

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. MAXIMO D. SISON, RESPONDENT.

G.R. No. 185954. February 16, 2010

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

Before us is a Petition for Review on Certiorari under Rule 45 assailing and seeking to set aside the Resolution[1] dated December 18, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 96611, entitled *Maximo D. Sison v. Fr. Noel Labendia for Himself and in Representation of Isog Han Samar Movement, Diocese of Calbayog, Catbalogan, Samar*. The CA Resolution denied petitioner Office of the Ombudsman's Omnibus Motion for Intervention and to Admit Attached Motion for Reconsideration of the CA's June 26, 2008 Decision.[2]

The Facts

On October 11, 2004, the Isog Han Samar Movement, represented by Fr. Noel Labendia of the Diocese of Calbayog, Catbalogan, Samar, filed a letter-complaint addressed to then Ombudsman, Hon. Simeon Marcelo, accusing Governor Milagrosa T. Tan and other local public officials[3] of the Province of Samar, including respondent Maximo D. Sison, of highly anomalous transactions entered into by them amounting to several millions of pesos. Sison was the Provincial Budget Officer.

The letter-complaint stemmed from the audit investigation dated August 13, 2004 conducted by the Legal and Adjudication Office (LAO), Commission on Audit (COA), which found, among others, that various purchases totaling PhP 29.34 million went without proper bidding procedures and documentations; that calamity funds were expended without a State of Calamity having been declared by the President; and that purchases for rice, medicines, electric fans, and cement were substantially overpriced.

The Special Audit Team, which was created under LAO Office Order No. 2003-059 dated July 7, 2003, summarized the corresponding COA audit findings and observations, to wit:

- Rules and regulations pertaining to procurement of supplies and materials were consciously and continually violated as disclosed in the verification of selected purchases of the Province. Below were the findings and observations:
- Purchases of various items, totaling at least PhP 29.34 million and allegedly procured through public bidding, were found highly irregular for lack of proper bidding procedures and documentation;
- At least PhP 28.165 million worth of purchases through repeat orders were made by the Province without observing the pertinent law, rules and regulations governing this mode of procurement; and
- Emergency purchases of medicines and assorted goods totaling PhP 14.67 million were found not complying with the requirements set forth under the Rules and Regulations on Supplies and Property Management in Local Governments (RRSPMLG). Moreover, the purchases were charged against the calamity fund, despite

absence of any declaration from the President that Samar was under a state of calamity, in violation of Sec. 324(d) of R.A. 7160.

- Inconsistencies in the dates of supporting documents relating to the purchases discussed in finding No. 1 were so glaring that they raised doubts on the validity of the transactions per se;

- The use of the 5% budgetary reserves for calamity as funding source of emergency purchases was not legally established, there being no declaration from the Office of the President that Samar was under a state of calamity, as required under Sec. 324(d) of R.A. 7160;

- Splitting of requisitions and purchase orders was resorted to in violation of COA Circular No. 76-41 dated July 30, 1976;

- There was overpricing in the purchase of rice, medicines, electric fans and cement in the amount of PhP 580,000.00, PhP 322,760.00, PhP 341,040.00, and PhP 3.6 million, respectively. An overpayment was also committed in the payments of cement in the amount of PhP 96,364.09;

- Other observations gathered corollary to the purchases made are the following:

- Purchase Orders were not duly accomplished to include a complete description of the items to be purchased, the delivery date and the terms of payment, in violation of the provisions of Section 74 and other corollary provisions of RRSPMLG. Some were even acknowledged by suppliers;

- At least 36 vouchers/claims were not supported with an official receipt, in violation of the provisions of Section 4 of PD 1445 that all disbursements must be supported with complete documentation; and

- Advanced deliveries of medicines and assorted goods were made on some purchases even before the purchase orders were prepared and before the public biddings were conducted.

- The necessity and veracity of the distribution of t-shirts/caps, medicines, assorted goods and cement purchased by the Province of Samar could not be established due to rampant inconsistencies in dates, quantities, as well as the signatures of the alleged recipients in the Requisition and Issue Slip; and,

- Financial Assistance (FA)/Assistance to Individuals in Crisis Situation (AICS) totaling at least PhP 5.4 million in 2002 and PhP 2.78 million as of April 2003 were granted to various applicant-recipients without subjecting them to the guidelines set forth by the Department of Social Welfare and Development (DSWD).[4]

x x x

On January 24, 2005, the Office of the Ombudsman, through Director Jose T. De Jesus, Jr., found basis to proceed with the administrative case against the impleaded provincial officials of Samar, docketed as OMB-C-A-05-0051-B. The latter were then required to file their counter-affidavits and countervailing evidence against the complaint.

In his counter-affidavit, Sison vehemently denied the accusations contained in the letter-complaint and claimed his innocence on the charges. He asserted that his function is limited to the issuance of a certification that an appropriation for the requisition exists, that the corresponding amount has been obligated, and that funds are available. He did not, in any way, vouch for the truthfulness of the certification issued by the requesting parties. In addition, he averred that he never participated in the alleged irregularities as shown in the minutes and attendance sheet of the bidding.

Further, he alleged that not one of the documentary evidences so far attached in the letter-complaint bore his signature and that he was neither factually connected nor directly implicated in the complaint.

On May 6, 2005, Sison submitted his Position Paper to the Office of the Ombudsman and reiterated that he had

not participated in the alleged anomalous purchases and use of public funds by the Province of Samar.

On August 22, 2006, the Office of the Ombudsman rendered a Decision, finding Sison and several other local officials of the Province of Samar guilty of grave misconduct, dishonesty, and conduct prejudicial to the best interest of the service and dismissing him from service. The dispositive portion of the Decision reads:

VUEWED IN THE FOREGOING LIGHT, DECISION is hereby rendered as follows:

- Respondents ROLANDO B. MONTEJO, DAMIANO Z. CONDE, JR., ROMEO C. REALES, MAXIMO D. SISON, AURELIO A. BARDAJE and NUMERIANO C. LEGASPI are FOUND GUILTY of GRAVE MISCONDUCT, DISHONESTY and CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE, and are METED the penalty of DISMISSAL FROM SERVICE, and shall carry with it the cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for re-employment in the government service.

Accordingly, Governor Milagrosa T. Tan and Executive Director Presentacion R. Montesa of the Bureau of Local Government Finance, Department of Finance, are respectfully directed to implement this Order upon receipt hereof and to forthwith inform the Office of compliance herewith.

- The administrative complaint against respondents MILAGROSA T. TAN, FE ORTEGA TAN ARCALES, SUSANO DIMAKILING SALURIO, BARTOLOME P. FIGUEROA, ANTONIO DE LEON BOLASTIG, III, ROSENAIDA A. ROSALES and BARTOLOME R. CASTILLO III is DISMISSED in view of their re-election in May 2004;

- The administrative complaint against ERNESTO CARCILLAR ARCALES, FELIX T. BABALCON, JR., JIMMY R. DY, JUAN COLINARES LATORRE, JR., MARIA LOURDES CORTEZ UY, BIENVENIDA P. REPOL and RAMON P. DEAN, JR., who are no longer public officials, is DISMISSED.

- For insufficiency of evidence, the administrative complaint against ANAMIE P. MANATAD-NUNEZ and ROSIE AMARO VILLACORTE is DISMISSED.

- The Fact-Finding and Intelligence Office is DIRECTED to conduct further fact-finding investigations on the following:

- On DV Nos. 221-2002-12-083 and 221-2002-11-065: (a) to DETERMINE the other public officials who may be held administratively liable; and (b) to FILE, if necessary, the corresponding Complaint;

- On Bid Nos. 079-2002, 442-2002, 554-2002, 861-2002, 937-2002, 947-2002, 1221-2002, 1375-2002, 1411-2002, 007-2003, 014-2003, 023-2003, 047-2003 and 082-2002: (a) to VERIFY whether actual public biddings took place relative to the transactions covered by these bids; (b) to CHECK the veracity of the documents relative to the repeat orders made; (c) to DETERMINE the other public officials who may appear to be administratively liable therefor; and (d) to FILE, if warranted, the corresponding Complaint; and

- On Bid Nos. 078-2002, 448-2002, 931-2002, 1230-2001, 411-2002, 944-2002, 1244-2002, 1407-2001, 198-2002, 316-2002 and 431-2002: (a) to DETERMINE whether actual public biddings were held relative to the above-mentioned transactions; (b) to CHECK the veracity of the documents relative to the repeat orders made; (c) to ASCERTAIN the other public officials who may be held administratively liable therefor; and (d) to FILE the corresponding Complaint, if warranted.

Accordingly, let a copy of this Memorandum be furnished the Fact- Finding and Intelligence Office for its appropriate action.

SO ORDERED.[5] (Emphasis supplied.)

Aggrieved, Sison appealed to the CA via a Petition for Review under Rule 43, docketed as CA-G.R. SP No.

96611.

On June 26, 2008, the CA rendered a decision reversing and setting aside the decision of the Office of the Ombudsman against Sison. The fallo of the CA decision reads:

WHEREFORE, the decision of the Ombudsman dated 22 August 2006 in OMB-C-A-05-0051-B in so far as it finds the herein petitioner MAXIMO D. SISON administratively liable for grave misconduct, dishonesty and conduct prejudicial to the best interest of service is hereby REVERSED and SET ASIDE for insufficiency of evidence. Accordingly, he is absolved from administrative liability as charged.

SO ORDERED.[6]

In ruling thus, the CA held that the Office of the Ombudsman failed to adduce substantial evidence in order to convict Sison. Moreover, it reasoned that Sison's responsibility as Provincial Budget Officer was to ensure that appropriations exist in relation to the emergency purchase being made and that he had no hand or discretion in characterizing a particular purchase as emergency in nature. Hence, he cannot be held administratively liable for simply attesting to the existence of appropriations for a certain purpose, save if such certification is proved to be false.

On July 22, 2008, the Office of the Ombudsman filed an Omnibus Motion for Intervention and to Admit Attached Motion for Reconsideration, which was subsequently denied by the CA in its assailed resolution of December 18, 2008.

Hence, we have this petition.

The Issues

I

Whether the [CA] gravely erred in denying petitioner's right to intervene in the proceedings, considering that (a) the Office of the Ombudsman has sufficient legal interest warranting its intervention in the proceedings before the [CA] since it rendered the subject decision pursuant to its administrative authority over public officials and employees; and (b) contrary to the appellate court a quo's ruling, petitioner Office of the Ombudsman filed its Omnibus Motion to Intervene and to Admit Attached Motion for Reconsideration on a patently erroneous decision of the [CA] which has not yet attained finality.

II

Whether the [CA] erred in ruling that the finding of the Office of the Ombudsman was not supported by substantial evidence.

III

Whether the [CA] erred in giving due course to respondent's petition for review when this was prematurely filed as it disregarded the well-entrenched jurisprudential doctrine of exhaustion of administrative remedies.

Our Ruling

The appeal lacks merit.

Intervention Is Discretionary upon the Court

The pivotal issue in this case is whether the Office of the Ombudsman may be allowed to intervene and seek reconsideration of the adverse decision rendered by the CA.

In its Decision, the CA did not allow the Office of the Ombudsman to intervene, because (1) the Office of the

Ombudsman is not a third party who has a legal interest in the administrative case against petitioner; (2) the Omnibus Motion for Intervention was filed after the CA rendered its Decision; and (3) the Office of the Ombudsman was the quasi-judicial body which rendered the impugned decision.

In its Petition, however, the Office of the Ombudsman asserts that it has sufficient legal interest to warrant its intervention in the proceedings, since it rendered the subject decision pursuant to its administrative authority over public officials and employees. Further, it contends that the Omnibus Motion to Intervene was timely filed, since, at the time of its filing, the decision of the CA had not yet attained finality.

We are not persuaded.

It is fundamental that the allowance or disallowance of a Motion to Intervene is addressed to the sound discretion of the court.[7] The permissive tenor of the rules shows the intention to give to the court the full measure of discretion in permitting or disallowing the intervention,[8] thus:

SECTION 1. Who may intervene. - A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

SECTION 2. Time to intervene. - The motion to intervene may be filed at any time before rendition of judgment by the trial court. A copy of the pleading-in-intervention shall be attached to the motion and served on the original parties.[9] (Emphasis supplied.)

Simply, intervention is a procedure by which third persons, not originally parties to the suit but claiming an interest in the subject matter, come into the case in order to protect their right or interpose their claim.[10] Its main purpose is to settle in one action and by a single judgment all conflicting claims of, or the whole controversy among, the persons involved.[11]

To warrant intervention under Rule 19 of the Rules of Court, two requisites must concur: (1) the movant has a legal interest in the matter in litigation; and (2) intervention must not unduly delay or prejudice the adjudication of the rights of the parties, nor should the claim of the intervenor be capable of being properly decided in a separate proceeding. The interest, which entitles one to intervene, must involve the matter in litigation and of such direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment.[12]

In support of its argument that it has legal interest, the Office of the Ombudsman cites *Philippine National Bank v. Garcia, Jr. (Garcia)*. [13] In the said case, the Philippine National Bank (PNB) imposed upon its employee, Garcia, the penalty of forced resignation for gross neglect of duty. On appeal, the Civil Service Commission (CSC) exonerated Garcia from the administrative charges against him. In accordance with the ruling in *Civil Service Commission v. Dacoycoy*, [14] this Court affirmed the standing of the PNB to appeal to the CA the CSC resolution exonerating Garcia. After all, PNB was the aggrieved party which complained of Garcia's acts of dishonesty. Should Garcia be finally exonerated, it might then be incumbent upon PNB to take him back into its fold. PNB should, therefore, be allowed to appeal a decision that, in its view, hampered its right to select honest and trustworthy employees, so that it can protect and preserve its name as a premier banking institution in the country.

Based on the facts above, the Office of the Ombudsman cannot use Garcia to support its intervention in the appellate court for the following reasons:

First, Sison was not exonerated from the administrative charges against him, and was, in fact, dismissed for grave misconduct, dishonesty, and conduct prejudicial to the best interest of the service by the Office of the Ombudsman in the administrative case, OMB-C-A-05-0051-B. Thus, it was Sison who appealed to the CA being, unquestionably, the party aggrieved by the judgment on appeal.

Second, the issue here is the right of the Office of the Ombudsman to intervene in the appeal of its decision, not its right to appeal.

And third, Garcia should be read along with Mathay, Jr. v. Court of Appeals^[15] and National Appellate Board of the National Police Commission v. Mamauag (Mamauag),^[16] in which this Court qualified and clarified the exercise of the right of a government agency to actively participate in the appeal of decisions in administrative cases. In Mamauag, this Court ruled:

RA 6975 itself does not authorize a private complainant to appeal a decision of the disciplining authority. Sections 43 and 45 of RA 6975 authorize 'either party' to appeal in the instances that the law allows appeal. One party is the PNP member-respondent when the disciplining authority imposes the penalty of demotion or dismissal from the service. The other party is the government when the disciplining authority imposes the penalty of demotion but the government believes that dismissal from the service is the proper penalty.

However, the government party that can appeal is not the disciplining authority or tribunal which previously heard the case and imposed the penalty of demotion or dismissal from the service. The government party appealing must be the one that is prosecuting the administrative case against the respondent. Otherwise, an anomalous situation will result where the disciplining authority or tribunal hearing the case, instead of being impartial and detached, becomes an active participant in prosecuting the respondent. Thus, in Mathay, Jr. v. Court of Appeals, decided after Dacoycoy, the Court declared:

To be sure when the resolutions of the Civil Service Commission were brought to the Court of Appeals, the Civil Service Commission was included only as a nominal party. As a quasi-judicial body, the Civil Service Commission can be likened to a judge who should "detach himself from cases where his decision is appealed to a higher court for review."

In instituting G.R. No. 126354, the Civil Service Commission dangerously departed from its role as adjudicator and became an advocate. Its mandated function is to "hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments and to review decisions and actions of its offices and agencies," not to litigate.

Clearly, the Office of the Ombudsman is not an appropriate party to intervene in the instant case. It must remain partial and detached. More importantly, it must be mindful of its role as an adjudicator, not an advocate.

It is an established doctrine that judges should detach themselves from cases where their decisions are appealed to a higher court for review. The *raison d'être* for such a doctrine is the fact that judges are not active combatants in such proceeding and must leave the opposing parties to contend their individual positions and the appellate court to decide the issues without the judges' active participation.^[17] When judges actively participate in the appeal of their judgment, they, in a way, cease to be judicial and have become adversarial instead.^[18]

In Pleyto v. Philippine National Police Criminal Investigation and Detection Group (PNP-CIDG),^[19] the Court applied this doctrine when it held that the CA erred in granting the Motion to Intervene filed by the Office of the Ombudsman, to wit:

The court or the quasi-judicial agency must be detached and impartial, not only when hearing and resolving the case before it, but even when its judgment is brought on appeal before a higher court. The judge of a court or the officer of a quasi-judicial agency must keep in mind that he is an adjudicator who must settle the

controversies between parties in accordance with the evidence and applicable laws, regulations and/or jurisprudence. His judgment should already clearly and completely state his findings of fact and law. There must be no more need for him to justify further his judgment when it is appealed before appellate courts. When the court judge or the quasi-judicial officer intervenes as a party in the appealed case, he inevitably forsakes his detachment and impartiality, and his interest in the case becomes personal since his objective now is no longer only to settle the controversy between the original parties (which he had already accomplished by rendering his judgment), but more significantly, to refute the appellant's assignment of errors, defend his judgment, and prevent it from being overturned on appeal.

Likewise, the facts reveal that this case was elevated to the CA via a verified Petition for Review under Rule 43 of the Rules of Court and Supreme Court Administrative Circular No. 1-95 dated May 16, 1995, which govern appeals to the CA from judgments or final orders of quasi-judicial agencies.

Rule 43, as well as Administrative Circular No. 1-95, provides that the petition for review shall state the full names of the parties to the case without impleading the court or agencies either as petitioners or respondents.[20] Thus, the only parties in such an appeal are the appellant as petitioner and appellee as respondent. The court or, in this case, the administrative agency that rendered the judgment appealed from, is not a party in the said appeal.

Therefore, the Office of the Ombudsman does not have the legal interest to intervene. As the CA held correctly:

The Office of the Ombudsman is not a third party who has a legal interest in the administrative case against the petitioner such that it would be directly affected by the judgment that this Court had rendered. It must be remembered that the legal interest required for an intervention must be direct and immediate in character. Lest it be forgotten, what was brought on appeal before this Court is the very Decision by the Office of the Ombudsman. Plainly, the Office of the Ombudsman, as an adjudicator, and not an advocate, has no legal interest at stake in the outcome of this Rule 43 Petition.[21]

Motion for Intervention Was Not Filed on Time

Furthermore, the Rules provides explicitly that a motion to intervene may be filed at any time before rendition of judgment by the trial court. In the instant case, the Omnibus Motion for Intervention was filed only on July 22, 2008, after the Decision of the CA was promulgated on June 26, 2008.

In support of its position, petitioner cites Office of the Ombudsman v. Samaniego.[22] That case, however, is not applicable here, since the Office of the Ombudsman filed the motion for intervention during the pendency of the proceedings before the CA.

It should be noted that the Office of the Ombudsman was aware of the appeal filed by Sison. The Rules of Court provides that the appeal shall be taken by filing a verified petition for review with the CA, with proof of service of a copy on the court or agency a quo.[23] Clearly, the Office of the Ombudsman had sufficient time within which to file a motion to intervene. As such, its failure to do so should not now be countenanced. The Office of the Ombudsman is expected to be an "activist watchman," not merely a passive onlooker.[24]

In this case, it cannot be denied that the Omnibus Motion for Intervention was belatedly filed. As we held in Rockland Construction Co., Inc. v. Singzon, Jr., no intervention is permitted after a decision has already been rendered.[25]

In light of the foregoing considerations, all other issues raised in the petition are rendered moot and academic and no further discussion is necessary.

WHEREFORE, the petition is DENIED. The CA Resolution dated December 18, 2008 in CA-G.R. SP No. 96611 is AFFIRMED.

SO ORDERED.

Corona, (Chairperson), Nachura, Peralta, and Mendoza, JJ., concur.

[1] Rollo, pp. 52-58.

[2] *Id.* at 60-81. Penned by Associate Justice Agustin S. Dizon (retired) and concurred in by Associate Justices Vicente S.E. Veloso and Celia C. Librea-Leagogo.

[3] The other local public officials accused were: Ernesto Carcillar Arcales (Vice-Governor); Aurelio A. Bardaje, Jr. (General Service Officer); Numeriano C. Legaspi (GSO Record Officer and Inspector); Rolando Bolastig Montejo (Administrative Officer); Damiano Zerda Conde, Jr. (Treasurer); Romeo Chan Reales (Accountant); Rosie Amaro Villacorte (Representative, Budget Office); and the following Sangguniang Panlalawigan Members: Felix T. Babalcon, Jr., Fe Ortega Tan Arcales, Jimmy R. Dy, Juan Colinares Latorre, Jr., Ma. Lourdes Cortez Uy, Bienvenida P. Repol, Susano Dimakiling Salurio, Ramon P. Dean, Jr., Anamie P. Manatad-Nuñez, Bartolome R. Castillo III, Bartolome P. Figueuroa, Rosenaida A. Rosales, and Antonio De Leon Bolastig III.

[4] Rollo, pp. 88-91.

[5] *Id.* at 112-116.

[6] *Id.* at 80.

[7] *Heirs of Geronimo Restrivera v. De Guzman*, G.R. No. 146540, July 14, 2004, 434 SCRA 456, 463.

[8] *Id.*

[9] RULES OF COURT, Rule 19.

[10] BLACK'S LAW DICTIONARY 820 (6th ed.).

[11] *Union Bank of the Philippines v. Concepcion*, G.R. No. 160727, June 26, 2007, 525 SCRA 672, 687.

[12] *Id.*

[13] G.R. No. 141246, September 9, 2002, 388 SCRA 485.

[14] G.R. No. 135805, April 29, 1999, 306 SCRA 425.

[15] G.R. No. 124374, December 15, 1999, 320 SCRA 703.

[16] G.R. No. 149999, August 12, 2005, 466 SCRA 624, 641-642.

[17] *Pleyto v. Philippine National Police Criminal Investigation and Detection Group (PNP-CIDG)*, G.R. No. 169982, November 23, 2007, 538 SCRA 534, 549.

[18] *Calderon v. Solicitor General*, G.R. Nos. 103752-53, November 25, 1992, 215 SCRA 876, 881.

[19] *Supra* note 17.

[20] RULES OF COURT, Rule 43, Sec. 6(a); Revised Administrative Circular No. 1-95, Sec. 6(a).

[21] Rollo, p. 55.

[22] G.R. No. 175573, September 11, 2008, 564 SCRA 567.

[23] Rule 43, Sec. 5; and Revised Administrative Circular No. 1-95, Sec. 5.

[24] Office of the Ombudsman v. Lucero, G.R. No. 168718, November 24, 2006, 508 SCRA 107, 115

[25] A.M. No. RTJ-06-2002, November 24, 2006, 508 SCRA 1, 11.

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