

JOSEPH E. ESTRADA, PETITIONER, VS. HON. ANIANO A. DESIERTO, IN HIS CAPACITY AS OMBUDSMAN, PAUL ELMER CLEMENTE, JENNIFER A. AGUSTIN-SE, PELAGIO S. APOSTOL AND ROBERTO E. KALLOS, ...

G.R. No. 156160. December 09, 2004

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is an Appeal by Certiorari filed by former President Joseph Ejercito Estrada on 20 December 2002 from the 20 November 2002 resolution of the Court of Appeals[1] dismissing his motion for reconsideration of the resolution of the appellate court dated 29 July 2002,[2] which in turn, dismissed for lack of jurisdiction his petition for certiorari. The petition with the Court of Appeals questioned the Office of the Ombudsman's dismissal of petitioner's criminal complaint against the private respondents herein.

Culled from the respective pleadings of the parties herein, the following antecedent facts are undisputed:[3]

- On 23 January 2001, the Bureau of Internal Revenue (BIR) placed petitioner's foreign currency deposit account at Citibank Greenhills Branch under constructive distraint;
- Contending that the BIR action was unlawful, petitioner filed on 31 January 2001 a complaint against respondent BIR officials (Deputy Commissioner Lilian Hefti, Revenue Officer I Archangel A. Albiento and Revenue Officer II Aniceto T. Dagdag, Jr.) and respondent Citibank officers (Riza P. Del Rosario, Victor Q. Lim and Catherine Weir) before the Office of the Ombudsman for allegedly violating (a) Section 8 of the Foreign Currency Deposits Act (Republic Act No. 6426); (b) Article 177 of the Revised Penal Code; and (c) Section 3(e) of the Anti-Graft and Corrupt Practices Act (Rep. Act No. 3019);
- On 17 September 2001, the Evaluation and Preliminary Investigation Bureau (EPIB) of the Office of the Ombudsman issued a Resolution recommending the dismissal of the aforesaid complaint for want of probable cause to indict respondent bank and BIR officials;
- On 19 November 2001, Paul Elmer Clemente, Legal Counsel, Acting Director–Office of the Chief Legal Counsel (OCLC), issued a Memorandum approving EPIB's recommendation, a copy of which was received by petitioner on 01 February 2002;
- On 15 February 2002, petitioner filed a Motion for Reconsideration of said Resolution, upon the ground that errors of fact and law were committed prejudicial to the interest of petitioner;
- On 26 February 2002, respondents EPIB officers issued an order, approved by respondent Desierto, denying petitioner's Motion for Reconsideration, a copy of which was received by petitioner on 06 June 2002;
- On 12 July 2002, petitioner filed a petition for certiorari under Rule 65[4] before the Court of Appeals;

- On 29 July 2002, the Court of Appeals promulgated the assailed resolution dismissing the petition on the ground that it did not fall under its jurisdiction pursuant to Rep. Act No. 6770. The Court of Appeals held --

Considering the allegations of the petition for certiorari, the Court Resolved to DISMISS the same in the light of Our view that the petition does not fall under any law as coming within the jurisdiction of the Court of Appeals.

...

Under the Fabian versus Desierto case (295 SCRA 470), there is the remedy of appeal from the Office of the Ombudsman in administrative disciplinary cases, in line with the regulatory philosophy adopted in appeals from quasi-judicial agencies in Rule 43 of the 1997 Rules of Civil Procedure. Stated in another way, the Court of Appeals is now vested with exclusive appellate jurisdiction involving a review of decisions or orders of the Office of the Ombudsman in administrative disciplinary cases only.

...

Since jurisdiction must exist as a matter of law, and there is no law whatsoever expressly extending the remedy of this so-called special civil action of certiorari from the Office of the Ombudsman to the Court of Appeals, petitioner in this case could not invoke this remedy of certiorari. By the passage of Republic Act No. 6770, this Court is expressly divested of any jurisdiction over the subject matter of these controversies.[5]

- On 15 August 2002, petitioner moved for the reconsideration of the Court of Appeals resolution;
- On 20 November 2002, the Court of Appeals dismissed the motion for reconsideration reiterating its earlier ruling on the ground that petitioner's arguments were not substantial enough to warrant the reversal of the earlier resolution;
- On 11 December 2002, petitioner filed with this Court a Motion for Extension of Time of fifteen (15) days to file Petition for Review which was granted on 14 January 2003; and
- The instant petition for review on certiorari was filed on 20 December 2002 praying that the Court of Appeals take cognizance of the petition for certiorari under Rule 65 filed therein by petitioner.

On 06 May 2003, after the parties filed their respective comments[6] and after petitioner filed his reply[7] thereto, this Court gave due course to the petition and required the parties to submit their respective memoranda.[8]

Petitioner postulates that the Court of Appeals has concurrent jurisdiction with this Court in original actions for certiorari concerning dispositions made by the Office of the Ombudsman of criminal cases that underwent preliminary investigation. In support thereof, petitioner argues that Section 14 of Rep. Act No. 6770 (The Ombudsman Act of 1989), which was made the basis by the Court of Appeals in dismissing his petition, is unconstitutional as it allegedly provides for direct appeal to this Court in contravention of Section 5(2), Article VIII of the Constitution which contains an exclusive list of cases falling under the appellate jurisdiction of the Supreme Court. Following the ruling in Fabian v. Desierto,[9] petitioner concludes that Section 14 has effectively increased the appellate jurisdiction of this Court without its advice and concurrence in violation of Section 30, Article VI of the Constitution. Petitioner then went on to state that the proper recourse from an adverse decision of the Ombudsman in criminal cases is a petition for certiorari under Rule 65 before the Court of Appeals pursuant to Tirol, Jr. v. Del Rosario[10] where we declared that a party aggrieved by a resolution of the Ombudsman in criminal cases may avail himself of such remedy. Petitioner contends that as the doctrine of hierarchy of courts precludes the immediate invocation of this Court's power of review, he correctly filed his petition for certiorari with the Court of Appeals.

The threshold legal issue to be resolved in the instant petition, therefore, is whether or not the Court of Appeals has jurisdiction to entertain original petitions for certiorari from decisions of the Office of the Ombudsman in criminal cases.

In *Tirol, Jr. v. Del Rosario*,^[11] we had occasion to rule that Rep. Act No. 6770 does not provide for the remedy of appeal from decisions of the Ombudsman in criminal or non-administrative cases. The aggrieved party may instead avail himself of the original petition for certiorari when the circumstances would warrant the use thereof:

. . . As we ruled in *Fabian*, the aggrieved party is given the right to appeal to the Court of Appeals. Such right of appeal is not granted to parties aggrieved by orders and decisions of the Ombudsman in criminal cases, like finding probable cause to indict accused persons.

However, an aggrieved party is not without recourse where the finding of the Ombudsman as to the existence of probable cause is tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction. An aggrieved party may file a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure. (Emphasis supplied)

But in which court should this special civil action be filed?

Petitioner contends that certiorari under Rule 65 should first be filed with the Court of Appeals as the doctrine of hierarchy of courts precludes the immediate invocation of this Court's jurisdiction. Unfortunately for petitioner, he is flogging a dead horse as this argument has already been shot down in *Kuizon v. Ombudsman*^[12] where we decreed –

In dismissing petitioners' petition for lack of jurisdiction, the Court of Appeals cited the case of *Fabian vs. Desierto*. The appellate court correctly ruled that its jurisdiction extends only to decisions of the Office of the Ombudsman in administrative cases. In the *Fabian* case, we ruled that appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under Rule 43 of the 1997 Rules of Civil Procedure. It bears stressing that when we declared Section 27 of Republic Act. No. 6770 as unconstitutional, we categorically stated that said provision is involved only whenever an appeal by certiorari under Rule 45 is taken from a decision in an administrative disciplinary action. It cannot be taken into account where an original action for certiorari under Rule 65 is resorted to as a remedy for judicial review, such as from an incident in a criminal action. In fine, we hold that the present petition should have been filed with this Court.^[13]

Kuizon and the subsequent case of *Mendoza-Arce v. Office of the Ombudsman (Visayas)*^[14] drove home the point that the remedy of aggrieved parties from resolutions of the Office of the Ombudsman finding probable cause in criminal cases or non-administrative cases, when tainted with grave abuse of discretion, is to file an original action for certiorari with this Court and not with the Court of Appeals.^[15] In cases when the aggrieved party is questioning the Office of the Ombudsman's finding of lack of probable cause, as in this case, there is likewise the remedy of certiorari under Rule 65 to be filed with this Court and not with the Court of Appeals following our ruling in *Perez v. Office of the Ombudsman*.^[16]

As this Court had already resolved said issue of jurisdiction in the above-cited cases, it is a salutary and necessary judicial practice to apply the rulings therein to the subject petition. *Stare decisis et non quieta movere*. Stand by the decisions and disturb not what is settled.^[17] Undaunted, petitioner now harps on the validity of Section 14 of Rep. Act No. 6770 claiming it to be unconstitutional. The Court of Appeals, it must be recalled, relied quite heavily on Section 14 of Rep. Act No. 6770 in relation to *Fabian v. Desierto*^[18] in ruling that it had no jurisdiction to entertain the petition filed thereat.

Section 14 of Rep. Act No. 6770 states –

Sec. 14. Restrictions. - . . .

No court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court, on pure question of law.

Basic is the principle that a constitutional issue may only be passed upon if essential to the decision of a case or controversy.[19] Even if all the requisites for judicial review are present, this Court will not entertain a constitutional question unless it is the very *lis mota* of the case or if the case can be disposed of on some other grounds, such as the application of a statute or general law.[20] Thus, in *Sotto v. Commission on Elections*, [21] we held –

. . . It is a well-established rule that a court should not pass upon a constitutional question and decide a law to be unconstitutional or invalid, unless such question is raised by the parties, and that when it is raised, if the record also presents some other ground upon which the court may rest its judgment, that course will be adopted and the constitutional question will be left for consideration until a case arises in which a decision upon such question will be unavoidable. (Emphasis supplied)

In herein case, the question of who has jurisdiction to entertain petitions for certiorari questioning the Ombudsman's orders or resolutions in criminal cases can be answered by resorting to the aforecited cases of *Kuizon v. Ombudsman*, [22] *Mendoza-Arce v. Office of the Ombudsman* [23] and *Perez v. Office of the Ombudsman*. [24] Consequently, there is no need to delve into the constitutionality of Section 14 of Rep. Act No. 6770 as case law already supplies the key.

Applying the foregoing, the Court of Appeals did not err in dismissing petitioner's original action for certiorari for lack of jurisdiction. Petitioner should have filed the same directly with this Court.

Even if the petition for certiorari had been correctly filed in this Court, we would have dismissed it just the same [25] as we do not perceive any clear case of abuse of discretion on the part of the public respondents when they issued the Resolution dated 17 September 2001 and the Order dated 19 September 2001 recommending the approval of the 17 September 2001 resolution dismissing, for lack of probable cause, petitioner's complaint for Usurpation of Official Function under Article 177 of the Revised Penal Code, for violation of Section 3(e) of Rep. Act No. 3019, and for violation of Section 8 of Rep. Act No. 6426. The same holds true for the Order dated 26 February 2002 which denied petitioner's motion for reconsideration of the 19 September 2001 resolution.

By grave abuse of discretion is meant such capricious and whimsical exercise of judgment which is equivalent to an excess or lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. [26]

In dismissing petitioner's complaint for Usurpation of Official Function against private respondents, public respondents reasoned [27] --

Under Art. 177 of the Revised Penal Code, in order for one to be held liable for Usurpation of Official Function, there must be a clear showing that the person being charged had performed an act pertaining to any person in authority or public officer of the Philippine government or any agency thereof, under pretense of official position, and without being lawfully entitled to do so.

In this instant case, respondent Hefti was the one specifically charged with Usurpation of Official Function, in view of her act of issuing the notice of constructive distraint against the foreign currency deposit of complainant with the Citibank. The rest of the public respondents and all the private respondents were merely charged in conspiracy with the said respondent. Hence, the issue that must be resolved is whether or not respondent Hefti being the Deputy Commissioner of BIR had indeed usurped the duty of the BIR

Commissioner when she issued the notice of distraint.

While it is true that under Sec. 206 of the NIRC as amended, the Commissioner of the BIR and not any Officer of the BIR was the one granted with the power to issue a notice of distraint, it bears to stress, however, that when respondent Hefti exercised such function of the BIR Commissioner, she was then designated Officer-In-Charge of the BIR by President Gloria Macapagal-Arroyo, as evidenced by a photocopy of her Memorandum of Appointment dated January 23, 2001. By virtue of her appointment as Officer-In-Charge of BIR, it necessary follows that respondent Hefti can now legally exercise the duties and functions pertaining to the BIR Commissioner, including the issuance of a constructive distraint. Whether the issuance of the notice of distraint is valid or not, such issue is no longer within the power of this Office to decide inasmuch as the power to review the decision of the BIR Commissioner on matters of distraint lies within the jurisdiction of the Court of Tax Appeals. Suffice it to say that when respondent Hefti issued the notice of distraint, she was clothed with authority to issue the same in view of her appointment as the then Officer-In-Charge of the BIR. Hence, the charge for Usurpation of Official Function does not apply to said respondent.

With the establishment of respondent Hefti's authority in the issuance of the constructive distraint, the subsequent act of respondent Dagdag in serving the said distraint to the Citibank, as well as the act of respondents Equillos and Albiento in witnessing the service of the same to the said bank, can not be construed as act in agreement to commit the crime of Usurpation of Authority in the light of the foregoing discussion.

The same thing holds true to the bank officers who were made respondents in this case, considering that their act in informing complainant regarding the existence of the constructive distraint as well as in implementing the said distraint against the latter's account with the said bank, [were] merely in compliance to an order issued by a competent authority.

And:[28]

As the officer-in-charge of the BIR duly-designated by the President, respondent Hefti was the incumbent head of BIR. By operation of law, she was the possessor of the office of the Commissioner by virtue of her lawful designation and was thus legally authorized to discharge the duties of such office (cf. Black's Law Dictionary, 6[th] Ed., at 768). In other words, she was authorized to temporarily act as the head of the said bureau until the appointment of the regular Commissioner. Her official acts as the duly-designated head of the BIR are deemed as acts of the bureau's Commissioner, and enjoy the presumptions of legality, validity and regularity.

With respect to the alleged violation of Sec. 3(e) of Rep. Act No. 3019, the resolution[29] of public respondents states in part:

Under Sec. 3(e) of R.A. 3019, the concurrence of the following elements are essential for the commission of the said offense.

- The respondent is a public officer discharging administrative, judicial or official functions, or any private individual in conspiracy with the public officer;
- The respondent must have acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and
- The respondent's action has caused any undue injury to any party including the government, or has given any party unwarranted benefits, advantage or preference in the discharge of his functions.

In this present case, public respondents are public officers within the contemplation of the law, and private respondents are charged in conspiracy with public respondents. Thus, the first element for the commission of the said offense is present.

Be it emphasized, however, that the issuance of the notice of distraint by respondent Hefti was done in

accordance with her function as the then Officer-In-Charge of the BIR. In issuing the said distraint, it appears that said respondent was guided not by her own unilateral and whimsical act as what the complainant is trying to impress to this Office, but on her observation regarding the huge disparity of complainant's income as declared by him in his Annual Income Tax Return, and the amount of his income as established in the impeachment trial, which is said to be concealed under fictitious name. In addition thereto, there are various news reports about the plan of complainant to flee the country bringing with him the money he amassed during his presidency.

Clearly, the foregoing circumstance are matters that this Office can not simply ignore for this are informations already known to the public, and the cognizance of it by respondent Hefti which led to the issuance of the subject distraint is just a prudent act expected from somebody tasked to protect the coffers of the government, and such can not be considered as an act tainted with manifest partiality, evident bad faith, and gross inexcusable negligence.

Furthermore, complainant failed to show the alleged undue injury he suffered because of the said distraint. There is nowhere in the records of this case to show that he was deprived by the Citibank Greenhills branch to withdraw any amount from his own foreign currency account deposit, nor was there a record of his attempt to withdraw from his foreign currency deposit with the said bank. The failure of the complainant to establish the actual injury he suffered by virtue of the subject distraint will necessarily give rise to a reasonable conclusion that the injury he claimed to have suffered is merely illusory and imaginary. Hence, the charge for violation of Sec. 3(e) under R.A. 3019 can not prosper for failure to establish the actual damage or injury suffered by the complainant.

Finally, with respect to the complaint for violation of Section 8 of Rep. Act No. 6426 (Foreign Currency Deposits Act of the Philippines), public respondents ratiocinated[30] --

At this point, it is worth stressing, that this office in its previous Order dated 20 February 2001, ruled that the absolute confidentiality of foreign currency deposit account provided for under R.A. 6426 does not apply to the foreign currency deposit accounts of herein complainant, since the protection under the said law is intended only for depositors who are non residents and are not engaged in trade and business in the Philippines. In coming out with such ruling, this office has as its basis one of the Whereas clauses of P.D. 1246 which amended Sec. 8 of R.A. 6426. For emphasis, the pertinent provision of the said law is hereby quoted:

WHEREAS, in order to assure the development and speedy growth of the Foreign Currency Deposit System and offshore Banking System in the Philippines, certain incentives were provided for under the two systems such as confidentiality of deposits subject to certain exceptions and tax exemptions on the interest of the income of depositors who are nonresidents and are not engaged in trade or business in the Philippines.

Considering the previous Order of this Office, it necessarily follows that the accusation for violation of Sec. 8 of R.A. 6426 against herein respondents has no leg to stand on, thus, the dismissal of the charge for violation of Sec. 8 of R.A. 6426 is therefore in order.

And:[31]

In *Salvacion v. Central Bank and China Bank*, 278 SCRA 27 (1997), the Highest Tribunal adopted the opinion of the Office of the Solicitor General (OSG) that only foreign currency deposits of foreign lenders and investors are given protection and incentives by the law, and further ruled that the Foreign Currency Deposits Act cannot be utilized to perpetuate injustice.[32] Following such pronouncements, it is respectfully submitted that foreign currency deposits of Filipino depositors, including herein complainant, are not covered by the Foreign Currency Deposits Act, and are thus not exempt from the processes duly-issued by the BIR.

We do not perceive any grave abuse of discretion on the part of the public respondents when they issued the aforesaid rulings. We, thus, defer to the policy of non-interference in the conduct of preliminary investigations.

We have invariably stated that it is not sound practice to depart from the policy of non-interference in the Ombudsman's exercise of discretion to determine whether or not to file information against an accused. 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.[33] 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 absolutely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decided to file an information in court or dismissed a complaint by a private complainant.[34] Thus, in the absence of a clear case of abuse of discretion, this Court will not interfere with the discretion of the Ombudsman, who, depending on his own findings and considered evaluation of the case, either dismisses a complaint or proceeds with it.[35]

A cautionary word. A declaration by this Court that the public respondents did not gravely abuse their discretion in issuing the resolutions dismissing petitioner's complaint does not necessarily translate to a declaration of assent in the findings of fact and conclusions of law contained therein. With respect specifically to the resolution for violation of Section 8 of Rep. Act. No. 6426, public respondents relied on the "whereas" clause of P.D. No. 1246 which amended Rep. Act No. 6426 and on the *Salvacion* case to conclude that only non-residents who are not engaged in trade and business are under the mantle of protection of Section 8 of Rep. Act. No. 6426. Assuming that such reliance is erroneous as contended by petitioner,[36] this Court, on petition for certiorari, cannot correct the same as the error is not of a degree that would amount to a clear case of abuse of discretion of the grave and malevolent kind. It is axiomatic that not every erroneous conclusion of law or fact is abuse of discretion.[37] As adverted to earlier, this Court will interfere in the Ombudsman's findings of fact and conclusions of law only in clear cases of grave abuse of discretion.

WHEREFORE, premises considered, the instant petition is hereby **DISMISSED** for lack of merit and the resolutions of the Court of Appeals in CA-G.R. SP No. 71722 dated 29 July 2002 and 20 November 2002 are hereby **AFFIRMED**. Costs against petitioner.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, and Garcia, JJ., concur.
Corona, J., on leave.

[1] Penned by Associate Justice Teodoro P. Regino with Associate Justices Eugenio S. Labitoria and Juan Q. Enriquez, Jr., concurring; CA Rollo, pp. 185-186.

[2] Penned by Associate Justice Teodoro P. Regino with Associate Justices Eugenio S. Labitoria and Juan Q. Enriquez, Jr., concurring; CA Rollo, pp. 89-90.

[3] As summarized by petitioner (Rollo, pp. 12-14; 170-172) and substantially reiterated in: (a) public respondents Ombudsman and EPIB officials' "COMMENT" (Rollo, p. 149) and "MEMORANDUM" (Rollo, p. 158); (b) private respondents bank officers' "MEMORANDUM" (Rollo, pp. 206-210); and (c) private respondents BIR officials' "MEMORANDUM" (Rollo, pp. 226-230).

[4] Rules of Civil Procedure.

[5] Rollo, pp. 32-34.

- [6] (1) Private respondents BIR officials' "COMMENT" [On The Petition For Review Dated 20 December 2002] dated 14 March 2003, Rollo, pp. 113-132.
- (2) Public respondents' "COMMENT" dated 05 May 2003, Rollo, pp. 149-156.
- [7] Rollo, pp. 137-144.
- [8] (1) Public respondents' "MEMORANDUM" dated 30 June 2003, Rollo, pp. 158-165.
- (2) Petitioner's "MEMORANDUM" dated 02 July 2003, Rollo, pp. 169-199.
- (3) Private respondents Citibank officers' "MEMORANDUM" dated 25 July 2004, Rollo, pp. 206-224.
- (4) Private respondents BIR officers' "MEMORANDUM" dated 25 July 2003, Rollo, pp. 226-252.
- [9] G.R. No. 129742, 16 September 1998, 295 SCRA 470.
- [10] G.R. No. 135913, 04 November 1999, 317 SCRA 779.
- [11] Id. at 785.
- [12] G.R. Nos. 140619-24, 09 March 2001, 354 SCRA 158, 172.
- [13] Citations omitted.
- [14] G.R. No. 149148, 05 April 2002, 380 SCRA 325, 333-334.
- [15] See also *Nava v. Commission on Audit*, G.R. No. 136470, 16 October 2001, 367 SCRA 263, 270-271.
- [16] G.R. No. 131445, 27 May 2004. Parenthetically, we held in *Socrates v. Sandiganbayan* (G.R. Nos. 116259-60 and 118896-97, 20 February 1996, 253 SCRA 773, 800) that in cases where the government prosecutor unreasonably refuses to file an information or to include a person as an accused therein despite the fact that the evidence clearly warrants such action, the aggrieved party has the following remedies:
- (1) In cases of grave abuse of discretion, mandamus under Rule 65;
 - (2) He may lodge a new complaint against the offenders before the Ombudsman and have a new examination conducted as required by law;
 - (3) He may institute administrative charges against the erring prosecutor, or a criminal complaint under Article 208 of the Revised Penal Code or a civil action for damages under Article 27 of the Civil Code;
 - (4) He may secure the appointment of another prosecutor; or
 - (5) He may institute another criminal action if no double jeopardy is involved.
- [17] *Secretary of Education, Culture and Sports v. Court of Appeals*, G.R. Nos. 128559 & 130911, 04 October 2000, 342 SCRA 40; *Tala Realty Services, Corp. v. Banco Filipino Savings and Mortgage Bank*, G.R. No. 137980, 20 June 2000, 334 SCRA 114.
- [18] *Supra*, note 9.
- [19] *People v. Vera*, 65 Phil. 56 [1937], as cited in *Dumlao v. Comelec*, G.R. No. L-52245, 22 January 1980, 95 SCRA 392.
- [20] *Lalican v. Vergara*, G.R. No. 108619, 31 July 1997, 276 SCRA 519, citing *Phil. Constitution Association v. Enriquez*, G.R. Nos. 113105, 113174, 113766 & 113888, 19 August 1994, 235 SCRA 506.

[21] 76 Phil. 516, 522 (1946).

[22] Supra, note 12.

[23] Supra, note 14.

[24] Supra, note 16.

[25] See *Perez v. Office of the Ombudsman*, supra, note 16; *Kuizon v. Ombudsman*, supra, note 12.

[26] *Duero v. Court of Appeals*, G.R. No. 131282, 04 January 2002, 373 SCRA 11; *Perez v. Office of the Ombudsman*, supra, note 16.

[27] RESOLUTION, OMB-01-01-0184 dated 17 September 2001, CA Rollo, pp. 52-53.

[28] MEMORANDUM OMB-01-01-0184 dated 19 September 2001, CA Rollo, p. 30.

[29] Supra, note 27 at 53-54.

[30] Supra, note 27 at 54-55.

[31] Supra, note 28 at 30-31.

[32] The Supreme Court ruled: “In fine, the application of the law depends on the extent of its justice . . . It would be unthinkable, that the questioned [law exempting foreign currency deposits from attachment, garnishment, or any other order or process of any court, legislative body, government agency or any administrative body whatsoever] would be used as a device [by an accused] . . . for wrongdoing, and in so doing, acquitting the guilty at the expense of the innocent.”

[33] Id.

[34] Ibid.; *Ocampo, IV v. Ombudsman*, G.R. Nos. 103446-47, 30 August 1993, 225 SCRA 725.

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

[36] The Court cannot help but mention that the “whereas” or perambulatory clauses do not form part of a statute, strictly speaking, as they do not form part of the operative language of the law. Though helpful to the extent that they articulate the general purpose or reason underlying a new enactment, they cannot, however, control the specific terms of a statute (*LLamado v. Court of Appeals*, G.R. No. 84850, 29 June 1989, 174 SCRA 566, 576, citing *Yazoo & Mississippi Valley R. Co. v. Thomas*, 132 US 174 [1989]; 33 L Ed. 302, and *Idaho Commission on Human Rights v. Campbell*, 506 P. 2d 112; 95 Id. 215 [1973]). Although considered an aid in interpretation, the preamble of an act or decree is not the law subject thereof (*People v. Balasa*, G.R. Nos. 106357, 108601-02, 03 September 1998, 295 SCRA 49, 85).

[37] *Ignacio v. Court of Appeals*, G.R. Nos. L-49541-52164, 28 March 1980, 96 SCRA 648.

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