

OFFICE OF THE OMBUDSMAN, Petitioner, vs. ROLANDO S. MIEDES, SR., Respondent.

G.R. No. 176409. February 27, 2008

Ponente: AUSTRIA-MARTINEZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-176409/>

AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Decision[1] of the Court of Appeals (CA) dated March 30, 2005 in CA-G.R. SP No. 86643 and the Resolution[2] dated January 17, 2007 which denied petitioner's Omnibus Motion for Intervention and Partial Reconsideration.

The facts are undisputed:

Marlou L. Billacura filed before the Office of the Ombudsman-Mindanao (OMB-MIN) a complaint and request for investigation on the propriety of the purchase and acquisition by the Municipal Government of Carmen, Davao del Norte of 19 cellular phone units amounting to P104,500.00.[3] OMB-MIN referred the complaint to the Provincial Auditor's Office of the Commission on Audit for necessary audit/investigation.[4]

The Provincial Auditor found that the acquisition of the cellular phones was made without a public bidding; that the purchase was made through an authorized distributor and not directly through a manufacturer or an exclusive distributor. Hence, he filed before OMB-MIN a complaint against the members of the Bids and Awards Committee (BAC) of the Municipal Government of Carmen, Davao del Norte, namely: Municipal Accountant Rolando S. Miedes, Sr. (respondent), Municipal Treasurer Cristeta M. Oducayen (Oducayen) and Municipal Budget Officer Sarah Jane L. Alcuzar[5] (Alcuzar) for violations of Section 3(e) of Republic Act No. 3019, Presidential Decree No. 1445; Civil Service Commission Memorandum Circular No. 19, Series of 1999, Abuse of Authority and Acts Prejudicial to the Best Interest of the Service.

In their Answer, respondents Oducayen and Alcuzar assert the regularity and propriety of the transactions.[6]

On October 21, 2002, the OMB-MIN issued a Joint Resolution[7] dismissing the criminal case against the three BAC members.

On January 6, 2003, the Ombudsman (petitioner) approved the said Joint Resolution only with respect to the dismissal of the criminal complaints. However, as to the administrative case, petitioner found substantial evidence on record proving that the offense of Simple Misconduct was committed by the BAC members and imposed upon them the penalty of three-month suspension without pay.[8]

Dissatisfied, respondent filed a Petition for Review[9] before the CA.

In a Decision[10] dated March 30, 2005, the CA affirmed the findings of the OMB-MIN, but reduced the impossible penalty from three-month to one-month suspension, holding that respondent's act was not motivated by any corrupt or wrongful motive.

Petitioner filed an Omnibus Motion for Intervention and Partial Reconsideration dated April 25, 2005, insisting

that it correctly imposed the medium-term penalty of suspension for three months for Simple Misconduct as the circumstance of lack of showing of corrupt or wrongful motive had been taken into consideration in the downgrading of the offense from Grave Misconduct to Simple Misconduct.

In a Resolution^[11] dated January 17, 2007, the CA denied petitioner's Omnibus Motion for Intervention and Partial Reconsideration.

Hence, the present petition anchored on the following grounds:

- WITH DUE RESPECT, THE APPELLATE COURT A QUO ERRED WHEN IT MODIFIED THE PENALTY IMPOSED UPON PRIVATE RESPONDENT MIEDES FOR SIMPLE MISCONDUCT FROM THREE (3) MONTHS TO ONE (1) MONTH SUSPENSION PREDICATED SOLELY ON THE GROUND THAT THERE IS AN ABSENCE OF CORRUPT MOTIVE ON THE PART OF THE PRIVATE RESPONDENT.
- FINDINGS OF FACT OF AN ADMINISTRATIVE AGENCY ARE GENERALLY ACCORDED NOT ONLY RESPECT BUT AT TIMES FINALITY.^[12]

Petitioner argues that if there was a finding of corrupt motive, the infraction would have been Grave Misconduct punishable by dismissal from service; that the absence of a positive finding of corrupt motive diluted the offense to Simple Misconduct; that since its beneficial effects on respondent have already been used up to exhaustion, this so-called absence of corrupt motive cannot work further to mitigate the appropriate penalty; that a mitigating circumstance is susceptible to only one application.

In his Comment,^[13] respondent submits that the penalty for Simple Misconduct of one month and one day to six months is susceptible of division into minimum, medium and maximum penalties; that the law is clear that if there is a mitigating circumstance and there is no aggravating circumstance, the mitigating circumstance is appreciated properly for the imposition of the proper penalty of minimum; and that to rule that a mitigating circumstance of lack of corrupt motive on the part of the respondent serves only to downgrade the offense and stop there and not to serve also as a mitigating circumstance for the imposition of the proper penalty for the offense, after an express finding that it is indeed a mitigating circumstance, must not be countenanced.

In its Reply, petitioner maintains that the mitigating circumstance of absence or lack of corrupt motive was correctly applied in downgrading the offense from grave misconduct to simple misconduct; and that it cannot be used for the second time as a mitigating circumstance in the determination of the proper penalty to be imposed; otherwise, respondent would be benefiting from the application of the same element twice.

After considering respondent's comment and petitioner's reply, the Court gives due course to the petition and considers the case ready for decision without need of memoranda from the parties.

The Court finds it necessary, before delving on the propriety of the modification of the penalty, to discuss the propriety of the motion for intervention filed by petitioner after the CA rendered its decision.

Under the rules on intervention, the allowance or disallowance of a motion to intervene is addressed to the sound discretion of the court.^[14] Discretion is a faculty of a court or an official by which he may decide a question either way, and still be right.^[15] The permissive tenor of the rules shows an intention to give to the court the full measure of discretion in permitting or disallowing the intervention. The discretion of the court, once exercised, cannot be reviewed by certiorari or controlled by mandamus save in instances where such discretion has been so exercised in an arbitrary or capricious manner.^[16]

In denying the motion for intervention of petitioner, the CA acted arbitrarily.

As a general rule, intervention is legally possible only “before or during a trial”; hence, a motion for intervention filed after trial - and, a fortiori, when the case has already been submitted, when judgment has been rendered, or worse, when judgment is already final and executory - should be denied.[17] The rule, however, is not without exceptions.

In *Director of Lands v. Court of Appeals*,[18] intervention was allowed even when the petition for review of the assailed judgment was already submitted for decision in the Supreme Court. In *Tahanan Development Corporation v. Court of Appeals*,[19] the Court allowed intervention almost at the end of the proceedings. In *Mago v. Court of Appeals*,[20] the Court granted intervention despite the fact that the case had become final and executory, thus:

[The] facts should have convinced the trial court and the Court of Appeals that a less stringent application of the Rules of Court was the more prudent recourse. Indeed, the exercise of discretion has often been characterized as odious; but where the necessity exists for its exercise, a judge is bound not to shirk from the responsibility devolving in him. For it is in relaxing the rules that we ultimately serve the ends of equity and justice based not on folly grounds but on substance and merit.[21]

Recently, in *Pinlac v. Court of Appeals*,[22] the Court, finding merit the claim of the intervenor, allowed intervention even after it had rendered its decision and the resolution denying the motion for reconsideration.

In the present case, the motion to intervene was filed after the CA had rendered judgment but before finality thereof. However, the modification of the penalty is patently erroneous. It behooved the CA to grant the motion to intervene due to the merit of petitioner's claim that the CA erred in modifying the penalty.

Misconduct is “a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer.”[23]

In Grave Misconduct, as distinguished from Simple Misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rules, must be manifest[24] and established by substantial evidence. Grave Misconduct necessarily includes the lesser offense of Simple Misconduct.[25] Thus, a person charged with Grave Misconduct may be held liable for Simple Misconduct if the misconduct does not involve any of the elements to qualify the misconduct as grave.[26]

The CA correctly found no reason to depart from the findings of the petitioner that respondent and his companions are guilty of Simple Misconduct. The elements particular to Grave Misconduct were not adequately proven in the present case. Corruption, as an element of Grave Misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.[27] There is no clear and convincing evidence in the present case to show that the purchase and acquisition of the 19 cellular phone units had been made for personal or selfish ends. Nor is there evidence that respondent and his companions acted in a capricious, whimsical and arbitrary manner with conscious and deliberate intent to do an injustice to others.

Nonetheless, as aptly found by the CA, respondent and his companions should have exercised all the necessary prudence to ensure that the proper procedure was complied with in the purchase of the 19 cellular phone units because the Municipal Government of Carmen, Davao del Norte was deprived of means of securing the most advantageous price by the purchase of the 19 cellular phone units through an authorized distributor and not directly through a manufacturer or an exclusive distributor. Thus, respondent is liable for Simple Misconduct.

Absence of corrupt or wrongful motive, as an element of Simple Misconduct, cannot be applied again to investigate further the penalty for the same offense.

The CA evidently erred in considering once again the absence of corrupt or wrongful motive as a mitigating circumstance in the imposition of the proper penalty for Simple Misconduct on respondent. The absence of corrupt or wrongful motive was already considered in downgrading the offense from grave misconduct to simple misconduct. Thus, in the imposition of the proper penalty for simple misconduct, good faith can no longer be considered as a mitigating circumstance that would warrant the application of paragraph (a), Section 54 of the Uniform Rules on Administrative Cases in the Civil Service,[28] to wit:

Section 54. Manner of imposition. When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:

- The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present.
- The medium of the penalty shall be imposed where no mitigating and aggravating circumstances are present.
- The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.
- Where aggravating and mitigating circumstances are present, paragraph (a) shall be applied where there are more mitigating circumstances present; paragraph (b) shall be applied when the circumstances equally offset each other; and paragraph (c) shall be applied when there are more aggravating circumstances. (Emphasis supplied)

Section 52(B)(2), Rule IV of the same Rules classifies simple misconduct as a less grave offense punishable with a corresponding penalty of suspension for one month and one day to six months for the first offense. Considering that no mitigating or aggravating circumstance can be appreciated in favor of the respondent, paragraph (b), Section 54, applies. Thus, the medium penalty of three months as imposed by petitioner is the appropriate penalty.

WHEREFORE, the petition is PARTLY GRANTED. The Resolution dated January 17, 2007 issued by the Court of Appeals in CA-G.R. SP No. 86643 is REVERSED and SET ASIDE. Petitioner's Omnibus Motion for Intervention and Partial Reconsideration is GRANTED. The Decision dated March 30, 2005 of the Court of Appeals is AFFIRMED insofar as it finds respondent GUILTY of SIMPLE MISCONDUCT with MODIFICATION that respondent is meted the penalty of SUSPENSION for THREE (3) MONTHS as imposed by petitioner in its Joint Resolution dated January 6, 2003.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, and Leonardo-De Castro, JJ., concur.
Quisumbing, J., on official leave.

[1] Penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Teresita Dy-Liacco Flores and Myrna Dimaranan Vidal, rollo, p. 36.

[2] Id. at 42.

[3] Rollo, p. 46.

[4] Id.

[5] Spelled as "Acuzar" in the Joint Resolution of the Ombudsman-Mindanao, id. at 45.

- [6] Id. at 48.
- [7] Id. at 45.
- [8] Rollo, p. 53.
- [9] Entitled “Rolando S. Miedes, Sr. v. Commission on Audit, Region XI, Davao City.”
- [10] Supra note 1.
- [11] Supra note 2.
- [12] Rollo, pp. 18-19.
- [13] Id. at 74.
- [14] *Galicia v. Manriquez Vda. de Mindo*, G.R. No. 155785, April 13, 2007, 521 SCRA 85, 92; *Foster-Gallego v. Galang*, G.R. No. 130228, July 27, 2004, 435 SCRA 275, 288.
- [15] *Heirs of Geronimo Restrivera v. De Guzman*, G.R. No. 146540, July 14, 2004, 434 SCRA 456, 463; *San Miguel Corporation v. Sandiganbayan*, 394 Phil. 608, 651 (2000).
- [16] *Foster-Gallego v. Galang*, supra note 14; *Big Country Ranch Corp. v. Court of Appeals*, G.R. No. 102927, October 12, 1993, 227 SCRA 161, 165.
- [17] *Looyuko v. Court of Appeals*, 413 Phil. 445, 460-461 (2001); *Oliva v. Court of Appeals*, G.R. No. L-76737, October 27, 1988, 166 SCRA 632, 636.
- [18] G.R. No. L-45168, September 25, 1979, 93 SCRA 238.
- [19] 203 Phil. 652 (1982).
- [20] 363 Phil. 225 (1999).
- [21] Id. at 238.
- [22] 457 Phil. 527 (2003).
- [23] *Estarija v. Ranada*, G.R. No. 159314, June 26, 2006, 492 SCRA 652, 663; *Bureau of Internal Revenue v. Organo*, G.R. No. 149549, February 26, 2004, 424 SCRA 9, 16.
- [24] *Villanueva v. Court of Appeals*, G.R. No. 167726, July 20, 2006, 495 SCRA 824, 834-835; *Civil Service Commission v. Lucas*, 361 Phil. 486, 490-491 (1999).
- [25] *Santos v. Rosalan*, G.R. No. 155749, February 8, 2007, 515 SCRA 97, 104; *Civil Service Commission v. Ledesma*, G.R. No. 154521, September 30, 2005, 471 SCRA 589, 603.
- [26] *Santos v. Rosalan*, supra note 25; *Civil Service Commission v. Ledesma*, supra note 25.
- [27] *Salazar v. Barriga*, A.M. No. P-05-2016, April 19, 2007, 521 SCRA 449, 453-454; *Vertudes v. Buenafior*, G.R. No. 153166, December 16, 2005, 478 SCRA 210, 234; *Civil Service Commission v. Belagan*, G.R. No. 132164, October 19, 2004, 440 SCRA 578, 599-600.
- [28] Civil Service Commission Resolution No. 991936, August 31, 1999.

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.