

## FRANCISCO P. MACALINO, PETITIONER, VS. JOSIE F. VERGARA, RESPONDENT.

Ponente: LAGURA-YAP, J.

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### LAGURA-YAP, J.:

This is a Petition for Annulment of Judgment[1] under Rule 47 of the 1997 Rules of Civil Procedure seeking to set aside the Decision[2] dated July 12, 2011 and Order[3] dated November 22, 2012 promulgated by the Office of the Ombudsman for the Military and Other Law Enforcement Offices (MOLEO) in Case No. OMB-V-A-07-0172-D.

A perusal of the instant Petition reveals that it is fraught with several infirmities warranting its outright dismissal, viz.:

1. Petitioner failed to indicate the date of receipt of the Decision promulgated on July 12, 2011 by the Office of the Ombudsman for the Military & Other Law Enforcement Offices.
2. Petitioner failed to indicate the date of filing of his Motion for Reconsideration.[4]
3. Petitioner failed to indicate the date of receipt of the Order promulgated on November 22, 2012 by the Office of the Ombudsman for the Military & Other Law Enforcement Offices.
4. Petitioner failed to show any competent evidence of his identity (at least one current identification/document issued by any official agency bearing his photograph and signature) in the Verification and Certification of Non-Forum Shopping.[5]

We also note that petitioner erroneously impleaded Josie Vergara, the daughter of private complainant in Case No. OMB-V-A-07-0172-D, as respondent in this case. The Ombudsman is the proper respondent considering that it is the Office which issued the Decision and Order assailed in this petition.

Over and above the noted infirmities is the grave fact that petitioner failed to avail of the correct remedy. The proper recourse from decisions of the Office of the Ombudsman in administrative cases is an appeal to this Court via Rule 43 of the Rules of Court. This was the Supreme Court's pronouncement in the landmark case of Fabian v. Desierto,[6] as reiterated in Administrative Circular No. 99-2-01-SC and Section 7,[7] Rule III of Administrative Order No. 07 (Rules of Procedure of the Office of the Ombudsman). Notably, the Court of Appeals has no jurisdiction over actions for annulment of decisions or orders of the Ombudsman in administrative cases,[8] as in this case.

As to the substantial issues raised in this case, such as whether the doctrine of res judicata applies and whether petitioner was deprived of his right to due process, suffice it for Us to state that We cannot rule on the said issues in view of Our finding that the instant petition is not the proper remedy.

IN VIEW OF THE FOREGOING, the instant petition is DISMISSED.

**SO ORDERED.**

Delos Santos, J., Chairperson, and Lopez, JJ., concur.

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[1] Rollo, p. 3-13.

[2] Id. at 18-20.

[3] Id. at 46-49.

[4] Rollo, pp. 21-36.

[5] Id. at 13.

**[6] 295 SCRA 470, 1998.**

[7] Section 7. Finality and execution of decision. - where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. in all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

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[8] Macalalag v. Ombudsman, G.R. No. 147995, March 04, 2004.

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