

**EXECUTIVE LABOR ARBITER RICARDO N. OLAIREZ, PETITIONER,
VS. SANDIGANBAYAN (SECOND DIVISION), THE OFFICE OF THE
OMBUDSMAN AND ALICIA ABAD TENORIA, RESPONDENTS.**

G.R. No. 148030. March 10, 2003

Ponente: VITUG, J.

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VITUG, J.:

Before the Court is a petition for certiorari assailing the resolution, dated 30 April 2001, of the Sandiganbayan (Second Division) which has denied the motion for reinvestigation/reconsideration filed by herein petitioner Executive Labor Arbiter Ricardo N. Olarez.

It would be useful to trace the origin of the case. Alicia Abad Tenoria instituted an action for illegal dismissal before the National Labor Relations Commission (NLRC) against Combate Clinic, St. Peter Thelmo Drug, Mercury Drug Aparri Branch, Dr. Valeriano Combate and Mrs. Hedy Combate, hereinafter collectively referred to as Mercury Drug, et al. The case, docketed NLRC Case No. RAB II CN-11-00300-92, was initially assigned to Executive Labor Arbiter Adrian Pagalilawan. When Pagalilawan was appointed to the position of a Regional Trial Court judge, the case was assigned to Executive Labor Arbiter Olarez. In a decision, dated 10 August 1994, Olarez dismissed Tenoria's complaint for lack of merit. Tenoria appealed to the NLRC which, in a decision promulgated on 25 May 1995, vacated the order of dismissal and entered another judgment; its dispositive portion read:

"WHEREFORE, premises considered, the appealed decision of August 10, 1994 is hereby VACATED and SET ASIDE and another judgment entered as follows:

"1.

Declaring the dismissal of the complainant to be illegal and consequently, the respondents are directed to reinstate the complainant to her former position without loss of seniority right and with full backwages;

"2.

The money claims of the complainant are remanded to Labor Arbiter of origin for further appropriate proceedings with the instruction that the same should be acted upon with dispatch; and

"3.

Dismissing the claims for moral and exemplary damages for lack of merit."

Tenoria moved for the execution of the judgment. At the pre-execution hearing, it was manifested that a motion for reconsideration had been filed and still then pending with the NLRC and that, likewise, Mercury Drug, et al., were elevating the case to the Supreme Court. Further proceedings on the motion for execution were thereupon suspended.

In a resolution, dated 05 February 1996, the Supreme Court dismissed the petition, docketed G.R. No. 123326, of

Mercury Drug, et al., for the failure of petitioners to submit a certified true copy of the NLRC decision and on the further ground that the NLRC was yet to resolve the then pending motion for reconsideration. After the NLRC ultimately denied the motion for reconsideration, another case, docketed G.R. No. 124967, was filed before the Supreme Court. The new petition was denied by the Court in its resolution of 03 July 1996. A motion for its reconsideration was denied with finality in another resolution of 30 September 1996. In due time, a pre-execution conference was conducted; in an order, dated 15 May 1997, Executive Labor Arbiter Olarez ruled:

“WHEREFORE, premises considered, respondents are ordered to reinstate complainant immediately upon presentation of a medical certificate that she is physically fit to assume her former position and as regards her backwages there is nothing to execute because her earnings elsewhere which should be deducted from her backwages are computed to be much more than her supposed full backwages.”[2]

Feeling aggrieved, Tenoria filed a petition for preliminary mandatory injunction before the NLRC assailing the order. In a decision, promulgated on 24 February 1999, the NLRC granted the petition; it said:

“There is no doubt, however, that in our 25 May 1995 decision, petitioner’s entitlement to backwages, as well as, reinstatement is conditioned upon no uncertain terms, other than the punitive sanction provided by law to redress the wrong done against her as a legal consequence of her unauthorized dismissal from employment.

“Indubitably, the imposition of conditions sine qua non in the execution of our 25 May 1995 decision, by all barometrical standards, is absolutely an amendment thereto plain and simple. x x x.

“WHEREFORE, the instant petition is hereby GRANTED. Let the Writ of Execution in NLRC CASE NO. RAB-II-11-00300-92 issue in accordance with the disposition in our 25 May 1995 decision. For strict compliance by respondent Executive Labor Arbiter Ricardo N. Olarez.”[3]

Another pre-execution hearing was conducted; in an order, dated 07 March 2000, Executive Labor Arbiter Olarez held:

“WHEREFORE, premises considered, the respondents are hereby ordered to pay complainant the computed amount of P310,000.00 representing her full backwages and separation pay. If no voluntary payment is made within a reasonable period, let a writ of execution issue for the enforcement and collection of the amount of P310,000.00 award for the complainant.”[4]

Meanwhile, on 06 March 2000, Tenoria filed a case for violation of Republic Act No. 3019, docketed OMB-1-00-0436, against Executive Labor Arbiter Olarez, Dr. Valeriano Combate in his capacity as member of the Sangguniang Panlalawigan of Tuguegarao, Cagayan, and Hedy Combate in her capacity as member of the Sangguniang Bayan of Calamianigan, Cagayan. In a resolution, dated 29 November 2000, Graft Investigator I Joy N. Casihan-Dumlao, with the concurrence of Director Ernesto M. Nocos, recommended the dismissal of the case against the Combates and the filing, however, of an information against Executive Labor Arbiter Olarez for violation of Section 3(e) of R.A. No. 3019. Deputy Ombudsman for Luzon Jesus F. Guerrero recommended the approval of the resolution. On 15 December 2000, Ombudsman Aniano Desierto approved the resolution. On 27 December 2000, an Information was filed before the Sandiganbayan and there docketed Criminal Case No. 26418; it read:

“That on or about May 1997, or sometime prior or subsequent thereto, in the City of Tuguegarao, Cagayan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being an Executive Labor Arbiter of the Regional Arbitration Branch II of the National Labor Relations Commission (NLRC), committing the crime herein charged in relation to and taking advantage of his official functions, and through evident bad faith, manifest partiality and/or gross inexcusable negligence, did then and there, willfully, unlawfully and criminally fail to issue a Writ of Execution, anent a RAB II CN. 11-00300-92 entitled ‘ALICIA ABAD TENORIA and COMBATE CLINIC, ET AL.’ despite the finality of the 25 May

1995 Decision of the NLRC and after respondent was again ordered to issue said Writ by the NLRC in its Decision dated February 24, 1999, thus, causing undue injury to ALICIA ABAD TENORIA.”[5]

Executive Labor Arbiter Olairez moved for the reconsideration of the 29th November 2000 resolution but it was denied in an order, dated 16 March 2001, which was approved on 30 March 2001 by Ombudsman Desierto. Executive Labor Arbiter Olairez then filed a motion for reinvestigation or reconsideration before the Sandiganbayan. In a resolution, dated 30 April 2001 and promulgated on 03 May 2001, the motion was denied for lack of merit.

On 11 July 2001, the Court granted petitioner’s motion to consolidate the case with G.R. No. 142889 (Executive Labor Arbiter Ricardo N. Olairez vs. Ombudsman Aniano Desierto, et al). In a resolution, dated 24 September 2001, the Court decided to grant a temporary restraining order enjoining the Sandiganbayan (Second Division) from further hearing Criminal Case No. 26418 upon petitioner’s filing of a five thousand-peso bond. Upon petitioner’s compliance, a temporary restraining order was issued on 01 October 2001. On even date, the Court resolved to deconsolidate the case from G.R. No. 142889 in view of the promulgation, on 21 September 2001, of a decision thereon.

In the instant petition, Labor Arbiter Olairez claims that Article 254 of the Labor Code is a proscription against the filing of criminal cases against labor arbiters in matters involving or growing out of labor disputes. This contention has no legal basis. The provision of the law invoked merely states that no “temporary or permanent injunction or restraining order in any case involving or growing out of labor disputes shall be issued by any court or other entity, except as otherwise provided in Articles 218 and 264 of this Code.” Clearly, the complaint filed by Tenoria against Olairez before the Office of the Ombudsman is not in the nature of an injunction contemplated under Article 254 of the Labor Code. The ruling in *Deltaventures Resources, Inc., vs. Cabato*,[6] cited by petitioner, refers to an instance where a Regional Trial Court, being a co-equal body, may not enjoin the execution of a decision of the NLRC. The case of *Judge Dolalas vs. Office of the Ombudsman*,[7] upon the other hand, deals with an administrative case against a judge filed with the Office of the Ombudsman in disregard of the Constitutional-mandate that the Supreme Court shall have exclusive administrative supervision over all courts and the personnel thereof.[8] Neither can Tenoria’s complaint filed before the Ombudsman be considered as an act of forum shopping. The complaint with the Ombudsman is confined to an alleged act of malfeasance, misfeasance or nonfeasance committed by Olairez, which is well within its authority under the Ombudsman Act,[9] and it would not necessarily affect in any material way the outcome of the labor action pending before him.

The other issues raised in the petition touch on the question of whether or not there appears to be a probable cause against respondent Olairez. Almost invariably, the Court has respected the assessment of the Ombudsman on the determination of the existence or absence of probable cause.[10] It is basically within his sound judgment to evaluate whether, given the facts and circumstances before him, a criminal case should or should not be filed.[11] Thus, it has been consistently held that it is not for this Court to review the Ombudsman’s paramount discretion in prosecuting or dismissing a complaint filed before his office.[12] In *Ocampo, IV vs. Ombudsman*,[13] the Court has ratiocinated:

“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 could 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]

There is, however, one important exception to the above rule, and it would be when grave abuse of discretion on the part of the Ombudsman in either prosecuting or dismissing a case before it is evident. In this event, the act of the Ombudsman can justifiably be assailed.

The Information charged Executive Labor Arbiter Olarez for having failed “to issue a Writ of Execution, anent a RAB II CN. 11-00300-92 x x x despite the finality of the 25 May 1995 Decision of the NLRC and after respondent was again ordered to issue said writ by the NLRC in its decision dated February 24, 1999 x x x”[15] Culled from the records, no writ of execution was issued after the promulgation of the 25 May 1995 decision, despite the motion by Tenoria, because of a pending motion for reconsideration before the NLRC and, later, because of the elevation of the case before this Court. On 30 September 1996, this Court denied with finality the motion for reconsideration filed by Mercury Drug, et al. On 15 May 1997, acting on a motion for reconsideration, Executive Labor Arbiter Olarez issued an order directing Mercury Drug, et al., to reinstate complainant upon presentation of a medical certificate to show Tenoria’s fitness to assume her former position. Relative to the matter of back salaries, the order decreed that there was nothing to execute because her earnings elsewhere, deductible from her back salaries, were computed to be much more than what would have been her full back salaries. The order became the subject of a petition for preliminary mandatory injunction filed by Tenoria before the NLRC which, in its decision of 24 February 1999, ordered Executive Labor Arbiter Olarez to issue a writ of execution in accordance with the disposition of the 25th May 1995 decision. Accordingly, another pre-execution hearing was called. It might be noted that the pre-execution hearing was necessary because, in its 25th May 1995 decision, the NLRC remanded the money claims of the complainant to the Executive Labor Arbiter for appropriate proceedings. Finally, on 07 March 2000, a day after Tenoria’s complaint before the Ombudsman and prior to the receipt by Olarez of an order directing him to file his counter-affidavit,[16] as well as long before the filing of the assailed Information before the Sandiganbayan, Olarez had already issued an order directing Mercury Drug, et al., to pay Tenoria the amount of P310,000.00 representing her full back salaries and separation pay. Section 3(e) of R.A. No. 3019, under which petitioner was charged, would require that the public officer should have caused undue injury to any party, or should have given 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.” There might have been an undue delay in the execution of the NLRC decision but there was no showing that he acted with manifest partiality, in bad faith, with malicious intent, or with gross inexcusable negligence; if at all, it was poor judgment on the part of respondent.

It is neither right nor just to unnecessarily put to anxiety and anguish a person by an indictment for a crime that, on its face, cannot stand. No useful purpose but only harm and undue concern can be achieved from an unwarranted criminal prosecution.

WHEREFORE, the petition is GIVEN DUE COURSE. The Resolution of the Office of the Ombudsman in OMB-1-00-0436, approved by Ombudsman Aniano A. Desierto on 15 December 2000, is SET ASIDE. The Sandiganbayan (Second Division) is directed to DISMISS the Information against petitioner Executive Labor Arbiter Ricardo N. Olarez in Criminal Case No. 26418. No costs.

SO ORDERED.

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

[1] Rollo, pp. 339-340.

- [2] Rollo, p. 355.
- [3] Rollo, p. 358.
- [4] Rollo, p. 137.
- [5] Rollo, pp. 69-70.
- [6] G.R. No. 118216, 09 March 2002, 237 SCRA 521.
- [7] G.R. No. 118808, 24 December 1996, 265 SCRA 819.
- [8] Section 6, Article VIII, 1987 Constitution.
- [9] See *Concerned Officials of the Metropolitan Waterworks and Sewerage System (MWSS) vs. Vasquez*, G.R. No. 109113, 25 January 1995, 240 SCRA 502.
- [10] *Raro vs. Sandiganbayan*, G.R. No. 108431, 14 July 2000, 335 SCRA 581.
- [11] *Presidential Commission on Good Government vs. Desierto*, G.R. No. 140358, 08 December 2000, 347 SCRA 561.
- [12] *Blanco vs. Sandiganbayan*, G.R. Nos. 136757-58, 27 November 2000, 346 SCRA 108.
- [13] G.R. Nos. 103446-47, 30 August 1993, 225 SCRA 725.
- [14] Page 730.
- [15] Rollo, pp. 70-71.
- [16] The order was received by petitioner on 05 April 2000; Rollo, p. 149.

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