

**ABS-CBN BROADCASTING CORPORATION, EUGENIO LOPEZ, JR.,
AUGUSTO ALMEDA-LOPEZ, AND OSCAR M. LOPEZ, PETITIONERS, VS.
OFFICE OF THE OMBUDSMAN, ROBERTO S. BENEDICTO, EXEQUIEL
B. GARCI...**

G.R. No. 133347. April 23, 2010

Ponente: NACHURA, J.

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NACHURA, J.:

Before us is a Motion for Reconsideration filed by petitioners Eugenio, Jr., Oscar and Augusto Almeda, all surnamed Lopez, in their capacity as officers and on behalf of petitioner ABS-CBN Broadcasting Corporation (ABS-CBN), of our Decision in G.R. No. 133347, dismissing their petition for certiorari because of the absence of grave abuse of discretion in the Ombudsman Resolution which, in turn, found no probable cause to indict respondents for the following violations of the Revised Penal Code (RPC): (1) Article 298 - Execution of Deeds by Means of Violence or Intimidation; (2) Article 315, paragraphs 1[b], 2[a], and 3[a] - Estafa; (3) Article 308 - Theft; (4) Article 302 - Robbery; (5) Article 312 - Occupation of Real Property or Usurpation of Real Rights in Property; and (6) Article 318 - Other Deceits.

The assailed Decision disposed of the case on two (2) points: (1) the dropping of respondents Roberto S. Benedicto and Salvador (Buddy) Tan as respondents in this case due to their death, consistent with our rulings in *People v. Bayotas*[1] and *Benedicto v. Court of Appeals*;^[2] and (2) our finding that the Ombudsman did not commit grave abuse of discretion in dismissing petitioners' criminal complaint against respondents.

Undaunted, petitioners ask for a reconsideration of our Decision on the following grounds:

I.

WITH DUE RESPECT, THE EXECUTION AND VALIDITY OF THE LETTER-AGREEMENT DATED 8 JUNE 1973 ARE PLAINLY IRRELEVANT TO ASCERTAINING THE CRIMINAL LIABILITY OF THE RESPONDENTS AND, THEREFORE, THE ISSUE AS TO WHETHER SAID AGREEMENT WAS RATIFIED OR NOT IS IMMATERIAL IN THE PRESENT CASE.

II.

WITH DUE RESPECT, RESPONDENTS BENEDICTO AND TAN SHOULD NOT BE DROPPED AS RESPONDENTS SIMPLY BECAUSE THEY MET THEIR UNTIMELY DEMISE DURING THE PENDENCY OF THE CASE.^[3]

Before anything else, we note that petitioners filed a Motion to Refer the Case to the Court en banc.^[4] Petitioners aver that the arguments contained in their Motion for Reconsideration, such as: (1) the irrelevance of the civil law concept of ratification in determining whether a crime was committed; and (2) the continuation of the criminal complaints against respondents Benedicto and Tan who have both died, to prosecute their possible civil liability therefor, present novel questions of law warranting resolution by the Court en banc.

In the main, petitioners argue that the Decision is contrary to law because: (1) the ratification of the June 8, 1973 letter-agreement is immaterial to the determination of respondents' criminal liability for the aforesated felonies in the RPC; and (2) the very case cited in our Decision, i.e. *People v. Bayotas*,^[5] allows for the continuation of a criminal case to prosecute civil liability based on law and is independent of the civil liability arising from the crime.

We disagree with petitioners. The grounds relied upon by petitioners in both motions, being intertwined, shall be discussed jointly. Before we do so, parenthetically, the counsel for respondent Miguel V. Gonzales belatedly informed this Court of his client's demise on July 20, 2007.^[6] Hence, as to Gonzales, the case must also be dismissed.

Contrary to petitioners' assertion, their motion for reconsideration does not contain a novel question of law as would merit the attention of this Court sitting en banc. We also find no cogent reason to reconsider our Decision.

First and foremost, there is, as yet, no criminal case against respondents, whether against those who are living or those otherwise dead.

The question posed by petitioners on this long-settled procedural issue does not constitute a novel question of law. Nowhere in *People v. Bayotas*^[7] does it state that a criminal complaint may continue and be prosecuted as an independent civil action. In fact, *Bayotas*, once and for all, harmonized the rules on the extinguished and on the subsisting liabilities of an accused who dies. We definitively ruled:

From this lengthy disquisition, we summarize our ruling herein:

1. Death of an accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, i.e., civil liability *ex delicto* in *senso strictiore*."

2. Corollarily, the claim for civil liability survives notwithstanding the death of accused, if the same may also be predicated on a source of obligation other than delict. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:

- a) Law
- b) Contracts
- c) Quasi-contracts
- d) xxx xxx xxx
- e) Quasi-delicts

3. Where the civil liability survives, as explained in Number 2 above, an action for recovery thereof may be pursued but only by filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.

4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with provisions of Article 1155 of the Civil Code, that should thereby avoid any apprehension on a possible [de]privation of right by prescription.

From the foregoing, it is quite apparent that Benedicto, Tan, and Gonzales, who all died during the pendency of

this case, should be dropped as party respondents. If on this score alone, our ruling does not warrant reconsideration. We need not even delve into the explicit declaration in *Benedicto v. Court of Appeals*.^[8]

Second, and more importantly, we dismissed the petition for certiorari filed by petitioners because they failed to show grave abuse of discretion on the part of the Ombudsman when he dismissed petitioners' criminal complaint against respondents for lack of probable cause. We reiterate that our inquiry was limited to a determination of whether the Ombudsman committed grave abuse of discretion when he found no probable cause to indict respondents for various felonies under the RPC. The invocation of our certiorari jurisdiction over the act of a constitutional officer, such as the Ombudsman, must adhere to the strict requirements provided in the Rules of Court and in jurisprudence. The determination of whether there was grave abuse of discretion does not, in any way, constitute a novel question of law.

We first pointed out in our Decision that the complaint-affidavits of petitioners, apart from a blanket charge that remaining respondents, Gonzales (who we thought was alive at that time) and Exequiel Garcia, are officers of KBS/RPN and/or alter egos of Benedicto, are bereft of sufficient ground to engender a well-founded belief that crimes have been committed and that respondents, namely, Gonzales and Garcia, are probably guilty thereof and should be held for trial. Certainly, no grave abuse of discretion can be imputed to the Ombudsman that would warrant a reversal of his Resolution.

The charges of individual petitioners Eugenio, Jr., Oscar and Augusto Almeda against respondents, Gonzales and Garcia, contained in their respective complaint-affidavits simply consisted of the following:

1. Complaint-affidavit of Eugenio, Jr.

32.1. I was briefed that Senator Estanislao Fernandez in representation of Benedicto, met with Senator Tañada at the Club Filipino in June 1976. Discussions were had on how to arrive at the "reasonable rental" for the use of ABS-CBN stations and facilities. A second meeting at Club Filipino took place on July 7, 1976 between Senators Tañada and Fernandez, who brought along Atty. Miguel Gonzales, a close associate and lawyer of Benedicto and an officer of KBS.

x x x x

38.2. The illegal takeover of ABS-CBN stations, studios and facilities, and the loss and/or damages caused to our assets occurred while Benedicto, Exequiel Garcia, Miguel Gonzales, and Salvador Tan were in possession, control and management of our network. Roberto S. Benedicto was the Chairman of the Board of KBS-RPN and its Chief Executive Officer (CEO), to whom most of the KBS-RPN officers reported while he was in Metro Manila. Miguel Gonzales, the Vice-President of KBS, and Exequiel Garcia, the Treasurer, were the alter egos of Benedicto whenever the latter was out of the country; x x x.^[9]2. Complaint-affidavit of Oscar

25. All the illegal activities as complained of above, were done upon the orders, instructions and directives of Roberto S. Benedicto, the Chairman of the Board and Chief Executive Officer of the KBS/RPN group; Miguel Gonzales and Exequiel Garcia, close colleagues and business partners of Benedicto who were either directors/officers KBS/RPN and who acted as Benedicto's alter egos whenever the latter was out of the country; x x x.

x x x x

38. Senator Estanislao Fernandez, in representation of Benedicto, met with Senator Tañada at the Club Filipino on June 1976. Discussions were had on how to arrive at the "reasonable rental" for the use of ABS stations and facilities. A second meeting at Club Filipino took place on July 7, 1976 between Senators Tañada and Fernandez, who brought along Atty. Mike Gonzales, a close associate and friend of Benedicto and an officer of KBS.^[10]3. Complaint-affidavit of Augusto Almeda

21.1. Barely two weeks from their entry into the ABS Broadcast Center, KBS personnel started making unauthorized withdrawals from the ABS Stock Room. All these withdrawals of supplies and equipment were made under the orders of Benedicto, Miguel Gonzales, Exequiel Garcia, and Salvador Tan, the Chairman, the Vice-President, Treasurer, and the General Manager of KBS, respectively. No payment was ever made by either Benedicto or KBS for all the supplies and equipment withdrawn from the ABS Broadcast Center.

x x x x

31. Senator Estanislao Fernandez, in representation of Benedicto, met with Senator Tañada at the Club Filipino on June 1976. Discussions were had on how to arrive at the "reasonable rental" for the use of ABS stations and facilities. A second meeting at Club Filipino took place on July 7, 1976 between Senators Tañada and Fernandez, who brought along Atty. Mike Gonzales, a close associate and friend of Benedicto and an officer of KBS.[11]

From the foregoing, it is beyond cavil that there is no reason for us to depart from our policy of non-interference with the Ombudsman's finding of probable cause or lack thereof. On the strength of these allegations, we simply could not find any rational basis to impute grave abuse of discretion to the Ombudsman's dismissal of the criminal complaints.

Third, we did not state in the Decision that ratification extinguishes criminal liability. We simply applied ratification in determining the conflicting claims of petitioners regarding the execution of the letter-agreement. Petitioners, desperate to attach criminal liability to respondents' acts, specifically to respondent Benedicto, alleged in their complaint-affidavits that Benedicto forced, coerced and intimidated petitioners into signing the letter-agreement. In other words, petitioners disown this letter-agreement that they were supposedly forced into signing, such that this resulted in a violation of Article 298 of the RPC (Execution of Deeds by means of Violence or Intimidation).

However, three elements must concur in order for an offender to be held liable under Article 298:

- (1) that the offender has intent to defraud another.
- (2) that the offender compels him to sign, execute, or deliver any public instrument or document.
- (3) that the compulsion is by means of violence or intimidation.[12]

The element of intent to defraud is not present because, even if, initially, as claimed by petitioners, they were forced to sign the letter-agreement, petitioners made claims based thereon and invoked the provisions thereof. In fact, petitioners wanted respondents to honor the letter-agreement and to pay rentals for the use of the ABS-CBN facilities. By doing so, petitioners effectively, although they were careful not to articulate this fact, affirmed their signatures in this letter-agreement.

True, ratification is primarily a principle in our civil law on contracts. Yet, their subsequent acts in negotiating for the rentals of the facilities – which translate into ratification of the letter-agreement – cannot be disregarded simply because ratification is a civil law concept. The claims of petitioners must be consistent and must, singularly, demonstrate respondents' culpability for the crimes they are charged with. Sadly, petitioners failed in this regard because, to reiterate, they effectively ratified and advanced the validity of this letter-agreement in their claim against the estate of Benedicto.

Finally, we take note of the conflicting claim of petitioners by filing a separate civil action to enforce a claim against the estate of respondent Benedicto. Petitioners do not even specifically deny this fact and simply sidestep this issue which was squarely raised in the Decision. The Rules of Court has separate provisions for different claims against the estate of a decedent under Section 5 of Rule 86 and Section 1 of Rule 87:

RULE 86.

SECTION 5. Claims which must be filed under the notice. If not filed, barred; exceptions. - All claims for money against the decedent, arising from contract, express or implied, whether the same be due, not due, or contingent, all claims for funeral expenses and expenses for the last sickness of the decedent, and judgment for money against the decedent, must be filed within the time limited in the notice; otherwise they are barred forever, except that they may be set forth as counter claims in any action that the executor or administrator may bring against the claimants. Xxx Claims not yet due, or contingent, may be approved at their present value.

RULE 87.

SECTION 1. Actions which may and which may not be brought against executor or administrator. - No action upon a claim for the recovery of money or debt or interest thereon shall be commenced against the executor or administrator; but actions to recover real or personal property, or an interest therein, from the estate, or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or personal, may be commenced against him.

If, as insisted by petitioners, respondents committed felonies in forcing them to sign the letter-agreement, petitioners should have filed an action against the executor or administrator of Benedicto's estate based on Section 1, Rule 87 of the Rules of Court. But they did not. Instead they filed a claim against the estate based on contract, the unambiguous letter-agreement, under Section 5, Rule 86 of the Rules of Court. The existence of this claim against the estate of Benedicto as opposed to the filing of an action against the executor or administrator of Benedicto's estate forecloses all issues on the circumstances surrounding the execution of this letter- agreement.

We are not oblivious of the fact that, in the milieu prevailing during the Marcos years, incidences involving intimidation of businessmen were not uncommon. Neither are we totally unaware of the reputed closeness of Benedicto to President Marcos. However, given the foregoing options open to them under the Rules of Court, petitioners' choice of remedies by filing their claim under Section 5, Rule 86 – after Marcos had already been ousted and full democratic space restored – works against their contention, challenging the validity of the letter-agreement. Now, petitioners must live with the consequences of their choice.

WHEREFORE, in light of the foregoing, the Motion to Refer the Case to the Court en banc and the Motion for Reconsideration are DENIED.

SO ORDERED.

Carpio Morales[*], Velasco, Jr.[**], Villarama, Jr.[***], and Mendoza[****], JJ., concur.

[*] Additional member per Raffle dated February 25, 2009.

[**] Additional member per Raffle dated May 18, 2009.

[***] Additional member in lieu of Associate Justice Consuelo Ynares-Santiago per Raffle dated November 20, 2009.

[****] Additional member in lieu of Associate Justice Minita V. Chico-Nazario per Memorandum dated January 5, 2010.

[1] G.R. No. 102007, September 2, 1994, 236 SCRA 239, 255-256.

[2] 416 Phil. 722 (2001).

[3] Rollo, pp. 823-847.

[4] Id. at 852-857.

[5] Supra note 1.

[6] Rollo, pp. 973-977.

[7] Supra note 1, at 255-256.

[8] Supra note 2. The Court, taking cognizance of respondent Benedicto's death on May 15, 2000, has ordered that the latter be dropped as a party, and has declared extinguished any criminal liability, as well as civil liability ex delicto, that might be attributable to him in Criminal Case Nos. 91-101879 to 91-101883, 91-101884 to 101892, and 92-101959 to 92-101969 pending before the Regional Trial Court of Manila.

[9] Rollo, pp. 69-70.

[10] Id. at 93, 95.

[11] Id. at 80, 82.

[12] Reyes, The Revised Penal Code, Book Two, 14th Ed., p. 657.

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