

NICEAS M. BELONGILOT, PETITIONER, VS. ROLANDO S. CUA, ROEL ERIC C. GARCIA, LORENZO R. REYES, AUGUSTO P. QUIJANO, IANELA G. JUSI-BARRANTES AND SALVADOR P. RAMOS, RESPONDENTS.

G.R. No. 160933. November 24, 2010

Ponente: BRION, J.

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BRION, J.:

Before this Court is the Petition for Review on Certiorari[1] assailing the Office of the Ombudsman's (Ombudsman's) Resolution[2] and Order[3] dated June 10, 2003 and October 20, 2003, respectively, in OMB-C-C-03-0045-B. The assailed Resolution dismissed the complaint filed by petitioner Niceas M. Belongilot against respondents Salvador P. Ramos, Rolando S. Cua, Roel Eric C. Garcia, Lorenzo R. Reyes, Augusto P. Quijano and Ianela G. Jusi-Barrantes, for violation of Section 3(e) of Republic Act (R.A.) No. 3019 (the Anti-Graft and Corrupt Practices Act), as amended. The challenged Order denied the petitioner's motion for reconsideration.

ANTECEDENT FACTS

The petitioner's wife, Leonarda Belongilot, was the owner of several parcels of land in Bulacan, covered by Original Certificate of Title (OCT) No. 0-359. Sometime in 1979, Juanito Constantino forcibly entered and took possession of Lot Nos. 1, 2 and 3 (the subject lots) covered by OCT No. 0-359, and converted them into a fishpond. Leonarda filed an ejectment complaint against Constantino before the Provincial Agrarian Reform Adjudicator Board (PARAB), docketed as R-03-02-8138'98.[4]

Provincial Agrarian Reform Adjudicator (PARAD) Gregorio B. Sapora, in his Decision of May 21, 2001, directed Constantino and all persons claiming rights under him to vacate the subject lots. Constantino moved to reconsider this decision, but PARAD Sapora denied his motion.

Constantino filed, on October 8, 2001, a notice of appeal before the PARAB, but PARAD Toribio F. Ilao, in his Order of April 16, 2002,[5] dismissed this notice of appeal for having been filed out of time. On May 22, 2002, PARAD Ilao issued a writ of execution[6] in favor of Leonarda.

Constantino, through Atty. Restituto David, filed, on May 21, 2002, a petition for injunction with application for a temporary restraining order (TRO)[7] before the Department of Agrarian Reform Adjudication Board (DARAB), without asking for the reconsideration of the dismissal of his notice of appeal. He prayed that the implementation of PARAD Sapora's May 21, 2001 Decision be restrained and that his notice of appeal, dated October 8, 2001, be given due course.

In the meantime, the DARAB sheriff[8] enforced the writ of execution on May 31, 2002, and evicted Constantino from the subject lots. Consequently, the possession of the subject lots was turned over to the petitioner in his capacity as general administrator of Leonarda's properties. The petitioner, thereafter, raised thousands of "bangus" and "sugpo" fingerlings in the fishpond.

On November 15, 2002, or more than five (5) months after the filing of the petition for injunction, the DARAB issued a TRO in Constantino's favor, in an Order that partly reads:

After taking into account the petitioner's allegations and arguments set forth in the pleadings filed as well as other supporting documents, it appears that grave and irreparable damage or injury would result to the petitioner before a hearing on the preliminary injunction can be held and to preserve the status quo of the parties pending the resolution of the instant case, the Motion is hereby GRANTED restraining the public respondents and/or any other persons acting under his authority from issuing a writ of execution, or from implementing the same, if one had already been issued.

This restraining order is effective for a period of twenty (20) days.

In the meantime, respondents are directed to submit their Answer/Comment to the instant Motion within a period of ten (10) days from receipt of this Order.

Let the hearing on the application for the issuance of a Writ of Injunction be set on December 4, 2002, 2:00 P.M. at the DAR Adjudication Board Hearing Room, Elliptical Road, Diliman, Quezon City.

No Motion for Postponement shall be entertained.

SO ORDERED.[9]

Leonarda filed, on November 21, 2002, a motion to dismiss the petition for injunction, alleging that the DARAB has no jurisdiction over the petition because of Constantino's failure to file a motion for reconsideration of the April 16, 2002 Order of PARAD Ilao. She further argues that the decision sought to be restrained had already been implemented.[10]

On November 23, 2002, the caretaker of the subject lots reported that Constantino harvested the "bangus" and "sugpo" fingerlings from the fishpond and sold them. As a result, the petitioner filed a complaint for qualified theft before the Philippine National Police of Hagonoy, Bulacan against Constantino. Meanwhile, the DARAB, in its Resolution[11] of December 27, 2002, granted Constantino's application for a writ of injunction, and "enjoined" the implementation of the writ of execution. The DARAB also ordered that the records of the case be elevated to it within 15 days from receipt of its resolution.

On January 20, 2003, the petitioner filed with the Ombudsman an amended criminal complaint,[12] for violation of Section 3(e) of R.A. No. 3019,[13] against the respondents in their capacity as officers[14] and members[15] of the Department of Agrarian Reform and the DARAB, respectively. This case was docketed as OMB-C-C-03-0045-B.

In its Resolution of June 10, 2003, the Ombudsman dismissed the complaint in this wise:

It is, therefore, apparent that the vital issue to be resolved is whether or not public respondents have jurisdiction to act on the petition filed by Juanito Constantino and subsequently issue the restraining order despite the finality of the PARAD Decision due to the belated filing of the Notice of Appeal, non-payment of appeal fee and non-filing of a Motion for Reconsideration of the Order dismissing his appeal - all pursuant to the DARAB Rules of Procedure.

Assuming arguendo that the public respondents' issuance of the restraining order suffers from procedural infirmities, the same is better addressed to the Court which has administrative and supervisory powers over administrative agencies performing quasi-judicial functions.

x x x x

This Office, therefore, cannot forestall the power of the Courts to take cognizance of matters which squarely

fall under their jurisdiction.

In sum, private complainant is not left without any recourse in the light of all the allegations and issues broached out before us. Nonetheless, complainant must ventilate its cause of action in the proper forum.

Prescinding from above, the charge against the public respondents must necessarily fail.

FOREGOING CONSIDERED, it is respectfully recommended that the instant complaint be dismissed, as it is hereby DISMISSED.

SO RESOLVED.[16]

The petitioner moved to reconsider this resolution, but the Ombudsman denied his motion in its Order dated October 20, 2003. The Ombudsman ruled that Constantino's non-filing of a motion for reconsideration, assailing the adjudicator's order before filing a petition for injunction with the DARAB, was not fatal to his case since "procedural due process is not based solely on a mechanic (sic) and literal application of a rule." [17] The Ombudsman further held that the respondents, in the absence of proof to the contrary, should be afforded the presumption of regularity in the performance of their official duties and functions; and added that the conspiracy theory advanced by the petitioner had no basis. Finally, it concluded that the respondents cannot be convicted for violation of Section 3(e) of R.A. No. 3019 in the absence of showing that they acted with manifest partiality, evident bad faith or gross inexcusable negligence.

In the present petition, the petitioner essentially claims that the Ombudsman erred in dismissing the complaint against the respondents for violation of Section 3(e) of R.A. No. 3019.

The Ombudsman, through the Office of the Solicitor General (OSG), avers that the petition must be dismissed outright because the petitioner availed of the wrong remedy. It further argues that the Ombudsman has the discretion to determine the existence of probable cause, that is, whether a criminal case should be filed or not.

THE COURT'S RULING

After due consideration, we find the petition meritorious.

I. Procedural Issue

We note at the outset that the petitioner, in seeking to annul the Ombudsman's Resolution and Order dated June 10, 2003 and October 20, 2003, [18] respectively, filed with this Court a petition for review on certiorari under Rule 45 of the Rules of Court.

In *Soriano v. Cabais*, [19] this Court had the occasion to discuss the appropriate recourse to take from decisions or resolutions of the Ombudsman, and said:

In *Fabian*, we ruled that appeals from the decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals by way of a petition for review under Rule 43 of the 1997 Rules of Civil Procedure, as amended. This ruling has been repeatedly reiterated in subsequent cases and continues to be the controlling doctrine.

Here, petitioner's complaint is criminal in nature. In *Estrada v. Desierto*, we held 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, not with the Court of Appeals. 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. This rule was subsequently

restated in *Acuña v. Deputy Ombudsman for Luzon* where we held that the remedy of an aggrieved party in criminal complaints before the Ombudsman is to file with this Court a petition for certiorari under Rule 65.

The petitioner's complaint before the Ombudsman, charging the respondents with violation of Section 3(e) of R.A. No. 3019, as amended, is undoubtedly criminal in nature. The petitioner's recourse to this Court should have, therefore, been through a petition for certiorari under Rule 65, instead of a petition for review on certiorari under Rule 45. Thus, from a procedural perspective, the OSG's claim that the petitioner availed of the wrong remedy appears to be correct.

We would have readily agreed with the OSG's conclusion had the petitioner simply dwelt on errors of law in his petition. Our reading of the petition, however, and as our discussions below will show, readily reveals that the petition, while entitled and presented as a petition for review on certiorari, in fact, outlines and charges acts that collectively constitute grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Ombudsman.[20] In other words, while the petitioner followed the Rule 45 procedures, the substance of the petition handily satisfies the requirements of a Rule 65 petition for certiorari. Thus viewed, the issue before us is whether the procedure and its form or substance should have primacy.

Our choice when faced with this kind of conflict, particularly one that involves grave abuse of discretion amounting to lack or excess of jurisdiction, is clear. No less than the Constitution under Section 1, Article VIII expressly directs the Judiciary, as a matter of power and duty, not only "to settle actual controversies involving rights which are legally demandable and enforceable" but, "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." We, thus, have the duty to take cognizance of the allegations of grave abuse of discretion; in the performance of this duty, we see no legal stumbling block if we deviate from the requirements of form and procedure that stand in the way in favor of substance.[21]

II. The Grave Abuse of Discretion Issue

Grave abuse of discretion is the capricious and whimsical exercise of judgment on the part of the public officer concerned, 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.[22]

A careful review of the petition and an examination of the records reveal a collective pattern of action - done capriciously, whimsically and without regard to existing rules and attendant facts - that shows a clear case of grave abuse of discretion amounting to lack or excess of jurisdiction in the exercise of judgment. We discuss all these below.

a. The Ombudsman erred in refusing to act on the petitioner's criminal complaint

The Ombudsman, in its resolution of June 10, 2003, did not give a definitive ruling on whether there was probable cause to hold respondents liable for violation of Section 3(e) of R.A. No. 3019; instead, it dismissed the complaint on the ground that the issue was "better addressed to the Court which has administrative and supervisory powers over administrative agencies performing quasi-judicial functions." [23]

To justify its refusal to take cognizance of the complaint, it cited the 1980 case of *Citizens' League of Free-Workers v. Court of Industrial Relations*. [24] We find this reliance misplaced, as the facts and ruling in this cited case are totally foreign to the present case. This cited case dealt with the issue of whether this Court could review the Court of Industrial Relations' refusal to act on a late breaking development in the case - the union's

motion for reinstatement and payment of backwages whose denial was alleged to be constitutive of an unfair labor practice act. The Court ruled that it was grave abuse of discretion for the respondent Court of Industrial Relations to refuse to consider and resolve the belatedly brought unfair labor practice charge: the labor court's action was rigid and severe in its application of the Industrial Peace Act (Commonwealth Act No. 103), and disregarded the fact that the new charge referred to new developments related to the unfair labor charge already pending with the labor court.

This ruling - involving a labor case under the Industrial Peace Act - has no relevance whatsoever to the issue presented before the Ombudsman, i.e., whether there was probable cause to indict respondents for violation of Section 3(e) of R.A. No. 3019. If the ruling is remotely related at all, it is on the point of whether the lower tribunal should act on a matter that, by law, is under its jurisdiction. From this perspective, the cited law, in fact, supports the petitioner's case. In the same manner that the labor court should have entertained the belated charge of unfair labor practice, the Ombudsman should have squarely ruled on the question of whether probable cause exists in the criminal complaint brought before it.

We note that instead of ruling on the issue of probable cause, the Ombudsman simply held that the propriety of the restraining order and injunction the DARAB ordered is a matter "better addressed to the Court which has administrative and supervisory powers over administrative agencies performing quasi-judicial functions." [25] In short, the Ombudsman viewed the case as a recourse the petitioner had taken against the restraining order and injunction the DARAB issued, not as a criminal charge for having violated the anti-graft law in issuing the restraining order/injunction. In this light, the Ombudsman's action is undoubtedly one tainted with grave abuse of discretion, as it made the wrong considerations in ruling on the probable cause issue. [26]

The Ombudsman's duty to act on the petitioner's complaint is undisputed. The mandate of the Ombudsman is expressed in Section 12, Article XI of the Constitution which states:

Sec. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

Section 13, Article XI of the Constitution enumerates the powers, functions, and duties of the Ombudsman, among which is to:

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

The Ombudsman Act of 1989 (R.A. No. 6770) likewise provides:

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

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of government, the investigation of such cases.

These constitutional and statutory provisions grant the Ombudsman full and unqualified authority, as well as the duty, to investigate and prosecute violations of the Anti-Graft and Corrupt Practices Act. They embody the duty to rule on probable cause issues that the Ombudsman cannot shirk away from. By ruling as it did, the Ombudsman

effectively ran away from this duty.

b. The Existence of Probable Cause

The Ombudsman attempted to remedy its error by stating in its Order denying the petitioner's motion for reconsideration, that "[t]he alleged procedural infirmities committed by the public respondents in issuing the Restraining Order and the Resolution do not, by themselves, establish a demonstrable violation of the provision of Section 3(e) of R.A. 3019." [27] Generally, we do not interfere with the Ombudsman's authority to determine the presence or absence of probable cause, except when the finding is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. But when, as in this case, the Ombudsman does not take essential facts into consideration in the determination of probable cause, our intervention is in order to correct the grave abuse of discretion. [28]

A finding of probable cause simply requires the existence of facts that are "sufficient to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial." The facts of this case establish sufficient basis to find probable cause to institute a charge for violation of Section 3(e) of R.A. No. 3019, which provides:

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

x x x x

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

Reduced to its elements, a violation under this provision requires that:

- the accused must be a public officer discharging administrative, judicial or official functions;
- he must have acted with manifest partiality, evident bad faith or inexcusable negligence; and
- that his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions. [29]

Among these elements, the first element is a given while the third element is in part dependent on the second element; the injury the petitioner suffered would be undue if the second element is present. The second and critical element provides the different modes for violating Section 3(e) of R.A. No. 3019, that is, through "manifest partiality," "evident bad faith," or "gross inexcusable negligence."

In *Uriarte v. People*, [30] this Court explained that "Section 3(e) of R.A. 3019 may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa*, as when the accused committed gross inexcusable negligence. There is manifest partiality when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. 'Evident bad faith' connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. 'Gross inexcusable negligence' refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there

is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected." [31] In issuing the TRO and preliminary injunction, and accepting Constantino's appeal, the respondents demonstrated manifest partiality, evident bad faith, and gross inexcusable negligence, which, oddly enough, the Ombudsman failed to take into consideration in determining the existence of probable cause. [32]

A glaring characteristic of the Ombudsman's handling of the petitioner's Section 3(e) charge is its patent failure to note and consider the DARAB's omission to observe the most basic rules in considering a petition for injunction and TRO, as we outline below.

First, the respondents granted the petition for injunction when nothing could anymore be enjoined because the act sought to be prevented or prohibited had already been accomplished. We stress that the DARAB issued a TRO and a preliminary injunction on November 15, 2002 and December 27, 2002, respectively. These came after the DARAB sheriff had executed and placed the petitioner in possession on May 31, 2002, pursuant to the final and executory order of PARAD Sabora. The execution was evidenced by the sheriff's Implementation Report dated June 5, 2002. [33] The settled rule is that an injunction would not lie where the acts sought to be enjoined have become *fait accompli* - an accomplished or consummated act. [34]

Second, the respondents entertained the injunction petition despite Constantino's failure to attach an affidavit of merit, as required by Section 1, Rule X of the 1994 DARAB Rules of Procedure (1994 DARAB Rules), which provides:

SECTION 1. Preliminary Injunction When Granted. A preliminary injunction, restraining order or a status quo order may be granted by the Board or any two (2) of its Members or the Adjudicator, when it is established on the basis of allegations in the sworn complaint or motion which shall be duly supported by affidavits of merit that the acts being complained of, if not enjoined, would cause some grave and irreparable damage or injury to any of the parties in interest so as to render ineffectual the decision in favor of such party. Should the Board or the Adjudicator believe that it is necessary to post a bond, it shall fix the amount of the bond to be executed by the party applying for the injunction in favor of the party sought to be enjoined to answer for the damages the latter might suffer thereby, if it is finally determined that the complainant or petitioner is not entitled thereto. Upon the filing and approval of such bond, injunction may be issued.

The above situation raises questions not only on the propriety of the TRO and the preliminary injunction, but - for purposes of the criminal complaint before the Ombudsman - on the character of the action made in relation to those who acted.

Apart from the questionable grant of the TRO and preliminary injunction, the respondents also considered the petition as an appeal, and ordered the elevation of the records of the case, completely ignoring the fact that the PARAD decision had not only become final, but had long been executed.

Constantino received the May 21, 2001 PARAD decision, through his counsel, on June 11, 2001; he filed a motion for reconsideration on June 19, 2001. On September 27, 2001, Constantino received the PARAD's order denying his motion. [35] When Constantino filed his notice of appeal on October 8, 2001, a total of 18 days had lapsed. [36] Section 1, Rule XIII of the 1994 DARAB Rules provides for a period of only 15 days from receipt of an order, resolution or decision of the adjudicator to appeal it before the DARAB. [37] The respondents, however, declared that the notice of appeal was filed on time, erroneously counting the 15-day period from the time Constantino himself received the PARAD decision on June 14, 2001. [38] Under Section 4(b), Rule V of the 1994 DARAB Rules, notice to the counsel is notice to the party himself.

Neither can Constantino's petition for injunction be considered as a certiorari petition (recognized under Section

3, Rule VIII of the 1994 DARAB Rules [39] against the PARAD order dismissing his notice of appeal. The provision declares that a petition for certiorari filed with the DARAB cannot be entertained without filing a motion for reconsideration with the Adjudicator a quo within five days from receipt of the order subject of the petition.

Under the above-listed circumstances, we hold that enough indicators exist to convince a reasonable man that the respondents grossly neglected to note and consider the facts and the law in the petition for injunction filed before them, to the proven prejudice of the petitioner. The Ombudsman joined this chorus of neglect and committed grave abuse of discretion when - through the use of wrong or irrelevant considerations and its own failure to properly examine the underlying DARAB case - it concluded that there was no reason to charge the respondents of violation of Section 3(e) of R.A. No. 3019. To be sure, the respondents may have a valid defense against such charge, but the merits of the petitioner's case and the respondents' defenses must be ventilated in an appropriately filed criminal case before the proper forum. In the meanwhile, the filing of a criminal case is in order and one must first be brought before the proper courts.

Lest this Decision be misinterpreted, we reiterate that not every error of the Ombudsman in the determination of probable cause can be directly submitted to this Court for remedial action. We can only directly intervene through the extraordinary writ of certiorari when, as in this case, a grave abuse of discretion exists.

WHEREFORE, premises considered, we hereby GRANT the petition. The Ombudsman's Resolution and Order dated June 10, 2003 and October 20, 2003, respectively, in OMB-C-C-03-0045-B, are REVERSED and SET ASIDE. The Ombudsman is ORDERED TO FILE in the proper court the necessary Information for violation of Section 3(e) of Republic Act No. 3019 against respondents Rolando S. Cua, Roel Eric C. Garcia, Lorenzo R. Reyes, Augusto P. Quijano, and Ianela G. Jusi-Barrantes.

SO ORDERED.

Carpio Morales, (Chairperson), Bersamin, Villarama, Jr., and Sereno, JJ., concur.

[1] Under Rule 45 of the Revised Rules of Court.

[2] Annex "E"; rollo, pp. 125-149.

[3] Annex "G"; id. at 157-170.

[4] Based on Section 2, Rule II of the 1994 DARAB Rules of Procedure, vesting the PARAD the jurisdiction to hear, determine and adjudicate all agrarian cases and disputes, and incidents in connection therewith, arising within his assigned territorial jurisdiction.

[5] Annex "A"; rollo, pp. 41-44.

[6] Annex "A-1"; id. at 45-47.

[7] Annex "B"; id. at 48-53.

[8] Sheriff Virgilio Robles, Jr.

[9] Rollo, pp. 63-64.

[10] Id. at 65-72.

[11] Id. at 92-99.

[12] Id. at 34-40.

[13] Section 3. Corrupt Practices of Public Officers. - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

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

[14] Respondent Salvador P. Ramos holds the position of Trial Attorney II at the DAR, while respondent Rolando S. Cua is the OIC-Executive Director of the DAR.

[15] Respondents Roel Eric C. Garcia, Lorenzo R. Reyes, Augusto P. Quijano, and Ianela G. Jusi-Barrantes are all members of the DARAB.

[16] Rollo, pp. 146-148.

[17] Id. at 163-164.

[18] The records disclose that the petitioner did not take any action to annul the DARAB's November 15, 2002 TRO and December 27, 2002 injunction; id. at 137.

[19] G.R. No. 157175, June 21, 2007, 525 SCRA 261, 265 (citations omitted).

[20] The petitioner alleged that "the Ombudsman has wittingly or unwittingly ignored or did not take into consideration certain material and indisputable facts that proved beyond doubt of the respondent's guilt of the offense charged. x x x the Ombudsman appeared to be manifestly and evidently partial in the performance of its official function in this case in favor of the respondents [.]" Rollo, pp. 17 and 20.

[21] See *People v. Romualdez*, G.R. No. 166510, July 23, 2008, 559 SCRA 492, 507.

[22] See *Presidential Ad Hoc Committee on Behest Loans v. Tabasondra*, G.R. No. 133756, July 4, 2008, 557 SCRA 31, 45.

[23] Rollo, p. 147.

[24] No. L-38293, February 21, 1980, 96 SCRA 225.

[25] Rollo, p. 146.

[26] The cases of *Varias v. Commission on Elections*, G.R. No. 189078, February 11, 2010, and *Pecson v. Commission on Elections*, G.R. No. 182865, December 24, 2008, 575 SCRA 634 (citing *Almeida v. Court of Appeals*, G.R. No. 159124, January 17, 2005, 448 SCRA 681), although not squarely in point, provide the basis for a conclusion that a decision or determination based on wrong considerations may be considered a grave abuse of discretion. See also *Mitra v. Commission on Elections*, G.R. No. 191938, July 2, 2010.

[27] Rollo, p. 163.

[28] *Ramiscal, Jr. v. Sandiganbayan*, G.R. Nos. 169727-28, August 18, 2006, 499 SCRA 375, 394, citing *Sistoza v. Desierto*, 437 Phil. 117, 129 (2002).

[29] Collantes v. Marcelo, G.R. Nos. 167006-07, August 14, 2007, 530 SCRA 142, 152.

[30] G.R. No. 169251, December 20, 2006, 511 SCRA 471, 487.

[31] Id., citing Siztoza v. Desierto, 437 Phil. 117 (2002).

[32] The Ombudsman merely defined the concepts of manifest partiality, evident bad faith, and gross inexcusable negligence, without explaining why the respondents' acts did not constitute to these.

[33] Annex "D"; rollo, pp. 55-56.

[34] See Aznar Brothers Realty Co. v. Court of Appeals, 384 Phil. 95 (2000).

[35] Rollo, p. 42.

[36] Constantino's notice of appeal was denied by PARAD Ilao in his Order of April 16, 2002; supra note 5.

[37] SECTION 1. Appeal to the Board. a) An appeal may be taken from an order, resolution or decision of the Adjudicator to the Board by either of the parties or both, orally or in writing, within a period of fifteen (15) days from the receipt of the order, resolution or decision appealed from, and serving a copy thereof on the adverse party, if the appeal is in writing.

[38] Rollo, pp. 96-97.

[39] Section 3, Rule VIII in part provides:

x x x x

The Order or resolution of the Adjudicators on any issue, question, matter or incident raised before them shall be valid and effective until the hearing shall have been terminated and the case is decided on the merits, unless modified and reversed by the Board upon a verified petition for certiorari which cannot be entertained without filing a motion for reconsideration with the Adjudicator a quo within five (5) days from receipt of the order, subject of the petition. Such interlocutory order shall not be the subject of an appeal.

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