

OMBUDSMAN-MINDANAO, PETITIONER, VS. LILING LANTO IBRAHIM, PROJECT MANAGER, NATIONAL IRRIGATION ADMINISTRATION, NIA-PIO, LANA DEL NORTE, RESPONDENT.

G.R. No. 211290. June 01, 2016

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for review on certiorari[1] assailing the 29 January 2013 Decision[2] and the 28 January 2014 Resolution[3] of the Court of Appeals Cagayan de Oro City in CA-G.R. SP No. 04242-MIN. The Court of Appeals set aside the 6 February 2007 Decision[4] which found respondent Liling Lanto Ibrahim (Ibrahim) guilty of dishonesty and grave misconduct and the 11 May 2011 Order[5] denying Ibrahim's motion for reconsideration, both issued by the Office of the Ombudsman-Mindanao (OMB-Mindanao) in Case No. OMB-M-A-06-131-D.

The Antecedent Facts

On 23 January 2003, Arobi Bansao (Bansao), President of Mapantao Irrigators Association, Inc. of Lumba-Bayabao, Lanao del Sur filed a complaint before the OMB-Mindanao against Engr. Johnny V. Emmanuel (Emmanuel), Regional Irrigation Manager of the National Irrigation Administration (NIA), Region X, Cagayan de Oro City, Bernardo S. Mercado (Mercado), OIC of the Engineering Division of the same office, and Ibrahim, Provincial Irrigation Officer (PIO) of NIA, Basak, Marawi City. Bansao alleged that on 21 August 2002, the El Niño Fund CY 2002 was granted for the Municipality of Lumba-Bayabao, First District, Lanao del Sur under Advice of Allotment No. (2002) 61768-102(8). Bansao further alleged that Emmanuel, Mercado, and Ibrahim realigned the amount of P2,946,422.40 intended for Mapantao CIS, Lanao del Sur to Balabagan CIS, Lanao del Sur. The realignment was not approved by the NIA Deputy Administrator. Bansao also alleged that the realignment was a ruse to conceal Ibrahim's withdrawal of the El Niño funds from the Land Bank of the Philippines, Marawi City Branch, and his misappropriation of the money for his personal use.

Pursuant to the 1st Indorsement dated 16 April 2003 of the Office of the Ombudsman and Commission on Audit (COA) Regional Legal and Adjudication Office Order No. 2003-13 dated 29 September 2003, COA Auditors Ramises D. Sumail and Pompong M. Bonsalagan (referred to in this case as the audit team) conducted an investigation and required Cashier C. Maruhumsar S. Somulung, Accounting Processor Hamim B. Ditucalan (Ditucalan), Ibrahim, and Emmanuel to submit their comments and copies of documents and vouchers relative to the complaint.

The audit team reported that the amount of P1,662,920 was appropriated for Balabagan CIS project for the year 2003 under ASA No. (2003)0103-101(4). As of 31 December 2003, the amount obligated was P42,530,[6] with a

balance of P1,620,389.14. However, the audit team discovered that there was another appropriation for the Balabagan CIS project for the year 2002 under ASA No. (2002)60963-101 in the amount of P217,827.70 which was fully obligated as of 31 December 2003.

On 14 September 2004, the audit team requested Ibrahim to submit additional documents pertaining to the Balabagan CIS project. They found that the disbursement vouchers only amounted to P1,200,915.31 which fell short of the realigned budget of P2,496,422.40 under Advice of Sub Allotment (ASA No. 2002-61768-102) with the difference of P1,295,507.09. The audit team also found that under the Audit Financial Statement that was submitted, there was no entry on Fund 102, indicating that the fund was already used up for the year. However, in the Cash in Bank Analysis, there was a remaining amount of P1,811.53 for Fund 102 as of 31 December 2003. The audit team reported that there was no proof that the realignment was approved by the Deputy Administrator or officials from the NIA Central Office.

On 9 May 2006, the Office of the OMB-Mindanao required Ibrahim to answer the complaint. In his Counter-Affidavit, Ibrahim admitted that the funds for Mapantao CIS project were realigned to Balabagan CIS project. He stated that all NIA PIOs were required to submit a listing of CIS for the allocation of the El Niño project. On 5 July 2002, he submitted a final listing for Lanao del Sur. On 21 August 2002, an Advice of Allotment on the approved listing was sent to the Office of the PIO, Lanao del Sur. On 26 August 2002, the PIO of Lanao del Sur requested for realignment of funds from Mapantao CIS to Balabagan CIS in the amount of P3,000,000 and from Mapantao Lubo CIS to Rugnan CIS for P1,000,000. NIA officials approved the alignment on 28 August 2002. Ibrahim denied that he misappropriated the funds for Mapantao CIS for his personal use. He also alleged that the copy of the alleged request for realignment that was not approved by the NIA Deputy Administrator and which was included as Annex "B" of the complaint was not an official document. Ibrahim alleged that it was only a draft that was not actually submitted to the Central Office for Approval because the NIA Regional Manager of Region 10 realized that the amount to be realigned was within his authority to act on. He added that the realignment from Mapantao CIS to Balabagan CIS was done with the consent of the Mapantao Irrigator's Association, Inc.

Ibrahim also explained that there was no illegal double appropriation because the Balabagan CIS was a multi-million ongoing and continuing rehabilitation of the irrigation system covering four barangays, namely Barangays Bengabing, Salaman, Matimos and Bakikis, with a distance of 2.46 kilometers of its main canal and 3.71 kilometers of lateral canals. He added that the communal system had a prioritized yearly appropriated budget for repair and rehabilitation with specific program of works by NIA. He also explained that the CIS had a prioritized yearly appropriated budget and as such, it could happen that another budget such as the El Niño and the Balikatan Sagip Patubig Programs (BSPP) funds would be used simultaneously with the CIS. He stated that the rehabilitation and completion fund appropriated yearly to Balabagan CIS was different from the El Niño and BSPP appropriations that were simultaneously implemented that year. Ibrahim also explained that the delay in the submission of documents to the State Auditors was due to the three successive replacements of the accountants in the Office of the PIO of Lanao del Sur.

Ibrahim also stated that there was no irregularity in the appropriation for a new budget for the Mapantao CIS. He explained that the two appropriations were different and distinct appropriations for different projects that covered two different years. According to him, the appropriation for 2003 to Balabagan CIS for P1,662,920 with ASA No. (2003)0103-101(4) was an appropriation for the BSPP for 2003. The amount of P217,827.70 with ASA No. (2002) 60963-101, which was obligated in full as of 31 December 2002, was the BSPP appropriation for 2002. He added that it was the actual balance during audit as of April 2003. He denied that there was a difference between the realigned amount of P2,946,422.40 and the disbursed El Niño fund of P1,200,915.31. He explained that the

vouchers audited by the audit team were only the ones partly prepared by Ditucalan, former Senior Accountant Processor of the PIO Lanao del Sur and they only covered disbursements from 30 August 2002 to 30 September 2002. The audit team failed to include several disbursements during the time of Ditucalan, Accountant Solaiman Saripada (Saripada), and Senior Accounting Processor Maamon Mindalano (Mindalano), totalling P1,098,323.33. Ibrahim also stated that the audit team failed to conduct an exit conference with the Office of the NIA PIO, Lanao del Sur.

The audit team maintained that Ibrahim was guilty of violation of Article 217 of the Revised Penal Code and that the conduct of the exit conference is within its discretion. It added that Ibrahim was negligent for not responding to their demand letters.

The Decision of the OMB-Mindanao

In its Decision dated 6 February 2007, the OMB-Mindanao found nothing unlawful in the realignment of the El Niño funds from Mapantao CIS project to Balabagan CIS project. The OMB-Mindanao found that on 1 July 2002, the NIA PIOs were required to submit a list of CIS for the allocation for the El Niño project. Ibrahim submitted a final listing of CIS for Lanao del Sur on 5 July 2002. The listing was approved and an Advice of Allotment on the approved listing was sent to the Office of the PIO, Lanao del Sur, on 21 August 2002. On 26 August 2002, the PIO, Lanao del Sur, requested for the realignment of fund from Mapantao CIS to Balabagan CIS for P3,000,000 and from Mapantao CIS to Rugnan CIS for P1,000,000. The OMB-Mindanao found that the listing for realignment was approved on 28 August 2002. The OMB-Mindanao also found that the Balabagan Communal Irrigation Project for which the fund was used was a legitimate beneficiary and it was the reason why Fund 102 was established. The OMB-Mindanao also found that during the clarificatory hearing, it was disclosed that the approval of the Deputy Administrator of the NIA was not necessary for the approval of the realignment of funds from Mapantao CIS project to Balabagan Communal Irrigation Project. The only requirement was to inform the NIA Central Management of the realignment. The responsibility to implement the project was with the NIA-Regional Office. The OMB-Mindanao found that in this case, the NIA Central Management was informed of the realignment. It also found that there was no unlawful realignment of funds for Balabagan Communal Irrigation Project because the expenditure was based on the Final List of Project Allocation as per the instruction of the NIA Central Management.

However, the OMB-Mindanao found Ibrahim liable for a shortage of P1,295,507.09. The OMB-Mindanao rejected Ibrahim's allegation that the audit team failed to include several disbursements made during the time of Ditucalan, Saripada, and Mindalano. It noted that some of the documents did not conform to the Program of Work as they included clothing allowance, GSIS remittances, and hazard pay. In addition, there was no entry on Fund 102 for 2002 but payments were made to Datu Sucor Baluno for the Takay Contracts from March to October 2004. The OMB-Mindanao also noted that the official receipt for PI 99,986.78 given by the Balabagan Communal Irrigators Association, Inc. (Balabagan Irrigators Association) was dated 25 January 2004 but the obligation or disbursement voucher was made on 25 March 2004. The OMB-Mindanao held that Ibrahim failed to explain the shortage of P1,295,507.09 which was the actual damage defrauded from the government. It ruled that Ibrahim failed in his duty as the officer-in-charge of the project and that he acted with dishonesty and grave misconduct.

The dispositive portion of the OMB-Mindanao's Decision reads:

WHEREFORE, premises considered, this Office finds substantial evidence to hold respondent LILING LANTO IBRAHIM liable for Dishonesty and Grave Misconduct and is hereby meted the penalty of DISMISSAL FROM THE SERVICE under Section 10, Rule III of Administrative Order No. 07 as amended by Administrative Order No. 17 of the Office of the Ombudsman in relation to Section 46(b)(1) and (4) of

Chapter 7 of the Revised Administrative Code of 1987 of the Civil Service Commission.

The Honorable Johnny V. Emmanuel, Regional Manager of National Irrigation Administration (NIA), Region X, Cagayan de Oro City, is hereby directed to implement the Decision within ten (10) days upon receipt hereof.

SO DECIDED.[7]

Ibrahim filed a motion for reconsideration. In its Order dated 11 May 2011, the OMB-Mindanao denied the motion.

Ibrahim filed a petition for review before the Court of Appeals, Cagayan de Oro City assailing the OMB-Mindanao's Decision of 6 February 2007 and Order of 11 May 2011.

The Decision of the Court of Appeals

Ibrahim alleged in his petition that the OMB-Mindanao failed to consider the Summary of Obligations, a newly-discovered evidence that would prove that there was no shortage of funds and that the government was not defrauded or did not suffer any damage. The OMB-Mindanao countered that the Summary of Obligations was hardly a newly-discovered evidence as it was already raised in Ibrahim's counter-affidavit but he only submitted it as an annex to his motion for reconsideration.

In its 29 January 2013 Decision, the Court of Appeals reversed the 6 February 2007 Decision and 11 May 2011 Order of the OMB-Mindanao and dismissed the case against Ibrahim.

The Court of Appeals ruled that the Summary of Obligations was actually new on the records because while it was mentioned in Ibrahim's counter-affidavit, it was only attached to Ibrahim's motion for reconsideration. The Court of Appeals observed that the OMB-Mindanao did not consider the Summary of Obligations in resolving Ibrahim's motion for reconsideration. The Court of Appeals also noted that the complaint against Ibrahim was for unlawful realignment of funds. The Court of Appeals stated that in its 6 February 2007 Decision, the OMB-Mindanao ruled that there was no unlawful realignment of the El Niño funds from Mapantao CIS to Balabagan CIS but found Ibrahim liable for the shortage of P1,295,507.09 based on the report of the audit team. The Court of Appeals found that the aggregate amount of the transactions not included in the computation of the audit team covered the alleged shortage of P1,295,507.09. The Court of Appeals concluded that there was no shortage of funds and that the El Niño funds had been accounted for. The Court of Appeals ruled that the OMB-Mindanao disregarded Ibrahim's evidence that refuted the findings of the audit team.

The dispositive portion of the Decision reads:

FOR THESE REASONS, the petition is GRANTED. The Decision dated [06] February 2007 and Order dated 11 May 2011 of the Office of the Ombudsman-Mindanao are REVERSED and SET ASIDE. The case against petitioner, Case No. OMB-M-A-06-131-D, is DISMISSED.

SO ORDERED.[8]

Ibrahim filed a Motion for Execution (During the Period of Appeal) while the OMB-Mindanao filed a Motion for Reconsideration on the ground that its findings, when supported by substantial evidence, are conclusive. In its 28 January 2014 Resolution, the Court of Appeals granted Ibrahim's motion for execution and denied the OMB-Mindanao's motion for reconsideration. The dispositive portion of the Resolution reads:

Accordingly, the motion for reconsideration is DENIED.

The Division Clerk of Court is directed to make an Entry of Judgment in due course.

The Regional Director of the National Irrigation Administration, Region X, Cagayan de Oro City is ORDERED to effect the reinstatement of petitioner Liling Lanto Ibrahim to his previous post without loss of seniority rights, or to equivalent post should his previous post ha[d] already been filled up, and with corresponding payment of back wages.

SO ORDERED.[9]

The OMB-Mindanao filed the present petition before this Court on the following grounds:

- (1) The Court of Appeals erred in directing the Division Clerk of Court to make an Entry of Judgment in this case;
- (2) The Court of Appeals erred in reviewing the factual findings of [OMB-Mindanao];
- (3) [The OMB-Mindanao] considered the totality of the evidence submitted by [Ibrahim] and the COA Auditors in resolving the administrative charges of dishonesty and grave misconduct against [Ibrahim] and in [imposing] upon him the penalty of dismissal from the service; and
- (4) The Court of Appeals erred in considering the annexes to [Ibrahim]'s Motion for Reconsideration as newly-discovered evidence.[10]

The Issues

We resolve the following issues:

- (1) Whether the Court of Appeals committed a reversible error in ordering the Clerk of Court to make an entry of judgment;
- (2) Whether the annexes that Ibrahim attached to his Motion for Reconsideration before the OMB-Mindanao are newly-discovered evidence; and
- (3) Whether the Court of Appeals committed a reversible error in dismissing the administrative case against Ibrahim.

The Ruling of this Court

We grant the petition in part.

Execution of the Decision Pending Appeal

In granting Ibrahim's motion for execution pending appeal, the Court of Appeals cited Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman (OMB Rules of Procedure) which states:

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.

In its Manifestation in Lieu of Comment filed before the Court of Appeals, the Office of the Solicitor General (OSG), representing the OMB-Mindanao and the audit team, cited the same provision of the OMB Rules of Procedure, particularly that an appeal shall not stop the decision from being executory. Thus, while the OSG manifested that it was not abandoning its motion for reconsideration before the Court of Appeals or any appropriate action that may be taken after the resolution of the pending motions, it did not oppose Ibrahim's motion for execution pending appeal.

We agree that the Court of Appeals is not precluded from acting on the motion for execution pending appeal filed by Ibrahim. However, the Court of Appeals committed a reversible error in directing the Clerk of Court to make an entry of judgment. Sections 1 and 5, Rule VII of the Internal Rules of the Court of Appeals (RIRCA) provide:

Section 1. Entry of Judgment. - Unless a motion for reconsideration or new trial is filed or an appeal taken to the Supreme Court, judgments and final resolutions of the Court shall be entered upon expiration of fifteen (15) days from notice to the parties.

(a) With respect to the criminal aspect, entry of judgment in criminal cases shall be made immediately when the accused is acquitted or his/her withdrawal of appeal is granted. However, if the motion withdrawing an appeal is signed by the appellant only, the Court shall first take steps to ensure that the motion is made voluntarily, intelligently and knowingly or may require his/her counsel to comment thereon.

When there are several accused in a case, some of whom appealed and others did not, entry of judgment shall be made only as to those who did not appeal. The same rule shall apply where there are several accused in a case, some of whom withdrew their appeal and others did not.

(b) Entry of judgment in civil cases shall be made immediately when an appeal is withdrawn or when a decision based on a compromise agreement is rendered.

x x x x

Section 5. Entry of Judgment and Final Resolution. - If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final resolution shall forthwith be entered by the clerk in the book of entries of judgments. The date when the judgment or final resolution becomes executory shall be deemed as the date of its entry. The record shall contain the dispositive part of the judgment or final resolution and shall be signed by the clerk, with a certificate that such judgment or final resolution has become final and executory.

The decision of the Court of Appeals is not yet final and its reversal of the decision of the OMB-Mindanao is still subject to review by this Court upon filing of a petition for review on certiorari under Rule 45. Following the RIRCA, entry of judgment should only be made when no appeal or motion for reconsideration has been timely filed. In this case, the OMB-Mindanao timely filed the present petition before this Court, making the entry of judgment premature. Hence, the Court of Appeals committed a reversible error in ordering the Clerk of Court to make an entry of judgment pending the final disposition of the case.

Review of the Decision of the Ombudsman

The OMB-Mindanao asserts that the Court of Appeals erred in reviewing its factual findings. We do not agree.

The general rule is that the findings of fact of the Office of the Ombudsman are conclusive when supported by substantial evidence.[11] The factual findings of the Office of the Ombudsman are generally accorded with great weight and respect, if not finality by the courts, due to its special knowledge and expertise on matters within its jurisdiction.[12] However, the Court of Appeals may resolve factual issues, review and re-evaluate the evidence

on record, and reverse the findings of the administrative agency if not supported by substantial evidence.

Here, the Court of Appeals noted that Ibrahim was charged with unlawfully realigning funds from the Mapantao CIS project to the Balabagan CIS project. It further noted that the OMB-Mindanao found that there was nothing unlawful in the realignment of funds and he was penalized for the alleged shortage of funds. Hence, the Court of Appeals deemed it proper to look into the Summary of Obligations and disbursement vouchers to determine if Ibrahim indeed incurred a shortage of P1,295,507.09 and to avoid a miscarriage of justice.

After Comparing the Table of Payments with the Summary of Obligations, the Court of Appeals found that there was no shortage of money in Ibrahim's account. The Summary of Obligations was detailed by the Court of Appeals as follows:

No.

Date

Amount of ASA

AMOUNT

EQUITY

VAT

NET AMOUNT

ASA Received from ROX

2,496,422.40

1

08/30/02

Badroden Mandi - Takay Contract

148,191.12

14,819.00

133,372.02

2

Curahab Enterprises - Sand/Gravel

42,500.00

42,500.00

3

09/10/02

Curahab Enterprises - Const. Materials

263,250.00

263,250.00

4

09/10/02

Lomondaya Magad - TEVs (9/1-9/02)

2,240.00

2,240.00

5

09/10/02

Datu Sucor Baluno-CIS Equity

253,500.00

253,500.00

6 09/10/02 Jonathan Mandi-Takay Contract

49,809.60

4,980.00

44,829.60

7 09/12/02 Jonathan Mandi- Takay Contract

49,960.00

4,996.00

44,964.00

8 09/12/02 Jonathan Mandi- Takay Contract

49,448.00

4,948.80

44,499.20

9 09/12/02 Benitez K Derogonan& 6 others/CAMEL

20,721.55

20,721.55

10 Datu Sucor Baluno-Takay Contract

49,854.42

4,985.44

44,868.98

11

Datu Sucor Baluno-Takay Contract

14,169.00

1,416.90

12,752.10

12

09/15/02 Alexis Petron Station-Fuel & Oil

4,723.00

4,723.00

13

09/16/02

G.S.I.S. Remittances

5,940.00

5,940.00

14

09/18/02

Lomondaya Magad - Clothing Allowance

4,000.00

4,000.00

15

09/18/02

Lomondaya Magad W(09/10-15/02)

4,162.30

4,162.30

16

09/18/02

Ronald Macaraya - Takay Contract

34,303.50

34,303.50

17

Gaphor Pumbayabaya W/A

10,359.17

10,359.17

18

09/19/02

Hamim Ditucalan, Transp. Fare

3,200.00

3,200.00

19

09/19/02

G.S.I.S. Remittances

20,627.00

20,627.00

20

09/23/02

Maruhombsar Somulung, C/A

40,000.00

40,000.00

21

09/27/02

Ansari Baudi & 2 others, W(09/l 6- 30/02)

11,062.47

11,062.47

22

09/30/02

Hamim Ditucalan, Reim. Fare

3,200.00

3,200.00

23

09/30/02

Noel Visitacion & 9 others (09/16-30/02)

24,400.00

24,400.00

24

09/30/02

Lomondaya Magad W(09/l 6-30/02)

4,481.00

4,481.00

25[13]

26

09/30/02

Jonathan Marinay J(09/16-30/02)

1,437.53

1,437.53

27

09/30/02

Anzari D. Baudi Reimb

5,050.00

5,050.00

Total Obligations of H.B. Ditucalan/SAP-B

1,120,589.66

36,146.24

1,084,443.42

28

11/28/02

Alexis Petron Station-Fuel & Oil

14,605.33

14,605.33

29

12/16/02

Tawano D. Mandi - Cost. Materials

28,000.00

28,000.00

30

12/17/02

Casamina Marandang, W/A

4,609.78

.4,609.78

31

Nestor Cadonggog -W(12/l-15/02)

24,780.21

24,780.21

32

12/17/02

Nelsa Dicay Representation

4,350.60

4,350.60

33

12/18/02

Datu Sucor Baluno - Takay Contract

48,939.66

48,939.66

34

12/23/02

Datu Sucor

26,548.20

26,548.20

Baluno - Takay Contract

35

12/23/02

Datu Sucor Baluno - Takay Contract

31,959.20

31,959.20

36

12/23/02

Datu Sucor Baluno - Takay Contract

40,280.00

40,280.00

37

12/23/02

Datu Sucor Baluno - Takay Contract

48,024.90

48,024.90

38

12/23/02

Aliusodan Macaayan — Hazard Pay/02

3,600.00

3,600.00

Total Obligations of S.S. Saripada/SAP-B

275,697.88

275,697.88

39

03/25/04

Datu Sucor Baluno - Takay Contract

265,890.24

26,589.02

239,301.22

40

03/25/04

Datu Sucor Baluno - Takay Contract

199,986.78

19,998.67

179,988.11

41

03/25/04

Datu Sucor Baluno - Takay Contract

241,963.07

24,196.30

217,766.77

42

03/25/04

Datu Sucor Baluno - Takay Contract

163,350.00

16,355.00

146,995.00

43

10/06/04

Datu Sucor Baluno - Takay Contract

47,813.63

4,781.36

43,032.27

44

10/06/04

Datu Sucor Baluno - Takay Contract

34,368.00

3,436.80

30,931.20

45

10/06/04

Datu Sucor Baluno - Takay Contract

23,447.78

2,344.72

21,103.06

46

10/06/04

Datu Sucor Baluno - Takay Contract

9,743.83

974.38

8,769.45

47

10/06/04

N & J Trading - Const. Materials

111,750.00

3,048.00

108,712.00

Total Obligations of M.B. Mindalano/SAP-B

1,098,323.33

11,537.26

3,048.00

212,547.98

Total Obligations

2,494,810.87

Balance

1,811.53[14]

The Court of Appeals found that from the computation of disbursements of the three accountants (Ditucalan, Saripada, and Mindalano), the total amount of disbursements tallied with the realigned project, thus:

Hamim Ditucalan

(from Aug. 30 to Sept. 30, 2002)

PI,120,589.66

Solaiman Saripada

(from Nov. 28 to Dec. 23, 2002)

275,697.88

Maamon Mindalano

(from Mar. 25 to Oct. 6, 2004)

1,098,323.33

Total Disbursements

P2,494,610.87

Plus Cash in Bank

1,811.53

TOTAL OBLIGATION**P2,496,422.40[15]**

To find out the items left out by the audit team that led to the finding that there was a shortage, the Court of Appeals then made a chart comparing the Schedule of Payments and the Summary of Obligations, as follows:

Schedule of Payment Annex J-Complaint

Summary of Obligations Annex 5 - Motion for Reconsideration

ASA Received from R.O.X. No. (2002) 61786- 102

2,496,422.40

Annex

2,496,422.40

Annex

DISBURSEMENTS by Hamim Ditucalan

Badroden Mandi - Takay Contract

148,191.12

Annex 5-A.A1

Curahab Enterprises -Sand/Gravel

42,500.00

No. 21

42,500.00

Annex 5-A2

Curahab Enterprises - Const. Materials

263,250.00

No. 22

263,250.00

Annex 5-A3

Lomondaya Magad - TEVs (9/1-9/02)

2,240.00

Annex 5-A4

Datu Sucor Baluno - CIS Equity

253,500.00

No. 8

253,500.00

Annex 5-A5

Jonathan Mandi - Takay Contract

49,809.60

No. 20

49,809.60

Annex 5-A6

Jonathan Mandi - Takay Contract

49,960.00

No. 24

49,960.00

Annex 5-A7

Jonathan Mandi - Takay Contract

49,448.00

No. 18

49,448.00

Annex 5-A8

Benitez K Derogonan & 6 others/CAMEL

20,721.55

No. 12

20,721.55

Annex 5-A9

Datu Sucor Baluno - Takay Contract

49,854.42

No. 19

49,854.42

Annex 5-A10

Datu Sucor Baluno - Takay Contract

14,169.00

No. 17

14,169.00

Annex 5-A11

Alexis Petron Station -Fuel & Oil

4,723.08

No. 14

4,723.08

Annex 5-A12

G.S.I.S. Remittances

5,940.41

No. 28

5,940.41

Annex 5-A13

Lomondaya Magad - Clothing Allowance

4,000.00

No. 7

4,000.00

Annex 5-A14

Lomondaya Magad - W(09/10-15/02)

4,162.30

No. 15

4,162.30

Annex 5-A15

Ronald Macaraya - Takay Contract

34,303.50

No. 16

34,303.50

Annex 5-A16

Gaphor Pumbayabaya W/A

10,359.17

No. 27

10,359.17

Annex 5-A17

Hamim B. Ditucalan, Transp. Fare

3,200.00

No. 26

3,200.00

Annex 5-A18

G.S.I.S. Remittances

20,627.00

No. 25

20,627.00

Annex 5-A19

Maruhombsar Somulung, C/A

40,000.00

No. 30

40,000.00

Annex 5-A20

Ansari Baudi & 2 others, W(09/I 6-30/02)

11,062.47

Annex 5-A21

Hamim B. Ditucalan, Reim. Fare

3,200.00

No. 13

3,200.00

Annex 5-A22

Noel Visitacion & 9 others (09/16-30/02)

24,400.00

Annex 5-A23

Lomondaya Magad, W(09/16-30/02)

4,481.03

Annex 5-A24

Jonathan Marinay J (09/16-30/02)

1,437.53

Annex 5-A26

Anzari D. Baudi Reimb

5,050.00

No. 23

5,050.00

Annex 5-A27

TOTAL

928,818.03

1,120,590.18

DISBURSEMENTS by Solaiman Saripada

Alexis Petron Station -Fuel & Oil

14,605.33

No. 1

14,605.33

Annex 5-B1

Tawano D. Mandi - Cost. Materials

28,000.00

No. 2

28,000.00

Annex 5-B2

Casamina Marandang, W/A

4,609.78

No. 11

4,609.78

Annex 5-B3

Nestor Cadonggog - W(12/1-15/02)

24,780.21

No. 10

24,780.21

Annex 5-B4

Nelsa Dicay Representation

4,350.60

No. 9

4,350.60

Annex 5-B5

Datu Sucor Baluno - Takay Contract

48,939.66

No. 29

48,939.66

Annex 5-B6

Datu Sucor Baluno - Takay Contract

26,548.20

No. 6

26,548.20

Annex 5-B7

Datu Sucor Baluno - Takay Contract

31,959.20

No. 5

31,959.20

Annex 5-B8

Datu Sucor Baluno - Takay Contract

40,280.00

No. 4

40,280.00

Annex 5-B9

Datu Sucor Baluno - Takay Contract

48,024.90

No. 3

48,024.90

Annex 5-B10

Aliusodan Macaayan - Hazard Pay/02

3,600.00

TOTAL

272,097.88

275,697.88

DISBURSEMENT by Maamon Mindalano

Datu Sucor Baluno - Takay Contract

265,890.24

Annex 5-C1

Datu Sucor Baluno - Takay Contract

199,986.78

Annex 5-C2

Datu Sucor Baluno - Takay Contract

241,963.07

Annex 5-C3

Datu Sucor Baluno - Takay Contract

163,350.00

Annex 5-C4

Datu Sucor Baluno - Takay Contract

47,813.63

Annex 5-C5

Datu Sucor Baluno - Takay Contract

34,368.00

Annex 5-C6

Datu Sucor Baluno - Takay Contract

23,447.78

Annex 5-C7

Datu Sucor Baluno - Takay Contract

9,743.83

Annex 5-C8

N & J Trading - Const. Materials

111,750.00

Annex 5-C9

TOTAL

0.00

1,098,323.33

Total Obligations

2,494,810.87

Balance

1,811.53 [16]

The Court of Appeals then found that the audit team failed to take into account the following disbursements:

DISBURSEMENTS by Hamim Ditucalar

Badroden Mandi - Takay Contract

148,191.12

Annex 5-A, A1

Lomondaya Magad - TEVs (9/1-9/02)

2,200.00

Annex 5-A4

Ansari Baudi & 2 others, W(09/16-30/02)

11,062.47

Annex 5-A21

Noel Visitacion & 9 others (09/16-30/02)

24,400.00

Annex 5-A23

Lomondaya Magad, W(09/16-30/02)

4,481.03

Annex 5-A24

Jonathan Marinay J(09/16-30/02)

1,437.53

Annex 5-A26

Sub-Total

191,772.15

DISBURSEMENT by Solaiman Saripada

Aliusodan Macaayan - Hazard Pay/02

3,600.00

Sub-Total

3,600.00

DISBURSEMENTS by Maamon Mindalano

Datu Sucor Baluno - Takay Contract

265,890.24

Annex 5-C1

Datu Sucor Baluno - Takay Contract

199,986.78

Annex 5-C2

Datu Sucor Baluno - Takay Contract

241,983.07

Annex 5-C3

Datu Sucor Baluno - Takay Contract

163,350.00

Annex 5-C4

Datu Sucor Baluno - Takay Contract

47,813.63

Annex 5-C5

Datu Sucor Baluno - Takay Contract

34,368.00

Annex 5-C6

Datu Sucor Baluno - Takay Contract

23,447.78

Annex 5-C7

Datu Sucor Baluno - Takay Contract

9,743.83

Annex 5-C8

N & J Trading - Const. Materials

111,750.00

Annex 5-C9

Sub-Total

1,098,323.33

TOTAL

1,293,695.48

Cash in Bank

1,811.53

TOTAL

1,295,507.01[17]

Indeed, we agree with the Court of Appeals that the supposed shortage incurred by Ibrahim was properly accounted for. The Court of Appeals meticulously studied the Summary of Obligations and found no shortage in

Ibrahim's account. In its petition, the OMB-Mindanao questioned the following disbursements, i.e., the clothing allowance to Lomondaya Magad (Magad) amounting to P4,000, GSIS remittances amounting to P20,627, and hazard pay to Aliusodan Macaayan (Macaayan) amounting to P3,600, payments for the Takay Contracts from March 2004 to October 2004, and payments to the Balabagan Irrigators Association amounting to P199,986.78.[18]

From the Summary of Obligations, the Court finds that the clothing allowance to Magad amounted to P4,000,[19] there were two GSIS remittances amounting to P5,940.41[20] and P20,627,[21] while the hazard pay to Macaayan amounted to P3,600.[22] The total amount of these disbursements is P34,167.41. As explained by Mindalano, the clothing allowance paid to Magad as well as the GSIS remittances[23] were obligations incurred before Ibrahim became the OIC of the PIO and were only paid during his time.[24] As regards Macaayan's hazard pay, the payment was reflected both in Saripada's Statement of Obligation and the Cost of Reconciliation accepted by the President of Balabagan Irrigators Association and the corresponding voucher was submitted to the audit team.[25] As pointed out by Ibrahim, these personnel are workers of the El Niño project and their allowances, emoluments, and remittances are chargeable to the funds of the project.[26]

The Takay Contracts were also sufficiently accounted for. Ibrahim explained that the payments were made to Datu Sucor Baluno (Datu Baluno) and he signed the receipts as President of Balabagan Irrigators Association. Ibrahim and Mindalano also explained that there was no entry on Fund 102 because there was only an Advice of Sub Allotment (ASA No. 2002-61768-102) but the corresponding cash was not yet deposited by the Department of Budget and Management (DBM)[27] and not because the funds were already exhausted. Mindalano also submitted a Cost Reconciliation of Expenditures[28] between the NIA and Balabagan Irrigators Association signed by Datu Baluno and Sultan Salong B. Rasuman, Chief of NIA Institutional Development Section showing all the disbursements and payments. As regards the discrepancy in the dates of the disbursement voucher and the official receipt, Mindalano explained that under DBM Circular No. 2004-2 (1.2), "commitments/obligations shall be recognized as accounts payable (A/ Ps) only upon receipt by the agency of the suppliers/creditors bills for goods/services delivered/rendered and project accepted." [29] It appears that instead of issuing a bill, Balabagan Irrigators Association issued a receipt, but it was only upon submission of the receipt that the money was deposited to Fund 102 and the amount was obligated. The obligation to Balabagan

Irrigators Association was paid when the DBM deposited the money to Fund 102.

Newly-discovered Evidence

Before proceeding further, the Court notes that the Decision of the OMB-Mindanao dismissing Ibrahim from the service was dated 6 February 2007. Ibrahim's motion for reconsideration showed that the NIA Office received a copy of the Decision only on 9 July 2009 while Ibrahim was attending a seminar in Manila, and he only received it on 13 July 2009 when he returned to work.[30] There was no explanation on the records why it took the OMB-Mindanao more than two years to send Ibrahim a copy of the Decision.

Ibrahim filed a motion for reconsideration on 20 July 2009 because he counted his period of filing from the date he received a copy of the Decision. The OMB-Mindanao failed to act on Ibrahim's motion. On 13 April 2011, Ibrahim filed a motion for early resolution of the case, noting that it was almost two years since he filed his motion for reconsideration and that the audit team failed to comment to refute his arguments during the period. On 30 May 2011, Ibrahim filed a motion for re-audit.[31] However, by that time, the OMB-Mindanao had already acted upon his motion for reconsideration in its 11 May 2011 Order. Again, there was nothing in the records that would show why it took the OMB-Mindanao two years to resolve Ibrahim's motion, in contravention of the OMB Rules of Procedure.

Section 8, Rule III of the OMB Rules of Procedure provides:

Section 8. Motion for reconsideration or reinvestigation: Grounds. -Whenever allowable, a motion for reconsideration or reinvestigation may only be entertained if filed within ten (10) days from receipt of the decision or order by the party on the basis of any of the following grounds:

- a) New evidence had been discovered which materially affects the order, directive or decision;
- b) Grave errors of facts or laws or serious irregularities have been committed prejudicial to the interest of the movant.

Only one motion for reconsideration or reinvestigation shall be allowed, and the Hearing Officer shall resolve the same within five (5) days from the date of submission for resolution.

To be considered a newly discovered evidence under the Rules of Court, the following requisites must be present: (a) the evidence was discovered after trial; (b) such evidence could not have been discovered and produced at the trial with reasonable diligence; and (c) it is material, not merely cumulative, corroborative or impeaching, and is of such weight that, if admitted, will probably change the judgment.[32]

In this case, the Court of Appeals did not consider the Summary of Obligations as newly-discovered evidence because it was already mentioned in Ibrahim's counter-affidavit. The Court of Appeals considered the Summary of Obligations new on the records because Ibrahim only submitted it with his motion for reconsideration. According to Ibrahim, the audit team failed to get this document from the financial officers and it was disregarded by OMB-Mindanao.[33] However, the Court of Appeals also pointed out that the Summary of Obligations was already in existence during the conduct of the investigation. The Court of Appeals noted that in his Reply, Ibrahim already insisted that the Summary of Obligations and the copies of the vouchers covering all disbursements were in the possession of the OMB-Mindanao from the time he submitted his counter-affidavit. We see no reversible error on the part of the Court of Appeals in considering the Summary of Obligations.

In administrative cases, the quantum of evidence necessary to find an individual administratively liable is substantial evidence.[34] Section 5, Rule 133 of the Rules of Court defines substantial evidence as that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[35] Here, we find that Ibrahim's guilt has not been proven with substantial evidence as to warrant his dismissal from the service.

WHEREFORE, we DENY the petition. We AFFIRM the 29 January 2013 Decision and the 28 January 2014 Resolution of the Court of Appeals Cagayan de Oro City in CA-G.R. SP No. 04242-MIN with MODIFICATION by canceling the entry of judgment issued by the Court of Appeals in the case.

SO ORDERED.

Del Castillo, Mendoza, and Leonen, JJ., concur.
Brion, J., on official leave.

[1] Under Rule 45 of the Revised Rules of Court.

[2] Rollo, pp. 84-110. Penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Renato C. Francisco and Oscar V. Badelles.

[3] Id. at 112-117.

[4] Id. at 133-151.

- [5] Id. at 168-173.
- [6] P42,530.86 in the Decision of the Court of Appeals.
- [7] Rollo, pp. 150-151.
- [8] Id. at 110.
- [9] Id. at 116-117.
- [10] Id. at 60-61.
- [11] *Miro v. Vda. de Erederos*, 721 Phil. 772 (2013).
- [12] Id.
- [13] No. 25 is missing in the Decision of the Court of Appeals.
- [14] Rollo, pp. 98-101.
- [15] Id. at 102.
- [16] Id. at 102-105.
- [17] Id. at 105-106. The shortage, according to the Decision of the Court of Appeals, was P1,295,507.09.
- [18] Id. at 67.
- [19] Id. at 103, No. 7.
- [20] Id., No. 28.
- [21] Id., No. 25.
- [22] Id. at 104.
- [23] The explanation was only for the P20,627 remittance but we presume that it includes the P5,940.41 remittance because they were paid three days apart. Id. at 99.
- [24] CA rollo, p. 162.
- [25] Id. at 163.
- [26] Id. at 357.
- [27] Id. at 161.
- [28] Id. at 168.
- [29] Id. at 162, 165.
- [30] Ibrahim attached a Travel Order and Certificate of Appearance showing that he was on official business in Manila from 8-11 July 2009. Id. at 140, 158-159.
- [31] Id. at 328.
- [32] *Amarillo v. Sandiganbayan*, 444 Phil. 487 (2003).
- [33] Rollo, pp. 340-361.

[34] *Pia v. Gervacio, Jr.*, 710 Phil. 196 (2013).

[35] *Id.*

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