

ROMULO J. MAROHOMSALIC, Petitioner, vs. REYNALDO D. COLE, Respondent.

G.R. No. 169918. February 27, 2008

Ponente: CORONA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-169918/>

CORONA, J.:

This is a petition for review under Rule 45 of the Rules of Court assailing the decision[1] of the Court of Appeals (CA) dated July 22, 2005 in CA-G.R. SP No. 86911 entitled Romulo J. Marohomsalic v. Reynaldo D. Cole, Office of the Ombudsman and Sylvia Hazel T. Bismonte-Beltran.

The facts follow.

Petitioner Romulo J. Marohomsalic was employed as Special Land Investigator I of the Provincial Environment and Natural Resources Office of the Department of Environment and Natural Resources (PENRO-DENR) in Koronadal City.

Respondent Reynaldo D. Cole[2] had a pending land dispute case in the PENRO-DENR in Koronadal City. Sometime in February 2001, he went to said office to inquire on the status of his case. He met Marohomsalic and asked him for assistance as he was not from Koronadal but from General Santos City.

The allegations of fact diverge at this point. Marohomsalic, on one hand, asserted that on March 8, 2001, Cole gave him cash purportedly to cover the expenses for photocopying the documents needed in the case. On the other hand, Cole claimed (and the Ombudsman affirmed) that Marohomsalic demanded P15,000 to secure the reversal of the PENRO-DENR decision against him (Cole). Cole sought the assistance of the National Bureau of Investigation to entrap Marohomsalic. On March 8, 2001, Marohomsalic was caught in flagrante delicto receiving bribe money of P2,700 from Cole.

An administrative complaint[3] for grave misconduct was filed against Marohomsalic in the Office of the Ombudsman-Mindanao. After evaluating the respective allegations of the parties, the Ombudsman found Marohomsalic guilty and dismissed him from the service.[4] An order dated April 28, 2004 for the immediate implementation of Marohomsalic's dismissal was issued.[5]

Marohomsalic appealed to the CA by way of a petition for review under Rule 43 of the Rules of Court. This was dismissed on grounds of procedural infirmities. He then filed this petition for review on certiorari with a prayer for the issuance of a temporary restraining order (TRO). On March 15, 2006, we issued a TRO stopping his dismissal during the pendency of this petition.

Marohomsalic raises two basic issues. First, he asserts that the CA acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed his petition for review on technical grounds. Second, he claims that his right to due process was violated by both the Ombudsman and the CA.

The petition must be denied.

THERE WAS NO GRAVE ABUSE OF DISCRETION ON THE PART OF THE CA

Marohomsalic considers as grave abuse of discretion the CA's dismissal of his petition on technical grounds, namely, the absence of a written explanation as to why his petition was filed via registered mail instead of personally, and improper verification.[6] He argues that the CA acted with such grave abuse of discretion because, by dismissing his petition, the Ombudsman's authority to dismiss him and the Ombudsman's finding of grave misconduct on his part were upheld.

Marohomsalic, however, did not substantiate his claim. Allegations of grave abuse of discretion must be proved. A decision is not deemed tainted with grave abuse of discretion simply because the party affected disagrees with it.

Grave abuse of discretion is a capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction. It must be shown that the discretion was exercised arbitrarily or despotically.[7] In *Solidum v. Hernandez*,[8] we held:

A tribunal, board or officer is said to have acted with grave abuse of discretion when it exercised its power in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion or a virtual refusal to perform the duty enjoined or to act in contemplation of law.

Based on the foregoing, the CA did not act with grave abuse of discretion when it dismissed Marohomsalic's petition. Its action was predicated on legal, albeit "technical," grounds.

Marohomsalic, through counsel, assumed that the CA would understand that, because of the distance between Manila and South Cotabato, the petition could not be filed personally.[9] The CA, however, was correct in holding that under Section 11, Rule 13 of the Rules of Court, personal service of petitions and other pleadings is the general rule while resort to the other modes of service and filing is the exception.[10] When recourse is made to the exception, a written explanation of why the service and the filing are not done personally becomes indispensable. If no explanation is offered to justify resorting to the other modes (i.e., the exception), the discretionary power of the court to expunge the pleading comes into play.[11]

Regarding the improper verification, Marohomsalic avers that the allegations in his pleading were based on authentic records. He argues that such was substantial compliance with the rule on verification. There was no further need for him to state in the verification that the allegations were also based on his personal knowledge. To require him to do so would be contrary to law.

Section 4, Rule 7 of the Rules of Court provides:

Sec. 4. Verification. – xxx

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

A pleading required to be verified xxx or lacks a proper verification, shall be treated as an unsigned pleading.

Verification is the assurance that the allegations of the petition have been made in good faith, or are true and correct and not merely speculative.[12] Marohomsalic has apparently missed the import of the foregoing rule. *Hun Hyung Park v. Eung Won Choi*[13] is instructive on this point:

A reading of [the above-quoted] Section 4 of Rule 7 indicates that a pleading may be verified under either of the two given modes or under both. The veracity of the allegations in a pleading may be affirmed based on either one's own personal knowledge or on authentic records, or both, as warranted. The use of the preposition "or" connotes that either source qualifies as a sufficient basis for verification and, needless to state, the

concurrence of both sources is more than sufficient. Bearing both a disjunctive and conjunctive sense, this parallel legal signification avoids a construction that will exclude the combination of the alternatives or bar the efficacy of any one of the alternatives standing alone.

Contrary to petitioner's position, the range of permutation is not left to the pleader's liking, but is dependent on the surrounding nature of the allegations which may warrant that a verification be based either purely on personal knowledge, or entirely on authentic records, or on both sources.

As pointed [out by respondent], "authentic records" as a basis for verification bear significance in petitions wherein the greater portions of the allegations are based on the records of the proceedings in the court of origin and/or the court a quo, and not solely on the personal knowledge of the petitioner. xxx (emphasis supplied)

We reiterate: whether the verification should be based on the pleader's personal belief or on authentic records, or both, depends largely on the nature of the allegations. It is not a matter of simple preference. Otherwise, the rationale of the rule will be trivialized and its resoluteness diminished.[14]

The CA correctly ruled that the requirement was not merely technical for it served a purpose that was relevant to the nature of the action. In an appeal by petition for review under Rule 43 of the Rules of Court, the petition may be resolved on the basis of the pleadings before the appellate court without the necessity of elevating the records from the quasi-judicial officer, tribunal or body where the case began. This is in contrast with an appeal by writ of error under Rule 41 according to which the appellate court may not act on the appeal until after the elevation of the records from the lower court.

It was important therefore for petitioner to have stated in his verification that (1) his allegations in the petition were true and correct of his personal knowledge and (2) if the petition relied on documents and records attached to the petition, that his allegations were based on records whose authenticity he warranted.[15]

But granting arguendo that Marohomsalic's contention was correct, his petition must nevertheless still fail. The CA found that only the March 24, 2004 order of the Office of the Ombudsman was an original copy. The copy of the February 23, 2004 decision of the Ombudsman was a machine copy. Furthermore, of the ten other documents attached to the petition, none was certified as a true and authentic copy. The only conclusion we can make is that Marohomsalic's verification was not based either on personal knowledge or on authentic records.

While procedural rules may be relaxed in the interest of justice, it is well-settled that these are tools designed to facilitate the adjudication of cases. The relaxation of procedural rules in the interest of justice was never intended to be a license for erring litigants to violate the rules with impunity. Liberality in the interpretation and application of the rules can be invoked only in proper cases and under justifiable causes and circumstances. While litigation is not a game of technicalities, every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.[16]

THE OMBUDSMAN HAS THE POWER TO ORDER THE DISMISSAL OF A PUBLIC OFFICER

The jurisdiction of the Ombudsman over disciplinary cases against government employees is vested by no less than Section 12, Article XI of the Constitution.[17] Part of such disciplinary authority in administrative cases is the power to investigate and prosecute, in accordance with the requirements laid down by law. One such requirement is that substantial evidence must always support any finding.[18]

One of the grounds for an administrative complaint cognizable by the Ombudsman is an act or omission contrary to law or regulations like grave misconduct. It is characterized by the elements of corruption, clear intent to violate the law or flagrant disregard of an established rule. Corruption as an element of grave misconduct includes the act of an official who unlawfully or wrongfully uses his station or character to procure some benefit for

himself, contrary to the rights of others.[19]

The Ombudsman found that Marohomsalic directly requested and received money from Cole in connection with a transaction in which he was involved in his official capacity. It concluded that Marohomsalic's act constituted grave misconduct. An analysis of the assailed decision[20] of the Ombudsman-Mindanao shows that there was substantial evidence to sustain such finding.

Without a showing of grave abuse of discretion, there is nothing more left to be done but to uphold the findings of fact of the Ombudsman.

The Supreme Court is not a trier of facts, especially in a petition for review under Rule 45. In *Brito v. Office of the Deputy Ombudsman for Luzon, et al.*, we said that:[21]

Except in cases when there is grave abuse of discretion [in the exercise of its discretion], which is absent in [this] case, we have adopted a policy of non-interference in the exercise of the Ombudsman's constitutionally mandated powers on this matter. This 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. 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, xxx.

Corollary to the Ombudsman's disciplinary authority is his authority to dismiss. This matter has long been settled. RA 6770,[22] which provides for the functional and structural organization of the Office of the Ombudsman, was passed by Congress to deliberately endow the Ombudsman with the power to prosecute offenses committed by public officers and employees to make him a more active and effective agent of the people in ensuring accountability in public office. Moreover, Congress granted the Ombudsman broad powers to implement his own actions.[23]

In *Ombudsman v. CA and Magbanua*,[24] the extent of the Ombudsman's disciplinary administrative authority was explained:

[The] provisions in Republic Act No. 6770 taken together reveal the manifest intent of the lawmakers to bestow on the Office of the Ombudsman full administrative disciplinary authority. These provisions cover the entire gamut of administrative adjudication which entails the authority to, inter alia, receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and necessarily, impose the said penalty.

xxx xxx xxx

The legislative history of Republic Act No. 6770 thus bears out the conclusion that the Office of the Ombudsman was intended to possess full administrative disciplinary authority, including the power to impose the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee found to be at fault. The lawmakers envisioned the Office of the Ombudsman to be "an activist watchman," not merely a passive one. xxx

Clearly, the Ombudsman has the power to directly impose administrative penalties on erring public officials and employees like Marohomsalic.

THERE WAS NO DENIAL
OF DUE PROCESS

Marohomsalic avers that his right to due process of law was violated by the Ombudsman when his case was set neither for preliminary investigation nor for preliminary conference. He further alleges that he should have been investigated under the “old rules of procedure” of the Office of the Ombudsman, not under the “new rules,” because he committed the alleged offense when the “old rules” were still in effect.

Marohomsalic is confused. The Office of the Ombudsman has only one set of rules of procedure and that is Administrative Order No. 07, series of 1990, as amended.[25] There have of course been various amendments made thereto but it has remained, to date, the only set of rules of procedure governing cases filed in the Ombudsman. Hence, the phrase “as amended” is correctly appended to Administrative Order No. 7 every time it is invoked. Administrative Order No. 17[26] is just one example of these amendments.

Semantics aside, Marohomsalic’s contention that his case should have been prosecuted under Administrative Order No. 7, s. 1990, as amended, without the amendments introduced by Administrative Order No. 17, is erroneous. Section 4 of Administrative Order No. 7, as amended by Administrative Order No. 17, provides:

[The rules] shall govern all cases brought after they take effect and to further proceedings in cases then pending, except to the extent that their application would not be feasible or would cause injustice to any party. (emphasis supplied)

Marohomsalic failed to prove how an application of the rules as amended would not be feasible under the circumstances or how it would cause injustice to him.

Marohomsalic likewise maintains that the “old rules” must apply to his case, in accordance with the principle that criminal laws favorable to the accused must be liberally construed in his favor. We disagree. Since the subject of this petition is an administrative complaint, not a criminal complaint, this case is not subject to criminal laws and procedure, or principles applicable only thereto. More importantly, he must not be allowed to hide behind the cloak of liberal construction favoring the accused, if at all this principle finds application in this case. To permit him to do so will be a mockery of public trust and accountability.

WHEREFORE, the petition is hereby DENIED. The temporary restraining order we issued on March 15, 2006 is LIFTED.

Costs against petitioner.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Azcuna, and Leonardo-De Castro, JJ., concur.

* The Court of Appeals was originally impleaded as respondent. Pursuant however to Section 4, Rule 45 of the Rules of Court, it was excluded as a party-respondent in this case.

[1] Penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Edgardo A. Camello and Rodrigo F. Lim, Jr. of the Former Twenty-Third Division of the Court of Appeals.

[2] Complainant in Case No. OMB-M-A-03-340-J. Rollo, p. 57.

[3] A criminal complaint was likewise filed against Marohomsalic. Id., p. 20.

[4] Decision dated February 23, 2004. Id., pp. 57-61.

[5] Id., p. 77.

- [6] Another ground for dismissing the petition was the failure of Marohomsalic's counsel to pay his IBP dues. Upon Marohomsalic's motion for reconsideration, the CA sustained its dismissal on the first and second grounds. The compliance by Marohomsalic's counsel with his IBP dues was noted by the CA. Rollo, p. 47.
- [7] *Torreda v. Toshiba Information Equipment (Phils.), Inc. and Cristobal*, G.R. No. 165960, 8 February 2007.
- [8] 117 Phil. 340 (1963).
- [9] Rollo, p. 47.
- [10] *Solar Team Entertainment, Inc. v. Bautista Ricafort, et al.*, G.R. No. 132007, 5 August 1998, 293 SCRA 667. In this case, we have stated that strictest compliance with Section 11 of Rule 13 is mandated one month from promulgation of this decision, *Id.*, p. 670.
- [11] *United Pulp and Paper Co., Inc. v. United Pulp and Paper Chapter-Federation of Free Workers*, G.R. No. 141117, 25 March 2004, 426 SCRA 334. *Zulueta v. Asia Brewery*, G.R. No. 138137, 8 March 2001, 354 SCRA 100, 109.
- [12] *Go v. CA, Lim and Lim*, G.R. No. 163745, 24 August 2007.
- [13] G.R. No. 165496, 12 February 2007.
- [14] *Id.*
- [15] Rollo, p. 48.
- [16] *Hun Hyung Park v. Eung Won Choi*, *supra* note 13.
- [17] *Office of the Ombudsman v. Estandarte and CA*, G.R. No. 168670, 13 April 2007.
- [18] *Ang Tibay, et al. v. CIR and National Labor Union, Inc.*, 69 Phil. 642 (1940).
- [19] *Salazar v. Barriga*, A.M. No. P-05-2016, 19 April 2007. *Civil Service Commission v. Belagan*, G.R. No. 132164, 19 October 2004, 440 SCRA 578.
- [20] *Supra* note 6.
- [21] G.R. Nos. 167335 & 167337, 10 July 2007.
- [22] Ombudsman Act of 1989.
- [23] *Estarija v. Ranada*, G.R. No. 159314, 26 June 2006, 492 SCRA 652.
- [24] G.R. No. 168079, 17 July 2007. *Office of the Ombudsman v. Court of Appeals*, G.R. No. 167844, 22 November 2006, 507 SCRA 610.
- [25] Otherwise referred to as Rules of Procedure of the Office of the Ombudsman.
- [26] Dated September 15, 2003. Administrative Order No. 7 as amended by Administrative Order No. 17, now allows the investigating officer to issue an order directing the parties to file, within ten days from receipt of the Order, their respective verified position papers which shall contain only matters provided in these rules and on the basis of which, along with attachments, the Hearing Officer may consider the case submitted for decision.

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.