

**TRIFILO MONTEBON, PETITIONER, VS. ATTY. CORAZON
TANGLAO-DACANAY, LEGAL COUNSEL AND/OR OFFICE OF THE
OMBUDSMAN, ROBERT LIM, AND EDWIN SALIMBANGON,
RESPONDENTS.**

G.R. NO. 136062. April 07, 2005

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Before us is a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, assailing the Memoranda[1] of the Office of the Ombudsman dated June 10, 1998 and August 11, 1998 in OMB-MIN-CRIM-91-0466, entitled "Trifilo Montebon vs. Placido Huesca, et. al."

Records show that Edwin Salimbangon concluded a Rattan Cutting Contract with the government through then Undersecretary Victor O. Ramos of the Department of Environment and Natural Resources (DENR). Thereafter, Salimbangon entered into a Rattan Supply Contract with Tradewinds Rattan and Handicraft, Inc. (TRHI) through its Vice-President Robert Lim. TRHI would supply Salimbangon rattan poles for a period of one year.

As Vice President of TRHI, Lim appointed Trifilo Montebon, herein petitioner, as its agent to process and follow-up pertinent papers for the supply and release of rattan poles shipment from the source to the port of Cebu.[2]

Sometime in May, 1990, the officers of the DENR, headed by Alfredo Madrid, filed with the Municipal Trial Court (MTC) of Tagum, Davao a complaint for possession of rattan poles without government permit, against petitioner, in violation of Section 68 of P.D. No. 705 (The Revised Forestry Code of the Philippines). During the preliminary investigation, the MTC issued an Order directing petitioner to take possession of the seized rattan poles for lack of space in the court for stock piling, but prohibiting him not to dispose the same until the case is resolved.[3]

The MTC found a prima facie case against petitioner. Hence, an Information for the offense charged was filed against him with the Regional Trial Court (RTC), Branch 1, Tagum, Davao, docketed as Criminal Case No. 7730.

Thereupon, petitioner filed a motion to quash the Information on the ground that he had paid all the forest charges and fees due the government.[4]

Meanwhile, on July 31, 1991, Lim cancelled petitioner's authority to represent TRHI and subsequently appointed Wilfredo Fortuna as its new agent. Fortuna was authorized to process and follow-up pertinent papers for the supply of its rattan poles to the Port of Cebu.

On August 2, 1991, the RTC issued an Order granting petitioner's motion to quash and dismissed the case.[5] The court found that petitioner had paid all the forest charges due. However, petitioner refused to turn over the rattan poles to TRHI.

On September 4, 1991, Fortuna applied for a Certificate of Minor Forest Products Origin (CMFPO) with the DENR over the unsplit rattan poles. Petitioner also applied for a CMFPO, claiming ownership of the unsplit rattan poles.

On September 24, 1991, Robert Lim personally applied for a CMFPO. Eventually, his application was approved by Alfredo Madrid, OIC of the Community Environment Natural Resources Officer (CENRO). Petitioner's application was denied because he had no more authority to represent TRHI.

When petitioner found that the poles were released to TRHI, he filed an affidavit-complaint with the Office of the Ombudsman-Mindanao (OMB-MIN) against Placido Huesca, DENR cartographer, and Roger Cantuba, DENR Forest Conservation Unit Division Chief, for violation of Section 3(e) and (h) of Republic Act 3019 (RA 3019)[6] and robbery, docketed as Case No. OMB-MIN 91-0466.[7] Subsequently, petitioner filed a supplemental complaint for the same charge against Robert Lim, Edwin Salimbangon and Alfredo Madrid. Petitioner claimed that all of them conspired in releasing the rattan poles to TRHI.

In their counter-affidavits, respondents alleged inter alia that petitioner has no right to claim possession of the rattan poles since he merely held them as an agent of TRHI; that his authority as agent had been revoked; and the issuance of the CMFPO by Alfredo Madrid, CENRO OIC, to Robert Lim, as officer of the TRHI, is proper since TRHI, the owner of the poles, paid all the required fees and charges.

On the basis of the Resolution[8] of the OMB-MIN, two Informations[9] were filed with the RTC, Branch 2, of Davao City against respondents Huesca and Cantuba of the DENR and Madrid of the CENRO; and Lim and Salimbangon for violation of Sections 3(e) and (h) of Republic Act 3019 (Anti-Graft and Corrupt Practices Act), docketed as Criminal Cases Nos. 37-597-96 & 37-598-96, respectively.

The RTC, upon respondents' motion, ordered the City Prosecutor to conduct a reinvestigation. On August 28, 1997, he issued a Resolution[10] recommending the dismissal of Criminal Case No. 35-597-96. As regards Criminal Case 37-598-96, he found probable cause against respondents Lim and Salimbangon.

On October 24, 1997[11], the OMB-MIN disapproved the Resolution of the City Prosecutor, prompting respondents Lim and Salimbangon to file a motion for reconsideration.[12] However, it was denied in an Order dated January 20, 1998.[13]

Undaunted, on February 23, 1998, respondents Lim and Salimbangon filed a notice of appeal with the Office of the Ombudsman in Manila, questioning the Memorandum of the OMB-MIN denying their motion to dismiss the charge against them.

In a Memorandum dated June 10, 1998,[14] the Office of the Ombudsman in Manila affirmed the appeal of Lim and Salimbangon and recommended the dismissal of the complaint and the withdrawal of the Informations against them, thus:

"x x x

It is humbly submitted that the requisites of RA 3019, Section 3 (e) is missing in this instance. It must be emphasized that the rattan poles, (which complainant said were illegally taken, stolen or spirited away illegally by TRHI), were only in the possession of complainant as an agent of TRHI, the true owners thereof, at least as far as the 59,670 unsplit poles are concerned. The poles were taken from TRHI's concession area. The DENR fees and charges were paid for by TRHI. The CMFPO issued was in favor of the owner of the rattan poles. Even complainant does not deny this. It cannot be said therefore, that the TRHI's officers Lim and Salimbangon caused undue injury or damage, or obtained unwarranted benefit, advantage or preference, for taking what was legally theirs.

PREMISES CONSIDERED, it is respectfully recommended that the complaint against herein respondents be DISMISSED and the informations (CCN 37597-96/CCN 37598-96) against them be WITHDRAWN."

Petitioner filed a motion for reconsideration but was denied by the Ombudsman on August 11, 1998.[15]

Hence, the present recourse. We quote petitioner's submission:

"Petitioner respectfully submits that the questioned Memoranda dated June 10 and August 11, 1998 should be nullified and/or set aside - on the grounds that in the rendition or issuance thereof, the respondent Legal Officer - Atty. Corazon Tanglao-Dacanay and/or the respondent Office of the Ombudsman-Manila, acted without jurisdiction and/or with grave abuse of discretion amounting to lack or in excess of jurisdiction; committed manifests reversible errors; acted in violation of the applicable Rules of the Ombudsman and exceeded the limits of preliminary investigation/reinvestigation; and disregarded the law and jurisprudence.[16]

For our resolution is the sole issue of whether the Ombudsman committed grave abuse of discretion amounting to excess or lack of jurisdiction when it ordered the dismissal of petitioner's complaint in OMB-MIN-CRIM 91-0466 and the withdrawal of the Informations in Criminal Case No. 37-598-96.

The petition must fail.

Under Section 15 of Republic Act No. 6770, otherwise known as "The Ombudsman Act of 1989", the Office of 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."[17] Relative to this, we have held that it is the consistent policy of this Court not to interfere with the Ombudsman's exercise of his investigatory powers.[18] In *Alba v. Nitorreda*,[19] we ruled:

". . . 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 rule is based not only upon constitutional considerations but also upon practical ones. If it were otherwise, the courts would be gravely hampered by innumerable petitions questioning the dismissal of investigatory proceedings before the Ombudsman, in much the same way that the courts would be swamped if they would be compelled to review the exercise of discretion on the part of our prosecutors each time they decide to file an information with the court or throw out a complaint.[20]

It is well-settled that in the absence of a clear case of abuse of discretion, courts will not interfere with the discretion of the Ombudsman, who, depending on his finding and considered evaluation of the case, either dismisses a complaint or proceeds with it.[21]

In the present case, we cannot sustain petitioner's contention that the Ombudsman acted with grave abuse of discretion when he approved the Memorandum of Atty. Corazon T. Dacanay, Legal Counsel of the Office of the Ombudsman, recommending the dismissal of the complaint leveled against respondents Lim and Salimbangon. A perusal of the said Memorandum does not show any taint of grave abuse of discretion on his part. Neither is there an indication that he acted in an arbitrary or despotic manner arising from passion or hostility when he approved Atty. Dacanay's Memorandum recommending the dismissal of the complaint against the two respondents.

Petitioner maintains that respondents Lim and Salimbangon should be held guilty as charged for they conspired with the public respondents, DENR personnel, in releasing the rattan poles to TRHI. This was made possible

when public respondent Madrid issued the CMFPO to Lim, an officer of TRHI. Obviously, petitioner wants us to review factual matters.

It is a fundamental aphorism in law that a review of facts and evidence is not the province of the extraordinary remedy of certiorari, which is extra ordinem - beyond the ambit of appeal.[22] Stated elsewhere, factual matters, now being raised by petitioner, cannot normally be inquired into by this Court in a certiorari proceeding. It cannot be tasked to go over the proofs presented by the parties and analyze, assess and weigh them again, in order to ascertain if the trial and the appellate courts were correct in according superior credit to this or that piece of evidence of one party or the other.[23]

WHEREFORE, the instant petition for certiorari is DISMISSED. Costs against petitioner.

SO ORDERED.

Panganiban, (Chairman), Corona, Carpio Morales, and Garcia, JJ., concur.

[1] Submitted by public respondent Legal Counsel Corazon Tanglao-Dacanay and approved by public respondent Ombudsman Aniano Desierto, Rollo at 27-34.

[2] Rollo at 71-72.

[3] Id., at 44.

[4] Rollo at 45.

[5] Id.

[6] Otherwise known as the "Anti-Graft and Corrupt Practices Act."

[7] Rollo at 79.

[8] Annex "L", Rollo at 97-100.

[9] Annexes "M" & "N", Id., at 101-104.

[10] Id., at 165-167.

[11] Id., at 169-173.

[12] Id., at 175-179.

[13] Id., at 180-181.

[14] Supra.

[15] Id., at 33-34.

[16] Id., at 18-21.

[17] Sec. 15(1), The Ombudsman Act of 1989 (RA 6770).

[18] Mamburao, Inc. vs. Office of the Ombudsman, 344 SCRA 817, citing Venus vs. Desierto, 298 SCRA 196; Velasco vs. Casaclang, 294 SCRA 394.

[19] 254 SCRA 753.

[20] Espinosa vs. Ombudsman, 343 SCRA 751, citing Cruz, Jr. v. People, G.R. No. 110436, June 27, 1994, 233 SCRA 439.

[21] Young v. Office of the Ombudsman, G.R. No. 110736, December 27, 1993, 228 SCRA 718.

[22] People vs. Court of Appeals, 308 SCRA 700 citing ComSavings Bank v. NLRC, 257 SCRA 307, June 14, 1996.

[23] People vs. Court of Appeals, 308 SCRA 700 citing Alicbusan vs. Court of Appeals, 269 SCRA 336, March 7, 1997.

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