

LUWALHATI R. ANTONINO, PETITIONER, VS. HON. OMBUDSMAN ANIANO A. DESIERTO, ROSALITA T. NUÑEZ, AUGUSTUS L. MOMONGAN, JUDGE ABEDNEGO O. ADRE, PEDRO G. NALANGAN, ASTERIA E. CRUZABRA...

G.R. No. 144492. December 18, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

Before this Court is a Petition for Certiorari[1] under Rule 65 of the Rules of Civil Procedure filed by petitioner, former Congresswoman Luwalhati R. Antonino (petitioner) of the First Congressional District of South Cotabato which includes General Santos City (city), assailing that portion of the Resolution[2] dated January 20, 1999 of the Office of the Ombudsman (Ombudsman) dismissing the case against private respondents, former city Mayor Rosalita T. Nuñez (Mayor Nuñez), Department of Environment and Natural Resources (DENR) Regional Executive Director for Region XI Augustus L. Momongan (Momongan), Regional Trial Court (RTC) Judge Abednego O. Adre (Judge Adre), former City Legal Officer Pedro G. Nalangan III (Nalangan), Register of Deeds Asteria E. Cruzabra (Cruzabra), Land Management Officer III of the Provincial Environment and Natural Resources Office (PENRO) of South Cotabato Julio C. Diaz (Diaz) and Regional Technical Director of the DENR for Region XI Agapito Borinaga (Borinaga) (respondents).

The facts, as narrated by the Ombudsman, are as follows:

Presidential Proclamation No. 168 was issued by then President Diosdado Macapagal on October 3, 1963 (Record, pp. 23-24). The pertinent provision of which states that:

do hereby withdraw from sale or settlement and reserve for recreational and health resort site purposes, under the administration of the municipality of General Santos, subject to private rights, if any there be, a certain parcel of land of the public domain situated in the said municipality and more particularly described as follows:

Mr-1160-D Municipal Reservation

The Municipal Government of General Santos Magsaysay Park

A parcel of land (as shown on plan Mr-1160-D) situated in the barrio of Dadiangas, Municipality of General Santos, province of Cotabato. x x x containing an area of 52,678 square meters.

On January 22, 1968, Republic Act No. 5412 (Record, pp. 25-26), known as the "Charter of the City of General Santos" was enacted creating the City of General Santos where it is provided that "The National Government hereby cedes to the City of General Santos the ownership and possession to all lands of the public domain within the city." Later, said Act was amended by Republic Act No. 6386 on August 16, 1971 (Record, pp. 27-28) wherein it read that "The disposition of all lands of the public domain within the city shall be in accordance with the provisions of Commonwealth Act Numbered One hundred forty-one, as amended:

Provided, That all incomes and receipts derived from such disposition shall accrue exclusively to the city as provided in this Act."

On the other hand, the property subject of Presidential Proclamation No. 168 was thereafter subdivided into three lots, namely: Lot Y-1 with an area of 18,695 square meters, Lot X containing 15,020 square meters and Lot Y-2 with 18,963 square meters, or a total of 52,678 square meters which is still equivalent to the original area.

However, on February 25, 1983, former President Ferdinand E. Marcos issued Proclamation No. 2273 amending Proclamation No. 168 (Record, pp. 29-31), which provides that:

do hereby exclude from the operation of Proclamation No. 168 dated October 3, 1963, which established the recreational and health resort reservation situated in the Municipality of General Santos, now General Santos City, Island of Mindanao, certain portions of the land embraced therein and declare the same open to disposition under the provisions of the Public Land Act, which parcels of land are more particularly described as follows:

Lot Y-1, MR-1160-D
(Magsaysay Park)

A PARCEL OF LAND (Lot Y-1, MR-1160-D, Magsaysay Park) situated in the Municipality of General Santos, now General Santos City, Island of Mindanao. x x x containing an area of EIGHTEEN THOUSAND SIX HUNDRED NINETY-FIVE (18,695) SQUARE METERS. x x x

Lot Y-2, MR-1160-D
(Magsaysay Park)

A PARCEL OF LAND (Lot Y-2, MR-1160-D, Magsaysay Park) situated in the Municipality of General Santos, now General Santos City, Island of Mindanao. x x x containing an area of EIGHTEEN THOUSAND NINE HUNDRED SIXTY-THREE (18,963) SQUARE METERS. x x x

Thus, leaving only Lot X as that covered by Presidential Proclamation No. 168 and is therefore reserved for recreational and health resort site purposes.

As a result of such exclusion, the Heirs of Cabalo Kusop applied for Free Patent with the District Land Office and consequently Certificates of Title were issued sometime in 1983. In 1984, two cases were filed by the local government of General Santos City against the said Heirs of Kusop for Declaration of Nullity of Titles and, on the other hand, the Heirs of Kusop filed a case against the said local government for Injunction and Damages. The said three cases were consolidated before the Regional Trial Court of General Santos City, Branch 22, presided by respondent Judge Abednego Adre.

On May 23, 1991, the Sangguniang Panlungsod of General Santos City passed Resolution No. 87, Series of 1991, entitled "Resolution Approving the Compromise Agreement to be entered into by and between the City Government of General Santos represented by the City Mayor and the Heirs of Cabalo Kusop, re: Magsaysay Park" (Record, pp. 1506-1507). Significant provisions of the said Compromise Agreement (Record, pp. 33-39) state that:

- The subject matter of this agreement are Lots Y-1, MR-1160-D and Y-2, MR-1160-D with combined area of THIRTY-SEVEN THOUSAND SIX HUNDRED FIFTY-EIGHT (37,658) SQUARE METERS, and from this the HEIRS AND BENEFICIARIES shall receive a total net area of TWENTY THOUSAND (20,000) SQUARE METERS and to the CITY shall pertain the remainder of SEVENTEEN THOUSAND SIX HUNDRED FIFTY-EIGHT (17,658) SQUARE METERS which if added to Lot X, MR-1160-D, previously donated to the CITY as stated in par. 7 of the WHEREAS clause, with an area of FIFTEEN THOUSAND AND TWENTY (15,020) SQUARE METERS (located in between Lots Y-1 and Y-2), the CITY shall retain a

total area of THIRTY TWO THOUSAND SIX HUNDRED SEVENTY-EIGHT (32,678) SQUARE METERS.

Said Compromise Agreement was signed by respondent City Mayor Rosalita Nuñez, assisted by respondent Pepito Nalangan III, and the heirs and beneficiaries of Cabalo Kusop.

As a consequence of the said Compromise Agreement, respondent Judge Abednego Adre issued an Order (Record, pp. 40-52), covering the three pending cases, on May 6, 1992, the dispositive portion of which states:

ACCORDINGLY, finding the foregoing "Compromise Agreement" in conformity with Article 6 in correlation with Article 1306 of the Civil Code of the Philippines, the same is hereby APPROVED and ADOPTED as judgment in these cases. The parties are enjoined to faithfully comply therewith.

A Writ of Execution was accordingly issued on November 28, 1995.

However, on July 22, 1997, acting upon the "Motion for Exclusion of an Extraneous Subject from the Coverage of the Judgment thereof" and the "Motion for Issuance of Clarificatory Order" submitted by the Heirs of Cabalo Kusop and jointly by CENR Officer and Regional Technical Director of DENR, respectively, respondent Judge issued another Order [assailed RTC Order] (Record, pp. 53-59) in the above-cited three cases, stating that:

ACCORDINGLY, based on all the foregoing facts, law and jurisprudence, the motion for exclusion of Lot X, MR-1160-D comprising an area of 15,020 SQUARE METERS is GRANTED. The movants heirs of Kusop are, however, enjoined to donate to the City of General Santos in keeping with the intent and spirit of the compromise agreement.

On July 23, 1997, the following private respondents applied for Miscellaneous Sales Patent over portions of Lot X, to be divided as follows (refer to affidavits, Record, pp. 60-75):

Applicants Area applied

1. Mad Guaybar - 999 sq. m.;
2. Oliver Guaybar - 999 sq. m.;
3. Jonathan Guaybar - 999 sq. m.;
4. Alex Guaybar - 999 sq. m.;
5. Jack Guiwan - 999 sq. m.;
6. Nicolas Ynot - 999 sq. m.;
7. Carlito Flaviano III - 999 sq. m.;

8. Jolito Poralan - 999 sq. m.;
9. Miguela Cabi-ao - 999 sq. m.;
10. Jose Rommel Saludar - 999 sq. m.;
11. Joel Teves - 999 sq. m.;
12. Rico Altizo - 999 sq. m.;
13. Johnny Medillo - 999 sq. m.;
14. Martin Saycon - 999 sq. m.;
15. Arsenio delos Reyes, Jr. - 510 sq. m.; and,
16. Jose Bomez - 524 sq. m.

The following day, July 24, 1997, public respondent Cesar Jonillo, as Deputy Land Management Inspector, recommended for the approval of the survey authority requested by the above-named private respondents for Lot X (Record, p. 418).

Within the same day, the Survey Authority was issued to private respondents by public respondent CENR Officer Renato Rivera (Record, p. 419). As a result of which, Lot X was subdivided into 16 lots (refer to subdivision plan, Record, p. 32).

On August 2, 1997, respondent City Mayor Rosalita T. Nuñez, assisted by respondent City Legal Officer Pedro Nalangan III issued 1st Indorsements (refer to application documents, Record, pp. 421-500) addressed to CENRO, DENR for portions of Lot X applied by private respondents and stated therein that "this office interposes no objection to whatever legal proceedings your office may pursue on application covering portions thereof after the Regional Trial Court, General Santos City, Branch 22 excluded Lot X, MR-1160-D from the coverage of the Compromise Judgment dated May 6, 1992 per said court's order dated July 22, 1997."

Thereupon, public respondents Cesar Jonillo and City Assessor Leonardo Dinopol, together with recommendation for approval from respondent Rivera, submitted an appraisal of lots X-1 to X-16 stating therein the appraisal amount of P100.00 per square meter and existing improvements of residential light house per lot with an appraised value ranging from P20,000.00 to P50,000.00 (refer to application papers, Record, pp. 421-500).

Subsequently, on August 4, 1997, respondent Cesar Jonillo prepared a letter-report addressed to the Regional Executive Director of DENR for each of the sixteen (16) applicants recommending for the private sale of the

subject lots to the above-named applicants-respondents, without public auction (refer to sample letter-report of recommendation in favor of Rico Altizo, Record, p. 77). Respondent CENR Officer, Renato Rivera, also issued recommendation letters for each of the sixteen applicants addressed to the PENR Officer for the approval of the appraisal of the subject lots and of the private sale (please refer to sample recommendation letter in favor of Rico Altiz[o], Record, p. 78).

A notice of sale was issued by respondent Julio Diaz also on the same date stating therein that on September 5, 1997 the subject lot/s will be sold (Record, p. 79).

On September 18, 1997, the following Certificates of Titles were issued by the Register of Deeds of General Santos City, respondent Asteria Cruzabra, which titles were also signed by respondent Augustus Momongan, as DENR Regional Executive Director, to wit:

Name of Owner OCT No. Lot No. Record
Page No.

1. Mad Guaybar P-6393-A X-1 80-82;
2. Oliver Guaybar P-6392 X-2 83-85;
3. Jonathan Guaybar P-6389-A X-3 86-88;
4. Alex Guaybar P-6393 X-4 89-91;
5. Jack Guiwan P-6399 X-5 92-94;
6. Nicolas Ynot P-6388-A X-6 95-97;
7. Carlito Flaviano III P-6389 X-7 98-100;
8. Jolito Poralan P-6391 X-8 101-103;
9. Miguela Cabi-ao P-6392-A X-9 104-106;
10. Jose Rommel Saludar P-6388 X-10 107-109;

11. Joel Teves P-6396 X-11 110-112;
12. Rico Altizo P-6395 X-12 113-115;
13. Johnny Medillo P-6390 X-13 116-117;
14. Martin Saycon P-6394-A X-14 118-120;
15. Arsenio delos Reyes P-6395-A X-15 121-123;
16. Jose Bomez P-6394 X-16 124-127.

Sometime on September 24 and 25, 1997, except for lots X-6, X-7, X-15 and X-16, the above-named registered owners sold their lots, through their attorney-in-fact, respondent Atty. Nilo Flaviano, to the AFP-Retirement and Separation Benefits System (AFP-RSBS) in the amount of Two Million Nine Hundred Ninety-Seven Thousand Pesos (P2,997,000.00) per 999 sq. m. lot (Record, pp. 127-150). Then, Transfer Certificate of Title Nos. T-81051 to 81062 were issued in the name of the vendee on September 25, 1997 (Record, pp. 151-173).

On the other hand, the registered owners of lot numbers X-6 and X-7 executed a Deed of Exchange with AFP-RSBS, represented by respondent Jose Ramiscal, Jr., consenting to the exchange of lots X-6 and X-7 with lots Y-1-A-1 and Y-1-A-2, respectively, the latter two lots being owned by AFP-RSBS (Record, pp. 175-178). While lots X-15 and X-16 were exchanged with one office unit or condo unit to be given or ceded to respondent Nilo Flaviano (Record, pp. 179-182).[3]

Based on the foregoing, petitioner filed a verified complaint-affidavit[4] before the Ombudsman against the respondents together with Cesar Jonillo (Jonillo), Renato Rivera (Rivera), Mad Guaybar, Oliver Guaybar, Jonathan Guaybar, Alex Guaybar, Jack Guiwan, Carlito Flaviano III, Nicolas Ynot, Jolito Poralan, Miguela Cabi-ao, Jose Rommel Saludar, Joel Teves, Rico Altizo, Johnny Medillo, Martin Saycon, Arsenio de los Reyes, and Jose Bomez (Mad Guaybar and his companions), Gen. Jose Ramiscal, Jr. (Gen. Ramiscal), Wilfredo Pabalan (Pabalan), and Atty. Nilo Flaviano (Atty. Flaviano) (indicted) for violation of Paragraphs (e), (g) and (j), Section 3 of Republic Act (R.A.) No. 3019,[5] as amended, and for malversation of public funds or property through falsification of public documents.

The Ombudsman's Ruling

In the assailed Resolution dated January 20, 1999, the Ombudsman held that Mayor Nuñez and Nalangan, among others, entered into the Compromise Agreement on behalf of the city and pursuant to the authority granted to them by the Sangguniang Panlungsod by virtue of Resolution No. 87; hence, it is not the sole responsibility of Mayor Nuñez and Nalangan but of the entire Sangguniang Panlungsod. Moreover, the Ombudsman opined that the validity of the Compromise Agreement had been settled when the Office of the Solicitor General (OSG) and the RTC found it to be in order. The Ombudsman also ruled that the Order of Judge Adre was made in accordance with the facts of the case, while Diaz, Borinaga, Momongan and Cruzabra were found to have regularly performed their official functions. Accordingly, the charges against the respondents were dismissed. Thus, the

case was disposed in this wise:

WHEREFORE, PREMISES CONSIDERED, this Office finds and so holds that the following crimes were committed and that respondents, whose names appear below, are probably guilty thereof:

- CESAR JONILLO - sixteen (16) counts of Falsification of public document to the sixteen (16) recommendation reports submitted;

- RENATO RIVERA - sixteen (16) counts of Falsification of public document relative to the sixteen (16) reports submitted, all dated August 4, 1997;

- MAD GUAYBAR, OLIVER GUAYBAR, JONATHAN GUAYBAR, ALEX GUAYBAR, JACK GUIWAN, CARLITO FLAVIANO III, NICOLAS YNOT, JOLITO PORALAN, MIGUELA CABI-AO, JOSE ROMMEL SALUDAR, JOEL TEVES, RICO ALTIZO, JOHNNY MEDILLO, MARTIN SAYCON, ARSENIO DE LOS REYES, and JOSE BOMEZ in conspiracy with public respondents CESAR JONILLO and RENATO RIVERA- one (1) count each for private respondents and sixteen (16) counts each for public respondents for violation of Section 3(e) of RA 3019;

- JOSE RAMISCAL, JR., WILFREDO PABALAN, NILO FLAVIANO - as conspirators for twelve (12) counts of falsification of public documents relative to the twelve (12) unilateral Deeds of Sale;

- MAD GUAYBAR, OLIVER GUAYBAR, JONATHAN GUAYBAR, ALEX GUAYBAR, JACK GUIWAN, JOLITO PORALAN, MIGUELA CABI-AO, JOSE ROMMEL SALUDAR, [J]JOEL TEVES, RICO ALTIZO, JOHNNY MEDILLO, MARTIN SAYSON - one (1) count each as conspirator in the falsification of public document relative to the corresponding unilateral Deed of Sale executed by their agent in their behalf;

- JOSE RAMISCAL, JR., WILFREDO PABALAN and NILO FLAVIANO - twelve (12) counts of violation of section 3(e) of RA 3019 for short-changing the government inn the correct amount of taxes due for the sale of Lot-X to AFP-RSBS; and

- MAD GUAYBAR, OLIVER GUAYBAR, JONATHAN GUAYBAR, ALEX GUAYBAR, JACK GUIWAN, JOLITO PORALAN, MIGUELA CABI-AO, JOSE ROMMEL SALUDAR, [J]JOEL TEVES, RICO ALTIZO, JOHNNY MEDILLO, MARTIN SAYSON - one (1) count each of violation of section 3(e) of RA 3019 as conspirator in short-changing the government in the payment of taxes for the sale of Lot-X to AFP-RSBS.

Let the herein attached Informations against aforementioned respondents be filed with the proper courts.

Charges against respondents ROSALITA NUÑEZ, AUGUSTUS MOMONGAN, ABEDNEGO ADRE, ASTERIA CRUZABRA, PEDRO NALANGAN III, JULIO DIAZ and AGAPITO BORINAGA are hereby DISMISSED, without prejudice to the filing of criminal cases against private respondents, for offenses committed not in conspiracy with the herein public respondents, by the proper parties-in-interest.

SO RESOLVED.[6]

On February 4, 2000, petitioner filed a Motion for Reconsideration which was, however, denied by the Ombudsman in his Order[7] dated April 26, 2000. The Ombudsman held that since the criminal Informations were already filed against the aforementioned indicted and the cases were already pending before the Sandiganbayan and the regular courts of General Santos City, the Ombudsman had lost jurisdiction over the said case.

The Sole Issue

Hence, this Petition, on the sole ground that:

THE OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR IN

EXCESS OF JURISDICTION IN THE EXERCISE OF HIS PROSECUTORY FUNCTIONS, BY DISMISSING THE CHARGES AGAINST THE RESPONDENTS DESPITE CLEAR AND CONVINCING EVIDENCE OF DIRECT PARTICIPATION AND INVOLVEMENT IN THE CONSPIRACY TO CHEAT AND DEFRAUD THE CITY GOVERNMENT OF GENERAL SANTOS CITY THROUGH THE ILLEGAL DISPOSITION OF LOT X OF THE MAGSAYSAY PARK IN VIOLATION OF LAW AND ITS CHARTER.[8]

Petitioner avers that the Ombudsman ignored substantial evidence pointing to the existence of a conspiracy among all the respondents and those indicted, which led to the illegal and fraudulent disposition of Lot X of the Magsaysay Park. To prove her claim of a grand conspiracy, petitioner outlines the individual participation, cooperation and involvement of each respondent, as follows:

- The assailed RTC Order issued by Judge Adre on July 22, 1997 was part of the grand scheme and was made the basis for the filing of the miscellaneous sales applications of Mad Guaybar and his companions. The same Order was likewise used by Mayor Nuñez and Nalangan as the reason for interposing no objection to the said applications. The assailed RTC Order was issued by Judge Adre almost five (5) years after his Judgment based on the Compromise Agreement had long become final; thus, it was issued with grave abuse of discretion and in gross ignorance of the law. Judge Adre, therefore, violated Section 3(e) of R.A. No. 3019.

- Mayor Nuñez and Nalangan knew or ought to have known, by reason of their respective offices and as administrators of the properties of the city, that Lot X of the Magsaysay Park is owned by the city and reserved as health and recreation site. Yet, Nalangan's Comment, filed before Judge Adre issued the assailed RTC Order, stated that per verification, there was no existing donation from the Heirs of Cabalo Kusop to the city. Likewise, in their 1[st] Indorsement dated August 2, 1997, instead of opposing the applications of Mad Guaybar and his companions, Mayor Nuñez and Nalangan endorsed the same and interposed no objection thereto. Said Indorsement was part of the grand conspiracy and was utilized as a front for the resale of the said property to AFP-RSBS, to the injury of the city. Petitioner submits that Mayor Nuñez and Nalangan also violated Section 3(e) of R.A. No. 3019.

- After Mayor Nuñez and Nalangan issued their 1[st] Indorsement on August 2, 1997 and after Jonillo submitted his falsified report on August 4, 1997, Diaz, on the same date, scheduled the sale of Lot X to Mad Guaybar and his companions on September 5, 1997. Thus, Diaz issued notices of sale of the subdivided lots of Lot X on September 5, 1997 without public auction and at the disadvantageous price recommended by Rivera. Therefore, Diaz, as a co-conspirator, should be similarly charged with Jonillo and Rivera for violation of Section 3(e) of R.A. No. 3019 and for falsification of public documents.

- Borinaga, conspiring with Rivera, filed on June 9, 1997 the Motion for Issuance of a Clarificatory Order before Judge Adre, which led to the issuance by the latter of the assailed RTC Order. Borinaga and Rivera likewise represented to the RTC that upon verification, they did not find in the records any deed of donation executed by the Heirs of Cabalo Kusop. Borinaga should be held liable as an active participant in a grand scheme to defraud the city.

- Momongan, by the nature of his office, knew that Lot X is not disposable and alienable and is, therefore, not a proper subject of a sales patent application. Despite such knowledge and based on the falsified reports of Jonillo and Rivera, Momongan allowed Lot X to be subdivided and sold to Mad Guaybar and his companions by approving their miscellaneous sales application and issuing the Original Certificates of Title (OCTs) covering the subdivided lots of Lot X. In sum, Momongan adopted as his own the false reports, and granted unwarranted benefit and advantage to Mad Guaybar and his companions, to the injury of the city.

- While the function of Cruzabra in the registration of documents and titles may be considered as ministerial, the circumstances under which the titles were issued in the names of Mad Guaybar and his companions and eventually, in the name of AFP-RSBS, indicate that Cruzabra was aware and was part of the grand conspiracy to defraud the city. Each of the sixteen (16) OCTs was transcribed and signed by Cruzabra on September 22, 1997. On the same date, Atty. Flaviano claimed and received the owners' copies of the OCTs; Mad Guaybar and his companions executed a Joint Special Power of Attorney (SPA) authorizing Atty. Flaviano to be their attorney-in-fact, for the purpose of selling their respective lots; and Cruzabra registered and annotated said SPA in their respective titles. On September 25, 1997, Atty. Flaviano registered with Cruzabra twelve (12) Deeds of Absolute Sale in favor of AFP-RSBS, after paying the Bureau of Internal Revenue (BIR) on the same day the capital gains tax and documentary stamp tax due thereon. On the same day, Cruzabra canceled the OCTs and issued, in lieu thereof, twelve (12) Transfer Certificates of Title (TCTs) in favor of AFP-RSBS. The remaining four (4) lots were transferred and registered in the name of AFP-RSBS on October 10, 1997 by virtue of deeds of exchange executed by the registered owners in favor of the former. Petitioner submits that Cruzabra could not have been unaware of the restrictions; instead, she allowed the transfer and registration of the said lots to AFP-RSBS so swiftly, that it could only be interpreted as part of the scheme to defraud the city.[9]

In sum, petitioner ascribes to the Ombudsman grave abuse of discretion in the exercise of his investigatory and prosecutory functions, by completely ignoring and disregarding the pieces of substantial evidence which clearly establish the existence of a common design among the respondents and those indicted in the fraudulent sale and disposition of Lot X of the Magsaysay Park.

On the other hand, respondents separately raise their respective defenses against petitioner's claims, as follows:

- The Ombudsman, through the Office of the Special Prosecutor (OSP), contends that, in effect, petitioner is asking this Court to review the pieces of evidence gathered by the Ombudsman during the preliminary investigation. This is not proper. In *Espinosa v. Office of the Ombudsman*[10] and *Young v. Office of the Ombudsman*,[11] this Court accorded highest respect for the factual findings of the Ombudsman, absent a clear case of grave abuse of discretion. The OSP claims that the Ombudsman did not commit grave abuse of discretion because the respondents, based on their counter-affidavits, have valid and legal justifications, sufficient for the Ombudsman to exculpate them from the charges.[12]

- Cruzabra avers that there is no showing that conspiracy exists between her and other respondents charged before the Ombudsman. Petitioner's allegations with respect to Cruzabra refer to recorded transactions which are legal acts. Such allegations did not discuss how the alleged conspiracy was committed; they are merely conjectures and bare allegations. Inasmuch as conspiracy cannot be presumed, and there is no convincing evidence to support such allegations, the Ombudsman did not commit grave abuse of discretion. Lastly, Cruzabra claims that the canceled OCTs do not contain any restriction to transfer the respective lots to AFP-RSBS. As such, Cruzabra submits that it would be most unfair if she would be made a part of the alleged conspiracy simply because she exercised her ministerial functions as Register of Deeds.[13]

- Momongan alleges, among others, that as Regional Executive Director of the DENR, he is duly authorized to sign patents and reconstituted patents. Since the standard procedure and processes were complied with, Momongan simply relied on his subordinates and on their good faith. He argues that he acted in accordance with law, department guidelines, rules and regulations, and that to require him to scrutinize every phase of a report of a subordinate is a very tall order.[14]

- Judge Adre manifests that in the Joint Resolution[15] of the Senate Committees on Accountability of Public Officers and Investigation (Blue Ribbon) and National Defense and Security, dated December 23, 1998, not one

of the respondents was recommended for prosecution in connection with the irregularity involving the Magsaysay Park. Judge Adre claims that he acted properly, and even sought the opinion of the OSG before the Compromise Agreement was approved. However, Judge Adre narrated that due to the vagaries of politics, the judgment lay dormant, as no motion for execution was filed by then Mayor Adelbert Antonino, husband of petitioner, after Mayor Nuñez lost in the elections. Subsequently, the writ was not issued as the Heirs of Cabalo Kusop did not execute any deed of donation in favor of the city. He declared that the RTC did not lose jurisdiction over the case when the Motions for Clarification and Exclusion were filed; thus, the issuance of the assailed RTC Order excluding Lot X and enjoining the Heirs of Cabalo Kusop from donating the same to the city in keeping with the intent and spirit of the compromise agreement, was proper.[16]

- Borinaga posits that the Ombudsman's factual findings need not be disturbed, as they are not attended by grave abuse of discretion. He maintains that he acted in accordance with law; that as the Regional Technical Director is not required to go to the premises of the land subject of miscellaneous applications, and he may rely on the data submitted by the CENRO and reviewed by the PENRO.[17] Moreover, Borinaga argues that the Motion for Reconsideration of petitioner assailing the Ombudsman's Resolution was filed out of time.[18] The Certification[19] dated October 1, 2003, issued by Severo A. Sotto, Records Officer IV of the Office of the Ombudsman, shows that petitioner was personally served with a copy of the assailed Resolution on February 24, 1999 by Jose Ruel Bermejo, Process Server, and she filed her Motion for Reconsideration only on February 4, 2000.

- Diaz opines that there is no substantial evidence to prove that he participated in a grand scheme to unlawfully dispose of the lots covered by Lot X. He vouches that when he issued the notice of sale, he did so on the basis of the requisite documents submitted to his office.[20]

- Mayor Nuñez and Nalangan contend that Mayor Nuñez did not violate the Charter of the City, because when she entered into the Compromise Agreement with the Heirs of Cabalo Kusop, she was authorized by the Sangguniang Panlungsod under Resolution No. 87, series of 1991, after almost one (1) year of committee and public hearings. The same was also referred to the OSG, which recommended its approval. When the Heirs of Cabalo Kusop filed a Motion for Exclusion of Lot X, Nalangan had no recourse but to tell the truth that, indeed, he found no deed of donation made in favor of the city. While they admit to have issued Indorsements, they made it clear that the DENR shall undertake only what is legally feasible. Mayor Nuñez and Nalangan asseverate that they had no intention of giving up the claim of the city over Lot X, as they even filed a case against Mad Guaybar and his companions.[21]

Our Ruling

The instant Petition lacks merit.

Section 27 of R.A. No. 6770 (The Ombudsman Act of 1989)[22] provides:

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.

Other than the statement of material dates wherein petitioner claimed that she received through counsel the assailed Resolution of the Ombudsman on January 21, 2000, she failed to establish that her Motion for Reconsideration was indeed filed on time, and thus, failed to refute the assertion of the respondents based on the aforementioned Certification that petitioner was personally served a copy of the assailed Resolution on February 24, 1999. There are a number of instances when rules of procedure are relaxed in the interest of justice. However, in this case, petitioner did not proffer any explanation at all for the late filing of the motion for reconsideration. After the respondents made such allegation, petitioner did not bother to respond and meet the issue head-on. We find no justification why the Ombudsman entertained the motion for reconsideration, when, at the time of the filing of the motion for reconsideration the assailed Resolution was already final.

Even only on the basis of this fatal procedural infirmity, the instant Petition ought to be dismissed. And on the substantive issue raised, the petition is likewise bereft of merit.

Under Sections 12 and 13, Article XI of the 1987 Constitution, and pursuant to R.A. No. 6770, the Ombudsman has the power to investigate and prosecute any act or omission of a public officer or employee when such act or omission appears to be illegal, unjust, improper or inefficient.[23] Well-settled is the rule that this Court will not ordinarily interfere with the Ombudsman's exercise of his investigatory and prosecutory powers without good and compelling reasons that indicate otherwise. 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. A contrary rule would encourage innumerable petitions seeking dismissal of investigatory proceedings conducted by the Ombudsman, which would grievously hamper the functions of the office and the courts, in much the same way that courts would be swamped by a deluge of cases if they have to review the exercise of discretion on the part of public prosecutors each time they decide to file an information or dismiss a complaint by a private complainant.[24]

Of course, this rule is not absolute. The aggrieved party may file a petition for certiorari under Rule 65 of the Rules of Court when the finding of the Ombudsman is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, as what the petitioner did in this case, consistent with our ruling in *Collantes v. Marcelo*,[25] where we laid down the following exceptions to the rule:

- When necessary to afford adequate protection to the constitutional rights of the accused;
- When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;
- When there is a prejudicial question that is sub judice;
- When the acts of the officer are without or in excess of authority;
- Where the prosecution is under an invalid law, ordinance or regulation;
- When double jeopardy is clearly apparent;
- Where the court has no jurisdiction over the offense;
- Where it is a case of persecution rather than prosecution;
- Where the charges are manifestly false and motivated by the lust for vengeance;
- When there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied.

Grave abuse of discretion exists where a power is exercised in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility so patent and gross as to amount to evasion of positive duty or virtual refusal to perform a duty enjoined by, or in contemplation of law.[26]

The alleged grave abuse of discretion imputed to the Ombudsman is found wanting in this case. Thus, this Court finds no reason to deviate from the general rule. We concur with the disquisition of GIO I Rubillar-Arao in dismissing the charges against respondents, as approved by Ombudsman Desierto, thus:

Hence, without ruling on the validity of the titles, this Office is constrained to limit its evaluation of the issue on the participation of each respondent in the titling of Lot X, whether the same would constitute a violation of RA 3019 and/or other illegal acts.

1. Respondent Abednego Adre - His participation extends only to his issuance of an Order excluding Lot-X from the coverage of the Compromise Agreement.

A review of the terms and conditions of the subject Compromise Agreement confirms the Order of the respondent that indeed Lot X was excluded. The Order of respondent judge was made in accordance with the facts of the case. It is even noteworthy that respondent judge assisted in preserving the claim of the government of General Santos City over Lot X by enjoining the donation of said property by the private respondents.

2. Respondents Nuñez and Nalangan - Said respondents' participation in the titling of Lot-X was when they issued or caused the issuance of Indorsements stating therein that "this office (Office of the Mayor) interposes no objection to whatever legal proceedings your (CENRO) office may pursue on the application covering portions thereof (Lot-X)."

The contents of the Indorsements, as quoted above, cannot be construed as a waiver on the part of General Santos City on its claim over Lot-X. On the contrary, it has given DENR the authority to take the necessary legal proceedings relative to the titling of the property. Moreover, it should be taken into account that DENR has the responsibility, authority and the power to grant alienable and disposable lands to deserving claimants.

Based on these circumstances, there is no evidence to prove that respondents Nuñez and Nalangan gave unwarranted benefit to the claimants by issuing said Indorsements. In fact, they protected the interest of the government over Lot-X by immediately filing a case for nullification of titles upon knowing of the issuances thereof.

x x x x

[5.] Public respondents Julio C. Diaz, Agapito Borinaga, Augustus L. Momongan, Asteria E. Cruzabra - Based on the evidences on record, these respondents were in the regular performance of their official functions. Their participation in the titling of Lot-X was due to the fact that the documents for titling were submitted to their respective offices as a matter of course, and there is nothing that they can do but to follow the established procedure upon finding that all the documents for titling were submitted.[27]

Indeed, while the Ombudsman's discretion in determining the existence of probable cause is not absolute, nonetheless, petitioner must prove that such discretion was gravely abused in order to warrant the reversal of the Ombudsman's findings by this Court. In this respect, petitioner fails.[28]

Moreover, the elements of the offense, essential for the conviction of an accused under Section 3(e), R. A. No. 3019, are as follows:

- (1) The accused is a public officer or a private person charged in conspiracy with the former;
- (2) The said public officer commits the prohibited acts during the performance of his or her official duties, or

in relation to his or her public functions;

(3) That he or she causes undue injury to any party, whether the government or a private party;

(4) Such undue injury is caused by giving unwarranted benefits, advantage or preference to such parties; and

(5) That the public officer has acted with manifest partiality, evident bad faith or gross inexcusable neglect.[29]

Thus, in order to be held guilty of violating Section 3(e), R. A. No. 3019, the act of the accused that caused undue injury must have been done with evident bad faith or with gross inexcusable negligence. Bad faith per se is not enough for one to be held liable under the law; bad faith must be evident. Bad faith does not simply connote bad moral judgment or negligence. There must be some dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent or ill will. It partakes of the nature of fraud. It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest, or ill will for ulterior purposes. On the other hand, gross negligence is characterized by the want of even slight care, acting or omitting to act in a willful or intentional manner displaying a conscious indifference to consequences as far as other persons may be affected.[30]

As found by the Ombudsman and based on the records, there is no showing of evident bad faith and/or gross negligence in the respective acts of the respondents. It must be stressed that it is good faith, not bad faith, which is presumed, as the chapter on Human Relations of the Civil Code directs every person, inter alia, to observe good faith, which springs from the fountain of good conscience.[31]

Finally, petitioner speaks of conspiracy among the respondents and those indicted. However, as found by the Ombudsman, such conspiracy alleged in the complaint was not supported by ample evidence. At best, the evidence adduced was not clear as to respondents' participation in the acts in question. *Actori incumbit onus probandi*- the burden of proof rests with the plaintiff or the prosecution. The inherent weakness of complainant's case is not a ground for the Ombudsman to conduct preliminary investigation.[32] For it is fundamental that conspiracy cannot be presumed. Conspiracy must be proved by direct evidence or by proof of the overt acts of the accused, before, during and after the commission of the crime charged indicative of a common design.[33] This, the petitioner sadly failed to establish.

All told, the Ombudsman did not act with grave abuse of discretion in dismissing the criminal complaint against respondents.

WHEREFORE, the petition is DISMISSED. No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.

[1] Rollo, pp. 106-140.

[2] Prepared by Graft Investigation Officer (GIO) I Joy C. Rubillar-Arao, reviewed by OIC-Director Corazon A. Arancon with the recommending approval of the Deputy Ombudsman for Mindanao Margarito P. Gervacio, Jr. and approved by respondent Ombudsman Aniano A. Desierto; id. at 143-175.

[3] Records, pp. 192-199.

[4] Id. at 1-18.

[5] Otherwise known as the Anti-Graft and Corrupt Practices Act, which pertinently provides, to wit:

SECTION 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x x

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

x x x x

(j) Knowingly approving or granting any license, permit, privilege or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege or advantage, or of a mere representative or dummy of one who is not so qualified or entitled.

[6] Supra note 2, at 173-174. (Emphasis supplied.)

[7] Id. at 75-76.

[8] Supra note 1, at 123.

[9] Petitioner's Memorandum dated September 15, 2003; rollo, pp. 602-640.

[10] 397 Phil. 829 (2000).

[11] G.R. No. 110736, December 27, 1993, 228 SCRA 718, 722.

[12] OSP's Memorandum dated August 18, 2003; rollo, pp. 541-565.

[13] Cruzabra's Memorandum dated August 18, 2003; id. at 589-596.

[14] Momongan's Memorandum dated September 18, 2003; id. at 692-709.

[15] Id. at 259-281.

[16] Judge Adre's Memorandum dated September 23, 2003; id. at 743-752.

[17] Borinaga's Memorandum dated October 2, 2003; id. at 754-794.

[18] Borinaga's Supplemental Memorandum dated October 28, 2003; id. at 893-898.

[19] Id. at 901-902.

[20] Diaz' Memorandum dated October 12, 2004; id. at 987-993.

[21] Memorandum of Mayor Nuñez and Nalangan dated October 6, 2003; id. at 871-888.

[22] As cited in *People v. Velez*, 445 Phil. 784, 798 (2003).

[23] Sections 12 and 13, Article XI of the 1987 Constitution provide:

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 results thereof.

Sec. 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient x x x.

Section 15 of RA 6770 states:

Sec. 15. Powers, Functions and Duties. — The Office of the Ombudsman shall have the following powers, functions and duties:

(1) 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. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of government, the investigation of such cases. (Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, G.R. No. 138142, September 19, 2007, 533 SCRA 571, 581.)

[24] Presidential Commission on Good Government v. Desierto, G.R. No. 140231, July 9, 2007, 527 SCRA 61, 70-71. (Citations omitted.)

[25] G.R. Nos. 167006-07, August 14, 2007, 530 SCRA 142, 151-152.

[26] Tetangco v. Ombudsman, G.R. No. 156427, January 20, 2006, 479 SCRA 249, 253.

[27] Supra note 2, at 164-168.

[28] Lim v. Desierto, G.R. No. 154992, February 13, 2008, 545 SCRA 66, 77.

[29] Baylon v. Office of the Ombudsman, 423 Phil. 705, 721 (2001), citing Garcia v. Office of the Ombudsman, 325 SCRA 667, 669-670 (2000) and Ingco v. Sandiganbayan, 338 Phil. 1061, 1072 (1997).

[30] Baylon v. Office of the Ombudsman, supra, at 724.

[31] Principio v. Barrientos, G.R. No. 167025, December 19, 2005, 478 SCRA 639, 649-650, citing Venus v. Hon. Desierto, 358 Phil. 675, 697 (1998).

[32] The Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, 415 Phil. 145, 150 (2001).

[33] People of the Philippines v. Huang Zhen Hua, G.R. No. 139301, September 29, 2004, 439 SCRA 350, 369.

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