

**REBECCA E. BADIOLA, PETITIONER, VS. HON. COURT OF APPEALS,
THE OFFICE OF THE OMBUDSMAN, AND LERMA G. ABESAMIS,
RESPONDENTS.**

G.R. No. 170691. April 23, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a Petition for Certiorari[1] under Rule 65 of the Rules of Court. Petitioner Rebecca E. Badiola (Badiola) seeks to annul, reverse and set aside (1) the Resolution[2] dated 19 October 2005 in which the Court of Appeals refused to reconsider its earlier Resolution[3] dated 22 December 2004, dismissing Badiola's petition in CA-G.R. SP No. 84623; and (2) the Decision[4] dated 19 January 2004 in Administrative Case No. OMB-C-A-03-0186-F in which the Office of the Ombudsman suspended Badiola from office for three months without pay after finding her guilty of simple neglect of duty.

The factual and procedural antecedents of the case are as follows:

Badiola is the Human Resource Management Officer V of the Department of Agriculture (DA) and is designated as the Chief of the Personnel Division. She is likewise the Head Secretariat of the DA Promotion and Selection Board (DA-PSB) and the DA Search Committee.

Private respondent Lerma G. Abesamis (Abesamis), on the other hand, is a Project Development Officer of the Public Investment Program Division of the DA Planning Service.

On 30 May 2003, Abesamis filed a Complaint-Affidavit[5] before the Office of the Ombudsman, charging Badiola with violating Section 5(a)[6] of Republic Act No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees), Section 3(e) and (f)[7] of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act), Perjury[8], and Dishonesty and/or Grave Misconduct.

In the Complaint-Affidavit, Abesamis related that on 17 July 2001, and again on 15 January 2003, she applied[9] for the vacant position of Director III (Assistant Director) of the Agricultural Training Institute, an attached Bureau of the DA. She submitted her letter of application to then DA Secretary Luis P. Lorenzo, Jr. (Lorenzo), together with recommendation letters from various politicians, which DA Secretary Lorenzo allegedly endorsed to the Office of the President (OP) for consideration.

In a letter[10] dated 5 March 2003, then Chairman Bernardino R. Abes (Abes) of the OP Search Committee returned DA Secretary Lorenzo's letter of endorsement of Abesamis's application, and required instead the submission of (1) the names of at least three nominees for the position, with supporting documents; and (2) the rating/ranking of the nominees given by the DA-PSB.

Abesamis alleged that from the time of receipt by the DA of Chairman Abes's letter on 6 March 2003 until the filing of her Complaint-Affidavit, the requirements in said letter were yet to be complied with. This undue delay was blamed on Badiola, as she was the head of the DA-PSB Secretariat, and this was deliberately done in order to

favor another unnamed applicant for the same position.

On 15 May 2003, Abesamis received a memorandum[11] signed by DA-PSB Vice Chairman and Administrative Service Director Julito M. Briola, requiring her to submit her Performance Appraisal Report for the 1[st] and 2[nd] semesters of Calendar Year 2002. Abesamis complained that this requirement was applied only to her, allegedly upon the authorship of Badiola. Abesamis's immediate superior, purportedly in collusion with Badiola, gave Abesamis low marks so as to disqualify her from the promotion she was aspiring for.

Finally, Abesamis pointed to the alleged illegality of Badiola's appointment as Human Resource Management Officer V (Chief of Division) on 20 January 1999. A Master's Degree was required for the said position and Badiola obtained hers from the Pampanga Agricultural College only in March 1999, as certified[12] by the school. Abesamis averred that Badiola wrongly stated this fact on her Personal Data Sheet.[13] According to Abesamis, Badiola even misrepresented in her Daily Time Record[14] that she was rendering overtime work in the DA Quezon City office during the Saturdays of November and December in 1998, when she was supposedly attending classes in Pampanga at the same time.

The administrative complaint was docketed at the Office of the Ombudsman Preliminary Investigation and Administrative Adjudication Bureau as OMB-C-A-03-0186-F, for Misconduct and Conduct Prejudicial to the Best Interest of the Service, while the criminal aspect of the complaint was docketed as OMB-C-C-03-0355-F, for violation of Section 3(e) and (f) of Republic Act No. 3019.

In an Order[15] dated 1 July 2003, the Office of the Ombudsman required Badiola to submit a Counter-Affidavit and other controverting evidence to the complaint.

On 8 July 2003, Badiola filed her Counter-Affidavit in which she denied the allegations that she caused the delay in the processing of Abesamis's papers and that she had any part in the decision of the DA-PSB to require the applicants to submit their performance evaluation reports. Badiola also asserted that the DA-PSB already forwarded its recommendations[16] of short listed applicants to DA Secretary Lorenzo as of 17 June 2003 in compliance with the letter of OP Search Committee Chairman Abes. Regarding the issue of her Master's Degree, Badiola declared that she belonged to the graduate class of October 1998 as reflected in the Official Transcript of Records[17] issued by the Pampanga Agricultural College. However, the graduation rites were only held on 16 December 1999, which circumstance was already beyond her control. Thus, she allegedly committed no misrepresentation in her Daily Time Records when she declared that she rendered overtime services in the months of November and December in 1998.

On 17 July 2003, Abesamis filed a Reply-Affidavit[18] wherein she spelled out the mistakes committed by Badiola in the performance of her duties. She annexed thereto an unsigned letter by DA Secretary Lorenzo to OP Search Committee Chairman Abes, which was prepared by Badiola's office. The matrix of the short listed applicants and their qualifications presented in said letter bear the following irregularities: (1) the name of then Undersecretary Charito R. Eligir of the Presidential Management Staff (PMS) appeared as one of Abesamis's endorsers, when he was actually not; (2) the other personalities who actually recommended Abesamis for the promotion were not listed; (3) that Abesamis's Master's Degree in Business Administration was omitted from the information regarding her educational background; and (4) that the applicant ranked number 1 was made to appear to have a Master's Degree in Environment and Natural Resources Management, when he had yet to finish the same. Abesamis claimed that these mistakes were deliberately resorted to by Badiola to discriminate against Abesamis's application for promotion.

In a Rejoinder[19] filed by Badiola, she explained that the erroneous entries were honest mistakes and that the same were already rectified.

Several more pleadings and documents[20] were thereafter filed by the parties before the Ombudsman.

On 10 November 2003, the Ombudsman issued a Resolution[21] dismissing OMB-C-C-03-0355-F, the criminal complaint against Badiola, pertinent portions of which read:

[W]ith respect to the charge of Violation of Section 3, paragraph (e) of R.A. 3019, the essential element of "discharging official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence" is not present in the instant case. In the same token, as regards the charge of Violation of Section 3, paragraph (f) of R.A. 3019, the essential element of giving undue advantage in favor of an interested party is lacking herein.

x x x x

Accordingly, it can not be gainsaid that the [herein petitioner Badiola] acted with manifest partiality, evident bad faith or gross inexcusable negligence since the purported delay is beyond her control. Furthermore, a reading of the complaint failed to reveal that "undue injury" has been caused to the [herein private respondent Abesamis]. In addition, the actuation of [Badiola] can not be considered as having given undue advantage to an interested party since the requirements imposed on the nominees to the position in question appears to apply to all of the said nominees.

In view of the lack of any sufficient ground to engender a well founded belief that the respondent committed a violation of Republic Act No. 3019, the only logical recourse is to dismiss the present case.

WHEREFORE, PREMISES CONSIDERED, it is respectfully recommended that the above-entitled case be DISMISSED, as it is hereby DISMISSED.

Subsequently, on 19 January 2004, the Office of the Ombudsman rendered a Decision[22] in OMB-C-A-03-0186-F, the administrative case against Badiola, in which it ruled as follows:

After a careful review of the records of the case, we conclude, and so hold, that substantial evidence have been adduced to establish the liability of respondent [Badiola] for Neglect of Duty.

It is beyond question that the official functions of [Badiola] consist of, among others, the supervision of the concerned office staff and the submission of data/information of candidates for appointment/promotion. However, as the records of the case will reveal, [Badiola] appears to have been remiss in the performance of the said functions.

For one, it has been shown that the respondent [Badiola] failed to perform her task of supervising the personnel under her direction, particularly, Human Resource Management Officer I ROMELIA A. UFEMIA, resulting in the placing of the name of Undersecretary CHARITO ELEGIR of the Presidential Management Staff as one of the endorsers in the application for promotion of the complainant. x x x

From this, it is clear that the respondent [Badiola] has been remiss in the performance of her duty, i.e., in supervising the personnel under her charge. Although this mistake may be considered as innocuous, it apparently has a more far-reaching repercussion, in that a false endorsement from the Presidential Management Staff, contained in official records, will have a negative effect on the application of the complainant [Abesamis].

In addition, the respondent [Badiola] further failed to perform her supervisory function, by indicating in the same matrix of short listed applicants for the position of Assistant Director for the Agricultural Training Institute (pp. 0079, records), that FRANCISCO RAMOS III, one of the applicants for the ATI position, was a graduate of a masteral degree in environment and natural resources management, when in fact, record in the possession of the respondent [Badiola] will show that RAMOS is not yet a graduate. This again has far-reaching effects in that it appears to be favorable to the concerned applicant, to the prejudice of the other

applicants for the position.

Again, in the same matrix of short listed applicants for the position of Assistant Director for the Agricultural Training Institute (pp. 0081, records), the fact that the complainant [Abesamis] is a holder of a Masters in Business Administration was omitted, when in fact, records in the official custody of the respondent [Badiola] will indicate such. This further shows that the respondent [Badiola] has apparently failed in the performance of her functions.

x x x x

As discussed above, the performance by the respondent [Badiola] of her function leaves much to be desired, and for which the appropriate penalty should be imposed. In view of the absence of any mitigating or aggravating circumstance, it is submitted that the medium penalty for the offense of Simple Neglect of Duty may be imposed against the respondent [Badiola].

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered finding [petitioner] REBECCA E. BADIOLA, Guilty of Simple Neglect of Duty, for which the penalty of Suspension From Office for Three (3) Months Without Pay is hereby recommended, pursuant to Section 52 B(1), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service.

The Honorable, the Secretary, (sic) Department of Agriculture is hereby furnished a copy of this Decision for its implementation in accordance with law, with the directive to inform this Office of the action taken hereon.

Badiola filed a Motion for Reconsideration[23] of the above Decision, which the Ombudsman denied in an Order[24] dated 11 May 2004.

Badiola sought recourse with the Court of Appeals by filing a Petition for Review on Certiorari with a Prayer for the Issuance of a Temporary Restraining Order,[25] docketed as CA-G.R. SP No. 84623.

In her petition, Badiola claimed that the Ombudsman erred in holding that she was remiss in the supervision of the personnel under her charge and that she was negligent in the performance of her official duties. According to Badiola, the official matrix that was signed by DA Secretary Lorenzo and submitted to the OP Search Committee showed the correct qualifications of the applicants, therefore proving that Badiola did indeed perform her job. Badiola likewise prayed for the issuance of a Temporary Restraining Order (TRO) inasmuch as the implementation of the Ombudsman Decision dated 19 January 2004, which ordered Badiola's suspension, and the 11 May 2004 Order,[26] which denied her Motion for Reconsideration of the said decision, will inflict irreparable injury upon her person.

Badiola subsequently filed a Supplemental Petition for Review,[27] in view of the fact that her original petition was instituted without the services of a counsel and that certain aspects of her case were overlooked. In the Supplemental Petition, Badiola further contended that the Ombudsman erred in proceeding with the administrative case despite the prior dismissal of the criminal aspect that was based on the same set of facts, and reiterated her prayer for the issuance of a TRO.

In a Resolution[28] dated 20 July 2004, the Court of Appeals dismissed Badiola's original petition in this wise:

For petitioner's [Badiola's] failure to attach copies of pertinent pleadings filed before the Office of the Ombudsman and a certified true copy or duplicate original of the assailed Decision dated January 19, 2004 rendered by the Ombudsman in OMB-C-A-03-0186-F as required by Section 6, Rule 43 of the Revised Rules of Court, this Court hereby resolves to DISMISS [the] instant petition.

Thereafter, Badiola, who apparently had not yet received a copy of the foregoing Resolution dismissing her petition, filed an Urgent Motion (To Resolve Application for a Temporary Restraining Order). According to

Badiola, on 26 July 2004, she received a copy of the letter-response^[29] of Overall Deputy Ombudsman Margarito P. Gervacio to DA Secretary Lorenzo's inquiry,^[30] informing the latter that in accordance with Section 7, Rule III of Administrative Order No. 7, as amended,^[31] an Ombudsman administrative disciplinary case may be executed pending appeal before the Court of Appeals, in the absence of any restraining or status quo order or preliminary injunction from the appellate court. In view of the imminent danger of sustaining a grave and irreparable injury through the implementation of the order of suspension, Badiola again urged the Court of Appeals to immediately issue a TRO.

On 3 August 2004, Badiola filed with the Court of Appeals a Motion praying for (1) reconsideration of its Resolution dated 20 July 2004 dismissing her petition; and (2) resolution of her Urgent Motion (To Resolve Application for a Temporary Restraining Order).^[32]

In the said Motion, Badiola enumerated the following documents that were attached to her original and supplemental Petitions for Review, namely: (1) Legible duplicate original of the Decision dated 19 January 2004 of the Ombudsman in OMB-C-A-03-0186-F, finding her guilty of simple neglect of duty and recommending her suspension for three (3) months without pay; (2) Certified true copy of the Order dated 11 May 2004 of the Ombudsman in OMB-C-A-03-0186-F, denying her Motion for Reconsideration of the 19 January 2004 Decision; (3) Certified true copy of the Resolution dated 10 November 2003 of the Ombudsman in OMB-C-C-03-0355-F, dismissing the criminal complaint against her; (4) Certified true copy of the letter dated 3 November 2003 of DA Secretary Lorenzo to OP Search Committee Chairman Abes, endorsing the appointment of Francisco Ramos III as Assistant Director of ATI and containing a corrected matrix of short listed applicants; and (5) Certified true copy of the letter dated 5 July 2004 of DA Secretary Lorenzo to Ombudsman Simeon V. Marcelo, asking for a clarification as to the implementation of the 19 January 2004 Decision.

Badiola insisted that the above-mentioned attachments were all certified true copies or legible duplicate originals as required by Section 6, Rule 43 of the Rules of Court.^[33] Having complied with all the requirements set forth by the Rules, Badiola argued that a reconsideration by the Court of Appeals of its 20 July 2004 Resolution dismissing her petition was in order and that her case should be decided on its merits.

On 12 August 2004, the Court of Appeals issued a Resolution^[34] stating that:

In view of the Resolution dated July 20, 2004 dismissing the Petition for Review, the Supplemental Petition for Review filed on July 12, 2004 and Urgent Motion (to Resolve Application for a Temporary Restraining Order) filed on July 27, 2004 are merely NOTED.

On 2 September 2004, Badiola filed with the Court of Appeals an Urgent Reiterating Motion seeking (1) reconsideration of the Resolution dated 20 July 2004; and (2) resolution of her Urgent Motion (To Resolve the Application for a Temporary Restraining Order).^[35] Badiola claimed that since her previous Motion for reconsideration and for resolution was filed only on 3 August 2004, a day after the Agendum for the 12 August 2004 deliberations was prepared, the same was not actually taken up. She likewise mentioned the fact that there was a newly appointed DA Secretary who might possibly implement the order of suspension against her. Badiola thus prayed for the immediate resolution of her Urgent Reiterating Motion for reconsideration and resolution.

After requiring Abesamis to submit a Comment^[36] on the said Urgent Reiterating Motion for reconsideration and resolution, the Court of Appeals issued a Resolution^[37] dated 22 December 2004, which states:

On August 3, 2004, a motion for reconsideration of this Court's resolution dated July 20, 2004 and for resolution of the urgent motion to resolve the application for a Temporary Restraining Order was filed. Attached to the motion are only the certified true copies of the Orders of the Ombudsman dated May 11, 2004 and January 19, 2004. The pertinent pleadings filed before the Ombudsman were however not included despite

explicit [orders] to do so.

In the instant case, this Court finds the necessity to look into the defenses petitioner [Badiola] raised in said pleadings if a complete determination of the issues of the case is to be achieved. No such compliance was made.

On account of failure to comply with the Order of this Court, the Motion for Reconsideration filed by petitioner Badiola is DENIED. (Emphasis supplied.)

Still undeterred, Badiola filed on 28 January 2005 a Motion (for Reconsideration of the Resolution dated December 22, 2004).[38] This time, certified true copies of the pertinent pleadings filed before the Ombudsman were attached.[39] Badiola informed the appellate court that she had already served the penalty of suspension imposed by the Ombudsman but, nonetheless, pursued her petition in order to clear her service record. Once again, Badiola anchored the merit of her case on the fact that the criminal complaint against her had already been dismissed. This, she believed, necessarily foreclosed any administrative liability on her part.[40] Badiola, thus, prayed that the Court of Appeals reconsider its Resolution dated 22 December 2004, admit the documents attached to the motion, and reinstate her original and supplemental Petitions for Review.

In a Resolution[41] dated 19 October 2005, the Court of Appeals resolved Badiola's latest motion, thus:

Before Us is a Motion for Reconsideration filed by petitioner [Badiola] on January 28, 2005 which seeks to set aside this Court's Resolution dated December 22, 2004.

Aforesaid motion partakes of the nature of a second motion for reconsideration of Our Resolution dated July 20, 2004 which is prohibited under Section 5, Rule 37, 1997 Rules of Civil Procedure.

Wherefore, in view of the foregoing, petitioner's [Badiola's] Motion for Reconsideration filed on January 28, 2005 is hereby DENIED.

Thereupon, on 22 December 2005, Badiola filed before this Court a Petition for Certiorari[42] under Rule 65 of the Rules of Court, raising the following issues:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, IN NOT APPRECIATING THE CASE ON ITS MERITS, AND IN DISMISSING THE APPEALED CASE PURELY ON TECHNICAL GROUNDS.

II.

WHETHER OR NOT THE HONORABLE OMBUDSMAN ERRED IN PROCEEDING WITH THE ADMINISTRATIVE CASE DESPITE THE PRIOR EXONERATION OF PETITIONER IN THE CRIMINAL CASE BASED ON THE SAME FACTS, ACTS AND OMISSIONS.[43]

We find the Petition at bar totally devoid of merit.

At the outset, the Court notes that the instant petition for certiorari under Rule 65[44] of the Rules of Court is not the appropriate remedy.

A petition for certiorari under Rule 65 of the Rules of Court is proper when (1) any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction and (2) there is no appeal, nor plain, speedy and adequate remedy in the ordinary course of law for the purpose of annulling or modifying the proceeding.[45]

Grave abuse of discretion exists when there is an arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or a whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross.[46] On the other hand, a remedy is considered "plain, speedy and adequate" if it will promptly relieve the petitioner from the injurious effects of the judgment and the acts of the lower court or agency.[47]

Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman (Administrative Order No. 07, as amended by Administrative Order No. 17, dated 15 September 2003), significantly provides:

Section 7. Finality and execution of decision.-Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable.

In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration. (Emphasis supplied.)

From the denial by the Court of Appeals of a petition filed under Rule 43 of the Rules of Court,[48] the party aggrieved may file a motion for reconsideration with the same court. Should this motion be again denied, the case may be elevated to this Court through a Petition for Review on Certiorari filed in accordance with Rule 45 of the Rules of Court.[49] Rule 45 is clear that decisions, final orders or resolutions of the Court of Appeals in any case, i.e., regardless of the nature of the action or proceeding involved, may be appealed to this Court by filing a petition for review, which would be but a continuation of the appellate process over the original case.[50]

Hence, there is a plain, speedy and adequate remedy available to Badiola in the ordinary course of law, other than a Petition for Certiorari under Rule 65 of the Rules of Court. However, instead of already filing a petition for review under Rule 45 with this Court, Badiola filed another Motion for Reconsideration with the Court of Appeals, questioning its 22 December 2004 Resolution that denied her earlier Motion for reconsideration and resolution. It was only when the appellate court denied her second motion for being prohibited under the Rules, that Badiola instituted the present Petition for Certiorari under Rule 65.

It is elementary that the special civil action of certiorari is not and cannot be a substitute for an appeal, where the latter remedy is available, as it was in this case.[51] A special civil action under Rule 65 of the Rules of Court will not be a cure for failure to timely file a petition for review on certiorari under Rule 45 of the Rules of Court. Rule 65 is an independent action that cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that under Rule 45, especially if such loss or lapse was occasioned by one's own neglect or error in the choice of remedies.[52]

The instant Petition for Certiorari may therefore already be dismissed, as under Rule 56, Section 5(f) of the Revised Rules of Court, a wrong or inappropriate mode of appeal, as in this case, merits an outright dismissal.

Badiola's plea for a relaxation of the rules in the interest of substantial justice cannot likewise be heeded. While this Court, indeed, has the discretion to treat a petition for certiorari under Rule 65 as a petition for review on certiorari under Rule 45 in accordance with the liberal spirit pervading the Rules of Court,[53] the petition still needs to comply with the reglementary period for filing an appeal under Rule 45. This mandatory requirement is jurisdictional such that failure to do so renders the assailed decision final and executory, and deprives this Court of jurisdiction to alter the final judgment, much less to entertain the appeal.[54] Under Section 2 of Rule 45, the petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the

judgment.

Badiola, in the instant case, received the Resolution of the Court of Appeals dated 22 December 2004 denying her first motion for reconsideration on 13 January 2005.[55] Thus, the reglementary period within which she can file a petition for review under Rule 45 was to end on 28 January 2005. However, she filed her present petition only on 22 December 2005 or three hundred and forty-three (343) days after she received notice of the denial of her first motion for reconsideration. The lapse of such a long period of time is also more than enough reason to dismiss the petition. Badiola's filing of a second motion for reconsideration with the Court of Appeals, being a prohibited pleading, did not toll the running of the reglementary period for filing a petition for review with this Court.

Even if this Court were to give due course to Badiola's petition under Rule 65, it would still be dismissible for lack of merit. Badiola claims that the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed her case on purely technical grounds, namely, that she filed a prohibited second motion for reconsideration. This insipid argument, however, fails to convince this Court. Allegations of grave abuse of discretion must be substantiated and proved. In this requirement, Badiola was utterly deficient. A decision is not deemed tainted with grave abuse of discretion simply because the party affected disagrees with it.[56]

The Court finds that the Court of Appeals committed no error, whether of judgment or jurisdiction, in denying Badiola's motion for reconsideration of the Resolution dated 22 December 2004 filed on 28 January 2005. This motion partakes of the nature of a second motion for reconsideration inasmuch as it contains the same grounds and the same prayer as that of her motion for reconsideration earlier filed on 2 September 2004. In both these motions filed before the Court of Appeals, Badiola contended that she had a meritorious case for the overturning of the 19 January 2004 Decision of the Ombudsman in the administrative case against her, considering that she was already exonerated in the criminal case involving the same act. Badiola thus prayed in these motions for the Court of Appeals to reinstate her original and supplemental Petitions for Review in CA-G.R. SP No. 84623.

Hence, the Court of Appeals was correct in denying Badiola's second motion for reconsideration. Section 2, Rule 52 of the Rules of Court explicitly declares that no second motion for reconsideration of a judgment or final resolution by the same party shall be entertained. Such motion is a prohibited pleading, which shall not be allowed, except for ordinarily persuasive reasons and only after an express leave shall have first been obtained.[57] Badiola, however, did not seek any leave to file her second motion for reconsideration nor offer any explanation or reason whatsoever to exempt the same from the general prohibition on second motions for reconsideration.

The only ground upon which Badiola staunchly based her claims in her two motions for reconsideration was, allegedly, her highly meritorious case. According to Badiola, the Ombudsman erred in proceeding with the administrative case and finding her guilty of simple neglect of duty despite her exoneration from the criminal case. By all accounts, her complete innocence and lack of culpability in the criminal case foreclosed any administrative liability on her part.[58]

The Court finds this argument to be entirely incorrect.

Indeed, the well established rule is that the dismissal of the criminal case involving the same set of facts does not necessarily foreclose the continuation of the administrative action or carry with it relief from administrative liability.[59] The case of *Tecson v. Sandiganbayan*[60] provides elucidation on this very point, thus:

[I]t is a basic principle of the law on public officers that a public official or employee is under a three-fold responsibility for violation of duty or for a wrongful act or omission. This simply means that a public officer

may be held civilly, criminally, and administratively liable for a wrongful doing. Thus, if such violation or wrongful act results in damages to an individual, the public officer may be held civilly liable to reimburse the injured party. If the law violated attaches a penal sanction, the erring officer may be punished criminally. Finally, such violation may also lead to suspension, removal from office, or other administrative sanctions. This administrative liability is separate and distinct from the penal and civil liabilities.

Furthermore, a finding of guilt in an administrative case may be sustained for as long as it is supported by substantial evidence that the respondent has committed the acts charged.[61] Substantial evidence is defined as that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[62] On the other hand, criminal proceedings require a more stringent quantum of proof, which is proof beyond reasonable doubt. As defined under the law, proof beyond reasonable doubt does not mean such a degree of proof as, excluding the possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.[63] Hence, when Badiola was absolved from criminal liability, it simply meant that her guilt on the offenses she was charged with was not proven beyond reasonable doubt. This fact does not and should not in any way bind the outcome of the administrative case, which requires only substantial evidence to prove her administrative culpability.

Finally, as aptly observed by the Ombudsman in its Memorandum[64] before this Court, the criminal and administrative cases were not at all based on the same facts as averred by Badiola. The criminal charges against her were brought about by her alleged act of deliberately delaying the processing of Abesamis's application. On the other hand, her administrative liability was established on the basis of her negligence in the supervision of the employees under her charge and the performance of her duties as the Head of the DA-PSB Secretariat.

WHEREFORE, in light of the foregoing, the instant Petition for Review under Rule 65 of the Rules of Court is hereby DISMISSED for lack of merit. The assailed Resolution of the Court of Appeals dated 19 October 2005 in CA-G.R. SP No. 84623 and the Decision of the Ombudsman dated 19 January 2004 in Administrative Case No. OMB-C-A-03-0186-F are hereby AFFIRMED. Costs against the petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Carpio-Morales, and Reyes, JJ., concur.

* Justice Conchita Carpio Morales was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 26 March 2008.

[1]Rollo, pp. 3-51.

[2] Rollo, p. 53.

[3] Penned by Associate Justice Arcangelita M. Romilla-Lontok with Associate Justices Rodrigo V. Cosico and Danilo B. Pine, concurring; Rollo, pp. 408-409.

[4]Id. at 56-71.

[5] Id. at 75-80.

[6]Section 5. Duties of Public Officials and Employees. - In the performance of their duties, all public officials and employees are under obligation to:

a) Act promptly on letters and requests. - All public officials and employees shall, within fifteen (15) working days from receipt thereof, respond to letters, telegrams or other means of communications sent by the public. The

reply must contain the action taken on the request.

[7] 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.

f) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.

[8] Perjury is punishable under Article 183 of the Revised Penal Code, which reads:

Art. 183. False testimony in other cases and perjury in solemn affirmation. -- The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed upon any person who, knowingly making untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.

Any person who, in case of a solemn affirmation made in lieu of an oath, shall commit any of the falsehoods mentioned in this and the three preceding articles of this section, shall suffer the respective penalties provided therein.

[9] Rollo, pp. 83-84.

[10] *Id.* at 93.

[11] *Id.* at 94.

[12] *Id.* at 112.

[13] *Id.* at 81-82.

[14] *Id.* at 97-102.

[15] *Id.* at 118-119.

[16] *Id.* at 144-147.

[17] *Id.* at 154.

[18] *Id.* at 156-164.

[19] *Id.* at 165-169.

[20] The following are the subsequent pleadings filed: (1) a Supplemental Rejoinder filed by Badiola on 7 August 2003, (2) an Urgent Manifestation filed by Abesamis on 1 September 2003, (3) a Motion for Summary Judgment

filed by Badiola on 17 September 2003, (4) an Urgent Manifestation and Motion filed by Abesamis on 21 October 2003, (5) a Counter-Manifestation by Badiola on 27 October 2003, (6) a Memorandum by Badiola on 7 November 2003.

[21] Rollo, pp. 198-208.

[22]Id. at 56-71.

[23]Id. at 217-221.

[24]Id. at 231-241.

[25]Id. at 247-256.

[26] Not 31 May 2004, as incorrectly alleged in the Petition.

[27] Rollo, pp. 289-298.

[28] Id. at 311.

[29]Id. at 319-320.

[30] Id. at 310.

[31] Section 7. Finality and execution of decision.-Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer. (Emphasis ours.)

[32] Rollo, pp. 323-328.

[33] SEC. 6. Contents of the petition.--The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein. (Emphasis ours).

[34]Rollo, p. 372.

[35] Id. at 373-376.

[36] Id. at 378-386.

[37] Id. at 408-409.

[38] Id. at 410-419.

[39]The pertinent pleadings included are as follows: (1) Complaint-Affidavit of Abesamis filed before the Ombudsman on 30 May 2003; (2) Counter-Affidavit of Badiola filed before the Ombudsman on 8 July 2003; (3) Reply-Affidavit of Abesamis filed before the Ombudsman on 17 July 2003; (4) Rejoinder of Badiola filed before the Ombudsman on 4 August 2003; (5) Supplemental Rejoinder of Badiola filed before the Ombudsman on 7 August 2003; (6) Urgent Manifestation of Abesamis filed before the Ombudsman on 1 September 2003; (7) Motion for Summary Judgment of Badiola filed before the Ombudsman on 17 September 2003; (8) Urgent Manifestation and Motion of Abesamis filed before the Ombudsman on 21 October 2003; (9) Counter-Manifestation of Badiola filed before the Ombudsman on 27 October 2003; (10) Memorandum of Badiola filed before the Ombudsman on 7 November 2003; (11) Motion for Reconsideration of Abesamis filed before the Ombudsman on 18 November 2003; (12) Manifestation and Motion for Early Resolution of Badiola filed before the Ombudsman on 25 November 2003; (13) Motion for Reconsideration of Badiola filed before the Ombudsman on 13 April 2004; (14) Comment/Opposition (to the Motion for Reconsideration) of Abesamis filed before the Ombudsman on 27 April 2004; and (15) Reply (to the Comment/Opposition) of Badiola filed before the Ombudsman on 11 May 2004.

[40] Rollo, p. 414.

[41]Id. at 53.

[42] Id. at 3-51.

[43] Id. at 32.

[44] Section 1 of Rule 65 provides:

Petition for Certiorari. - When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

[45] Ang Biat Huan Sons Industries, Inc. v. Court of Appeals, G.R. No. 154837, 22 March 2007, 518 SCRA 697, 702-703.

[46]Villanueva v. Porras-Gallardo, G.R. No. 147688, 10 July 2006.

[47] San Miguel Corporation v. Court Of Appeals, 425 Phil. 951, 956 (2002).

[48]Section 1 of Rule 43 provides in part:

Section 1. Scope. - This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. x x x.

[49]Section 1 of Rule 45 provides:

Section 1. Filing of petition with Supreme Court. - A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

[50]San Miguel Corporation v. Court of Appeals, supra note 47 at 956.

[51] Chua v. Santos, G.R. No. 132467, 18 October 2004, 440 SCRA 365, 374.

[52] Id.

[53] Some of the instances when a petition for certiorari under Rule 65 has been considered by the Court as a petition for review under Rule 45 include: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; (d) or when the questioned order amounts to an oppressive exercise of judicial authority. (Metropolitan Manila Development Authority v. Jancom Environmental Corporation, 425 Phil. 961, 974 (2002).

[54] People v. Sandiganbayan, G.R. No. 156394, 21 January 2005, 449 SCRA 205, 217.

[55]Rollo, p. 410.

[56]Marohomsalic v. Cole, G.R. No. 169918, 27 February 2008.

[57] Apex Mining Co., Inc. v. Commissioner of Internal Revenue, G.R. No. 122472, 20 October 2005, 473 SCRA 490, 496-498.

[58]Rollo, p. 414.

[59] Apolinario v. Flores, G.R. No. 152780, 22 January 2007, 512 SCRA 113, 122.

[60]376 Phil 191, 198-199 (1999), cited in Office of the Ombudsman v. Torres, G.R. No. 168309, 29 January 2008.

[61]Velasquez v. Hernandez, G.R. No. 150732, 31 August 2004, 437 SCRA 357, 369.

[62]RULES OF COURT, Rule 133, Sec. 5.

[63]Id., Sec. 2.

[64] Rollo, pp. 759-788.

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