

PUBLIC ATTORNEY’S OFFICE, MAXIMO B. USITA, JR. and WILFREDO C. ANDRES, Petitioners, vs. THE HON. SANDIGANBAYAN, SPECIAL DIVISION, Respondent.

G.R. Nos. 154297-300, February 15, 2008

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for certiorari alleging that the Sandiganbayan, Special Division, committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Resolutions dated May 28, 2002 and June 11, 2002 retaining petitioners, Atty. Maximo B. Usita, Jr. and Atty. Wilfredo C. Andres of the Public Attorney’s Office (PAO), as counsels de oficio of then accused President Joseph Estrada and his son, Jose “Jinggoy” Estrada.

The facts are as follows:

On March 15 and 18, 2002, Atty. Persida V. Rueda-Acosta, Chief Public Attorney of PAO personally appeared before respondent Special Division of the Sandiganbayan[1] to request the relief of the appearance of PAO as de oficio counsel for accused President Joseph Estrada and Jose Estrada in their criminal cases before the Sandiganbayan. However, the request was denied.

On May 8, 2002, the Chief Public Attorney filed an Urgent and Ex-Parte Motion to be Relieved as Court-Appointed Counsel with the Special Division of the Sandiganbayan, praying that she be relieved of her duties and responsibilities as counsel de oficio for the said accused on the ground that she had a swelling workload consisting of administrative matters and that the accused are not indigent persons; hence, they are not qualified to avail themselves of the services of PAO.

On May 9, 2002, respondent Court found the reasons of the Chief Public Attorney to be plausible and relieved the Chief Public Attorney as counsel de oficio of former President Joseph Estrada and Mayor Jose Estrada.

On May 14, 2002, the remaining eight PAO lawyers filed an Ex-Parte Motion To Be Relieved As Court-Appointed Counsels with respondent Court on the ground that the accused, former President Joseph Estrada and Jose Estrada, are not indigents; therefore, they are not qualified to avail themselves of the services of PAO.

On May 28, 2002, respondent Court issued a Resolution denying the motion, but retaining two of the eight PAO lawyers, namely, the petitioners Atty. Usita, Jr. and Atty. Andres. The pertinent portion of the Resolution reads:

. . . There being no compelling and sufficient reasons to abandon the Court’s previous rulings, the instant motion is hereby DENIED. While it is true that a similar motion filed by the PAO Chief Public Attorney Persida Rueda-Acosta was granted per Court’s Resolution of May 9, 2002, the rationalization advanced by Atty. Rueda was found meritorious by the Court in that there was unexpected upsurge in her administrative workload as head of the office including the administration and supervision of more or less 1,000 PAO lawyers and 700 staff nationwide and many other functions which require her immediate attention and undivided time.

Nonetheless, considering that there are eight (8) de oficio counsels from the Public Attorney’s Office (PAO),

the Court, in the exercise of its sound discretion, deems it proper to reduce their number and retain only two (2) of them, namely: Atty. Wilfredo C. Andres and Atty. Maximo B. Usita to continue their duties and responsibilities as counsels de oficio for accused Joseph and Jose “Jinggoy” Estrada.[2]

The retained lawyers of PAO joined the four Court-appointed counsels from the private sector, namely, Prospero Crescini, Justice Manuel Pamaran, Irene Jurado and Noel Malaya.

On June 4, 2002, petitioners filed a motion for reconsideration of the Resolution dated May 28, 2002.

In a Resolution dated June 10, 2002, respondent denied the motion for reconsideration, thus:

xxx xxx xxx

It appearing that the ground raised by the movants PAO lawyers are mere rehashes/reiterations of their previous arguments which the Court finds to be not valid justification for them to be relieved, either temporarily or permanently of their duties and responsibilities as counsels de oficio in these cases, the instant motion in hereby DENIED.[3]

Hence, this petition for certiorari alleging grave abuse of discretion by respondent in rendering the Resolutions dated May 28, 2002 and June 10, 2002.

On September 21, 2004, PAO filed a Manifestation and Compliance which informed the Court that petitioners Atty. Usita and Atty. Andres were appointed as Assistant City Prosecutors of the Quezon City Prosecutor’s Office sometime in August 2002, and that PAO is left as the lone petitioner in this case.

The issue is whether or not respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the subject Resolutions retaining two PAO lawyers to act as counsels de oficio for the accused who are not indigent persons.

PAO contends that it is undeniable that in retaining its two PAO lawyers as counsels de oficio of former President Estrada and Jose Estrada, respondent Court relied upon the provisions of Sec. 7, Rule 116 of the Revised Rules of Criminal Procedure, thus:

Sec. 7. Appointment of counsel de oficio.—The Court, considering the gravity of the offense and the difficulty of the questions that may arise, shall appoint as counsel de oficio such members of the bar in good standing, who, by reason of their experience and ability, can competently defend the accused.

PAO, however, submits that the power of respondent to appoint and retain PAO lawyers as counsels de oficio is limited by Sec. 20 of Letter of Implementation (LOI) No. 20 dated December 31, 1972 and Presidential Decree (PD) No. 1725 dated September 26, 1980, thus:

LOI No. 20

Sec. 20. The Citizens Legal Assistance Office shall represent, free of charge, indigent persons mentioned in Republic Act No. 6035, or the immediate members of their family, in all civil, administrative, and criminal cases where after due investigation the interest of justice will be served thereby, except agrarian reform cases as defined by Republic Act 3844, as amended, which shall be handled by the Bureau of Agrarian Legal Assistance of the Department of Agrarian Reform, and such cases as are now handled by the Department of Labor.

PD No. 1725

WHEREAS, the Citizen’s Legal Assistance Office as the law office of the Government of the Republic of the Philippines for indigent and low-income persons, performs a vital role in the implementation of the legal aid program of the State, in upholding the rule of law, in the protection and safeguarding of the institutional and

statutory rights of the citizenry, and in the efficient and speedy administration of justice.

The Revised Administrative Code of 1987 renamed the Citizen's Legal Assistance Office as the Public Attorney's Office and retained its powers and functions. Section 14, Chapter 5, Title III, Book V of the said Code provides:

Sec. 14. Public Attorney's Office (PAO).— The Citizen's Legal Assistance Office (CLAO) is renamed Public Attorney's Office (PAO). It shall exercise the powers and functions as are now provided by law for the Citizen's Legal Assistance Office or may hereafter be provided by law.

In the implementation of the foregoing provisions of law, PAO issued Memorandum Circular No. 5, Series of 1997, as amended by Memorandum Circular No. 12, Series of 2001, and subsequently by Memorandum Circular No. 18, Series of 2002, defining who are indigent persons qualified to avail themselves of the services of PAO, thus:

Section 3. Indigency Test. – Taking into consideration recent surveys on the amount needed by an average Filipino to 1) buy its food consumption basket and b) pay for its household and personal expenses, the following shall be considered indigent persons:

- Those residing in Metro Manila whose family income does not exceed P14,000.00 a month;
- Those residing in other cities whose family income does not exceed P13,000.00 a month;
- Those residing in all other places whose family income does not exceed P12,000.00 a month.

The term "family income" as herein employed shall be understood to refer to the gross income of the litigant and that of his or her spouse, but shall not include the income of the other members of the family.

PAO states that the Statement of Assets and Liabilities attached to the records of the cases of the accused show that they were not qualified to avail themselves of the services of PAO, since they could afford the services of private counsels of their own choice. It noted that the wife of former President Estrada had an income exceeding P14,000.

PAO argues that the only exception when it can appear on behalf of a non-indigent client is when there is no available lawyer to assist such client in a particular stage of the case, that is, during arraignment or during the taking of the direct testimony of any prosecution witness subject to cross-examination by the private counsel on record. The appearance of PAO is only provisional in those instances.

PAO asserts that the sole reliance of respondent on Sec. 7, Rule 116 of the Revised Rules of Criminal Procedure is improper. Respondent should have not only considered the character of PAO lawyers as members of the Bar, but especially their mandate to serve only indigent persons. In so doing, the contradiction in the exercise of PAO's duties and responsibilities could have been avoided.

PAO asserts that while its lawyers are also aware of their duties under Rule 14.02 of the Code of Professional Responsibility,[4] PAO lawyers are limited by their mandate as government lawyers.

Hence, PAO submits that the subject Resolutions of respondent are not in accordance with the mandate of PAO and affect the rendition of effective legal service to a large number of its deserving clients.

In defense, respondent Special Division of the Sandiganbayan, represented by the Office of the Special Prosecutor, stated that it did not commit grave abuse of discretion since it did not act in an arbitrary, capricious and whimsical manner in issuing the subject Resolutions.

It explained that it was facing a crisis when respondent issued the subject Resolutions. At that time, the accused,

former President Joseph Estrada, relieved the services of his counsels on nationwide television. Subsequently, the counsels of record of co-accused Jose Estrada withdrew, and both accused were adamant against hiring the services of new counsels because they allegedly did not believe in and trust the Sandiganbayan. The Sandiganbayan had the duty to decide the cases, but could not proceed with the trial since the accused were not assisted by counsel.

Respondent stated that, bound by its duty to protect the constitutional right of the accused to be heard by himself and counsel, it exercised its prerogative under Sec. 7, Rule 116 of the Revised Rules of Criminal Procedure,[5] and appointed Chief Public Attorney Persida V. Rueda-Acosta of the PAO and eight other PAO lawyers, including petitioners, to act as counsels de oficio for the said accused. As noted earlier, the Chief Public Attorney and six PAO lawyers were later relieved from such duty, but respondent retained two PAO lawyers as counsels de oficio for the accused.

Considering the attendant situation at the time of the issuance of the subject Resolutions, respondent asserts that it did not act in an arbitrary, despotic, capricious or whimsical manner in issuing the subject Resolutions. In appointing the PAO lawyers to act as counsels for the said accused, respondent merely acted within the prerogative granted to it by the Rules of Court in order to protect the constitutional right of the accused to be heard by himself and counsel. Respondent also merely required petitioners to perform their duty as members of the Bar and officers of the court to assist the court in the efficient administration of justice.

Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, the exercise of the power in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[6]

The Court holds that respondent did not gravely abuse its discretion in issuing the subject Resolutions as the issuance is not characterized by caprice or arbitrariness. At the time of PAO's appointment, the accused did not want to avail themselves of any counsel; hence, respondent exercised a judgment call to protect the constitutional right of the accused to be heard by themselves and counsel during the trial of the cases.

Subsequently, respondent reduced the number of PAO lawyers directed to represent the accused, in view of the engagement of new counsels de parte, but retained two of the eight PAO lawyers obviously to meet such possible exigency as the accused again relieving some or all of their private counsels.

In any event, since these cases of the accused in the Sandiganbayan have been finally resolved, this petition seeking that PAO, the only remaining petitioner, be relieved as counsel de oficio therein has become moot.

WHEREFORE, the petition is DISMISSED for being moot.

No costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Tinga, Chico-Nazario, Velasco, Jr., Nachura, and Reyes, JJ., concur.
Leonardo-De Castro, J., no part

[1] The respondent Special Division is a special court created through a Supreme Court Administrative Circular exclusively to hear and decide the cases of former President Joseph Estrada, et al.

[2] Rollo, p. 36.

[3] Id. at 43.

[4] Rule 14.02. – A lawyer shall not decline, except for a serious and sufficient cause, an appointment as counsel de oficio or an amicus curiae or a request from the Integrated Bar of the Philippines or any of its chapters for rendition of free legal aid.

[5] Sec. 7. Appointment of counsel de oficio. — The Court, considering the gravity of the offense and the difficulty of the questions that may arise, shall appoint as counsel de oficio such members of the bar in good standing, who, by reason of their experience and ability, can competently defend the accused.

[6] Land Bank of the Philippines v. Court of Appeals, G.R. No. 129368, August 25, 2003, 409 SCRA 455.

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