

JOSE S. RAMISCAL, JR., PETITIONER, VS. HONORABLE SANDIGANBAYAN (FOURTH DIVISION), ALBANO & ASSOCIATES AND THE ASSOCIATION OF GENERALS & FLAG OFFICERS, INC., RESPONDENTS.

G.R. Nos. 140576-99. December 13, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court, of the Resolution of the Sandiganbayan, dated June 9, 1999 in Criminal Cases Nos. 25122 to 25145, and its Resolution dated October 22, 1999, denying the motion for reconsideration thereof.

The Antecedents

The Armed Forces of the Philippines Retirement and Separation Benefits System (AFP-RSBS) was established in December 1973 and started its actual operations in 1976. Created under Presidential Decree (P.D.) No. 361, as amended, the AFP-RSBS was designed to establish a separate fund to guarantee continuous financial support to the AFP military retirement system as provided for in Republic Act No. 340.[1] Under the decree, the AFP-RSBS was to be funded from three principal sources: (a) congressional appropriations and compulsory contributions from members of the AFP; (2) donations, gifts, legacies, bequests and others to the system; and (3) all earnings of the system which shall not be subject to any tax whatsoever.[2] AFP-RSBS is a government-owned or controlled corporation (GOCC) under Rep. Act No. 9182, otherwise known as “The Special Purpose Vehicle Act of 2002.” It is administered by the Chief of Staff of the AFP through a Board of Trustees and Management Group.[3] Its funds are in the nature of public funds.[4]

On December 18, 1997, Luwalhati R. Antonino, then a member of the House of Representatives representing the First District of the Province of South Cotabato, filed a “Complaint-Affidavit”[5] with the Office of the Ombudsman for Mindanao. She alleged that anomalous real estate transactions involving the Magsaysay Park at General Santos City and questionable payments of transfer taxes prejudicial to the government had been entertained into between certain parties. She then requested the Ombudsman to investigate the petitioner, Retired Brig. Gen. Jose S. Ramiscal, Jr., then President of the AFP-RSBS,[6] together with twenty-seven (27) other persons[7] for conspiracy in misappropriating AFP-RSBS funds and in defrauding the government millions of pesos in capital gains and documentary stamp taxes.[8]

On January 28, 1999, after the requisite preliminary investigation, Special Prosecutor Joy C. Rubillar-Arao filed twenty-four (24) separate Informations with the Sandiganbayan against the petitioner and several other accused. The filing of the Informations was duly approved by then Ombudsman Aniano A. Desierto. The first twelve (12) Informations were for violation of Section 3(e) of Rep. Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, docketed as Criminal Cases Nos. 25122 to 25133.[9] All were similarly worded, except for the names of the other accused, the dates of the commission of the offense, and the property involved.

Representative of the said Informations is that filed in Criminal Case No. 25122, the inculpatory portion of which reads:

That sometime on September 24, 1997, and prior, or subsequent thereto, in General Santos City, Philippines, and within the jurisdiction of this Honorable Court, accused JOSE RAMISCAL, JR., a high ranking public official being then the President, and WILFREDO PABALAN, a low ranking public officer being the Project Director, both of the AFP-RSBS, while in the performance of their official duties, taking advantage of their official positions and committing the offense in relation to their offices, conspiring together and confederating with NILO FLAVIANO and ALEX GUAYBAR, both private individuals, did, there and then, willfully, unlawfully and criminally execute and/or cause the execution of a falsified Deed of Sale covering Lot-X-4, a real property located at General Santos City, by making it appear therein that the purchase price of the said lot is only TWO MILLION NINE HUNDRED NINETY-SEVEN THOUSAND (P2,997,000.00) PESOS at P3,000.00 per square meter, when in truth and in fact, as all the accused very well knew and, in fact, agreed, that the same was sold for P10,500.00 per square meter or a total of TEN MILLION FOUR HUNDRED EIGHTY-NINE THOUSAND FIVE HUNDRED (P10,489,500.00) PESOS, and use the said falsified Deed of Sale as basis for payment of capital gains and documentary stamp taxes relative to the sale of the subject lot in the amount of only P299,700.00 and P89,910.00, respectively, when the capital gains, and documentary stamp and other taxes should have been P524,475.00 and P157,342.50, respectively, thereby short-changing and causing undue injury to the government through evident bad faith and manifest partiality in the total amount of TWO HUNDRED NINETY-TWO THOUSAND TWO HUNDRED SEVEN and 50/100 PESOS (P292,207.50), more or less.

CONTRARY TO LAW.[10]

On the other hand, twelve (12) other separate Informations indicted the accused for Falsification of Public Documents, defined and penalized under paragraph 4, Article 171 of the Revised Penal Code, docketed therein as Criminal Cases Nos. 25134 to 25145.[11] Save with respect to the names of the other accused, the dates of the commission of the felonies, and the property involved in each case, the Informations were, likewise, similarly worded, representative of which is that in Criminal Case No. 25134. The accusatory portion reads:

That on or about September 24, 1997, and sometime prior, or subsequent thereto, in General Santos City, Philippines, and within the jurisdiction of this Honorable Court, accused JOSE RAMISCAL, JR., a high-ranking public official being then the President, and WILFREDO PABALAN, a low-ranking public officer being the Project Director, both of the AFP-RSBS, while in the performance of their duties, taking advantage of their official positions and committing the offense in relation to their offices, conspiring and confederating with each other and with accused NILO FLAVIANO and JACK GUIWAN, both private individuals, acting with unfaithfulness and with malicious intent, did, there and then, willfully, unlawfully and criminally falsify a public document by executing and/or causing to be executed a Deed of Sale for a 999-sq. m. property particularly identified as Lot-X-5 located at General Santos City and stating therein a purchase price of only P3,000.00 per square meter or a total of TWO MILLION NINE HUNDRED NINETY-SEVEN THOUSAND (P2,997,000.00) PESOS when in truth and in fact, as all the accused very well knew and, in fact, agreed, the purchase price of said lot is P10,500.00 per square meter or a total of TEN MILLION FOUR HUNDRED EIGHTY-NINE THOUSAND FIVE HUNDRED (P10,489,500.00) PESOS, thereby perverting the truth.

CONTRARY TO LAW.[12]

On February 2, 1999, the petitioner filed an Urgent Motion to Dismiss the Informations and to Defer the Issuance of Warrant of Arrest, alleging want of jurisdiction.[13] He, likewise, filed an Urgent Manifestation and Motion to Suspend Proceedings[14] on February 16, 1999, because of the pendency of his motion for reinvestigation with the Office of the Ombudsman. The Office of the Special Prosecutor opposed the said motions.[15]

Meanwhile, pending resolution of the aforementioned motions, the law firm of Albano & Associates filed a “Notice of Appearance”[16] as private prosecutors in all the aforementioned cases for the Association of Generals and Flag Officers, Inc. (AGFOI)[17] on March 9, 1999. The notice of appearance was apparently made conformably to the letter-request of Retired Commodore Ismael Aparri and Retired Brig. Gen. Pedro Navarro, who are members thereof.

In a Resolution[18] dated April 5, 1999, the Sandiganbayan denied the earlier motions filed by the petitioner for lack of merit. Consequently, a warrant of arrest against him was issued.[19] He posted a cash bail bond for his provisional liberty.[20]

On April 6, 1999, the petitioner opposed the appearance of the law firm of Albano & Associates as private prosecutors, contending that the charges brought against him were purely public crimes which did not involve damage or injury to any private party; thus, no civil liability had arisen.[21] He argued that under Section 16 of the Rules of Criminal Procedure, “an offended party may be allowed to intervene through a special prosecutor only in those cases where there is civil liability arising from the criminal offense charged.”[22] He maintained that if the prosecution were to be allowed to prove damages, the prosecution would thereby be proving another crime, in violation of his constitutional right to be informed of the nature of the charge against him.

In its comment, the law firm contended that its clients, Commodore Aparri and Brig. Gen. Navarro, were members of the AGFOI and contributors of AFP-RSBS. It alleged that as such members-contributors, they “have been disadvantaged or deprived of their lawful investments and residual interest at the AFP-RSBS” through the criminal acts of the petitioner and his cohorts. It posited that its clients, not having waived the civil aspect of the cases involved, have all the right to intervene pursuant to Section 16, Rule 110 of the Rules of Court. Moreover, the law firm averred that its appearance was in collaboration with the Office of the Ombudsman, and that their intervention in any event, was subject to the direction and control of the Office of the Special Prosecutor.[23]

Replying to the comment, the petitioner refuted the allegation of AGFOI that he had civil interest in the criminal cases involved. He posited that AGFOI was neither a member nor a beneficiary of the AFP-RSBS. Moreover, considering that it was funded partly by the national government and individual soldiers by way of salary deductions, the AGFOI never contributed a single centavo to the funds of the AFP-RSBS. He further averred that AGFOI, as an organization, has a distinct personality of its own, apart from the individual members who compose it.[24] Hence, it is of no moment if some members of AGFOI are or have been members and beneficiaries of the AFP-RSBS.

Meanwhile, on June 6, 1999, the petitioner filed a “Motion for Reinvestigation”[25] with the Sandiganbayan, mentioning therein his unresolved motion for reconsideration with the Office of the Ombudsman. He prayed that the proceeding be suspended and his arraignment deferred pending the resolution of the reinvestigation.

The Sandiganbayan granted the motion in its Order dated June 11, 1999. The fallo of the said resolution reads:

WHEREFORE, the prosecution is given 60 days from today within which to elevate its evidence and to do whatever is appropriate on the Motion for Reconsideration dated February 12, 1999 and supplemental motion thereof dated May 28, 1999 of accused Jose Ramiscal, Jr. and to inform this Court within the said period as to its findings and recommendations together with the action thereon of the Ombudsman.

As prayed for in open court by Pros. Monteroso, this authority from the Court for the prosecution to evaluate its evidence and take such appropriate action as regards accused Ramiscal’s subject motion shall also include the case regarding all the accused.

SO ORDERED.[26]

In the meantime, in a Resolution[27] dated June 9, 1999, the Sandiganbayan made short shrift of the petitioner's opposition and denied his plea for the denial of the appearance of the law firm.[28] In justifying its resolution, the Sandiganbayan declared as follows:

Considering that the offended parties are members of the AFP-RSBS, as represented by the two (2) flag officers, and their right may be affected by the action of the Court resolving the criminal and civil aspects of the cases, there appears a strong legal presumption that their appearance should not be disturbed. After all, their appearance is subject to the direct supervision and control of the public prosecutor.[29]

The petitioner moved for a reconsideration[30] of the Sandiganbayan's Resolution of June 9, 1999, which was opposed[31] by the prosecution. The Sandiganbayan issued a Resolution[32] denying the same on October 22, 1999.

The petitioner filed the instant petition under Rule 45 of the Rules of Civil Procedure, for the nullification of the June 9, 1999 and October 22, 1999 Resolutions of the graft court, and raised the following issues:

I

WHETHER OR NOT, BY NATURE, THE SUBJECT CRIMINAL INDICTMENTS FOR VIOLATIONS OF SECTION 3(E), REPUBLIC ACT NO. 3019 AND ARTICLE 172, IN RELATION TO ARTICLE 171, OF THE REVISED PENAL CODE GIVE RISE TO CIVIL LIABILITY IN FAVOR OF ANY PRIVATE PARTY.

II

WHETHER OR NOT AGFOI AS REPRESENTED BY ALBANO & ASSOCIATES ARE PRIVATE INJURED PARTIES ENTITLED TO INTERVENE AS THE PRIVATE PROSECUTOR IN THE SUBJECT CASES.[33]

In support of his petition, the petitioner reiterated the same arguments he put forth before the Sandiganbayan.

The Special Prosecutor, for his part, avers that the remedy resorted to by the petitioner under Rule 45 of the Rules of Civil Procedure was improper since the assailed Resolutions of the Sandiganbayan are interlocutory in nature and not final; hence, the remedy of the petitioner was to file a petition for certiorari and prohibition under Rule 65 of the Rules of Court. He also argues that the petition is premature because the reinvestigation of the cases had not yet been completed. On the merits of the petition, he posits that the AGFOI is a member of the AFP-RSBS, and that its rights may be affected by the outcome of the cases. He further alleged that the appearance of the private prosecutor was subject to the direct supervision and control of the public prosecutor.

The petitioner, however, asserts, by way of reply, that the assailed orders of the Sandiganbayan are final orders; hence, his recourse under Rule 45 of the Rules of Civil Procedure was proper.

The Ruling of the Court

The Assailed Resolutions
of the Sandiganbayan are
Interlocutory in Nature

The word interlocutory refers to something intervening between the commencement and the end of a suit which decides some point or matter but is not a final decision of the whole controversy. The Court distinguished a final order or resolution from an interlocutory one in *Investments, Inc. v. Court of Appeals*[34] as follows:

... A "final" judgment or order is one that finally disposes of a case, leaving nothing more to be done by the

Court in respect thereto, e.g., an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of res adjudicata or prescription. Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties' next move (which, among others, may consist of the filing of a motion for new trial or reconsideration, or the taking of an appeal) and ultimately, of course, to cause the execution of the judgment once it becomes "final" or, to use the established and more distinctive term, "final and executory." [35]

...

Conversely, an order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is "interlocutory," e.g., an order denying a motion to dismiss under Rule 16 of the Rules, or granting a motion for extension of time to file a pleading, or authorizing amendment thereof, or granting or denying applications for postponement, or production or inspection of documents or things, etc. Unlike a "final" judgment or order, which is appealable, as above pointed out, an "interlocutory" order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in this case. [36]

The rule is founded on considerations of orderly procedure, to forestall useless appeals and avoid undue inconvenience to the appealing party by having to assail orders as they are promulgated by the court, when all such orders may be contested in a single appeal. [37]

Under Section 1, Rule 45 of the Rules of Court, only final judgments, orders or resolutions of the Court of Appeals or Sandiganbayan may be assailed therein. The remedy is a mode of appeal on questions of law only. [38]

In the present case, the Sandiganbayan merely resolved to allow the appearance of the law firm of Albano & Associates as private prosecutors, on its finding that the AGFOI, represented by Commodore Aparri and Brig. Gen. Navarro who were, likewise, investors/members of the AFP-RSBS, is the offended party whose rights may be affected by the prosecution of the criminal and civil aspects of the cases and the outcome thereof. Furthermore, the private prosecutor is subject to the direct supervision and control of the public prosecutor. The Sandiganbayan did not dispose of the cases on their merits, more specifically, the guilt or innocence of the petitioner or the civil liabilities attendant to the commission of the crimes charged. Assuming that the Ombudsman would maintain the finding of probable cause against the petitioner after the reinvestigation of the cases, and, thereafter, the Sandiganbayan would sustain the finding of probable cause against the petitioner and issue warrants for his arrest, the graft court would then have to proceed to trial, receive the evidence of the parties and render judgment on the basis thereof. The petitioner would then have the following options: (a) to proceed to trial, and, if convicted, file a petition for review under Rule 45 of the Rules of Court to this Court; or (b) to file a petition for certiorari, under Rule 65 of the Rules of Court, to nullify the resolutions of the Sandiganbayan on the ground of grave abuse of discretion amounting to excess or lack of jurisdiction in issuing the said resolutions and decision.

Nevertheless, in the interest of substantial justice, we shall treat the petition as one filed under Rule 65 of the Rules of Court. Dismissal of appeal purely on technical grounds is frowned upon where the policy of the courts is to encourage hearings of appeal on their merits. The rules of procedure ought not to be applied in a very rigid technical sense, as they are used only to help secure, not override substantial justice. If a technical and rigid enforcement of the rules is made, their aim would be defeated. Consequently, in the interest of justice, the instant petition for review may be treated as a special civil action on certiorari. [39] As we held in *Salinas v. NLRC*, [40] a petition which should have been brought under Rule 65 and not under Rule 45 of the Rules of Court, is not an inflexible rule. The strict application of procedural technicalities should not hinder the speedy disposition of the

case on the merits.[41]

Although there is no allegation in the petition at bar that the Sandiganbayan committed grave abuse of its discretion amounting to excess or lack of jurisdiction, nonetheless, the petitioner made the following averments: that the graft court arbitrarily declared the AGFOI to be the offended party despite the plain language of the Informations and the nature of the crimes charged; and that the graft court blatantly violated basic procedural rules, thereby eschewing the speedy and orderly trial in the above cases. He, likewise, averred that the Sandiganbayan had no authority to allow the entry of a party, through a private prosecutor, which has no right to the civil liabilities of the accused arising from the crimes charged, or where the accused has no civil liabilities at all based on the nature of said crimes. The petitioner also faulted the Sandiganbayan for rejecting his opposition thereto, in gross violation of the Revised Rules of Criminal Procedure and the Revised Penal Code. Indeed, such allegations are sufficient to qualify the petition as one under Rule 65 of the Rules of Court. As we held in *People v. Court of Appeals*: [42]

The public respondent acts without jurisdiction if it does not have the legal power to determine the case; there is excess of jurisdiction where the respondent, being clothed with the power to determine the case, oversteps its authority as determined by law. There is grave abuse of discretion where the public respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of its judgment as to be said to be equivalent to lack of jurisdiction.[43]

Besides, unless we resolve the present petition on its merits, other parties, like the private respondents herein, may, likewise, enter their appearance as offended parties and participate in criminal proceedings before the Sandiganbayan.

The Appearance of
the Law Firm Albano
& Associates

The respondent law firm entered its appearance as private prosecutor for AGFOI, purportedly upon the request of Commodore Aparri and Brig. Gen. Navarro, quoted infra:

Atty. Antonio Albano
Practicing Lawyer
Albano-Irao Law Offices

Dear Atty. Albano:

We represent a number of Retired Generals and other Star Rank Officers who rightfully claim to have been disadvantaged or deprived of our lawful investments and residual interest at the Retirement Separation Benefit System, AFP because of alleged plunder of the System's Funds, Large Scale Estafa and Falsification of Public Documents.

We are requesting that you appear in our behalf as private prosecutor of our case.

Thank you very much.

(Sgd.) COMMO. ISMAEL D. APARRI (RET)

(Sgd.) BGEN. PEDRO I. NAVARRO (RET)[44]

As gleaned from the letter-request, the legal services of the respondent law firm were not engaged by the AGFOI itself; it was Commodore Aparri and Brig. Gen. Navarro who did so, for and in behalf of the other retired generals and star rank officers claiming to have residual interests in or to be investors of the AFP-RSBS, the vendee of the

lots subject of the Informations against the petitioner. Moreover, there is no showing in the records that the Board of Directors of the AGFOI, authorized them to engage the services of the respondent law firm to represent it as private prosecutor in the above cases. Neither is there any resolution on record issued by the Board of Directors of the AGFOI authorizing Commodore Aparri and Brig. Gen. Navarro to secure the services of the respondent law firm to represent it as the private prosecutor in said cases. If at all, the respondent law firm is the counsel of Aparri and Navarro only.

The AGFOI and/or Commodore
Aparri and/or Brig. Gen.
Navarro Are Not the Offended
Parties in the Informations filed
Before the Sandiganbayan

The petitioner avers that the crimes charged are public offenses and, by their very nature, do not give rise to criminal liabilities in favor of any private party. He asserts that, as gleaned from the Informations in Criminal Cases Nos. 25122 to 25133 for violation of Section 3(e) of Rep. Act No. 3019, the offended party is the government because based on the deeds of sale executed in favor of the AFP-RSBS, as vendee, it was deprived of capital gains and the documentary stamp taxes. He contends that the Informations in Criminal Cases Nos. 25134 to 25145, for falsification of public document under paragraph 4, Article 171 of the Revised Penal Code, do not contain any allegation that the AGFOI or any private party sustained any damage caused by the said falsifications. The petitioner further argues that absent any civil liability arising from the crimes charged in favor of AGFOI, the latter cannot be considered the offended party entitled to participate in the proceedings before the Sandiganbayan. According to the petitioner, this view conforms to Section 16, Rule 110 of the Revised Rules of Criminal Procedure, which reads:

SEC. 16. Intervention of the offended party in criminal action.— Where the civil action for recovery of civil liability is instituted in the criminal action pursuant to Rule 111, the offended party may intervene by counsel in the prosecution of the offense.

The petitioner posits that the AGFOI is not a member, beneficiary or contributor of the AFP-RSBS, and that even if it were so, it would not sustain a direct and material damage by an adverse outcome of the cases. Allowing the AGFOI to intervene would open the floodgates to any person similarly situated to intervene in the proceedings and, thus, frustrate the speedy, efficient and inexpensive disposition of the cases.

In his Comment, the Special Prosecutor avers that the AGFOI is entitled to intervene in the proceedings in the Sandiganbayan because it is a member of the AFP-RSBS, whose rights may be affected by the outcome of the cases.

The AGFOI and the respondent law firm contend that the latter has a right to intervene, considering that such intervention would enable the members of AGFOI to assert their rights to information and access to the official records, documents, and papers, a right granted by no less than paragraph 7, Article IV of the 1987 Constitution. Furthermore, the funds of the AFP-RSBS are impressed with public character because the government provided for its initial funds, augmented from time to time by the salary contributions of the incumbent AFP soldiers and officers.

We agree with the contention of the petitioner that the AGFOI, and even Commodore Aparri and Brig. Gen. Navarro, are not the offended parties envisaged in Section 16, Rule 110, in relation to Section 1, Rule 111 of the Revised Rules of Criminal Procedure.

Under Section 5, Rule 110[45] of the Rules, all criminal actions covered by a complaint or information shall be

prosecuted under the direct supervision and control of the public prosecutor. Thus, even if the felonies or delictual acts of the accused result in damage or injury to another, the civil action for the recovery of civil liability based on the said criminal acts is impliedly instituted[46] and the offended party has not waived the civil action, reserved the right to institute it separately or instituted the civil action prior to the criminal action, the prosecution of the action inclusive of the civil action remains under the control and supervision of the public prosecutor.[47] The prosecution of offenses is a public function.[48] Under Section 16, Rule 110 of the Rules of Criminal Procedure, the offended party may intervene in the criminal action personally or by counsel, who will act as private prosecutor for the protection of his interests and in the interest of the speedy and inexpensive administration of justice. A separate action for the purpose would only prove to be costly, burdensome and time-consuming for both parties and further delay the final disposition of the case. The multiplicity of suits must be avoided.[49] With the implied institution of the civil action in the criminal action, the two actions are merged into one composite proceeding, with the criminal action predominating the civil. The prime purpose of the criminal action is to punish the offender in order to deter him and others from committing the same or similar offense, to isolate him from society, reform and rehabilitate him or, in general, to maintain social order.

On the other hand, the sole purpose of the civil action is for the resolution, reparation or indemnification of the private offended party for the damage or injury he sustained by reason of the delictual or felonious act of the accused.[50] Under Article 104 of the Revised Penal Code, the following are the civil liabilities of the accused:

ART. 104. What is included in civil liability. – The civil liability established in Articles 100, 101, 102 and 103 of this Code includes:

- Restitution;
- Reparation of the damage caused;
- Indemnification for consequential damages.

Thus, when the offended party, through counsel, has asserted his right to intervene in the proceedings, it is error to consider his appearance merely as a matter of tolerance.[51]

The offended party may be the State or any of its instrumentalities, including local governments or government-owned or controlled corporations, such as the AFP-RSBS, which, under substantive laws, are entitled to restitution of their properties or funds, reparation, or indemnification. For instance, in malversation of public funds or property under Article 217[52] of the Revised Penal Code, frauds under Article 213[53] of the Revised Penal Code, and violations of the Forestry Code of the Philippines, P.D. No. 705, as amended, to mention a few, the government is the offended party entitled to the civil liabilities of the accused. For violations of Section 3(e) of Rep. Act No. 3019,[54] any party, including the government, may be the offended party if such party sustains undue injury caused by the delictual acts of the accused. In such cases, the government is to be represented by the public prosecutor for the recovery of the civil liability of the accused.

Under Section 16, Rule 110 of the Revised Rules of Criminal Procedure, the offended party may also be a private individual whose person, right, house, liberty or property was actually or directly injured by the same punishable act or omission of the accused,[55] or that corporate entity which is damaged or injured by the delictual acts complained of. Such party must be one who has a legal right; a substantial interest in the subject matter of the action as will entitle him to recourse under the substantive law, to recourse if the evidence is sufficient or that he has the legal right to the demand and the accused will be protected by the satisfaction of his civil liabilities. Such interest must not be a mere expectancy, subordinate or inconsequential. The interest of the party must be personal; and not one based on a desire to vindicate the constitutional right of some third and unrelated party.[56]

Hence, even if the members of AGFOI may also be members or beneficiaries of the AFP-RSBS, the respondent AGFOI does not have a legal right to intervene in the criminal cases merely and solely to enforce and/or protect the constitutional right of such members to have access to the records of AFP-RSBS. Neither are such members entitled to intervene therein simply because the funds of the AFP-RSBS are public or government funds. It must be stressed that any interest of the members of the AFP-RSBS over its funds or property is merely inchoate and incidental. Such funds belong to the AFP-RSBS which has a juridical personality separate and independent of its members/beneficiaries.

As gleaned from the Informations in Criminal Cases Nos. 25122 to 25133 for violation of Section 3(e) of Rep. Act No. 3019, the offended party is the government, which was allegedly deprived by the petitioner and the other accused of the capital gains and documentary stamp taxes, based on the actual and correct purchase price of the property stated therein in favor of the AFP-RSBS. The AGFOI was not involved whatsoever in the sales subject of the crimes charged; neither was it prejudiced by the said transactions, nor is it entitled to the civil liability of the petitioner for said cases. Thus, it is not the offended party in the said cases.

We agree with the petitioner that the AGFOI is not even the offended party in Criminal Cases Nos. 25134 to 25145 for falsification of public documents under paragraph 4, Sec. 1, Article 171, of the Revised Penal Code. It bears stressing that in the felony of falsification of public document, the existence of any prejudice caused to third person or the intent to cause damage, at the very least, becomes immaterial. The controlling consideration is the public character of a document and the violation of the public faith and the destruction of truth therein solemnly proclaimed. The offender does not, in any way, have civil liability to a third person.[57]

However, if, in a deed of sale, the real property covered thereby is underpriced by a public officer and his co-conspirators to conceal the correct amount of capital gains and documentary stamp taxes due on the sale causing undue injury to the government, the offenders thereby commit two crimes – (a) falsification of public document defined in paragraph 4, Article 171 of the Revised Penal Code; and (b) violation of Section 3(e) of Rep. Act No. 3019, a special penal law. The offender incurs civil liability to the government as the offended party for violation of Section 3(e) of Rep. Act No. 3019, but not for falsification of public document under paragraph 4, Article 171 of the Revised Penal Code.

On the other hand, if, under the deed of sale, the AFP-RSBS was made liable for the payment of the capital gains and documentary stamp taxes and, thereafter, gave the correct amount thereof to the petitioner to be paid to the government, and the petitioner and his co-accused pocketed the difference between the correct amount of taxes and the amount entrusted for payment, then the AFP-RSBS may be considered the offended party entitled to intervene in the above criminal cases, through the Government Corporate Counsel.[58]

In fine, the AGFOI is not the offended party entitled to intervene in said cases.

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The assailed Resolutions of the Sandiganbayan are REVERSED and SET ASIDE. No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Otherwise known as the Uniform System for the AFP.

[2] Section 2, P.D. No. 361.

[3] Circular No. 6 dated March 10, 1976 issued by the Department of National Defense.

[4] *People v. Sandiganbayan*, 408 SCRA 672 (2003).

[5] Records, p. 1. (Vol. I)

[6] Presidential Decree No. 361, Section 1. An Armed Forces Retirement and Separation Benefits System, referred to in this Act as “System,” for payment of retirement and separation benefits provided and existing law to military members of the Armed Forces of the Philippines and such similar laws as may in the future be enacted applicable to commissioned officers and enlisted personnel of the Armed Forces of the Philippines is hereby established.

[7] Rosalita T. Nuñez, City Mayor of General Santos City; Pedro G. Nalangan III, City Legal Officer of General Santos City; Renato L. Rivera, CENR Officer, DENR, Region XI-5B, General Santos City; Cesar A. Jonillo, Dept. Land Inspector, CENRO, DENR Region XI-5B, General Santos City; Julio C. Diaz, Land Management Officer III, PENRO, R XI-5; Agapito Borinaga, Regional Technical Director, Land Management, Region XI, DENR; Augustus L. Momongan, Regional Executive Director, DENR, Region XI; Judge Abednego O. Adre, Presiding Judge, Branch 22, Regional Trial Court, General Santos City; Wilfredo G. Pabalan, Project Director, AFP-RSBS; Atty. Asteria E. Cruzabra, Register of Deeds for General Santos City; Atty. Nilo J. Flaviano; Mad, Oliver, Jonathan, Alex, all surnamed Guaybar; Jack Guiwan; Carlito Flaviano III; Nicolas Ynot; Jolito Poralan; Miguela Cabi-ao; Jose Rommel Saludar; Joel Teves; Rico Altizo; Johnny Medello; Martin Saycon; Arsenio De Los Reyes; and, Jose Bomez.

[8] Records, p. 16. (Vol. I)

[9] Rollo, pp. 28-63.

[10] *Id.* at 28-29.

[11] *Id.* at 64-87.

[12] *Id.* at 64-65.

[13] Records, p. 36. (Vol. II)

[14] *Id.* at 71-106.

[15] *Id.* at 300 and 313.

[16] *Id.* at 310.

[17] Rollo, p. 96.

[18] Records, p. 338. (Vol. II)

[19] *Id.* at 345.

[20] *Id.* at 360.

[21] *Id.* at 352.

[22] *Id.*

[23] *Id.* at 367-368.

[24] *Id.* at 26-27.

[25] *Id.* at 46.

[26] Id. at 247.

[27] Records, p. 238. (Vol. III)

[28] Id. at 240.

[29] Id. at 239.

[30] Id. at 259.

[31] Id. at 297.

[32] Id. at 325.

[33] Rollo, p. 11.

[34] 147 SCRA 334 (1987).

[35] Id. at 339-340.

[36] Id. at 340-341.

[37] Id. at 341.

[38] SECTION 1. Filing of petition with Supreme Court. – A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

[39] See *Salazar v. NLRC*, 256 SCRA 273 (1996).

[40] 319 SCRA 54 (1999).

[41] *Caraan v. Court of Appeals*, 289 SCRA 579 (1998).

[42] G.R. No. 144332, June 10, 2004.

[43] Id. at 7, citing *Condo Suite Club Travel, Inc. v. NLRC*, 323 SCRA 679 (2000).

[44] Records, p. 372. (Vol. II)

[45] SECTION 1. Institution of criminal and civil actions.— (a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institute the civil action prior to the criminal action.

The reservation of the right to institute separately the civil action shall be made before the prosecution starts presenting its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.

[46] *Banal v. Tadeo, Jr.*, 156 SCRA 325 (1998).

[47] Section 1, Rule 111, Revised Rules of Criminal Procedure.

[48] *Diel v. Martinez*, 76 Phil. 273 (1946).

[49] *Banal v. Tadeo, Jr.*, *supra*.

[50] Sangco, Torts and Damages, Vol. I, 1993 ed., p. 43.

[51] Lim Tek Goan v. Yatco, 94 Phil. 197 (1953).

[52] ART. 217. Malversation of public funds or property-presumption of malversation. - Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation of malversation of such funds or property, shall suffer:

- The penalty of prision correccional in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed two hundred pesos.
- The penalty of prision mayor in its minimum and medium periods, if the amount involved is more than 200 pesos but does not exceed 6,000 pesos.
- The penalty of prision mayor in its maximum period to reclusion temporal in its minimum period, if the amount involved is more than 6,000 pesos but is less than 12,000 pesos.
- The penalty of reclusion temporal in its medium and maximum periods, if the amount involved is more than 12,000 pesos but is less than 22,000 pesos. If the amount exceeds the latter, the penalty shall be reclusion temporal in its maximum period to reclusion perpetua.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly-authorized officer, shall be prima facie evidence that he has put such missing funds or property to personal uses. (As amended by Rep. Act No. 1060, approved June 12, 1954.)

[53] ART. 213. Frauds against the public treasury and similar offenses.-The penalty of prision correccional in its medium period to prision mayor in its minimum period, or a fine ranging from 200 to 10,000 pesos, or both, shall be imposed upon any public officer who:

- In his official capacity, in dealing with any person with regard to furnishing supplies, the making of contracts, or the adjustment or settlement of accounts relating to public property or funds, shall enter into an agreement with any interested party or speculator or make use of any other scheme, to defraud the Government;
- Being entrusted with the collection of taxes, licenses, fees and other imposts, shall be guilty of any of the following acts or omissions:
 - (a) Demanding, directly or indirectly, the payment of sums different from or larger than those authorized by law.
 - (b) Failing voluntarily to issue a receipt, as provided by law, for any sum of money collected by him officially.
 - (c) Collecting or receiving, directly or indirectly, by way of payment or otherwise, things or objects of a nature different from that provided by law.

When the culprit is an officer or employee of the Bureau of Internal Revenue or the Bureau of Customs, the provisions of the Administrative Code shall be applied.

[54] (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions

through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporation charged with the grant of licenses or permits or other concessions.

[55] Banal v. Tadeo, *supra*.

[56] Tankiko v. Cezar, 302 SCRA 559 (1999).

[57] Siquian v. People, 171 SCRA 223 (1989).

[58] In its Report to the President of the Philippines, the Feliciano Commission cited the Initial Report of the Senate Blue Ribbon Committee on the possible offended parties in connection with the real estate transactions of the AFP-RSBS:

In 1998, the Senate Committees on Accountability of Public Officers and Investigation (Blue Ribbon) and on National Defense and Security (collectively, Senate Blue Ribbon Committee) carried out an extensive joint inquiry into the “coup rumors and alleged anomalies in the AFP-RSBS.” The major finding of the Senate Blue Ribbon Committee was alarming; the very extensive real estate acquisitions made by RSBS had been attended by massive overpricing of such acquisitions.

Essentially, the Blue Ribbon Committee found that the real estate purchases by RSBS were uniformly documented, by two (2) sets of instruments: firstly, a unilateral covering the same piece of land, executed both by the seller and by RSBS as buyer. The price stated in the second bilateral instrument was invariably much higher than the price reflected in the unilateral deed of sale. The discrepancies between the purchase price booked by RSBS and the purchase price reflected in the unilateral deed of sale actually registered in the relevant Registry of Deeds, totalled about seven hundred three million pesos (P703 Million). The two (2) sets of purchase price figures obviously could not both be correct at the same time. Either the purchase price booked and paid out by RSBS was the true purchase price of the land involved, in which case RSBS had obviously assisted or abetted the seller in grossly understating the capital gains realized by him and in defrauding the National Treasury; or the purchase price in the unilateral deed of sale was the consideration actually received by the seller from RSBS, in which case, the buyer-RSBS had grossly overpaid, with the differential, in the belief of the Senate Blue Ribbon Committee, going into the pockets of RSBS officials. A third possibility was that the differential between the purchase price booked and paid by the buyer-RSBS and the selling price admitted by the seller of the land, had been shared by the buyer and seller in some undisclosed ratio.

After a prolonged investigation (20 hearing days), the Senate Blue Ribbon Committee rendered a set of detailed recommendations in its Committee Initial Report No. 16 dated 21 December 1998 and a second additional set of recommendations in its Committee Final Report No. 51 dated 20 May 1999.

In its Initial Committee Report, the Blue Ribbon Committee made the following recommendations notable for their specificity:

“1. For the Office of the Ombudsman, to prosecute and/or cause the prosecution of Gen. Jose Ramiscal, Jr. (Ret.), past RSBS president, who had signed the unregistered deeds of sale covering the acquisition of the lands in General Santos, in the towns of Tanauan and Calamba, and in Iloilo City, hereinafter mentioned: Mr. Wilfredo Pabalan, RSBS project manager in General Santos City; the lawyers in the RSBS legal office, namely, Meinardo Enrique Bello and Manuel Satuito; and the lawyers who notarized the deeds thereof, namely, Ernesto P. Layusa, Alfredo Nasser and Cecilio Casalla, for (1) falsification of public documents, or violation of Art. 172, par. 1, in relation to Art. 171, pars. 4 and/or 6, of the Revised Penal Code, and (2) violation of R.A. 3019, or the anti-graft law, particularly Section 3(e) and (g) thereof.

2. For the Department of Justice, to prosecute and/or cause the prosecution of Atty. Nilo Flaviano and his partner, Atty. Antonio Geoffrey Canja, for falsification of public documents by submitting to and registering with the Registry of Deeds in General Santos City deeds of sale of the lands purchased by RSBS from their principals not bearing the true consideration paid for by RSBS.
3. For the Department of Justice, to prosecute and/or to cause the prosecution of Attys. Alfredo Nasser and Ernesto P. Layusa and Mr. Jesus Garcia and Mrs. Elizabeth Liang, Concord Resources, Inc., treasurer and president, for falsification of public documents by submitting to and registering with the Registry of Deeds of Calamba the deed of sale with Concord Resources, Inc. not bearing the true consideration paid for by RSBS.
4. For the Bureau of Internal Revenue, to collect the deficiency in the payment of capital gains tax, documentary stamp tax and income tax from the vendors of the parcels of land in General Santos City, Iloilo City, and the Municipalities of Tanauan and Calamba sold to RSBS, and to cause their prosecution for tax evasion, or more specifically for violation of Sections 21, 24 and 173 of the National Internal Revenue Code.
5. For the City Treasurers of General Santos City and Iloilo City, and the Provincial Treasurers of Batangas and Laguna, to collect the deficiency transfer tax due on the lands sold by their owners to RSBS; and
6. For the Integrated Bar of the Philippines, to investigate and recommend to the Supreme Court the disbarment of, or imposition of appropriate disciplinary sanctions on, lawyers Nilo J. Flaviano, Antonio Geoffrey H. Canja, Alfredo Nasser, Ernesto P. Layusa, Cecilio Casalla, Meinardo Enrique Bello, Manuel Satuito and other lawyers for their involvement as lawyers in the presentation to and registration with the Registry of Deeds of General Santos City, Iloilo City, Batangas and Laguna, of falsified deeds of sale covering various real estate acquisitions by RSBS."

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