

**AMADO G. PEREZ (DECEASED) REPRESENTED BY HIS WIDOW
GUILLERMA T. PEREZ, MARIO S. FRANCISCO, RAFAEL P. ARGAME,
MIRASOL V. MENDOZA, GLORIA S. GONZALVO AND MARIA FE V.
BOMBASE, peti...**

G.R. No. 131445. May 27, 2004

Ponente: CORONA, J.

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CORONA, J.:

This is an appeal by certiorari under Rule 45 from the November 13, 1997 resolution[1] of the Court of Appeals (CA) in CA G.R. SP No. 45127, dismissing petitioners' motion for reconsideration of its September 9, 1997 resolution[2] which in turn dismissed, for lack of jurisdiction, petitioners' petition for certiorari and mandamus. The petition questioned the Office of the Ombudsman's April 11, 1997 dismissal of their criminal complaint against Mayor Ignacio R. Bunye.

Petitioners, members of the Kilusang Bayan ng mga Magtitinda ng Bagong Pamilihang Bayan ng Muntinlupa, Inc. (KBMBPM), instituted two complaints at the Office of the Ombudsman (docketed as OMB-0-89-0983 and OMB-0-89-1007) against several respondents, one of whom was then Mayor Ignacio R. Bunye, for violation of RA 3019 (also known as the "Anti-Graft and Corrupt Practices Act"). Respondents allegedly destroyed the doors of the KBMBPM office while serving on petitioners the Take-Over Order of the KBMBPM management dated October 28, 1998 issued by then Agriculture Secretary Carlos G. Dominguez.

In disposing of said complaints on April 11, 1997, the Office of the Ombudsman issued a resolution (hereinafter, "Ombudsman resolution")[3] excluding respondent Bunye from the criminal indictment. The petitioners assailed the exclusion in the CA on September 1, 1997 through an original petition for certiorari and mandamus. The CA, however, dismissed it for lack of jurisdiction supposedly in accordance with Section 27 of RA 6770 (also known as the "Ombudsman Act of 1989"). Citing *Yabut vs. Ombudsman*,[4] *Alba vs. Nitorreda*[5] and *Angchangco vs. Ombudsman*,[6] the CA likewise denied petitioners' motion for reconsideration.

Hence, this petition for review.

The CA was correct in dismissing the petition for certiorari and mandamus.

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. If it is an administrative case, appeal should be taken to the Court of Appeals under Rule 43 of the Rules of Court.[7] If it is a criminal case, the proper remedy is to file with the Supreme Court an original petition for certiorari under Rule 65.[8]

We find that, although the CA was correct in dismissing the petition for certiorari, it erroneously invoked as ratio decidendi Section 27 of RA 6770[9] which applies in administrative cases only, not criminal cases,[10] such as the graft and corruption charge at bar. In our en banc decision in *Fabian vs. Desierto*,[11] which is still

controlling, we held that Section 27 applies only whenever an appeal by certiorari under Rule 45 is taken from a decision in an administrative disciplinary action. Nevertheless, we declared Section 27 unconstitutional for expanding the Supreme Court's appellate jurisdiction without its advice and consent. We thus held that all 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 Court.

As the present controversy pertained to a criminal case, the petitioners were correct in availing of the remedy of petition for certiorari under Rule 65 but they erred in filing it in the Court of Appeals. The procedure set out in *Kuizon vs. Ombudsman*[12] and *Mendoza-Arce vs. Ombudsman*,[13] requiring that petitions for certiorari questioning the Ombudsman's orders or decisions in criminal cases should be filed in the Supreme Court and not the Court of Appeals, is still the prevailing rule.[14]

But even if the petition for certiorari had been filed in this Court, we would have dismissed it just the same. First, petitioners should have filed a motion for reconsideration of the Ombudsman resolution as it was the plain, speedy and adequate remedy in the ordinary course of law, not filing a petition for certiorari directly in the Supreme Court. Second, the Office of the Ombudsman did not act without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Ombudsman resolution.

Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. In other words, the exercise of power is in an arbitrary or despotic manner by reason of passion or personal hostility. It must be so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[15]

In this case, there was no grave abuse of discretion on the part of the Office of the Ombudsman in dismissing the complaint against respondent Bunye upon the factual finding that:

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Indeed no evidence is shown in the record that respondent Mayor Bunye specifically participated in the violent implementation of Secretary Dominguez' Order of October 28, 1988. It was not shown with certainty by complainant that the alleged presence of respondent Mayor Bunye at the scene of the incident was an active participation thereof by the latter.

On the other hand, if the alleged presence of the respondent Mayor Bunye at the scene were really true, such would not be improper because of the provision of Article 87, par. 2 (VI) of the Local [G]overnment Code which states:

"x x x call upon the appropriate law enforcement agencies to restore order, riot, lawless violence, rebellion or sedition or to apprehend violators of the law when public interest so requires, and the municipal police force are inadequate to cope with the situation or the violators." (underlining supplied)

Anent the alleged letter dated August 8, 1988 of respondent Mayor Bunye, the same seems only a request for the suspension of complainant. He did not take it upon himself to issue any suspension of complainant. At that point in time, the respondent Mayor Bunye reasonably believed that the Order of Secretary Dominguez was valid. Besides, the facts and the evidence on record do not show any interest personal or otherwise on the part of respondent Mayor Bunye in the implementation of Secretary Dominguez' Order. Accordingly, the exclusion of respondent Mayor Bunye from the criminal charge and the dismissal of the complaint against him are in order.

Furthermore, if at the instance of complaint, respondents (sic) Secretary Dominguez whose Order dated October 28, 1988 was questioned by the complainant and Atty. Rogelio Madriaga, who allegedly orchestrated the implementation of the said Order were dropped from the complaint, how can respondent Bunye be liable for the same act, if as alleged, he was merely standing in front of the KBS Building, New Muntinlupa Market?

It will be noted that at the time of the alleged implementation of the Order on October 29, 1988 and the take-over of the Management and operation of the KBMBPM cooperative, respondent Bunye apparently believed that the said Order of Secretary Dominguez was valid.

Considering the earlier approval of the Honorable Ombudsman on the memorandum of then SPO III, now Director Wendell E. Barreras-Sulit as reiterated in the memorandum of the Honorable Assistant to the Ombudsman re: the exclusion of respondent Bunye from criminal indictment, undersigned respectfully concurs with the same.

xxx xxx xxx.[16]

We have consistently refrained from interfering with the investigatory and prosecutorial powers of the Ombudsman absent any compelling reason.[17] This policy is based on constitutional, statutory and practical considerations. We are mindful that the Constitution and RA 6770 endowed the Office of the Ombudsman with a wide latitude of investigatory and prosecutorial powers, virtually free from legislative, executive or judicial intervention, in order to insulate it from outside pressure and improper influence.[18] Moreover, a preliminary investigation is in effect a realistic judicial appraisal of the merits of the case. Sufficient proof of the guilt of the accused must be adduced so that when the case is tried, the trial court may not be bound, as a matter of law, to order an acquittal.[19] Hence, if the Ombudsman, using professional judgment, finds the case dismissible, the Court shall respect such findings, unless clothed with grave abuse of discretion.[20] 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, the courts will be swamped with cases if they will have to review the exercise of discretion on the part of fiscals or prosecuting attorneys each time the latter decide to file an information in court or dismiss a complaint by a private complainant.[21]

WHEREFORE, the petition is hereby DENIED for lack of merit.

SO ORDERED.

Vitug, (Chairman and Acting Chief Justice), Sandoval-Gutierrez, and Carpio Morales, JJ., concur.

[1] Penned by CA Associate Justice Delilah Vidallon-Magtolis and concurred in by the Associate Justices Cancio C. Garcia (now CA Presiding Justice) and Hilarion L. Aquino of the former Thirteenth Division.

[2] Penned by CA Associate Justice Delilah Vidallon-Magtolis and concurred in by the Associate Justices Cancio C. Garcia (now CA Presiding Justice) and Hilarion L. Aquino of the Thirteenth Division.

[3] Penned by Director Ernesto M. Nocos and approved by Deputy Ombudsman for Luzon Jesus F. Guerrero acting by authority of the Ombudsman who inhibited himself from the case.

[4] 233 SCRA 310 [1994].

[5] 254 SCRA 753 [1996].

[6] 233 SCRA 310 [1994].

[7] Fabian vs. Ombudsman Desierto, 295 SCRA 470 [1998].

[8] Kuizon vs. Ombudsman Desierto, 354 SCRA 158 [2001]; Mendoza-Arce vs. Ombudsman, 380 SCRA 325

[2002].

[9] Section 27 of RA 6770 provides, in part:

“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 and underscoring supplied).

[10] Fabian vs. Ombudsman Desierto, 295 SCRA 470 [1998]; Tirol vs. Commission on Audit, 337 SCRA 198 [2000]; Nava vs. Commission on Audit, 367 SCRA 263 [2001].

[11] 295 SCRA 470 [1998].

[12] 354 SCRA 158 [2001].

[13] 380 SCRA 325 [2002].

[14] Article VIII, Section 4 (3) of the 1987 Constitution.

[15] People vs. Januario, 267 SCRA 608 [1997].

[16] Rollo, pp. 70-71.

[17] Presidential Commission on Good Government vs. Desierto, 349 SCRA 767 [2001].

[18] Presidential Ad Hoc Fact-Finding Committee on Behest Loans vs. Desierto, 362 SCRA 730 [2001].

[19] Cojuangco vs. PCGG, 190 SCRA 226 [1990].

[20] Presidential Ad Hoc Fact-Finding Committee on Behest Loans vs. Desierto, 362 SCRA 730 [2001].

[21] Ocampo, IV vs. Ombudsman, 225 SCRA 725, 730 [1993].

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