 finding probable cause to hold him liable for violation of Section 3(e) of Republic Act (R.A.) No. 3019 in OMB-M-C-10-0298-I. Likewise, it seeks to set aside the Joint-Order[4] dated March 12, 2006 denying petitioner's Joint-Motion for Reconsideration[5].

Facts

Private respondent Datu Makapanton Danilo Narido (hereafter private respondent) filed an administrative complaint for Misconduct against petitioner Jason Vincent Damasco (hereafter petitioner) for demanding and receiving monetary consideration in exchange for assistance in advancing the Work and Financial Plan necessary for the Palalan Higaonon Tribe of Cagayan de Oro City and Libona, Bukidnon vis a vis the tribe's claim over their ancestral land, docketed as OMB-P-A-05-0819-G.[6]

In relation thereto, private respondent also filed a criminal complaint against petitioner for violation of Sections 3(e) and (f) of R.A. No. 3019[7] and violation of the pertinent provisions of R.A. No. 6713,[8] docketed as OMB-M-C-10-0298-I.[9]

The prevailing factual milieu of the instant case is summarized by the Ombudsman in this wise:

The complainant [Datu Makapanton Danilo E. Narido) avers that sometime in March 2009, while he was at the house of his friend, Leo B. Sierra, the respondent [Jason Vincent Melendez Damasco] called him up and asked for money in order to start the implementation of the Work and Financial Plan and to mobilize the engineers; that he then called the tribe's lawyer to withdraw Twenty Thousand Pesos (PHP 20,000.00) from PNB, so he can give the money to respondent; that he went to Divisoria together with his friend, Allan Magdale, to meet with Atty. Narido, who handed him the money; that after a while, the respondent arrived, and he gave him the money in the presence of Allan Magdale; that despite having advanced the said money for mobilization, the respondent has not started any work, and neither did he order or made some coordination with the NCIP Engineers to conduct the initial phase of the titling process; that after their tribe was able to deposit with the NCIP Regional Office their counterpart funding for the Work and Financial Plan in the amount of Four Hundred Two Thousand Seven Hundred Fifty Pesos (PHP 402,750.00), the respondent again requested for some money to commence the activity; that in view of the said request, he again withdrew the amount of Ten Thousand Pesos (PHP 10,000.00) from the BDO Account of their tribe; and that he then asked Leo B. Sierra to deliver the said amount to the respondent, but despite giving the said money, no work pertaining to the said Work and Financial Plan was commenced or undertaken by the respondent. Leo B. Sierra corroborates the same in his Affidavit.

xxx xxx xxx

[Respondent submitted his counter-affidavit where he] vehemently denies the allegations imputed against him and contends that this case resulted from the controversy between two contending parties vying for the position of Tribal Chieftain, one of whom is the complainant, who wants to be recognized as bonafide tribal chieftain of the Palalan Higaonon Tribe of Cagayan de Oro City and Libona, Bukidnon, for the claim on the ancestral domain traversing the land from Cagayan de Oro to Libona, Bukidnon, with an area of more or less 11,000 hectares; that it is unfortunate for him to be caught in a personal and political power and leadership struggle between the said two parties; that along with the said vast tract of land claimed by the indigenous tribe is the ranch owned by RAMCAR, Inc., the famous battery maker; that part of the ranch of the late Emmanuel Pelaez, Vice President of Del Monte Pineapple Plantation, is the electric tower of the TRANSCO and some other mining industry and irrigation project; that this case is somehow related to the said facts considering that the companies are in one way or another, paying royalty fees or rent to the tribal community; that to be specific, the TRANSCO has a standing agreement with the tribal community to pay all the electric towers traversing their ancestral domain which, as of this time, has payables of more than Three Million Pesos to the tribal community; that since a huge amount of money is involved, the issue on who is the rightful tribal chieftain arises, which is very vital not only in the award of the vast tract of ancestral land but also to the entitlement of the rents and royalties of the industries and companies that traverse or utilize the said land; and that the complainant and Datu Filomeno "Tunungan" Eduria are vying for the position of tribal chieftain [of] the said tribe.[10]

On January 30, 2012, the Ombudsman-Mindanao rendered a Decision[11] in OMB-M-A-10-307-I finding petitioner administratively liable for misconduct. It held that there is substantial evidence to establish that petitioner unlawfully demanded and received money from respondent for the purpose of facilitating the conduct of the initial phases of the verification survey relative to the Work and Financial Plan that would delineate the extent and boundaries of the Palalan Higaonon Tribe of Cagayan de Oro City and Libona, Bukidnon. It ratiocinated that petitioner's act of demanding and receiving ten thousand pesos (P10,000.00) from private respondent, despite knowing that the conduct of the subject verification survey is exclusively handled by the Special Committee of the National Commission on Indigenous Peoples (NCIP), evinces his intent to commit a wrong and violate the rule of law. It further emphasized that the positive evidence or testimony contained in private respondent's complaint must be upheld as opposed to the denial of petitioner. The dispositive portion of which reads:

WHEREFORE, premises considered, respondent Jason Vincent Melendez Damasco, Provincial Officer, National Commission on Indigenous Peoples, Misamis Oriental Provincial Office, with office address at the Provincial Capitol, Cagayan de Oro City, is hereby sanctioned for Misconduct, and meted the penalty of Two (2) Months Suspension without remuneration pursuant to Section 10 (b) of Administrative Order No. 07, as amended by Administrative Order No. 17. Furthermore, the Honorable Commissioner, National Commission on Indigenous Peoples, is hereby directed to implement this Decision within ten (10) days from receipt thereof, and to submit a Compliance Report within the same period.

SO DECIDED.

On the same date, the Ombudsman-Mindanao issued a Resolution[12] in OMB-M-C-10-0298-I dismissing the criminal complaint for violation of Section 3(f) of R.A. 3019, as well as, violation of R.A. 6713. However, it found probable cause to hold petitioner liable for violation of Section 3(e) of Republic Act No. 3019, and ordered the filing of the requisite Information pursuant thereto.

Petitioner moved for the reconsideration of the abovementioned decision and resolution,[13] but the Ombudsman-Mindanao denied the same in its Joint-Order[14] dated March 12, 2012.

In its Joint-Order, the Ombudsman-Mindanao ruled that the reglementary period to seek a reconsideration of criminal cases before the Ombudsman is five (5) days from receipt of the resolution. Having received a copy of

the resolution on February 14, 2012, petitioner thereby has until February 20, 2012, within which to file his motion for reconsideration. Thus, when petitioner filed his motion for reconsideration in OMB-M-C-10-0298-I on February 24, 2012, the reglementary period has already lapsed and thereby called for the immediate denial of his motion. With respect to OMB-M-A-10-307-I, the Ombudsman-Mindanao upheld its finding of administrative liability for misconduct against petitioner.

Aggrieved, petitioner filed the present Petition for Review arguing that there is no substantial evidence to support a finding of administrative liability for misconduct and there is no probable cause to hold him liable for violation of Section 3(e) of R.A. 3019.[15]

Ruling

The petition is bereft of merit.

Petitioner alleges that the Ombudsman-Mindanao grievously erred in finding him administratively liable for misconduct in OMB-M-A-10-307-I and for finding probable cause for holding him liable for violation of Section 3(e) of R.A. 3019 in OMB-M-C-10-0298-I.

OMB-M-C-10-0298-I

We note at the outset that the petitioner, in seeking to annul the Ombudsman-Mindanao's Resolution dated January 30, 2012 in OMB-M-C-10-0298-I, filed with this Court a petition for review under Rule 43 of the Revised Rules of Court.

In *Belongilot v. Cua, et al.*, [16] citing *Soriano v. Cabais*, [17] the Supreme Court had the occasion to reiterate the appropriate recourse to take from decisions or resolutions of the Ombudsman, and said:

In *Fabian*, we ruled that appeals from the decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals by way of a petition for review under Rule 43 of the 1997 Rules of Civil Procedure, as amended. This ruling has been repeatedly reiterated in subsequent cases and continues to be the controlling doctrine.

Here, petitioner's complaint is criminal in nature. In *Estrada v. Desierto*, we held that the remedy of aggrieved parties from resolutions of the Office of the Ombudsman finding probable cause in criminal cases or non-administrative cases, when tainted with grave abuse of discretion, is to file an original action for certiorari with this Court, not with the Court of Appeals. In cases when the aggrieved party is questioning the Office of the Ombudsman's finding of lack of probable cause, as in this case, there is likewise the remedy of certiorari under Rule 65 to be filed with this Court and not with the Court of Appeals. This rule was subsequently restated in *Acuña v. Deputy Ombudsman for Luzon* where we held 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 in the original)

Here, petitioner's complaint before the Ombudsman-Mindanao, charging the respondents with violation of Section 3(e) of R.A. No. 3019 is undoubtedly criminal in nature. The proper recourse should have been through a petition for certiorari under Rule 65 to the Supreme Court, instead of a petition for review under Rule 43 before the Court of Appeals.[18]

Furthermore, We take note of the fact that petitioner's motion for reconsideration in OMB-M-C-10-0298-I was filed beyond the reglementary period. The Ombudsman-Mindanao held that "per Registry Return Receipts, copies of the approved Resolution and Decision [dated January 30, 2012] were received by the respondent on February 14, 2012, at around 2:30 p.m. through Florentino A. Macua. The herein Joint-Motion for Reconsideration was filed on February 24, 2012. Under the rules, for criminal cases, the motion for reconsideration must be filed

within five (5) days from receipt of the Resolution. Thus, the respondent has until February 20, 2012, to file his motion for reconsideration for the criminal case.” On this point, Section 27 of R.A. No. 6770 expressly reads:

Section 27. Effectivity and Finality of Decisions. — (1) All provisional orders of the Office of the Ombudsman are immediately effective and executory.

A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice and shall be entertained only on any of the following grounds:

(1) New evidence has been discovered which materially affects the order, directive or decision;

(2) Errors of law or irregularities have been committed prejudicial to the interest of the movant. The motion for reconsideration shall be resolved within three (3) days from filing; provided, that only one motion for reconsideration shall be entertained.

xxx xxx xxx (emphasis supplied)

In fine, the propriety of the Ombudsman-Mindanao's assailed resolution is already rendered moot by petitioner's failure to move for its reconsideration within the reglementary period. Moreover, petitioner clearly availed of the wrong mode of remedy via the present petition for review.

Time and again the Supreme Court has stressed that the rules of procedure must be faithfully complied with and should not be discarded with the mere expediency of claiming substantial merit. As a corollary, rules prescribing the time for doing specific acts or for taking certain proceedings are considered absolutely indispensable to prevent needless delays and to orderly and promptly discharge judicial business. By their very nature, these rules are regarded as mandatory.¹⁹

OMB-M-A-10-307-I

We shall now delve into the merit of petitioner's imputation of error upon the Ombudsman-Mindanao for finding him administratively liable for misconduct in OMB-M-A-10-307-I.

To this end, it bears emphasis that in an administrative case, 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.^[20] The quantum of evidence required in an administrative case is less than that required in a criminal case. Criminal and administrative proceedings may involve similar operative facts but each requires a different quantum of evidence. Administrative cases require only substantial evidence, as opposed to criminal cases which require proof beyond reasonable doubt.^[21] Accordingly, a finding of guilt in an administrative case would have to be sustained for as long as it is supported by substantial evidence that the respondent has committed acts stated in the complaint. Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.^[22]

We find that the factual findings of the Ombudsman upon which its decision on petitioner's administrative liability was based are substantially supported by the evidence on record.

On this point, misconduct means intentional wrongdoing or deliberate violation of a rule of law or standard of behavior. To constitute an administrative offense, misconduct should relate to or be connected with the performance of official functions and duties of a public officer.^[23]

In the instant case, the following facts are well-established: [a] private respondent claims to be the chieftain of the Higaonon Tribe of Cagayan de Oro City and Libona, Bukidnon; [b] the tribe is in the process of claiming its

ancestral land; [c] for this purpose, a Certificate of Ancestral Domain Title and Certificate of Ancestral Land Title were issued in the tribe's favor, subject to verification by the Special Committee organized by the NCIP; [c] sometime in the year 2009, petitioner communicated with private respondent and asked the latter for money for the purpose of facilitating the implementation of the Work and Financial Plan necessary for the verification of the tribe's title over their ancestral land; [d] the money was personally given to petitioner by private respondent's friend, Leo B. Sierra; [e] after receiving the money and despite his undertaking to fast-track the survey necessary for the tribe's Work and Financial Plan, no action has ever been commenced by petitioner towards the fulfillment of his end of the bargain; and [f] it turns out that petitioner has no legal authority to cause the implementation of the Work and Financial Plan since it is only the Special Committee of the NCIP that is authorized to do so.

In his defense, petitioner denied the imputation of misconduct against him and proffered the defense of denial. Under the circumstances, We find adequate basis for the findings of the Ombudsman-Mindanao. Indeed, it appears that the contentions of petitioner are devoid of merit. Petitioner's only defense is one of denial. The rule is that the denial, if not substantiated by clear and convincing evidence, is negative and self-serving evidence, which has no weight in law and cannot be given greater evidentiary value over the testimony of credible witnesses who testified on affirmative matters.[24]

It is settled that it is not for the appellate court to substitute its own judgment for that of the administrative agency on the sufficiency of the evidence and the credibility of the witnesses. Administrative decisions on matters within their jurisdiction are entitled to respect and can only be set aside on proof of grave abuse of discretion, fraud or error of law.[25] None of which are prevailing in the instant case. Perforce, the petition must fail.

One final note. It is not amiss to point out that public servants ought to exhibit at all times the highest sense of honesty and integrity, for no less than the Constitution mandates that a public office is a public trust. Public officers and employees are accountable to the people, and must serve with utmost responsibility, integrity, loyalty, and efficiency, as well as act with patriotism and justice, and lead modest lives. These constitutionally-enshrined principles, oft-repeated in our decisions, are not mere rhetorical flourishes or idealistic sentiments, but they are working standards in accord with the State's policy of promoting a high standard of ethics and utmost responsibility in the public service.[26]

The law does not tolerate misconduct by a civil servant. Petitioner's assailed act undoubtedly violates the norm of decency and diminishes or tends to diminish the people's respect for those in the government service. When an officer or employee is disciplined, the object is the improvement of the public service and the preservation of the public's faith and confidence in the government.[27]

WHEREFORE, the petition is DENIED for lack of merit. No pronouncement as to costs.

SO ORDERED.

Lloren, J., Ch., and Santos, JJ., concur.

[1] Under Rule 43 of the Revised Rules of Court.

[2] Rollo, pp. 80-99.

[3] Rollo, pp. 41-56.

[4] Rollo, pp. 57-63.

[5] A copy of petitioner's joint motion for reconsideration of the Ombudsman's decision and resolution dated

January 30, 2012 respectively is not among the attachments of the instant petition.

[6] A copy of the complaint in OMB-M-A-10-307-I is not among the attachments of the instant petition.

[7] Anti-Graft and Corrupt Practices Act.

[8] Code of Conduct and Ethical Standards for Public Officials and Employees.

[9] A copy of the complaint in OMB-M-C-10-0298-I is not among the attachments of the instant petition.

[10] Rollo, pp. 42-44.

[11] Rollo, pp. 23-40.

[12] Rollo, pp. 41-56.

[13] A copy of petitioner's joint-motion for reconsideration of the Ombudsman's decision and resolution dated January 30, 2012 respectively, is not among the attachments of the instant petition.

[14] Rollo, pp. 57-63.

[15] Rollo, p. 11.

[16] G.R. No. 160933 (November 24, 2010).

[17] G.R. No. 157175 (June 21, 2007).

[18] *Belongilot v. Cua, et al.*, *supra.*; see note 16.

[19] *cf. Bolos v. Bolos*, G.R. No. 186400 (October 20, 2010).

[20] *Office of the Ombudsman v. Torres*, G.R. No.168309 (January 29, 2008).

[21] *Paredes v. Court of Appeals*, G.R. No. 169534 (July 30, 2007).

[22] *Dadulo vs. Court of Appeals*, G.R. No. 175451 (April 13, 2007).

[23] *Office of the Ombudsman v. Torres*, *supra.*; see note 20.

[24] *Office of the Ombudsman v. Luciro*, G.R. No. 168718 (November 24, 2006).

[25] *Medina v. Commission on Audit(COA)*, G.R. No. 176478 (February 4, 2008).

[26] *Boncalon v. Ombudsman (Visayas)*, G.R. No. 171812 (December 24, 2008).

[27] *Santos vs. Rasalan*, G.R. No. 155749 (February 8, 2007).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.