

**HON. CONRADO M. VASQUEZ, OMBUDSMAN, OFFICE OF THE  
OMBUDSMAN, PETITIONER, VS. HON. MARIETTA HOBILLA-ALINIO  
IN HER CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL  
COURT, BR. 62,...**

*G.R. Nos. 118813-14. April 08, 1997*

Ponente: BELLOSILLO, J.

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**BELLOSILLO, J.:**

SEEKING JUSTICE for the killing of her husband Dionesio Odelmo and her father-in-law Jose Odelmo on 31 December 1992, Corazon Odelmo appeared before the Office of the Deputy Ombudsman for the Visayas on 12 February 1993 and filed a complaint for murder against respondents Mayor Luis Mondia Jr. of Pulupandan, Negros Occidental, Sgt. Ruben Olvido, Pat. Ernesto Eneserio Jr., Jerry Vista, Joel Treyes, Rufino Zondia, Samson Mondia, Manny Mondia, Rodrigo Mondia Jr., Norberto Española, Robinson Galanza and Noel Occeña.

After preliminary investigation the Office of the Deputy Ombudsman concluded that there was probable cause to hold private respondents liable for the crime charged. Thus, in a resolution dated 10 August 1993 it recommended the filing of an Information for double murder against all of them before the Sandiganbayan.

However upon review the Office of the Special Prosecutor (OSP) appreciated the evidence antithetically; it found that two (2) separate crimes of murder were committed but the commission thereof was not in relation to the performance of the duties of private respondents. In view thereof it recommended on 14 December 1993 the filing of two (2) separate Informations before the Regional Trial Court of Bago City.

On 28 December 1993 the resolution of 14 December 1993 of the OSP modifying the resolution of 10 August 1993 of the Office of the Deputy Ombudsman was approved by petitioner Ombudsman Conrado M. Vasquez.

Accordingly, on 17 January 1994 two (2) Informations were filed before the Regional Trial Court of Bago City, and on 18 January 1994 the corresponding warrants/orders of arrest were issued. That same day private respondents filed a motion to recall warrants/orders of arrest on the ground that they had not yet received copy of the complaint, neither had they been furnished by the Office of the Ombudsman copy of the resolution of 14 December 1993, as required under Sec. 6, Rule II,[1] of Administrative Order No. 7 of the Office of the Ombudsman.[2] They claimed that this resulted in a denial of their right to seek reconsideration or reinvestigation in contravention of Sec.7[3] of the Administrative Order. Moreover, they posited that the Office of the Ombudsman had no authority to file the Informations in view of its own finding that the crime was not committed by the accused in relation to their office. The following day private respondents filed a motion to quash the Informations based on lack of authority.

On 26 January 1994 respondent Judge found that the Office of the Ombudsman failed to furnish private respondents copy of the resolution of 14 December 1993 depriving them of their right to move for reconsideration or to elevate the matter to a higher office before the Informations were filed. Consequently she ordered that the

execution of the warrants/orders of arrest be held in abeyance. For the same reason, she also granted the motion to quash the Informations. [4]

The Office of the Ombudsman through the OSP moved for reconsideration insofar as respondent Judge granted the motion to quash the Informations. It was argued that the failure to furnish a copy of the resolution to private respondents was not an authorized ground to quash the Informations under Sec. 3, Rule 117, of the Rules of Criminal Procedure.[5] Furthermore, it invoked *Torralba v. Sandiganbayan*[6] as authority on what respondents should have done under the circumstances.

Respondent Judge maintained her ruling, opining that the assailed order was anchored on valid and legal grounds, apparently referring to Secs. 6 and 7 of Administrative Order No. 7. She stressed that her order had become final since the motion for its reconsideration was filed beyond the reglementary period. On 14 July 1994 she denied the motion to reconsider her order. [7]

Imputing grave abuse of discretion and lack or excess of jurisdiction to respondent Judge in granting the motion to quash the Informations petitioner now comes to us for relief invoking our ruling in *Torralba* to stress his point. He also asserts that although the motion for reconsideration was belatedly filed it should nevertheless have been given due course considering the clearly meritorious grounds and the peculiar structural organization of the Office of the Ombudsman.

Petitioner further asks the Court to resolve the issue concerning the authority of the Office of the Ombudsman to investigate and prosecute illegal acts and omissions of public officers which respondent Judge did not pass upon.

Private respondents on the other hand charge that certiorari is an improper remedy from an order quashing the Informations for it cannot substitute for a lost appeal.

We rule for petitioner. Under Sec. 3, Rule 117, of the Rules of Court, it is clear that failure of the prosecution to furnish copy of the resolution to private respondents is not one of the grounds to quash an information. Private respondents' proposition that the Office of the Ombudsman had no authority to file the Informations would have held solid ground under Sec. 3, par. (c), of the Rule. But this seems to have been ignored by respondent Judge. Be that as it may, on the assumption that this ground was invoked and applied, it would still be inappropriate to quash the Informations because the fact that private respondents had not yet been served with copy of the resolution rendered the filing of the Informations premature, since the avenue for a reconsideration or reinvestigation was still accessible. It is in this instance that the doctrine in *Torralba* rightfully comes into play.

In *Torralba* we found that the averments of petitioners that they had not been served with copies of the final resolution of the Office of the Ombudsman, the approved modified memorandum of the Special Prosecution Officer as well as the special audit report were not controverted. The inevitable conclusion then was that petitioners were not only effectively denied the opportunity to file a motion for reconsideration but were also deprived of their right to a full preliminary investigation preparatory to the filing of the Informations against them. Nevertheless, the Court emphasized that –

The incomplete preliminary investigation in this case x x x x does not warrant the quashal of the information, nor should it obliterate the proceedings already had. Neither is the court's jurisdiction nor validity of an information adversely affected by deficiencies in the preliminary investigation. Instead, the Sandiganbayan is to hold in abeyance any further proceedings therein and to remand the case to the Office of the Ombudsman for the completion of the preliminary investigation,[8] the outcome of which shall then be indorsed to (the) Sandiganbayan for its appropriate action.

It is thus manifest that respondent Judge capriciously and whimsically ordered the quashing of the Informations

notwithstanding our ruling in *Torralba* and Sec. 3, Rule 117, of the Rules of Court.

It is worthy to note that subsequent to *Torralba* and the issuance of the disputed orders of respondent Judge we addressed the same issue in *Pecho v. Sandiganbayan*[9] thus -

x x x x the failure to furnish the respondent with a copy of an adverse resolution pursuant to Section 6 x x x does not affect the validity of an information thereafter filed even if a copy of the resolution upon which the information is based was not served upon the respondent. The contention that the provision is mandatory in order to allow the respondent to avail of the 15-day period to file a motion for reconsideration or reinvestigation is not persuasive for under Section 7[10] of the said Rule, such motion may, nevertheless, be filed and acted upon by the Ombudsman if so directed by the court where the information was filed x x x x

Private respondents insist that the remedy of certiorari is improper. While an order granting a motion to quash, unlike one of denial, is a final order and not merely interlocutory and therefore is immediately appealable,[11] we have ruled that even when appeal is available as a proper remedy we will sanction a writ of certiorari on the basis of a patent, capricious and whimsical exercise of discretion by a trial judge[12] or when an appeal will not promptly relieve petitioner from the injurious effects of the disputed orders.[13]

While we recognize that certiorari as a remedy may not be used as a substitute for an appeal, especially a lost appeal, this rule should not be strictly enforced if the petition is genuinely meritorious.[14] In the final analysis, certiorari as an extraordinary legal remedy is intended to annul or void proceedings in order to ensure the fair and orderly administration of justice. Unquestionably, the circumstances of the present petition warrant direct recourse to this Court.

On the authority of the Office of the Ombudsman to file the Informations before respondent Judge, we need only quote Sec. 15, of RA 6770, otherwise known as the Ombudsman Act of 1989, which provides:

Sec. 15. Powers, Functions and Duties. - The Office of the Ombudsman shall have the following powers, functions and duties: (1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases.

We explained in *Deloso v. Domingo*,[15] the nature, power and function of the Office of the Ombudsman thus –

The clause 'any [illegal] act or omission of any public official' is broad enough to embrace any crime committed by a public official. The law does not qualify the nature of the illegal act or omission of the public official or employee that the Ombudsman may investigate. It does not require that the act or omission be related to or be connected with or arise from the performance of official duty. Since the law does not distinguish, neither should we.

The reason for the creation of the Ombudsman in the 1987 Constitution and for the grant to it of broad investigative authority, is to insulate said office from the long tentacles of officialdom that are able to penetrate judges' and fiscals' offices, and others involved in the prosecution of erring public officials, and through the exertion of official pressure and influence, quash, delay, or dismiss investigations into malfeasances and misfeasances committed by public officers. It was deemed necessary, therefore, to create a special office to investigate all criminal complaints against public officers regardless of whether or not the acts or omissions complained of are related to or arise from the performance of the duties of their office. The Ombudsman Act makes perfectly clear that the jurisdiction of the Ombudsman encompasses 'all kinds of malfeasance, misfeasance, and non-feasance that have been committed by any officer or employee as mentioned in Section 13 hereof, during his tenure of office' (Sec. 16, R.A. 6770).

WHEREFORE, the petition is GRANTED. The order of respondent Judge Marietta Hobilla-Alinio dated 26 January 1994 insofar as it quashed the Informations as well as the order dated 14 July 1994 denying reconsideration thereof is SET ASIDE. Respondent Judge having in the meantime died,[16] any other Judge replacing her or to whom these cases may be reassigned is directed to remand the cases to the Office of the Ombudsman for completion of the proceedings by furnishing copy of the questioned orders to private respondents and thereafter resolving with dispatch whatever incidents may ensue thereunder, the result of which shall then be immediately indorsed to the RTC-Br. 62, Bago City, or any other branch to which the cases may be reassigned, for appropriate action.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Davide, Jr., Romero, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, Hermosisima, Jr., Panganiban, and Torres, Jr., JJ., concur.

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[1] Sec. 6. Notice to parties. - The parties shall be served with a copy of the resolution as finally approved by the Ombudsman or by the proper Deputy Ombudsman.

[2] Rules of Procedure of the Office of the Ombudsman.

[3] Sec. 7. Motion for reconsideration. - a. Only one motion for reconsideration or reinvestigation of an approved order or resolution shall be allowed, the same to be filed within fifteen (15) days from notice thereof with the Office of the Ombudsman, or the Deputy Ombudsman as the case may be x x x x

[4] Order issued by respondent Judge Marietta Hobilla-Alinio, RTC-Br. 62, Bago City; Rollo, p. 26.

[5] Sec. 3. Grounds. - The accused may move to quash the complainant or information on any of the following grounds: (a) that the facts charged do not constitute an offense; (b) that the court trying the case has no jurisdiction over the offense charged or the person of the accused; (c) that the officer who filed the information had no authority to do so; (d) that it does not conform substantially to the prescribed for; (e) that more than one offense is charged except in those cases in which existing laws prescribed in single punishment for various offenses; (f) that the criminal action or liability has been extinguished; (g) that it contains averments, which if true, would constitute a legal excuse or justification; and (h) that the accused has been previously convicted or in jeopardy of being convicted, or acquitted of the offense charged.

[6] G.R. Nos. 101421-22, 10 February 1994 , 230 SCRA 33.

[7] Rollo, pp. 33-34.

[8] Citing *Doromal v. Sandiganbayan*, G.R. No. 85468, 7 September 1989, 177 SCRA 354.

[9] G.R. No. 111399, 14 November 1994, 238 SCRA 116.

[10] Sec. 7. Motion for reconsideration. - x x x b. No motion for reconsideration or reinvestigation shall be entertained after the information shall have been filed in court, except upon order of the court wherein the case was filed.

[11] *Milo v. Salanga*, No. L-37007, 20 July 1987, 152 SCRA 113.

[12] *Rodriguez v. Court of Appeals*, G.R. No. 85723, 19 June 1995, 245 SCRA 150.

[13] *Seven Brothers Shipping Corporation v. Court of Appeals*, G.R. No. 109573, 13 July 1995, 246 SCRA 33.

[14] *De la Paz v. Panis*, G.R. No. 57023, 22 June 1995, 245 SCRA 242.

[15] G.R. No. 90591, 21 November 1990.

[16] Respondent Judge Marietta Hobilla-Alinio died on 27 December 1994.

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