

ROBERTO B. KALALO, PETITIONER, VS. OFFICE OF THE OMBUDSMAN, ERNESTO M. DE CHAVEZ AND MARCELO L. AGUSTIN, RESPONDENTS.

G.R. No. 158189. April 23, 2010

Ponente: PERALTA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-158189/>

PERALTA, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court seeking to nullify and/or set aside the Resolution dated May 14, 2002 and the Order dated October 8, 2002 of the Office of the Ombudsman.

The antecedent facts are as follows.

Petitioner Roberto Kalalo, an employee of Pablo Borbon Memorial Institute of Technology (PBMIT), now Batangas State University, filed a Complaint Affidavit[1] with the Office of the Ombudsman against the officials of the same school, namely: Dr. Ernesto M. De Chavez, President; Dr. Virginia M. Baes, Executive Vice-President; Dr. Rolando L. Lontok, Sr., Vice-President for Academic Affairs; Dr. Porfirio C. Ligaya, Vice-President for Extension Campus Operations; Professor Maximo C. Panganiban, Dean and Campus Administrator, Districts 1 and 2; Dr. Amador M. Lualhati, University Secretary; and Marcelo L. Agustin, Researcher, Office of the BSU President.

According to petitioner, the above-named officials committed falsification of public documents and violations of Sections 3 (a) and (e) of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act, based on the following incidents:

The 129[th] General Meeting of the Board of Trustees of the PBMIT/BSU transpired on January 21, 1997.

In March 2001, petitioner, who was then the Board Secretary, claimed that he found in his table, a final print of the Minutes[2] of the above-mentioned General Meeting which was forwarded by respondent Marcelo Agustin upon the order of respondent De Chavez, in order for the petitioner to certify as to its correctness. The fact that the said copy of the Minutes was given to him after a long period of time and other inconsistencies found in the same document, caused suspicion on the part of the petitioner. After conducting his own investigation, petitioner questioned the following three (3) resolutions, which, according to him, were inserted by De Chavez:

- 1) Resolution No. 6, s. 1997, which ratified the referendum dated August 4, 1996 approving the adjustment of charges or fees on the following documents issued by the college: 1) Admission and Testing Fee, 2) Transcript of Records, 3) Certification, 4) Honorable Dismissal, 5) Diploma, 6) Fine (late enrollees), 7) Library Card, and 8) second copy of Diploma;
- 2) Resolution No. 25, which relates to the authorizing of the President of PBMIT/BSU to deposit all the income of the college with government depository banks in the form of savings, time, money placement and other deposit accounts, and to open a PBMIT testing, admission and placement office account;
- 3) Resolution No. 26, refers to the resolution approving the construction contracts entered into by PBMIT with

C.S. Rayos Construction and General Services for the construction of the DOST/FNRI/PBMIT Regional Nutrition and Food Administration and Training Center and the Physical Education and Multi-Purpose Playground. The contract prices for the approved projects were P2,693,642.90 and P968,283.63, respectively.

As claimed by petitioner, the authentic minutes had eight (8) pages, while the falsified one had nine (9) pages. Thus, he concluded that Resolution Nos. 25 and 26 were mere intercalations on the minutes of the annual meeting.

Petitioner also claimed that respondent's deviation from the usual procedure in signing and approving the minutes was highly suspicious. According to petitioner, the usual procedure was for respondent De Chavez, in his capacity as Vice-Chairman, to sign the minutes only after the same has been attested by petitioner as the Board Secretary. However, De Chavez submitted a copy of the minutes to petitioner with his signature already affixed thereon. Thus, petitioner refused to sign the said minutes.

Despite the refusal of petitioner to sign the minutes, Resolution No. 25 was still implemented.

Respondents filed their Joint Counter-Affidavit[3] denying petitioner's allegations and stating that it was ministerial on the part of respondent De Chavez to sign the minutes prepared by petitioner himself in his capacity as Board Secretary. Petitioner, on the other hand, reiterated and stood by his allegations in his Complainant's Reply to Respondents' Joint Counter-Affidavit[4] dated April 1, 2002.

In its Resolution[5] dated May 14, 2002, the Office of the Deputy Ombudsman for Luzon dismissed the complaint of petitioner stating that:

A careful evaluation of the case records and the evidence submitted reveals that the charge of falsification against respondents has no leg to stand on.

What clearly appears on the records was that complainant had issued certifications as to the correctness of the resolutions in question, namely, Resolution Nos. 6, s. 1997; 25 and 26. Readily, it can be said that said certifications did not only dispute complainant's claim, but casts serious doubt as to the merit of the instant complaint as well.

It must be pointed out that complainant assailed the authenticity of the minutes of the 129[th] General Assembly meeting of the Board of Trustees of PBMIT and accused herein respondent for allegedly inserting/intercalating therein the aforesaid Resolution Nos. 6, 25 and 26.

With the foregoing certifications subscribed by complainant himself confirming the authenticity of the subject resolutions and the contents thereof, we fail to see any grounds for complainant to question the same.

IN THE LIGHT OF THE FOREGOING, it is respectfully recommended that the instant complaint be DISMISSED as it is hereby dismissed.

SO RESOLVED.[6]

Petitioner filed a Motion for Reconsideration[7] dated August 16, 2002, which was denied by the Ombudsman in an Order[8] dated October 8, 2002 for lack of merit.

Hence, the present petition.

Petitioner raises the following arguments:

I

PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN SERIOUSLY MISAPPRECIATING THE FACTS AND ISSUES OF THE

INSTANT CASE.

II

PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN ISSUING THE ASSAILED RESOLUTION AND ORDER WITHOUT FACTUAL AND LEGAL BASES.

III

PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN NOT FINDING "PROBABLE CAUSE" AGAINST BOTH PRIVATE RESPONDENTS.[9]

The petition is bereft of merit.

Petitioner extensively and exhaustively discusses in his petition, the differences between what he claimed to be the falsified Minutes and what he presented as the true and authentic Minutes of the general meeting, and by not subscribing to his own findings, he now comes to this Court alleging that the Office of the Ombudsman gravely abused its discretion which amounted to lack and/or excess of jurisdiction.

A careful reading of his arguments shows that the matters he raised were purely factual. He claims that the Office of the Ombudsman grievously erred in finding that petitioner had issued certifications as to the correctness of the resolutions in question, namely Resolution Nos. 6, s. 1997; 25 and 26, when, according to petitioner, he positively asserted that the same were signed by mistake or out of sheer inadvertence. He went on to state that the signature on the questioned Minutes was forged and that the one inadvertently signed was the excerpts, not the Minutes. This line of argument has been repeatedly emphasized along with his own findings of falsification.

In alleging the existence of grave abuse of discretion, it is well to remember *Sarigumba v. Sandiganbayan*,^[10] where this Court ruled that:

For grave abuse of discretion to prosper as a ground for certiorari, it must first be demonstrated that the lower court or tribunal has exercised its power in an arbitrary and despotic manner, by reason of passion or personal hostility, and it must be patent and gross as would amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law. Grave abuse of discretion is not enough. Excess of jurisdiction signifies that the court, board or office, has jurisdiction over the case but has transcended the same or acted without authority.

After considering all the issues and arguments raised by the parties, this Court finds no clear showing of manifest error or grave abuse of discretion committed by the Office of the Ombudsman.

As a general rule, courts do not interfere with the discretion of the Ombudsman to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts.^[11]

This Court has consistently held that the Ombudsman has discretion to determine whether a criminal case, given its facts and circumstances, should be filed or not. It is basically his call. He may dismiss the complaint forthwith should he find it to be insufficient in form and substance, or should he find it otherwise, to continue with the inquiry; or he may proceed with the investigation if, in his view, the complaint is in due and proper form and substance.^[12]

In the present case, the Office of the Ombudsman did not find probable cause that would warrant the filing of Information against respondents. Probable cause, for purposes of filing a criminal information, has been defined

as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondents are probably guilty thereof. The determination of its existence lies within the discretion of the prosecuting officers after conducting a preliminary investigation upon complaint of an offended party.[13] Probable cause is meant such set of facts and circumstances which would lead a reasonably discreet and prudent man to believe that the offense charged in the Information, or any offense included therein, has been committed by the person sought to be arrested. In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and that it was committed by the accused. Probable cause demands more than bare suspicion; it requires less than evidence which would justify conviction.[14] Unless it is shown that the questioned acts were done in a capricious and whimsical exercise of judgment evidencing a clear case of grave abuse of discretion amounting to lack or excess of jurisdiction, this Court will not interfere in the findings of probable cause determined by the Ombudsman.[15]

The findings of the Office of the Ombudsman, as contained in its Order[16] dated October 8, 2002, does not, in any way, indicate the absence of any factual or legal bases, as shown in the following:

While we do acknowledge that the purpose of a preliminary investigation is to determine the existence of probable cause that which engender a well-founded belief that an offense has been committed and that the accused is probably guilty thereof, we should not, however, lose sight of its other objective. In the case of *Duterte v. Sandiganbayan*, 289 SCRA 721, it is equally intoned that the rationale for conducting a preliminary investigation is "to secure the innocent against hasty, malicious, oppressive prosecution, and to protect him from an open and public accusation of a crime, from the trouble, expenses and anxiety of a public trial." With the questioned minutes bearing the signature of complainant-movant, the evidence at hand tends to tilt in favor of the dismissal of the case. This is rightfully so as complainant-movant's signature was never alleged to have been falsified, although he claims to have signed the minutes through inadvertence.

In relation thereto, complainant-movant's assertion that his signature in the disputed minutes was a case of oversight is hardly impressive. It should be noted that the minutes of the 129[th] Regular Meeting of the then PBMIT Board of Trustees was approved during its 130[th] Regular Meeting held on November 7, 1997. As the Board Secretary, complainant-movant could have easily detected the alleged insertions especially so when we consider that Board Resolution Nos. 25 and 26, s. of 1997, were those last mentioned as having been approved by the Board. It was quite, therefore, convenient for complainant-movant to blame respondent Marcelo L. Agustin for having signed the questioned minutes when it was his duty as Board Secretary to certify as to the correctness of the minutes.

More telling is the fact that complainant-movant again certified correct the excerpts of the minutes of the 129[th] Regular Meeting of then PBMIT Board of Trustees pertaining to Resolution No. 6, s. of 1997, approving the adjustment of charges or fees not only to the admission/testing fees but including transcript of records, certification, honorable dismissal, diploma, library card, fine (late enrollees) and second copy of diploma. Given such situation, we could not believe that complainant-movant signed such excerpts of the minutes through the same inadvertence or oversight. A single mistake may be acceptable but to commit the same twice is no longer a case of honest mistake. Corollary thereto, this finding precludes any further discussion that the letter dated August 14, 1996 of respondent Ernesto M. de Chavez to then PBMIT Board of Trustees is conclusive proof that the increase in fees was limited only to the admission/testing fees.[17]

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. As cited in a long line of cases, this Court has pronounced that it cannot pass upon the sufficiency or insufficiency of evidence to determine the existence of probable cause. 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. If it were otherwise, this Court will be clogged with an innumerable list of cases assailing investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, to determine if there is probable cause.[18]

Furthermore, it is not amiss to state that the findings of the Ombudsman are essentially factual in nature. Therefore, when petitioner assailed the findings of the Ombudsman on the guise that the latter committed grave abuse of discretion, questions of fact are inevitably raised. Clearly, petitioner centered his arguments on the Ombudsman's appreciation of facts. It must always be remembered that a petition for certiorari admits only of questions of grave abuse of discretion amounting to lack or excess of jurisdiction and never on questions of fact.

Petitioner raises as an incidental issue in his Memorandum[19] that the Solicitor General cannot act as the counsel of private respondents in the instant criminal case, which is indisputable. However, petitioner failed to understand that the Office of the Solicitor General represents the public respondent – the Office of the Ombudsman – upon which his petition revolves. The Office of the Ombudsman is an instrumentality of the government and, as mandated by law, the Office of the Solicitor General has the authority to represent the said office. *Cooperative Development Authority v. DOLEFIL Agrarian Reform Beneficiaries Cooperative, Inc., et al.*[20] is instructive as to the jurisdiction of the Office of the Solicitor General, which reads:

The authority of the Office of the Solicitor General to represent the Republic of the Philippines, its agencies and instrumentalities, is embodied under Section 35(1), Chapter 12, Title III, Book IV of the Administrative Code of 1987, which provides that:

SEC. 35. Powers and Functions.--The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. When authorized by the President or head of the office concerned, it shall also represent government owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of lawyers. It shall have the following specific powers and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

The import of the above-quoted provision of the Administrative Code of 1987 is to impose upon the Office of the Solicitor General the duty to appear as counsel for the Government, its agencies and instrumentalities and its officials and agents before the Supreme Court, the Court of Appeals, and all other courts and tribunals in any litigation, proceeding, investigation or matter requiring the services of a lawyer. Its mandatory character was emphasized by this Court in the case of *Gonzales v. Chavez*,[21] thus:

It is patent that the intent of the lawmaker was to give the designated official, the Solicitor General, in this case, the unequivocal mandate to appear for the government in legal proceedings. Spread out in the laws creating the office is the discernible intent which may be gathered from the term "shall", which is invariably employed, from Act No. 136 (1901) to the more recent Executive Order No. 292 (1987).

x x x x x x x x

The decision of this Court as early as 1910 with respect to the duties of the Attorney-General well applies to the Solicitor General under the facts of the present case. The Court then declared:

In this jurisdiction, it is the duty of the Attorney General "to perform the duties imposed upon him by law" and "he shall prosecute all causes, civil and criminal, to which the Government of the Philippine Islands, or any

officer thereof, in his official capacity, is a party" xxx.

x x x x x x x x

The Court is firmly convinced that considering the spirit and the letter of the law, there can be no other logical interpretation of Sec. 35 of the Administrative Code than that it is, indeed, mandatory upon the OSG to "represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer."

WHEREFORE, the petition is DISMISSED for lack of merit. The Resolution dated May 14, 2002 and the Order dated October 8, 2002 of the Office of the Ombudsman are hereby AFFIRMED.

SO ORDERED.

Corona, (Chairperson), Velasco, Jr., Abad[*], and Mendoza, JJ., concur.

[*] Designated as additional member per Raffle dated August 5, 2009 in lieu of Justice Antonio Eduardo B. Nachura.

[1] Rollo, pp. 40-61.

[2] Id. at 230-238.

[3] Id. at 100-118.

[4] Id. at 137-158.

[5] Id. at 31-34.

[6] Id. at 34.

[7] Id. at 220-227.

[8] Id. at 36-39.

[9] Id. at 7-8.

[10] G.R. Nos. 154239-41, February 16, 2005, 451 SCRA 533.

[11] *Principio v. Barrientos*, G.R. No. 167025, December 19, 2005, 478 SCRA 639, 650.

[12] *Presidential Ad-Hoc Fact Finding Committee on Behest Loans v. Desierto*, G.R. No. 137777, October 2, 2001, 366 SCRA 428, citing *Espinosa v. Office of the Ombudsman*, 343 SCRA 744 (2000) and *The Presidential Ad-Hoc Fact Finding Committee on Behest Loans v. Hon. Aniano Desierto*, 362 SCRA 730 (2001); see also *Blanco v. Sandiganbayan*, G.R. Nos. 136757-58, November 27, 2000, 346 SCRA 108 (2001).

[13] *Advincula v. Court of Appeals*, G.R. No. 131144, October 18, 2000, 343 SCRA 583, 589-590.

[14] *Okabe v. Hon. Gutierrez*, in his capacity as Presiding Judge of RTC, Pasay City, Branch 119, et al., 473 Phil. 758, 781 (2004).

[15] *Galaro v. Ombudsman*, G. R. No. 166797, July 10, 2007, 527 SCRA 190, 206-207.

[16] Rollo, pp. 36-39.

[17] Id. at 37-38.

[18] Galario v. Ombudsman, *supra* note 15, at 206.

[19] Rollo, pp. 525-532.

[20] 432 Phil. 290 (2002).

[21] G.R. No. 97351, February 4, 1992, 205 SCRA 816, 836-846.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.