

SUSAN MENDOZA-ARCE, PETITIONER, VS. HONORABLE OFFICE OF THE OMBUDSMAN (VISAYAS), PRIMO C. MIRO, DEPUTY OMBUDSMAN, REGIONAL TRIAL COURT ROXAS CITY, EXECUTIVE JUDGE, HONORABLE SAL...

G.R. No. 149148. April 05, 2002

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for certiorari to annul the resolution, dated April 20, 2001, of the Office of the Ombudsman (Visayas), finding a prima facie case for violation of §3(e) of R.A. No. 3019 (Anti-Graft and Corrupt Practices Act) and Art. 171 of the Revised Penal Code against petitioner Susan Mendoza-Arce, and the order, dated June 29, 2001, denying her motion for reconsideration.

The facts are as follows:

Respondent Santiago B. Villaruz is one of the oppositors in Special Proceeding Case No. V-6433, entitled “In the Matter of the Petition to Approve the Will of Remedios Bermejo-Villaruz, deceased, v. Nicolas P. Villaruz.”[1] The case, originally assigned to the Regional Trial Court (RTC), Branch 15, Roxas City, of which Judge Roger B. Patricio was presiding judge, was later re-assigned to Branch 19 of the same court, presided over by Judge (now Justice of the Court of Appeals) Sergio Pestaño.[2]

Respondent Santiago B. Villaruz was originally the administrator of the estate of his mother Remedios Bermejo Villaruz. However, in an order issued by the trial court on June 10, 1998, he was removed as such for patent neglect of his legal duties and failure to comply with the court orders. In his place, respondent’s eldest brother, Nicolas B. Villaruz, Jr., was appointed regular administrator, “upon filing and approval by this Court of an Administrator’s Bond in the amount of fifty thousand pesos (P50,000.00).”[3]

In a motion, dated July 1, 1998, Nicolas filed a motion for the approval of his bond, furnished by the Philippine Surety & Insurance, Inc., in the amount of P50,000.00. Santiago and his brother Jose Ma. Villaruz opposed Nicolas’ motion and prayed that Jose Maria be instead appointed regular administrator.[4] Attached to their opposition was a certification, dated August 31, 1988, executed by their mother Remedios before she passed away, authorizing Santiago to take possession of and/or to manage her nipa lands, which were then in his care, for a period of 20 years or during her lifetime, whichever was longer. Remedios Bermejo-Villaruz also gave Santiago the option of leasing the properties for P120,000.00 a year plus land taxes.[5] The oppositors likewise submitted an agreement, dated February 6, 1993, executed by the three children of Remedios Bermejo-Villaruz, in which they agreed to honor the lease until August 23, 2008.[6]

In an order, dated September 22, 1998, Judge Patricio denied the oppositors’ opposition, while recognizing the validity of the certification executed by Remedios Bermejo-Villaruz and the agreement of the heirs, and stated that the administration of the new administrator was subject to them. No mention of the agreement was, however,

made in the dispositive portion of the order, which simply read:

WHEREFORE, premises considered, for lack of merit, oppositors' Opposition and Motion dated July 15, 1998 is denied, while action on petitioner's Motion to Approve Administrator's Bond dated July 1, 1998 is held in abeyance until after petitioner submits to this Court, within ten (10) days from receipt of this order, an updated certification from the Supreme Court to the effect that the Philippine Phoenix Surety & Insurance, Inc. has no pending obligation and/ or liability to the government insofar as confiscated bonds in civil and criminal cases are concerned.[7]

On October 12, 1998, Judge Sergio Pestaño, to whom the case was in the meantime reassigned, approved the administrator's bond of respondent Nicolas B. Villaruz, Jr. in an order which stated:

It appearing from the Certification issued by the Supreme Court that Philippine Phoenix Surety and Insurance, Inc. has no pending obligation and/ or liabilities to the government insofar as confiscated bonds in civil and criminal cases are concerned, the Administrator's bond filed by petitioner Nicolas B. Villaruz, is approved.

Send copy of this Order to petitioner through his counsel, to the Clerk of Court of this court, and to the oppositors through their counsel.[8]

After receiving a copy of Judge Pestaño's order, respondent Susan Mendoza-Arce, Clerk of Court VI of the Regional Trial Court of Roxas City, prepared a Letter of Administration (LOA) which read:

KNOW ALL MEN BY THESE PRESENTS:

That by order of this Court dated October 12, 1998, issued by Honorable Sergio Pestaño, Judge of the Regional Trial Court, Branch 19, Roxas City, Nicolas B. Villaruz, Jr. has been appointed Administrator of the estate of Remedios Bermejo-Villaruz, deceased, with full authority to take possession of all property/ies of said deceased in any province or provinces in which it may be situated and to perform all other acts necessary for the preservation of said property, he having filed a bond satisfactory to the Court. Said Administrator shall within three months from the date of this appointment return to the Court a true inventory and appraisal of the real and personal estate of the deceased which have come into his possession or knowledge and shall render a true and just account of his administration to the Court within one year and at any other time when required by the Court.

IN WITNESS WHEREOF, I sign and seal these presents in Roxas City, Philippines, this 16th day of October 1998.

(sgd.) Susan Mendoza-Arce
(t)SUSAN MENDOZA-ARCE

The LOA was based on the form prescribed in the Manual for Clerks of Court.[9] Accordingly, on December 7, 1998, administrator Nicolas B. Villaruz, Jr., accompanied by three armed security guards and respondent's Deputy Sheriff Charles Aguilung, took possession of the entire estate of the decedent, including the nipa lands which had been leased to respondent Santiago B. Villaruz.[10]

This gave rise to the present action. In a letter-complaint to the Ombudsman, dated March 25, 1999, respondent Santiago B. Villaruz alleged that petitioner committed two crimes in issuing the LOA, to wit:

- Falsification by a public officer under Article 171, par. 3 of the Revised Penal Code, by "attributing to persons who have participated in an act or proceeding statements other than those in fact made by them."
- Corrupt practice in violation of §3(e) of the Anti-Graft and Corrupt Practices Act (R.A. No. 3019) by "causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefit, advantage or preference in the discharge of his official administrative or judicial functions through manifest

partiality, evident bad faith or gross inexcusable negligence.”[11]

Attached to his letter-complaint to the Ombudsman were affidavits executed by respondent Santiago B. Villaruz and his employees, namely, Teresita B. Bechayda, Ramon Benliro, Jr., Garry B. Bonales, Romeo S. Bolante, and Sulpico B. Blanco.[12] In his affidavit, respondent accused petitioner of acting “with manifest partiality, evident bad faith and gross inexcusable negligence” by falsely attributing to Judge Pestaño the appointment of Nicolas B. Villaruz as new administrator and investing him with “full authority to take possession of all property/ies” of the decedent, because the fact was that it was Judge Patricio who had appointed Nicolas administrator of the estate subject to the terms and conditions of the lease agreement in favor of respondent Santiago B. Villaruz. Respondent claimed that he had been deprived of income in the amount of P33,000.00 every week, as well as of the bancas and boats used in his business, as a result of the issuance of the order in question.[13]

In her report, dated May 13, 1999, Graft Investigation Officer Estrela Alma A. Singco stated that “the allegations in the complaint warrant further investigation” and recommended that petitioner be ordered to file her counter-affidavit.[14]

In her counter-affidavit, dated June 23, 1999, petitioner admitted issuing the LOA in favor of Nicolas B. Villaruz, Jr. She claimed, however, that she acted in compliance with the order of Presiding Judge Sergio Pestaño and that, in preparing the LOA, she merely adopted the legal form prescribed in the Manual for Clerks of Court, which had been approved by this Court. She said she issued the LOA “in line [with] my official functions which [are] ministerial in nature and devoid of any bad faith and with manifest partiality.”[15]

In a reply-affidavit, dated June 29, 1999, respondent Santiago B. Villaruz reiterated the arguments raised in his letter-complaint and asserted that legal forms are mere guidelines in the preparation of legal documents and that respondent usurped the functions of the branch clerk of court when she issued the LOA.[16]

In a resolution, dated April 20, 2001, Ricardo A. Rebolledo, Graft Investigation Officer II, found probable cause against petitioner. Based on the affidavits and counter-affidavits submitted by the parties, he found petitioner guilty of the charge by making it appear that it was Judge Pestaño, instead of Judge Patricio, who had appointed Nicolas B. Villaruz as administrator, without regard to the lease agreement in favor of respondent Santiago B. Villaruz. The Graft Investigation Officer found that although petitioner’s duties were ministerial, she should have read the order recognizing the lease. The resolution concluded,

All things considered, respondent [now petitioner Susan Mendoza-Arce] in the discharge of her official administrative or judicial functions, through manifest partiality, evident bad faith, or gross inexcusable negligence caused undue injury to complainant and gave unwarranted benefit, advantage or preference to Administrator Nicolas B. Villaruz, Jr. who has been the one reaping the fruits and products of the said 120 hectares of nipa lands the fruits and products of which lawfully and rightfully belong to complainant as lessee.

WHEREFORE, premises considered, this Office finds a prima facie case against respondent ATTY. SUSAN MENDOZA-ARCE for violation of Section 3(e) of Republic Act 3019 otherwise known as the Anti-Graft & Corrupt Practices Act, and for the crime of Falsification of Official Document under paragraph 3, Article 171 of the Revised Penal Code. Let the corresponding Informations be filed before the proper court.[17]

Petitioner moved for a reconsideration, maintaining that her official duties as a clerk of court were ministerial in nature and that she merely tried to comply with the dispositive portion of orders and decisions of the trial court. She pointed out that neither the order, dated June 10, 1998, nor the order, dated September 22, 1998, issued by Judge Patricio mentioned the lease of nipa lands and that it was only in the text of the order, dated September 22, 1998, that said lease was referred to. In discharging her official duties, she argued, she could not be guilty of manifest partiality, evident bad faith, or gross inexcusable negligence, as asserted by complainant.[18]

In an order, dated June 29, 2001, the Graft Investigation Officer found “no new matters or issues raised therein which would justify the reversal or modification of our earlier findings,” and held that in any event “the grounds relied by respondent are evidentiary matters which could well be ventilated before the court of justice.” Hence, this petition.

We first dispose of a procedural issue raised by respondent Santiago B. Villaruz. In his Comment, dated October 12, 2001, respondent invokes Rule 65, §4 of the 1997 Rules of Civil Procedure and contends that the petition for certiorari in this case should have been filed in the Court of Appeals. This provision states in pertinent parts:

SEC. 4. When and where petition filed.- The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days.

The contention has no merit. In *Tirol, Jr. v. del Rosario*,^[19] we held that although as a consequence of the decision in *Fabian v. Desierto*^[20] appeals from the orders, directives, or decisions of the Ombudsman in administrative cases are now cognizable by the Court of Appeals, nevertheless in cases in which it is alleged that the Ombudsman has acted with grave abuse of discretion amounting to lack or excess of jurisdiction, a special civil action of certiorari under Rule 65 may be filed in this Court to set aside the Ombudsman’s order or resolution. In *Kuizon v. Desierto*,^[21] we again held that this Court has jurisdiction over petitions for certiorari questioning resolutions or orders of the Office of the Ombudsman in criminal cases.

Coming now to the merits, we find the petition meritorious.

To begin with, in *Posadas v. Ombudsman*,^[22] we held: “The rule, of course, is that a criminal prosecution cannot be enjoined. But as has been held, infinitely more important than conventional adherence to general rules of criminal procedure is respect for the citizen’s right to be free not only from arbitrary arrest and punishment but also from unwarranted and vexatious prosecution.” In that case, the Ombudsman ordered the prosecution of certain officials of the University of the Philippines in Diliman, Quezon City for preventing the National Bureau of Investigation from arresting without warrants student-suspects in the killing of a fraternity member. The question was whether there was probable cause for violation of P.D. No. 1829, which makes it unlawful for anyone to obstruct the apprehension and prosecution of criminal offenders. The Court found none and enjoined the Ombudsman and his agents from prosecuting the U.P. officials. The attempted arrest was declared illegal and petitioners to be simply protecting the rights of the students.

Indeed, while this Court’s policy is one of non-interference in the conduct of preliminary investigations, leaving the investigating officers with a latitude of discretion in the determination of probable cause,^[23] nonetheless exceptions to the general rule have been recognized, to wit:

- 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 which 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.[24]

In this case, we hold that the Office of the Ombudsman (Visayas) acted without or in excess of its authority when it ordered the filing of informations against petitioner for violation of R.A. No. 3019, §3(e) and the Revised Penal Code, Art. 171, par. 3, despite the absence of probable cause, defined as such ground as engenders a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, warranting the filing of the case in court.[25]

First. Petitioner Arce allegedly violated §3 (e) of Republic Act No. 3019 by including the phrase “with full authority to take possession of all property/ies of said deceased in any province or provinces in which it may be situated . . .” in the LOA she prepared in Special Proceeding Case No. V-6433. This provision states:

SEC. 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:

(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.

The elements of the offense are:

- That the accused are public officers or private persons charged in conspiracy with them;
- That said public officers committed the prohibited acts during the performance of their official duties or in relation to their public positions;
- That they caused undue injury to any party, whether the Government or a private party;
- That such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and
- That the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence.[26]

These elements must all be proven.[27] In this case, there is no basis for the finding that in issuing the LOA in question petitioner acted with “partiality,” or bias which excites a disposition to see and report matters as they are wished for rather than as they are, with “bad faith,” which connotes not only bad judgment or negligence but also a dishonest purpose or conscious wrongdoing, a breach of duty amounting to fraud, nor with “gross negligence,” which is negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to

consequences as far as other persons are concerned.[28]

The Manual for Clerks of Court describes the clerk of court as “an officer of the Court, a public officer, and an ‘officer of the law,’ [although] the position is not that of a judicial officer, nor is it synonymous with the Court. . . . The office is essentially a ministerial one.”[29] Petitioner performed a ministerial duty in preparing the letter of administration based on the dispositive portions of the orders dated September 22, 1998 and October 12, 1998. She merely copied substantially the form for letters of administration prescribed in the Manual for Clerks of Courts. The LOA may not be accurate for lack of reference to the lease agreement in favor of respondent Santiago B. Villaruz, but it cannot be said with certainty that she acted either with gross negligence or from some corrupt motive. The fact is that, instead of employing her own words, she used phrases in the Manual prescribed by this Court.

Second. The Office of the Ombudsman (Visayas) found a prima facie case for falsification under Article 171, par. 3 of the Revised Penal Code against petitioner because she stated in the letter of administration that Nicolas B. Villaruz, Jr. had been appointed administrator by Judge Sergio Pestaño when what the latter did was to approve the administrator’s bond.

We disagree with the Ombudsman’s findings. Art. 171, par. 3 of the Revised Penal Code provides:

Falsification by public officer, employee, or notary or ecclesiastical minister. — The penalty of prision mayor and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

. . . .

3. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them.

Criminal intent must be shown in felonies committed by means of dolo, such as falsification.[30] In this case, there is no reasonable ground to believe that the requisite criminal intent or mens rea was present. Petitioner prepared the letter of administration on the basis of the order of Judge Pestaño, dated October 12, 1998, approving the administrator’s bond filed by Nicolas B. Villaruz, Jr. By the approval of his bond, Nicolas B. Villaruz, Jr. qualified as administrator so that in a sense, therefore, the statement in the letter of administration “[t]hat by order of this Court dated October 12, 1998, issued by Honorable Sergio Pestaño, Judge of the Regional Trial Court, Branch 19, Roxas City, Nicolas B. Villaruz, Jr. has been appointed Administrator of the estate of Remedios Bermejo-Villaruz, deceased” is correct. There was nothing willful or felonious in petitioner’s act warranting her prosecution for falsification.

WHEREFORE, the petition is GRANTED and the resolution dated April 20, 2001, of the Graft Investigation Officer, as approved by the Office of the Ombudsman, and his order, dated June 29, 2001, are hereby SET ASIDE and the complaint of respondent Santiago B. Villaruz against petitioner Susan Mendoza-Arce for violation of R.A. No. 3019, §3(e) and for falsification committed by a public officer under Art. 171 of the Revised Penal Code is DISMISSED.

SO ORDERED.

Bellosillo, (Chairman), and De Leon, Jr., JJ., concur.

Quisumbing, J., no part. Close relations to counsel of a party.

[1] Order dated September 22, 2002; Rollo, pp. 38-40.

- [2] Orders dated June 10, 1998, September 22, 1998, and October 12, 1998; id., pp. 35-41.
- [3] Order dated June 10, 1998; id., pp. 35-37.
- [4] Order dated September 22, 1998; id., pp. 38-40.
- [5] Certification of Remedios B. Villaruz dated August 23, 1988; Records, p. 17.
- [6] Agreement of Nicolas B. Villaruz, Jr., Jose Ma. B. Villaruz, and Santiago B. Villaruz dated February 6, 1993; Records, p. 18.
- [7] Rollo, pp. 38-40.
- [8] Id., p. 41.
- [9] Rollo, p. 42; The Manual for Clerks of Court, p. 612 (1991) prescribed the form for Letters of Administration as follows:
- Know All Men By These Presents:
- That by order of this Court dated _____, 19__, issued by Hon. _____, Judge of the _____ Court, Branch _____ has been appointed Administrator of the estate of _____, deceased, with full authority to take possession of all property of said deceased in any province or provinces in which it may be situated and to perform all other acts necessary for the preservation of said property, he/ she having filed a bond satisfactory to the Court. Said Administrator shall within three months from the date of this appointment return to the Court a true inventory and appraisal of the real and personal estate of the deceased which have come into his possession or knowledge, and shall render a true and just account of his administration to the Court within one year and at any other time when required by the Court.
- IN WITNESS WHEREOF, I sign and seal these presents in _____, Philippines, this _____ day of _____, 19__.
- [10] Affidavit of Santiago B. Villaruz dated March 25, 1999; Records, pp. 3-8.
- [11] Letter-complaint dated March 25, 1999; Rollo, pp. 16-17.
- [12] Records, pp. 23-27.
- [13] Affidavit of Santiago B. Villaruz dated March 25, 1999; Records, pp. 3-8.
- [14] Records, pp. 46-47.
- [15] Id., pp. 50-51.
- [16] Id., pp. 59-66.
- [17] Rollo, pp. 21-28 (emphasis in the original).
- [18] Id., pp. 29-33.

[19] 317 SCRA 779 (1999).

[20] 295 SCRA 470 (1998).

- [21] G.R. Nos. 140619-24, March 9, 2001.

[22] 341 SCRA 388 (2000).

[23] Sebastian, Sr. v. Garchitorena, 343 SCRA 463 (2000); Camanag v. Guerrero, 268 SCRA 473 (1997); Fernando v. Sandiganbayan, 212 SCRA 680 (1992).

[24] Posadas v. Ombudsman, 341 SCRA 388 (2000); Venus v. Desierto, 298 SCRA 196 (1998); Brocka v. Enrile, 192 SCRA 183 (1990).

[25] RULES OF COURT, Rule 112, §1.

[26] Bunye v. Sandiganbayan, 306 SCRA 663 (1999); Ingco v. Sandiganbayan, 272 SCRA 563 (1997); Ponce de Leon v. Sandiganbayan, 186 SCRA 745 (1990).

[27] Avila, Sr. v. Sandiganbayan, 307 SCRA 236 (1999); Fernando v. Sandiganbayan, 212 SCRA 680 (1992).

[28] Fonacier v. Sandiganbayan 238 SCRA 656 (1994); Alejandro v. People, 170 SCRA 400 (1992).

[29] Manual for Clerks of Court (1991), p. 2.

[30] See REVISED PENAL CODE, ART. 3.

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