

**REMBERTO C. KARA-AN, PETITIONER, VS. OFFICE OF THE
OMBUDSMAN, HON. CONRADO M. VASQUEZ, HON. ABELARDO L.
APORTADERA, JR., HON. RAUL ARNAU, HON. ROLINE M.
GINEZ-JABALDE, AS APPROV...**

G.R. No. 119990. June 21, 2004

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This petition for review on certiorari^[1] seeks to reverse the Ombudsman's Resolution dated 27 January 1995 dismissing petitioner Remberto C. Kara-an's ("petitioner") complaint for violation of Republic Act No. 3019^[2] ("RA 3019") and the Order dated 17 April 1995 denying petitioner's motion for reconsideration in OMB-0-94-0705.

The Antecedents

On 14 February 1994, petitioner wrote then Senator Ernesto Maceda imputing certain criminal acts to "the present number and membership" or "the clique of six" in the Board of Directors of the Al-Amanah Islamic Investment Bank of the Philippines ("Islamic Bank"). Petitioner claimed that "the clique of six" granted a loan of P250,000 to Compressed Air Machineries & Equipment Corporation ("CAMEC") without a valid collateral. Petitioner also claimed that the "clique of six" approved the real estate mortgage on CAMEC's loan without requiring the cancellation of a prior subsisting mortgage and without securing the written consent of the first mortgagee in violation of law. Thus, petitioner asserts that the "clique of six" is liable for entering into a contract which is manifestly and grossly disadvantageous to the government, which is punishable under RA 3019.

On 22 February 1994, Senator Maceda endorsed petitioner's letter to then Ombudsman Conrado M. Vasquez for appropriate investigation. On 25 March 1994, public respondent Raul R. Arnau ("Arnau"), Head of the Evaluation and Preliminary Investigation Bureau ("EPIB"), required respondents who were incumbent members of the Islamic Bank's Board of Directors ("Bank's Board") to comment on the complaint. Those required to comment were Roberto F. De Ocampo, as former chairman, and Alfredo C. Antonio, Farouk A. Carpizo, Bernice Syquia, Ibrahim Mamao, Reynaldo Palmieri and Gerardo Taruc ("respondents").

On 10 May 1994, respondents filed their Comment stating that:

- Roberto F. De Ocampo, presently Secretary of Finance, used to be a Director and Chairman of the Bank's Board commencing on 9 March 1989;
- Alfredo C. Antonio, representing the shares/interest of the National Government commenced his Directorship on 9 March 1989;
- Farouk A. Carpizo, representing the shares/interest of the National Government commenced his Directorship some time in March 1981;

- Bernice Syquia, representing the shares/interest of the Asset Privatization Trust commenced her Directorship on 31 March 1990;
- Ibrahim Mamao, representing the shares/interest of the National Government commenced his Directorship on 14 June 1993;
- Reynaldo Palmieri, representing the shares/interest of the Social Security System commenced his Directorship on 9 March 1989;
- Gerardo Taruc, representing the shares/interest of the Government Service Insurance System commenced his Directorship on 13 December 1993.[3]

In petitioner's Reply, he alleged that respondents concealed the names and terms of the directors before them. Petitioner theorized that respondents' failure to disclose their predecessors' names "makes them participants in the crime, giving aid and comfort to their co-offenders." Petitioner argued that under Republic Act No. 6770 or The Ombudsman Act of 1989 ("RA 6770"),[4] the Ombudsman can demand information on the names and terms of directors who approved the CAMEC loan in 1986.

On 27 January 1995, the Ombudsman issued the first assailed Resolution[5] dismissing the complaint for lack of merit. The Ombudsman reasoned out:

Respondents maintain that they were not yet even members of the Board of Directors of the Islamic Bank when the CAMEC transaction came about in 1986. Even if we are to assume "arguendo" that the CAMEC transaction started during the term of the respondents as chairman and directors of the Islamic Bank, the complainant and his cohorts by their individual and collective misconduct and omission, had thereby unduly exposed the Islamic Bank's Board from approving the CAMEC loan transaction predicated upon the false reports presented to the Board. The Board could not reasonably be expected to personally go out in the field and check the minute details of the loan application, much less, the personal whereabouts and identities of the applicants nor the physical location and legal status of the collaterals. Having received all the favorable reports from the subordinate officials of the bank and after going through with the merits of the loan application, the Board could not reasonably be expected to do anything more but determine the merits of the recommendations submitted to them by the subordinate officials of the Islamic Bank. Thus, assuming that there were discrepancies, errors or failures in the appraisal, assessment and legal status of the collaterals and credit investigation of the borrowers and the responsible subordinate official, such as the complainant, must be held accountable for the end result.

After a careful and judicious evaluation of the facts of the case, the complaint filed by Kara-an against the Board is doomed to be dismissed from the very beginning. While he was the Officer-in-Charge of the Makati Branch of the Islamic Bank, he was the one directly responsible in screening the qualifications of the various applicants for loan. He cannot delegate this responsibility to the higher up because this is his main duty as the officer-in-charge of the said branch.[6]

On 22 March 1995, petitioner filed a Motion for Reconsideration or Reinvestigation. Petitioner denied that he was the officer-in-charge of the Islamic Bank's Makati Branch responsible for screening loan applications in 1986. Petitioner alleged that when Islamic Bank approved the CAMEC loan in 1986, Tupa-an A. Datu-Imam ("Datu-Imam") was the Makati branch manager while Michael O. Mastura ("Mastura") was the Islamic Bank president. In the Order of 17 April 1995, the Ombudsman denied petitioner's motion for these reasons:

Complainant reiterates that the particular incident or mortgage transactions he is complaining of in this case took place between the dates of inscription of the entries referred to by the complainant between March 22, 1982 and May 17, 1986. Except for Farouk Carpizo, all the respondents herein were appointed after the 1986 EDSA Revolution.

He likewise maintains that he is not yet the officer-in-charge of the Islamic Bank, Makati Branch during that period. The Branch Manager then was Tupaan A. Datu-Imam. The loan recommendation dated 28 April 1986 concerning CAMEC was signed by then Makati Branch Manager Tupaan A. Datu-Imam and Philippine Amanah Bank President Michael O. Mastura. He did not participate in the screening of said loan application, incidents or mortgage transaction in 1986.

Granting that he is not yet the officer-in-charge then of the Islamic Bank, Makati Branch when the said loan application in 1986 was approved is of no moment. The respondents did not either approve said loan application being appointed only beyond 1986. Hence, they could not be the proper parties in this case.[7]

Hence, the present recourse.

The Issues

In his memorandum, petitioner raises these issues:

- WHETHER THE OMBUDSMAN OFFICIALS CONDUCTED APPROPRIATE INVESTIGATIONS ACCORDING TO THEIR CONSTITUTIONAL, STATUTORY AND ADMINISTRATIVE MANDATES, REQUIREMENTS AND THEIR SWORN DUTIES AS REQUESTED AND ENDORSED BY SENATOR MACEDA OF THE SENATE BLUE RIBBON COMMITTEE.
- WHETHER CRIMES HAVE BEEN COMMITTED.
- WHETHER TUPAAN A. DATU-IMAM, MICHAEL O. MASTURA, FAROUK A. CARPIZO AND THE OTHER FOUR MEMBERS OF THE PHILIPPINE AMANAH BANK BOARD OF DIRECTORS ARE GUILTY OR LIABLE.
- WHETHER THE OMBUDSMAN OFFICIALS ACTED WITH PATENTLY GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION IN RENDERING THEIR RESOLUTION AND ORDER ASSAILED AS VOID.[8]

The Solicitor General, on the Ombudsman's behalf, and the Government Corporate Counsel, representing respondents, pray for the dismissal of the petition for lack of merit.

Remedy from Ombudsman's Order in Criminal Cases

The title of this petition shows that petitioner filed the petition under Rule 45 of the Rules of Court. The remedy from resolutions of the Ombudsman in preliminary investigations of criminal cases is a petition for certiorari under Rule 65, not a petition for review on certiorari under Rule 45. By availing of a wrong remedy, the petition should be dismissed outright.

Rule 45 of the Rules of Court provides that only judgments or final orders or resolutions of the Court of Appeals, Sandiganbayan, the Regional Trial Court and other courts, whenever authorized by law may be the subject of a petition for review on certiorari to this Court. The second to the last paragraph of Section 27 of RA 6770 is clear. It reads:

SEC. 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.

Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive, or decision imposing the penalty of public censure or reprimand, suspension of not more than one month salary shall be final and unappealable.

In all administrative disciplinary cases, orders, directives or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for certiorari within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.

The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require. (Emphasis supplied)

Under Section 27 of RA 6770, a decision of the Ombudsman in an administrative disciplinary action is appealable to this Court by petition for review under Rule 45. However, this does not include decisions of the Ombudsman in preliminary investigations of criminal cases. Neither does it include orders resolving incidents in preliminary investigations of criminal cases. In other words, the right to appeal under Rule 45 does not apply to orders and decisions of the Ombudsman in criminal cases. Such right is granted only from orders or decisions of the Ombudsman in administrative cases.[9] Even in administrative cases, appeals from decisions of the Ombudsman is first taken to the Court of Appeals under the provisions of Rule 43.[10]

However, an aggrieved party in criminal actions is not without any recourse. Where grave abuse of discretion amounting to lack or excess of jurisdiction taints the findings of the Ombudsman on the existence of probable cause, the aggrieved party may file a petition for certiorari under Rule 65. Nevertheless, we will consider the present petition as one filed under Rule 65 of the Rules of Court since a reading of the contents reveals that petitioner is imputing grave abuse of discretion on the Ombudsman for dismissing his complaint.[11]

Whether Dismissal of the Complaint was Proper

Cutting through the convoluted language of petitioner's arguments, the pivotal issue is whether the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing petitioner's complaint.

The answer is in the negative.

Section 12, Article XI of the 1987 Constitution provides:

Sec. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

The Ombudsman has the "sole power to investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient." [12] The consistent policy of the Court is not to interfere with the Ombudsman's exercise of his investigatory and prosecutory powers. We held in *Alba v. Nitorreda* [13] that:

xxx this Court has consistently refrained from interfering with the exercise by the Ombudsman of his

constitutionally mandated investigatory and prosecutory powers. Otherwise stated, it is beyond the ambit of this Court to review the exercise of discretion of the Ombudsman in prosecuting or dismissing a complaint filed before it. Such initiative and independence are inherent in the Ombudsman who, beholden to no one, acts as the champion of the people and preserver of the integrity of the public service.

The Court explained the rationale underlying its policy of non-interference in this wise:

xxx The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they would be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.[14]

Petitioner contends that the Ombudsman's grave abuse of discretion lies in his failure to conduct the appropriate investigation in breach of constitutional, statutory and administrative mandates. Petitioner also points out that EPIB Head Arnau, in his 1st Indorsement/Letter dated 29 March 1994, named as respondents "the former chairman and incumbent board members of Islamic Bank" instead of those who processed and approved the anomalous P250,000 loan to CAMEC in 1986. Petitioner asserts that Arnau could have easily determined the directors who approved the CAMEC loan by issuing a subpoena duces tecum to Islamic Bank to produce a copy of the minutes of meeting of the Bank's Board that approved the loan.

Section 2, Rule II of Administrative Order No. 07 of the Office of the Ombudsman, otherwise known as the "Rules of Procedure of the Office of the Ombudsman,"[15] states:

SEC. 2. Evaluation. – Upon evaluating the complaint, the investigating officer shall recommend whether it may be:

- a) dismissed outright for want of palpable merit;
- b) referred to respondent for comment;
- c) indorsed to the proper government office or agency which has jurisdiction over the case;
- d) forwarded to the appropriate officer or official for fact-finding investigation;
- e) referred for administrative adjudication; or
- f) subjected to a preliminary investigation.

Clearly, the Ombudsman does not have to conduct a preliminary investigation upon receipt of a complaint. The Ombudsman has discretion to determine whether a preliminary investigation is proper.[16] Should the investigating officer find the complaint devoid of merit, then he may recommend its outright dismissal.[17]

Since the Ombudsman can dismiss a complaint outright for lack of merit, it necessarily follows that he can also dismiss the complaint for lack of merit after the respondent's comment to the complaint. The Ombudsman, through Graft Investigation Officer I Roline M. Ginez-Jabalde, acted within her authority in requiring Islamic Bank's former chairman and incumbent board members to comment on petitioner's letter-complaint since the complaint mentioned Roberto F. De Ocampo and referred to "the present number and membership of the Bank's Board" as the ones responsible for the loan. The records fail to show any abuse of discretion by the Ombudsman in dismissing the complaint after this inquiry. The Ombudsman did not find prima facie evidence to proceed with the investigation simply because respondents, except for Farouk A. Carpizo, were not yet directors of the Bank's

Board when the Islamic Bank approved the CAMEC loan in 1986.

Petitioner cannot also compel the Ombudsman to order the production of certain documents,[18] if in the Ombudsman's judgment such documents are not necessary to establish probable cause against respondents.[19] The Court cannot interfere with the Ombudsman's discretion in determining the adequacy or inadequacy of the evidence before him. The investigation is advisedly called preliminary, as it is yet to be followed by the trial proper. The occasion is not for the full and exhaustive display of the parties' evidence but for the presentation of such evidence only as may engender a well-founded belief that an offense has been committed and that the accused is probably guilty of the offense.[20]

The Court cannot likewise sustain petitioner's contention that the Ombudsman gravely abused his discretion in dismissing the charge against Farouk A. Carpizo ("Carpizo"). The Ombudsman explained his reasons for finding that there was no sufficient ground to engender a well-founded belief that Carpizo is liable under RA 3019. True, Carpizo, who was appointed in March 1981, was already a director when the Islamic Bank approved the CAMEC loan in 1986. However, the fact that the Islamic Bank processed and approved the CAMEC loan during his incumbency as director does not automatically establish probable cause against him absent a showing that he personally participated in any irregularity in the processing and approval of the loan. As the Ombudsman stated in the assailed Order, there were subordinate officials who studied and favorably endorsed the loan to the Bank's Board for approval.

Petitioner's other arguments are anchored on the propriety of the Ombudsman's appreciation of the facts. But the Ombudsman is the proper adjudicator on aspects of this nature and the Court has adopted a policy of non-interference in the exercise of the Ombudsman's constitutionally mandated powers on this matter. Indeed, this Court is not a trier of facts, the Ombudsman is.[21]

Whether Denial of Motion for Reconsideration or Reinvestigation was Proper

We now turn to petitioner's Motion for Reconsideration or Reinvestigation ("Motion") which the Ombudsman denied. Confronted once again by petitioner's extremely cluttered arguments, we gather that petitioner faults the Ombudsman for, allegedly in grave abuse of discretion - (1) dismissing petitioner's Motion for Reconsideration or Reinvestigation with an Ex-Parte Urgent Motion for the Conduct of a Preliminary Investigation which deprived petitioner of the opportunity to present newly discovered evidence linking Director and President Michael O. Mastura ("Mastura") and Makati Branch Manager Tupaan A. Datu-Imam ("Datu-Imam") to the "CAMEC scam"; (2) in not holding Datu-Imam and Mastura as among the proper parties liable in this case and prosecuted accordingly; and (3) in not requiring Datu-Imam and Mastura to file their comment and controverting evidence to the complaint.

In this Motion, petitioner virtually abandoned his previous charge against "the present number and membership" or "the clique of six" in the Bank's Board. The Resolution of 27 January 1995 stated that petitioner "was the Officer-in-Charge of the Makati branch, directly responsible for screening the qualifications of the various applicants for loan." Petitioner vehemently denied being an officer-in-charge of the Islamic Bank's Makati branch and shifted the blame to Datu-Imam and Mastura. Petitioner submitted evidence to support this charge, specifically, the Loan Recommendation dated 28 April 1986 allegedly signed by Datu-Imam and Mastura.

However, the Expanded Fact Finding Committee that investigated petitioner found that he "was the officer-in-charge of the bank at the time of the release of the loan." [22] The Expanded Fact Finding Committee did not state that petitioner was the officer-in-charge who screened the loan applications or signed the Loan Recommendation. Petitioner has not denied the finding of the Expanded Fact Finding Committee that he was the

officer-in-charge at the time of release of the loan. What petitioner has denied is that he was the officer-in-charge during the “screening [of] the qualifications of the various applicants for loan.” The release of the loan proceeds took place only after the Bank’s Board had acted on the Loan Recommendation. Even if petitioner did not screen CAMEC’s loan application or sign the Loan Recommendation, he is still liable if as officer-in-charge or releasing officer, he released the loan proceeds without checking the mortgage documents to insure the cancellation of any prior mortgage as required by the Islamic Bank’s procedures. The prudent banking practice is to annotate first the bank’s real estate mortgage, ensuring that no prior lien subsists or intervened since the last verification, before releasing the loan proceeds.

This Court cannot end this opinion without remarking on how petitioner who is a non-lawyer, took upon himself the task of preparing all the pleadings in this case, deluging this Court with unnecessarily long and overly cluttered pleadings. Petitioner should realize that conciseness of pleadings prepared by a member of the Bar can advance one’s cause much better than pretentious presentations that more often than not only reveal a paucity of logic and a sorry confusion over the issues of the case.

WHEREFORE, the Resolution dated 27 January 1995 of the Office of the Ombudsman in OMB-0-94-0705, as well as the Order dated 17 April 1995 denying the motion for reconsideration, is **AFFIRMED**.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Panganiban, and Azcuna, JJ., concur.
Ynares-Santiago, J., on leave.

[1] Under Rule 45 of the Rules of Court.

[2] Anti-Graft and Corrupt Practices Act.

[3] Rollo, pp. 623-234.

[4] Specifically, Sections 15(4), 15(5), 26(4) and 33.

[5] By Graft Investigation Officer I Roline M. Ginez-Jabalde, with the recommending approval of EPIB Head Raul R. Arnau, reviewed by Assistant Ombudsman Abelardo L. Aportadera, Jr. and approved by Ombudsman Conrado M. Vasquez.

[6] Rollo, pp. 80-81.

[7] Ibid., pp. 103-104.

[8] Ibid., p. 536.

[9] *Nava v. Commission on Audit*, 419 Phil. 544 (2001).

[10] *Fabian v. Hon. Desierto*, 356 Phil. 787 (1998).

[11] Ibid.

[12] Section 15(1), RA 6770.

[13] 325 Phil. 229 (1996).

[14] *Ocampo v. Ombudsman*, G.R. Nos. 103446-47, 30 August 1993, 225 SCRA 725.

[15] Dated 10 April 1990, issued pursuant to the rule-making power of the Ombudsman under Section 13(8) of

the 1987 Constitution and Sections 18, 23 and 27 of The Ombudsman Act of 1989.

[16] *Mamburao, Inc. v. Office of the Ombudsman*, G.R. Nos. 139141-42, 15 November 2000, 344 SCRA 805; *Knecht v. Hon. Desierto*, 353 Phil. 494 (1998).

[17] *Ibid.*

[18] Such as “all the minutes of the meetings of the board and its executive committee from 1 January 1986 to the present and the printed annual reports of the bank to the stockholders from 1986 to the present.”

[19] *Ibid.*

[20] *Hashim v. Boncan*, 71 Phil. 216 (1941).

[21] *Alba v. Nitorreda*, *supra*, see note 13.

[22] *Rollo*, p. 78. See also p. 621.

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