

**GENEVIEVE O. GAAS AND ADELINA P. GOMERA, PETITIONERS, VS.  
RASOL L. MITMUG, REGIONAL DIRECTOR, REGION XII,  
COMMISSION ON AUDIT, RESPONDENT.**

*G.R. No. 165776. April 30, 2008*

Ponente: QUISUMBING, J.

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**QUISUMBING, J.:**

This is a petition for review on certiorari under Rule 45 of the Rules of Court seeking a reversal of the Decision[1] dated February 9, 2004 and the Resolution[2] dated September 9, 2004 of the Court of Appeals in CA-G.R. SP No. 56275. The appellate court affirmed the Decision[3] dated October 23, 1997 of the Office of the Ombudsman for Mindanao in Case No. OMB-MIN-ADM-94-042 finding petitioners Genevieve O. Gaas and Adelina P. Gomera guilty of gross neglect of duty and dismissing them from government service.

The facts, culled from the records, are as follows:

Petitioners Genevieve O. Gaas and Adelina P. Gomera were the bookkeeper and senior clerk, respectively, of the Office of the Municipal Treasurer, Municipality of Bacolod, Lanao del Norte.

On May 15, 1990, in accordance with Regional Office Order No. 90-27-A dated May 7, 1990, the State Auditors and Technical Audit Specialist of the Provincial Auditor's Office and the City Auditor's Office conducted a cash examination as part of a comprehensive audit on the cash and accounts of Officer-in-Charge (OIC)-Assistant Municipal Treasurer Saturnino L. Burgos of Bacolod, Lanao del Norte. They discovered that there was a shortage of cash in the possession of petitioners as follows: (1) P19,483.20 in the possession of petitioner Gaas, representing disallowed vales or chits; and (2) P29,956.28 in the possession of petitioner Gomera, also representing disallowed vales or chits. Gaas explained to the auditors that she was tasked to receive liquidations of collections from the Revenue Collection Clerks and was instructed by Burgos to advance P25,648.80 from the collections in her possession for the payment of various expenses to be incurred by the General Fund; and that P19,483.20 was disallowed for reimbursement. Gomera, on the other hand, explained that she was made to draw a cash advance out of the liquidated collections in the amount of P25,648.80; and that the shortage consisted of chits of municipal officers and employees, which were submitted to her for deduction from their respective monthly salaries; but the said chits were disallowed. Both petitioners settled the missing cash upon demand.

Based on the comprehensive audit report submitted by the auditors, the Commission on Audit (COA) sent a Letter[4] dated October 29, 1991 to the Office of the Ombudsman for Mindanao, recommending the filing of appropriate disciplinary actions against petitioners. The Office of the Ombudsman administratively charged petitioners, Revenue Collection Clerk Nelson L. Gonzales and Municipal Mayor Warlino M. Relova for dishonesty. They were required to submit counter-affidavits.

On October 23, 1997, the Office of the Ombudsman for Mindanao rendered a Decision finding petitioners and Gonzales guilty of gross neglect of duty and ordered their dismissal. The complaint against Mayor Relova was dismissed without prejudice to the result of the investigation of the criminal aspect of the same acts.

The Office of the Ombudsman for Mindanao found substantial evidence against petitioners for violating government accounting and auditing rules since petitioners made disbursements without proper documentation. It stressed that chits, vales and IOU's[5] are not valid means of disbursing funds and are not considered valid cash items, citing the Manual on Cash Examination of the COA which states: "Vales, chits or IOU's are not allowable under any circumstances." It ruled that by the nature of petitioners' sensitive duties as custodians of government funds, it is their primary duty to ensure that public funds are properly disbursed and the long practice of allowing local officials to obtain cash through vales is wrong.[6] The dispositive portion of the decision reads:

WHEREFORE, PREMISES CONSIDERED, respondents Genevieve O. [G]aas, Adelina P. Gomera and Nelson L. Gonzales are hereby found GUILTY of Gross Neglect of Duty. Pursuant to the provision of Sec. 23 (c), Rule XIV, Civil Service Commission Resolution No. 91-1631 dated December 27, 1991, Rules Implementing Book V, of the Executive Order No. 292 and other pertinent Civil Service Laws, they are dismissed from the service, without prejudice to their right to appeal as provided under Sec. 27, R.A. [No.] 6770.

The Municipal Mayor shall implement this decision within ten (10) days from the date that it shall have become final and executory.

The complaint against Mayor Warlino M. Relova is hereby dismissed, without prejudice to the result of the investigation of the criminal aspect of these same acts.

SO DECREED.[7]

Petitioners filed respective motions for reconsideration which were denied. Thereafter, they filed an appeal before the Court of Appeals which affirmed the decision of the Office of the Ombudsman for Mindanao. The dispositive portion of the Court of Appeals decision reads:

WHEREFORE, the instant petition is hereby DISMISSED. The assailed Decision dated October 23, 1997 and Order dated February 24, 1998, of the Office of the Ombudsman-Mindanao in Case No. OMB-MIN-ADM-94-042 are hereby AFFIRMED.

SO ORDERED.[8]

The Court of Appeals, in affirming the decision of the Deputy Ombudsman for Mindanao, ruled that the evidence presented was substantial, sufficient to cause the dismissal of petitioners:

. . . The comprehensive audit report submitted by public respondent Commission on Audit, Region [XII], Cotabato City, reported that the shortages of cash by the petitioners was due to the disallowed cash advances (vales or chits) made by the municipal employees; that such cash advances were made through the petitioners per instructions of Saturnino Burgos, the Assistant Municipal Treasurer-OIC, who at that time appointed the petitioners as special disbursing officers; that appointing the petitioners as special disbursing officers was strictly prohibited since such [positions were] incompatible to the petitioners' positions as municipal bookkeeper and unbonded senior clerk. The petitioners themselves admitted such findings but raised as a defense the alleged scheme by Burgos under the guise of designating them as special disbursement officers and made them to perform tasks incompatible to their positions.

It is true that their immediate superior, Burgos, in his capacity as Assistant Municipal Treasurer-OIC, was unauthorized to appoint them as special disbursing officers, hence, tasked to handle public funds. However, by accepting such additional and incompatible task, the petitioners likewise accepted the duty to be accountable [for] the public funds and to make sure that the disbursement thereof are properly documented according to the rules and regulations. The petitioners should have kept in mind the constitutional mandates that a public office is a public trust; that all public officers and employees are held accountable to the people; and that they should serve the people with utmost responsibility, integrity, loyalty and efficiency. Between their duty as public

employees and their duty to their immediate superior, who in many cases would order them to do tasks in violation of the rules and regulations, the petitioners should have considered their duty as public employees, burdened with ... accountability to the people, as their primary responsibility.[9]

Thus, this petition.

Petitioners argue that there was a misapprehension of facts by the Ombudsman and the Court of Appeals since the shortage happened when the funds were still in the possession of the collectors and not petitioners. They also lament that although the complaint was filed with the Office of the Ombudsman for Mindanao as early as November 18, 1991, the order for them to file their counter-affidavits was made only on June 16, 1995 or more than three years after and the case was resolved only on October 23, 1997. According to them, the delay violated their constitutional rights to due process and to a speedy disposition of the case.

On the other hand, respondent counters that questions of facts, particularly as to who disbursed the funds as argued by petitioners, is not the proper subject of a petition for review on certiorari before the Supreme Court. Respondent also argues that petitioners cannot raise the issue on the alleged violation of their right to a speedy trial for the first time on appeal.

The issues raised by petitioners for our resolution are:

**I.**

WHETHER OR NOT THERE WAS MISAPPREHENSION OF FACTS BY BOTH THE OMBUDSMAN AND THE COURT OF APPEALS; and

**II.**

[WHETHER OR NOT] THE OMBUDSMAN VIOLATED ITS RULES OF PROCEDURE, CONSTITUTING DEPRIVATION OF APPELLANT[S]/PETITIONERS' RIGHTS TO SPEEDY TRIAL AND DUE PROCESS.[10]

On the other hand, respondent posits the following issues:

**I.**

WHETHER OR NOT THE INSTANT PETITION RAISES REVERSIBLE ERRORS OF FACT OR OF LAW AS TO JUSTIFY A REVIEW UNDER RULE 45 OF THE RULES OF COURT.

**II.**

WHETHER OR NOT THE PETITIONER MAY RAISE BEFORE THIS HONORABLE COURT FOR REVIEW AN ISSUE WHICH WAS NEVER RAISED BELOW.[11]

The primordial issues of the case are: (1) Did the Ombudsman commit an error of fact in concluding that petitioners are guilty of gross neglect of duty? and (2) Were petitioners' rights to a speedy trial and to a speedy disposition of the case violated?

As to the first issue, this Court has held that any appeal or application for remedy against a decision or finding of the Office of the Ombudsman may only be entertained by the Supreme Court on a pure question of law. Section 14 of Republic Act No. 6770, the Ombudsman Act of 1989, provides that "[n]o court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court on a pure question of law." Moreover, Section 27 of the said Act provides further that "[f]indings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive." [12]

Findings of fact of the Office of the Ombudsman are conclusive when supported by substantial evidence and are

accorded due respect and weight especially when they are affirmed by the Court of Appeals. It is only when there is grave abuse of discretion by the Ombudsman that a review of factual findings may aptly be made.[13]

We find no grave abuse of discretion on the part of the Ombudsman and uphold its finding which was upheld by the Court of Appeals that there is substantial evidence against petitioners for violating government accounting and auditing rules and making disbursements without proper documentation.

As to the second issue, we rule that there was no violation of petitioners' rights to a speedy trial and to a speedy disposition of the case.

The right to speedy disposition of cases, like the right to speedy trial, is violated only when the proceedings are attended by vexatious, capricious and oppressive delays. In the determination of whether said right has been violated, particular regard must be taken of the facts and circumstances peculiar to each case. The conduct of both the prosecution and the defendant, the length of the delay, the reasons for such delay, the assertion or failure to assert such right by the accused, and the prejudice caused by the delay are the factors to consider and balance. A mere mathematical reckoning of time involved would not be sufficient.[14]

In this case, although it is true that the Complaint was filed on November 18, 1991 and petitioners received an Order[15] directing them to submit their counter-affidavits only three years after or on June 16, 1995, they failed to raise the issue of speedy disposition of the case at that time. Instead, they submitted their counter-affidavits. It was only in this petition that they first raised the issue. Neither have they moved for a speedy resolution of the case. It was only when they lost and pursued their appeal that they first raised the issue. It cannot therefore be said that the proceedings are attended by vexatious, capricious and oppressive delays. Petitioners cannot now seek the protection of the law to benefit from the adverse effects of their failure to raise the issue at the first instance. In effect, they are deemed to have waived their rights when they filed their counter-affidavits after they received the Order dated June 16, 1995 without immediately questioning the alleged violations of their rights to a speedy trial and to a speedy disposition of the case.

WHEREFORE, the petition is DENIED. The assailed Decision dated February 9, 2004 and the Resolution dated September 9, 2004 of the Court of Appeals in CA-G.R. SP No. 56275 are AFFIRMED.

Costs against petitioners.

### **SO ORDERED.**

Puno, CJ., Ynares-Santiago, Austria-Martinez, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-De Castro, and Brion, JJ., concur.

Carpio, J., on leave.

Corona, J., I certify that J. Corona, concurred with the ponencia.

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\* On leave.

[1] Rollo, pp. 126-134. Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Delilah Vidallon-Magtolis and Jose L. Sabio, Jr. concurring.

[2] Id. at 135-136.

[3] Id. at 74-81.

[4] Id. at 31-32.

[5] Id. at 22.

[6] Id. at 80.

[7] Id. at 81.

[8] Id. at 133.

[9] Id. at 131-132.

[10] Id. at 212.

[11] Id. at 233.

[12] Morong Water District v. Office of the Deputy Ombudsman, G.R. No. 116754, March 17, 2000, 328 SCRA 363, 369.

[13] Bedruz v. Office of the Ombudsman, G.R. No. 161077, March 10, 2006, 484 SCRA 452, 456.

[14] Mendoza-Ong v. Sandiganbayan, G.R. Nos. 146368-69, October 18, 2004, 440 SCRA 423, 425-426.

[15] Rollo, p. 70.

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