

MARIANO UN OCAMPO III, Petitioner, vs. PEOPLE OF THE PHILIPPINES, Respondent.

G.R. Nos. 156547-51. February 04, 2008

Ponente: AZCUNA, J.

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AZCUNA, J.:

These are consolidated petitions for review on certiorari[1] of the Sandiganbayan's Decision promulgated on March 8, 2002 and its Resolution promulgated on January 6, 2003.

The Decision and Resolution of the Sandiganbayan held petitioners Mariano Un Ocampo III and Andres S. Flores guilty of malversation of public funds in Crim. Case Nos. 16794 and 16795.

The facts are as follows:

During the incumbency of President Corazon C. Aquino, Tarlac Province was chosen as one of the four provinces that would serve as a test case on decentralization of local government administration.

For this purpose, the Department of Budget and Management (DBM) released National Aid for Local Government Units (NALGU) funds in the total amount of P100 million to the Province of Tarlac. The NALGU is a fund set aside in the General Appropriations Act to assist local governments in their various projects and services. The distribution of this fund is entirely vested with the Secretary of the DBM.

Petitioner Ocampo, provincial governor of Tarlac from February 22, 1988 up to June 30, 1992, loaned out P56.6 million of the P100 million to the Lingkod Tarlac Foundation, Inc. (LTFI) for the implementation of various livelihood projects. The loan was made pursuant to a Memorandum of Agreement (MOA) entered into by the Province of Tarlac, represented by petitioner Ocampo, and LTFI, represented by petitioner Flores, on August 8, 1988.

LTFI is a private non-stock corporation with petitioner Ocampo as its first chairperson and petitioner Andres S. Flores as its executive director. The Sandiganbayan, in its Resolution dated January 6, 2000, admitted the annexes[2] submitted by petitioner Ocampo, which annexes proved that petitioner Ocampo resigned as chairperson and trustee of the LTFI prior to August 8, 1988, the date when petitioner Ocampo and LTFI entered into the MOA.

How the P56.6 million released to LTFI was utilized became the subject matter of 25 criminal cases. In a Resolution in G.R. Nos. 103754-78 dated October 22, 1992,[3] this Court quashed 19 of the 25 Informations filed against petitioner Ocampo. The Fifth Division of the Sandiganbayan dismissed one case[4] on demurrer to evidence. In its Decision promulgated on March 8, 2002, the Fifth Division of the Sandiganbayan dismissed two[5] of five criminal cases for malversation of public funds against petitioners. On motion for reconsideration, the Sandiganbayan dismissed one[6] more case in a Resolution promulgated on January 6, 2003. The two remaining cases are the subject matters in the instant consolidated petitions.

The Informations of the remaining two cases filed on May 28, 1991 state:

Crim. Case No. 16794

That on or about the periods between November 2, 1988 to February 27, 1989, or sometime subsequent thereto, in the Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, accused Mariano Un Ocampo III, then the Governor of the province of Tarlac and at the same time President-Chairman of the Board of Trustees of the Lingkod Tarlac Foundation, Inc. (LTFI), a private entity, having received by reason of his position, public funds amounting to more than Fifty Two Million Pesos (P52,000,000) x x x from the National Aid for Local Government Unit (NALGU) funds, which he is accountable by reason of his official duties, did then and there with intent to defraud the government aforethought release out of the aforesaid funds thru the said LTFI, the amount of EIGHT MILLION EIGHT HUNDRED SIXTY THOUSAND PESOS (P8,860,000) x x x for the payment of the importation of Juki Embroidery Machines which actually cost SEVEN MILLION SIX HUNDRED SEVENTY NINE THOUSAND FIVE HUNDRED THIRTY PESOS AND FIFTY TWO CENTAVOS (P7,679,530.52) x x x thereby leaving a balance of P1,180,463.48 which ought to have been returned, but far from returning the said amount, accused Mariano Un Ocampo III, in connivance with his co-accused, Andres S. Flores and William Uy wilfully, unlawfully and feloniously misapply, misappropriate and convert for their own personal use and benefit the said amount resulting to the damage and prejudice of the government in the aforesaid sum of One Million One Hundred Eighty Thousand Four Hundred Sixty Three Pesos and Forty Eight Centavos (P1,180,463.48).

CONTRARY TO LAW.

Crim. Case No. 16795

That on or about the periods between November 2, 1988 to February 27, 1989, or sometime subsequent thereto, in the Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, accused Mariano Un Ocampo III, then the Governor of the province of Tarlac, and at the same time President-Chairman of the Board of Trustees of the Lingkod Tarlac Foundation, Inc. (LTFI), a private entity, having received by reason of his position, public funds amounting to more than Fifty Two Million Pesos (P52,000,000.00) x x x from the National Aid for Local Government Unit (NALGU) Funds, which he is accountable by reason of his official duties, caused the withdrawal by co-accused Andres S. Flores on April 28, 1989, then Executive Officer, LTFI, from the PHILIPPINE NATIONAL BANK LTFI account the sum of FIFTY EIGHT THOUSAND PESOS (P58,000.00), portion of the said NALGU funds deposited by LTFI under Account No. 490-555744, both accused conniving and confederating with one another, with intent to gain and to defraud the government, did then and there, wilfully, unlawfully and feloniously misappropriate, misapply and convert the same to their own personal use and benefit to the damage and prejudice of the government in the aforesaid amount of P58,000.00, Philippine Currency.

CONTRARY TO LAW.[7]

The Prosecution relied mainly on an audit conducted by the Commission on Audit on LTFI from February 12, 1990 up to April 2, 1990. The audit covered the period from July 1, 1988 to December 31, 1989 and was confined to the examination of the loans granted by the Provincial Government of Tarlac for the implementation of its Rural Industrialization Can Happen Program. The result of the audit was embodied in Special Audit Report No. 90-91, offered as Exhibit "B" by the prosecution.

According to the Sandiganbayan, the money trail with respect to the two cases, as proven by the prosecution, is as follows:

(1)

Accused Ocampo released P11.5 Million to LTFI, P7,023,836.00 of which was intended for the purchase of 400

embroidery machines;

(2)

The total amount released was deposited by LTFI to the Rural Bank of Tarlac, Inc.;

(3)

Within two (2) months from the deposit, a total of P5,465,000.00 was withdrawn and given to William Uy (LTFI's broker for the importation of the machines);

(4)

This amount (P5,465,000) was thereafter deposited to the personal account of "William Uy and/or Andres Flores" under S/A No. 26127;

(5)

Another account (PNB S/A No. 490-555744-6) was opened by "LTFI by Andres Flores," this time with PNB, intended solely for the purchase of the machines;

(6)

A check in the amount of P3,395,000.00 dated February 27, 1989, was remitted for the payment of the machines;

(7)

This amount, together with the P5,465,000.00 placed on the personal account of William Uy and/or Andres Flores, made up the cost of the machines or a total of P8,860,000.00 as recorded in the books of LTFI;

(8)

To the PNB account was added a total of P4,332,261.00 deposited on different dates from March 6 to April 17, 1989 which funds came from S/A No. 26127;

(9)

Thus, the total amount on deposit with PNB was P7,727,261.00 plus interest;

(10)

Of this amount, P7,679,530.52 was used for the opening of the LC (for the payment of the machines) leaving a balance of P47,730,48.00 plus interest;

(11)

Between the amount listed in the books of the corporation (P8,860,000) and the amount of the LC (P7,679,530), a discrepancy of P1,180,496.48 existed.

(12)

Between the total amount deposited in PNB S/A No. 490-555744-6 (P7,727,261.00) and the total amount withdrawn from the account for the payment of the machines (P7,679,530.52), a balance of P47,730.48 remained. This balance (plus interest), in the amount of P58,000.00, was later withdrawn upon authorization of accused Flores.[8]

Petitioner Ocampo did not testify regarding the subject cases on the ground that he was not competent to testify

on the disbursements made by LTFI but only as to the receipt of the NALGU funds from the government.

The Sandiganbayan declared that petitioner Ocampo as governor of Tarlac, who personally received the NALGU funds from the DBM and thereafter released some of them to the LTFI, was duty bound to put up regular and effective measures for the monitoring of the projects approved by him.

According to the Sandiganbayan, Sec. 203(t) of the Local Government Code obligated provincial governors to “adopt measures to safeguard all the lands, buildings, records, monies, credits and other property rights of the province.” However, petitioner Ocampo, as governor of Tarlac, neglected to set up safeguards for the proper handling of the NALGU funds in the hands of LTFI which resulted in the disappearance of P1,132,739 and P58,000 of the said funds. The Sandiganbayan held:

For such gross and inexcusable negligence, accused is liable for malversation. In so ruling, we are guided by the oft-repeated principle that malversation may be committed through a positive act of misappropriation of public funds or passively through negligence by allowing another to commit such misappropriation (*Cabello vs. Sandiganbayan*, 197 SCRA 94 [1991]). Although accused was charged with willful malversation, he can validly be convicted of malversation through negligence where the evidence sustains the latter mode of committing the offense (*Cabello, supra*).[9]

Further, the Sandiganbayan stated that under Sec. 203(f) of the Local Government Code of 1983,[10] the provincial governor, as chief executive of the provincial government, has the power to “represent the province in all its business transactions and sign on its behalf all bonds, contracts and obligations and other official documents made in accordance with law or ordinance.”

Sec. 2 (c) of Rule XI[11] of the Rules and Regulations Implementing the Local Government Code of 1983 provides that the local chief executive of a local government unit shall “[r]epresent the respective local units in all their business transactions and sign on its behalf all bonds, contracts and obligations and other official documents made in accordance with law or ordinance.” Sec. 2 of Rule VI[12] states that “[t]he power to sue, to acquire and convey real or personal property, and to enter into contracts shall be exercised by the local chief executive upon authority of the Sanggunian concerned.” Thus, the Sandiganbayan declared that since the required authority from the Sangguniang Panlalawigan was not shown to have been obtained by petitioner Ocampo, the MOA is ineffective as far as the Province of Tarlac is concerned.

Petitioner Flores, as executive director of LTFI, was charged with malversation of public funds in connivance with a public officer. However, the Sandiganbayan found that there was no conspiracy between the petitioners, and held petitioner Flores guilty of malversation through his independent acts under Art. 222 of the Revised Penal Code,[13] since the purpose of Art. 222 is to extend the provisions of the Penal Code on malversation to private individuals. According to the Sandiganbayan, petitioner Flores bound himself, as a signatory of the MOA representing LTFI, to receive NALGU funds from the province of Tarlac. In such capacity, he had charge of these funds.

In *Crim. Case No. 16794*, petitioner Flores was found to have charge of missing NALGU funds deposited in his personal account in the amount of P1,132,739, which formed part of the discrepancy of the actual cost of the embroidery machines and the NALGU funds released for payment of the said machines.

In defense, petitioner Flores claimed that the broker for the importation of the machines made an initial payment to the supplier of the machines, which initial payment would explain the discrepancy between the reported cost as stated in the books of the corporation and the letter of credit. However, the Sandiganbayan stated that the explanation was hearsay as the broker was not presented in court, and there was no proof of the initial payment.

In Crim. Case No. 16795, the Sandiganbayan held that petitioner Flores' failure to explain the purpose of the withdrawal on April 28, 1989 of P58,000 upon his authorization, considering that he was in charge of the PNB savings account, made him liable for malversation of public funds.

Petitioners presented five documents to show that LTFI's obligations to the Province of Tarlac, in the amount of P56.6 million, have been extinguished. The documents are as follows:

1)

The Tripartite Memorandum of Agreement (TMOA) dated May 23, 1990 executed by the Province of Tarlac, LTFI and the Barangay Unity for Industrial and Leadership Development (BUILD) Foundation whereby the liability of LTFI in favor of the Province of Tarlac was transferred and assumed by BUILD in the total amount of P40 million.

2)

Resolution No. 76 of the Sangguniang Panlalawigan of Tarlac dated April 5, 1990 showing that the authority of petitioner Ocampo in entering into the TMOA was with prior approval of the Sangguniang Panlalawigan.

3)

A Deed of Assignment between Tarlac and LTFI whereby the latter assigned its loan portfolios (including interests and certificates of time deposit), the Juki embroidery machines and other assignable documents to the Province of Tarlac in the total amount of P16,618,403.

4)

Resolution No. 199 of the Sangguniang Panlalawigan of Tarlac dated October 18, 1990 authorizing petitioner Ocampo to enter into the Deed of Assignment with LTFI

5)

A certified photocopy of a document dated June 16, 1992 issued by the OIC provincial treasurer of Tarlac whereby the treasurer affirmed the existence of the above documents.

The Sandiganbayan declared that the documents showing the extinguishment of LTFI's obligations to the Province of Tarlac do not mitigate the liability of petitioners since the crime is consummated as of asportation, akin to the taking of another's property in theft. It held that the return of the amount malversed is neither an exempting circumstance nor a ground for extinguishing the criminal liability of petitioners.

On March 8, 2002, the Fifth Division of the Sandiganbayan rendered a Decision acquitting petitioners of the crime of malversation of public funds in Crim. Case Nos. 16796 and 16802, but finding them guilty of the crime in Crim. Case Nos. 16787, 16794 and 16795. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, accused Mariano Un Ocampo III and Andres S. Flores are hereby found GUILTY beyond reasonable doubt of the crime of malversation of Public Funds under Crim. Case No. 16787 and are sentenced to suffer the indeterminate penalty of (10) years, and one (1) day of prision mayor, as minimum, to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal as maximum and to pay a fine of sixty-six thousand nine hundred thirty-two pesos and seventy centavos (P66,932.70). They shall also suffer the penalty of perpetual special disqualification. Costs against the accused.

For Crim. Case No. 16794, accused Mariano Un Ocampo III and Andres S. Flores are hereby found GUILTY beyond reasonable doubt of the crime of Malversation of Public Funds and are sentenced to suffer the indeterminate penalty of (10) years, and one (1) day of prision mayor, as minimum, to eighteen (18) years,

eight (8) months and one (1) day of reclusion temporal as maximum and to pay a fine of one million one hundred thirty-two thousand seven hundred thirty-nine pesos (P1,132,739.00). They shall also suffer the penalty of perpetual special disqualification. Costs against the accused.

For Crim. Case No. 16795, accused Mariano Un Ocampo III and Andres S. Flores are hereby found GUILTY beyond reasonable doubt of the crime of Malversation of Public Funds and are sentenced to suffer the indeterminate penalty of (10) years, and one (1) day of prision mayor, as minimum, to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal as maximum and to pay a fine of fifty-eight thousand pesos (P58,000.00). They shall also suffer the penalty of perpetual special disqualification. Costs against the accused.

For Crim. Case No. 16796, on ground that the crime was not committed by the accused, accused Mariano Un Ocampo III and Andres S. Flores are hereby ACQUITTED of the crime charged. The surety bonds posted by them for their provisional liberty are cancelled.

For Crim. Case No. 16802, on ground of reasonable doubt, accused Mariano Un Ocampo III and Andres S. Flores are hereby ACQUITTED of the crime charged. The surety bonds posted by them for their provisional liberty are cancelled.

SO ORDERED.[14]

Petitioners separately filed a motion for reconsideration of the Decision.

In a Resolution promulgated on January 6, 2003, the Sandiganbayan reconsidered its Decision in Crim. Case No. 16787, and acquitted petitioners of the crime charged. In that case, the prosecution alleged that P5 million of the NALGU funds loaned to LTFI were placed in time deposits with the Rural Bank of Tarlac and earned a total interest of P116,932.77, of which amount only P50,000.00 was recorded in the books of LTFI. The unrecorded interest of P66,932.77 was said to have been withdrawn from December 27, 1988 to February 2, 1989 and allegedly malversed by petitioners. The Sandiganbayan held that as this Court has already labeled the subject agreement as one of loan, the said “interest are private funds, hence, not the proper subject for malversation of public funds.” Thus, petitioners were acquitted in Crim. Case No. 16787.

Petitioners thereafter filed their respective petitions, which were consolidated by the Court in a Resolution dated February 20, 2006.

The pertinent issues raised by petitioners may be summarized as follows:

1)

Whether or not petitioners Ocampo and Flores are guilty of the crime of malversation of public funds under Art. 217 and Art. 220 respectively of the Revised Penal Code;

2)

Whether or not the Sandiganbayan erred in holding that the MOA is void and did not bind the Province of Tarlac on the ground that the MOA was entered into by petitioner Ocampo without authority from the Sangguniang Panlalawigan in violation of the Local Government Code of 1983.

First Issue: Whether or not petitioners Ocampo and Flores are guilty of the crime of malversation of public funds under Art. 217 and Art. 220 respectively of the Revised Penal Code?

Crucial to the resolution of the first issue is the nature of the transaction entered into by the Province of Tarlac and LTFI.

Petitioners claim that in the instant cases, the public funds alleged to have been malversed were loaned by the Province of Tarlac to LTFI per the MOA; hence, LTFI acquired ownership of the funds which thus shed their public character and became private funds.

Petitioner Ocampo also asserts that the Sandiganbayan impliedly ruled that the funds were private in character and owned by LTFI when it ruled in Crim. Case No. 16787 that since this Court has already labeled the subject agreement as one of loan, the interests from the loan are private funds; hence, not the proper subject for malversation of public funds. Having declared the interests earned by the funds loaned to LTFI as private funds, the Sandiganbayan should have also declared the funds loaned as private.

Petitioners' arguments are meritorious.

The MOA states:

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WHEREAS, the First Party [the Provincial Government of Tarlac], in order to vigorously pursue its livelihood program for rural development, has identified the need to establish a RICH (Rural Industrialization Can Happen) Program;

WHEREAS, the First Party now realizes the effectivity and efficiency of designating a professional private non-profit organization to implement the various livelihood projects under the RICH Program;

WHEREAS, the Second Party [Lingkod Tarlac Foundation], has represented that it has the technical expertise required by the First Party in the implementation of the various livelihood projects under the RICH Program;

WHEREAS, the First Party desires to engage the Second Party and the latter agrees as the implementing arm of the Provincial Government for its livelihood projects;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties hereby agree as follows:

ARTICLE I

UNDERTAKINGS OF THE FIRST PARTY

- The First Party shall provide all the data and information as may be required by [the] Second Party in the implementation of the RICH Program;

ARTICLE III

DESCRIPTION OF THE PRIORITY PROJECTS

- Program For Lease Purchase Agreements on equipment, machineries, buildings and structures:

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- Direct Lending Program:

Under this scheme, the Lingkod Tarlac Foundation shall engage in direct lending operations to proponents of livelihood activities under the Rural Industrialization Can Happen (RICH PROGRAM) at variable interest rates and loan conditions depending on the viability and nature of the livelihood projects availing of the loan.

- Direct Borrowing by Lingkod Tarlac Foundation:

The Lingkod Tarlac Foundation shall be allowed to borrow funds directly from the Provincial government to fund Lingkod Tarlac Foundation projects provided the projects are livelihood projects under the Rural Industrialization Can Happen (RICH Program).

- Other project financing schemes that may be developed for the RICH Program.

ARTICLE IV

CONDITIONS FOR RELEASE OF FUNDS

The First Party shall release in lump sum the appropriate funds for the approved projects covered by individual loan documents upon signing of [the] respective loan agreement and approval of the Commission on Audit.

ARTICLE V

TERMS OF REPAYMENT

- The Second Party shall repay the First Party only the total amount of capital without interest in consideration of the following:

a)

The Second Party shall shoulder all its operating expenses.

b)

The Second Party shall not charge the Province any management fees or whatever fees.

c)

The Second Party shall, whenever necessary, assure the beneficiaries of the project interests and management fees at rates lower than the commercial financial rates.

- The terms of repayment shall be based on the projects' ability to pay without sacrificing on the projects viability.

ARTICLE VI

SUCCESSORS AND ASSIGNEES

Except as may be mutually agreed in writing, neither party can assign, sublet, or transfer its interest or duties under this Agreement.

ARTICLE VII

TERMS OF THE AGREEMENT

This Agreement shall exist for as long as the Program exists or any extension thereof.

IN WITNESS WHEREOF, the Parties have hereunto set their hands on this 8[th] day of August, 1988 in Tarlac, Tarlac.

LINGKOD TARLAC FOUNDATION

Second Party PROVINCE OF TARLAC

First Party

(Signed)

ANDRES S. FLORES

Executive Director (Signed)

MARIANO UN OCAMPO III

Governor

CONCURRED IN BY:

(Signed)

GUILLERMO N. CARAGUE

Secretary of Budget
& Management

The MOA shows that LTFI is “allowed to borrow funds directly from the Provincial Government to fund Lingkod Tarlac Foundation projects provided the projects are livelihood projects under the Rural Industrialization Can Happen Program.” Moreover, the agreement stipulates under the “Conditions for Release of Funds” that the Province of Tarlac “shall release in lump sum the appropriate funds for the approved projects covered by individual loan documents upon signing of the respective loan agreement....”[15]

In Crim. Case No. 16794, the fund alleged to have been malversed in the amount of P1,180,496.48 represents the discrepancy of the cost of the Juki embroidery machines as listed in the books of LTFI and the amount actually paid to open the letter of credit for the payment of the machines. In the books of LTFI, the cost of the Juki embroidery machines was listed as P8,860,000, while the amount paid to open the letter of credit for the payment of the machines was P7,679,530.52. Petitioner Flores was held liable only up to the amount of P1,132,739.

In Crim. Case No. 16795, the fund alleged to have been malversed in the amount of P58,000 is the money left (P47,730) in PNB S/A No. 490-555744-6 after the withdrawal of the purchase price of the Juki embroidery machines, plus interest. The amount of P58,000 was withdrawn upon the authorization of petitioner Flores. The withdrawal was neither reflected as deposit in the bank accounts of LTFI nor spent by it.

In both cases, the money trail proven by the prosecution shows that the subject funds or the money used for the purchase of the Juki embroidery machines came from the release of the Province of Tarlac through petitioner Ocampo of NALGU funds in the amount of P11.5 million to LTFI on October 24, 1988. The release of the funds was covered by a loan document in accordance with the MOA which states that the Province of Tarlac “shall release in lump sum the appropriate funds for the approved projects covered by individual loan documents upon signing of the respective loan agreement....”

The Report on the Special Audit of LTFI[16] stated:

. . . For the period July 1988 to December 1989, LTFI received a total of P56.6 million which consisted of six releases and covered by individual loan agreements, as follows:

Date Amount

08 30 88 P7, 000, 000

10 24 88 11,500, 000

12 08 88 1,500, 000

02 22 89 4,000, 000

04 12 89 18,000, 000

06 14 89 12,718, 403

Total P56,618, 403

xxx

On October 24, 1988, the Provincial Government of Tarlac approved and released an amount of P11,500,000 to Lingkod Tarlac Foundation, Inc. (LTFI) for the Rural Industrialization Can Happen (RICH) Program. Of the amount released, P7,023,836 was intended for the purchase of 400 sets embroidery machines for the Embroidery Skills Training Project.[17]

Based on the foregoing, it is clear that the funds released by the Province of Tarlac, including the money allegedly malversed by petitioners in Crim. Case Nos. 16794 and 16795, were in the nature of a loan to LTFI.

Art. 1953 of the Civil Code provides that “[a] person who receives a loan of money or any other fungible thing acquires the ownership thereof, and is bound to pay to the creditor an equal amount of the same kind and quality.”

Hence, petitioner Ocampo correctly argued that the NALGU funds shed their public character when they were lent to LTFI as it acquired ownership of the funds with an obligation to repay the Province of Tarlac the amount borrowed. The relationship between the Province of Tarlac and the LTFI is that of a creditor and debtor. Failure to pay the indebtedness would give rise to a collection suit.

The Sandiganbayan convicted petitioner Ocampo of malversation of public funds under Art. 217 of the Revised Penal Code for his “gross and inexcusable negligence” in not setting up safeguards in accordance with Sec. 203(t) of the Local Government Code[18] for the proper handling of the NALGU funds in the hands of LTFI which resulted in the disappearance of P1,132,739 allegedly malversed in Crim. Case No. 16794 and the disappearance of P58,000 in Crim. Case No. 16795.

In his petition, petitioner Ocampo states that he made sure that proper safeguards were in place within LTFI to ensure the proper handling of NALGU funds by LTFI. On August 5, 1988, before the Province of Tarlac and LTFI entered into the MOA, LTFI’s Articles of Incorporation were amended to add the following:

TENTH: That no part of the net income of the Foundation shall inure to the benefit of any member of the Foundation and that at least seventy percent (70%) of the funds shall be used for the projects and not more than thirty percent (30%) of said funds shall be used for administrative purposes.

Petitioner Ocampo argues that since he had resigned from LTFI both as chairperson and as trustee on June 22, 1988, he ceased to become accountable for the handling of the NALGU funds after the same were loaned to LTFI pursuant to the MOA dated August 8, 1988. Consequently, he may not be held criminally liable for disbursements made by LTFI since he had nothing to do with its operations after his resignation.

Malversation may be committed by appropriating public funds or property; by taking or misappropriating the same; by consenting, or through abandonment or negligence, by permitting any other person to take such public funds or property; or by being otherwise guilty of the misappropriation or malversation of such funds or property.[19]

The essential elements common to all acts of malversation under Art. 217 of the Revised Penal Code[20] are:

(a)

That the offender be a public officer;

(b) That he had the custody or control of funds or property by reason of the duties of his office;;

(c) That those funds or property were public; funds or property for which he was accountable;

(d) That he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.[21]

There can be no malversation of public funds by petitioner Ocampo in the instant cases since the loan of P11.5 million transferred ownership and custody of the funds, which included the sum of money allegedly malversed, to LTFI for which Ocampo could no longer be held accountable. Thus, contrary to the allegation of the Office of the Special Prosecutor, petitioner Ocampo cannot be held culpable for malversation committed through negligence in adopting measures to safeguard the money of the Province of Tarlac, since the same were neither in his custody

nor was he accountable therefor after the loan to LTFI.

Thus, petitioner Flores, as the executive director of LTFI, cannot also be held liable for malversation of public funds in a contract of loan which transferred ownership of the funds to LTFI making them private in character. *Liwanag v. Court of Appeals*[22] held:

. . . in a contract of loan once the money is received by the debtor, ownership over the same is transferred. Being the owner, the borrower can dispose of it for whatever purpose he may deem proper.

The Sandiganbayan erred when it stated that the intention of the parties was for the funds to remain public, citing the MOA which allegedly provided, thus:

The Province shall have the right to have access to all resources and records of either LTF[I] or BUILD and may conduct COA examination or audit on any or all matter affecting the loans or assets covered by this agreement and funds from the Province of Tarlac.

A review of the MOA did not show the presence of such provision. But the cited provision is contained in the TMOA, which was later entered into by the Province of Tarlac, LTFI and BUILD, whereby LTFI transferred part of its obligation to BUILD.

What is controlling in the instant cases is that the parties entered into a contract of loan for each release of NALGU funds. The second release on October 24, 1988 included the subject funds in controversy. By virtue of the contract of loan, ownership of the subject funds was transferred to LTFI making them private in character, and therefore not subject of the instant cases of malversation of public funds.

The Court notes that the obligation of LTFI to repay the NALGU Funds of P56,618,403 obtained by it from the Province of Tarlac pursuant to the MOA was extinguished as follows:

(1)

BUILD assumed LTFI's principal loan of P40 million;

(2)

LTFI ceded, transferred and assigned to the Province of Tarlac all the rights and interests of LTFI in certain loans including interests, certificate of time deposit and certain Juki embroidery machines in the total amount of P16,618,403.

Second Issue: Whether or not the Sandiganbayan erred in holding that the MOA is void and did not bind the Province of Tarlac on the ground that the MOA was entered into by petitioner Ocampo without authority from the Sangguniang Panlalawigan in violation of the Local Government Code of 1983?

In its Resolution dated January 6, 2003, the Sandiganbayan concedes that the transaction between the Province of Tarlac through petitioner Ocampo and the LTFI was one of loan. However, it stated that since Ocampo was not authorized by the Sangguniang Panlalawigan to enter into the MOA as required by the Local Government Code of 1983, the MOA did not bind the province nor did it give any benefits to the LTFI because a void contract has no effect whatsoever.

Petitioner Ocampo alleges that he had ample authority to enter into the MOA for the following reasons:

1)

NALGU funds received by the Province of Tarlac came straight from the national government and were intended for a specific purpose, that is, the implementation of various livelihood projects in the Province of Tarlac, as

evidenced by the exchange of correspondence between him (petitioner Ocampo) and DBM Secretary Guillermo N. Carague.[23]

2)

On July 15, 1988, the DBM released a revolving fund for the implementation of various livelihood projects in the Province of Tarlac under Advice Allotment No. BCS-0183-88-301.[24] In August 1988, he (petitioner Ocampo) informed the DBM that the Province of Tarlac had designated LTFI as the implementing arm for its livelihood projects, and requested authority to extend loans to LTFI, which request was approved by the DBM Secretary.[25]

3)

The DBM's approval of petitioner Ocampo's request constituted the authority of petitioner Ocampo to enter into the MOA with LTFI.

4)

DBM also approved and concurred with the terms of the MOA as evidenced by the DBM Secretary's signature on the MOA.

Petitioner Ocampo also asserts that Sec. 203(f) of the Local Government Code of 1983,[26] which authorized the provincial governor to enter into business transactions on behalf of the province, did not expressly require the concurrence of the provincial board unlike its counterpart provision in the Local Government Code of 1991.[27]

Further, petitioner Ocampo states that in any case, the lack of authority of one who enters into a contract in the name of another does not render the contract void under Art. 1409 of the Civil Code,[28] as ruled by the Sandiganbayan, but only unenforceable under Art. 1403(1) of the Civil Code. He points out that unenforceable contracts are susceptible of ratification, and in this case, the Provincial Board of Tarlac can be deemed to have ratified the MOA when it passed the following resolutions:

(1)

Resolution No. 76, which confirmed and ratified the TMOA among the Province of Tarlac, LTFI and the BUILD, whereby the liability of LTFI in favor of the Province of Tarlac in the total amount of P40 million was transferred to and assumed by BUILD;[29] and

(2)

Resolution No. 199, which authorized petitioner Ocampo to sign the Deed of Assignment between the Province of Tarlac and LTFI, whereby LTFI assigned loans, sewing machines and other assignable documents in favor of the Province of Tarlac to settle the balance of its obligation in the amount of P16,618,403.00. [30]

The Court holds that since petitioner Ocampo was not duly authorized by the Sangguniang Panlalawigan to enter into the MOA, the agreement is an unenforceable contract under Sec. 1403 of the Civil Code:

Art. 403. The following contracts are unenforceable, unless they are ratified:

(1) Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers; x x x.

Unenforceable contracts are governed by the following provisions of the Civil Code:

Art. 1404. Unauthorized contracts are governed by article 1317 and the principles of agency in Title X of this

Book.

Art. 1317. No one may contract in the name of another without being authorized by the latter, or unless he has by law or right to represent him.

A contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, shall be unenforceable, unless it is ratified, expressly or impliedly, by the person on whose behalf it has been executed, before it is revoked by the other contracting party.[31]

The Court finds that the MOA has been impliedly ratified by the Sangguniang Panlalawigan as it has not directly impugned the validity of the MOA despite knowledge of this controversy. Implied ratification is also shown by the following acts:

1)

The Sangguniang Panlalawigan subsequently recognized the transfer of liabilities of LTFI in favor of the Province of Tarlac to BUILD in the amount of P40 million contained in a TMOA.[32]

2)

It authorized petitioner Ocampo to sign in behalf of the Province of Tarlac the Deed of Assignment entered into by the Province of Tarlac and LTFI[33] which extinguished the remaining loan obligations of LTFI obtained under the MOA.

WHEREFORE, the consolidated petitions are GRANTED. The Decision of the Sandiganbayan promulgated on March 8, 2002 and its Resolution promulgated on January 6, 2003 are SET ASIDE. Petitioner Mariano Un Ocampo III and petitioner Andres S. Flores are hereby ACQUITTED of the crime of malversation of public funds in Crim. Case Nos. 16794 and 16795.

No costs.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Corona, and Leonardo-De Castro, JJ., concur.

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

[2] Annexes “A,” “B,” and “C.”

[3] Governor Mariano UN Ocampo III v. The Honorable Sandiganbayan (Second Division) and Office of the Special Prosecutor.

[4] Criminal Case No. 16786.

[5] Criminal Case Nos. 16796 and 16802.

[6] Criminal Case No. 16787.

[7] Rollo (G.R. Nos. 156547-51), Sandiganbayan Decision, pp. 46-47.

[8] Id. at 84-85.

[9] Id. at 89.

[10] Batas Pambansa Blg. 337.

[11] Powers and Duties of Local Executives.

[12] Corporate Powers and Seal.

[13] Art. 222. Officers included in the preceding provisions. – The provision of this chapter shall apply to private individuals who, in any capacity whatever, have charge of any insular, provincial or municipal funds, revenues, or property attached, seized, or deposited by public authority even if such property belongs to a private individual.

[14] Rollo, (G.R. Nos. 156547-51), pp. 92-93.

[15] Emphasis supplied.

[16] Exhibit “B.”

[17] Exhibit “B-3.”

[18] Sec. 203. Provincial Governor as Chief Executive of the Province; Powers and Duties.— (1) The governor shall be the chief executive of the provincial government and shall exercise such powers and duties as provided in this Code and other laws.

(2) The governor shall:

xxx

(t) Adopt measures to safeguard all the lands, buildings, records, monies, credits and other property and rights of the province. . . .

[19] *Pondevida v. Sandiganbayan*, G.R. Nos. 160929-31, August 16, 2005, 467 SCRA 219, 241-242.

[20] 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 or malversation of such funds or property, shall suffer:

1. 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.

x x x

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.

[21] *Supra*, note 19, at 242; Luis B. Reyes, *The Revised Penal Code*, Book 2, Fourteenth Edition, Revised 1998, p. 406.

[22] G.R. No. 114398, October 24, 1997, 281 SCRA 225, 231.

[23] See Annex “D” and Annex “E,” rollo (G.R. Nos. 156547-51), pp. 123-124.

[24] *Ibid*.

[25] Annex “E,” rollo (G.R. Nos. 156547-51), p. 124.

[26] Sec. 203. Provincial Governor as Chief Executive of the Province; Powers and Duties.—(1) The governor

shall be the chief executive of the provincial government and shall exercise such powers and duties as provided in this Code and other laws.

(2) The governor shall:

xxx

(a) Represent the province in all its business transactions and sign on its behalf all bonds, contracts and obligations and other official documents made in accordance with law or ordinance.

[27] Sec. 465. The Chief Executive: Powers, Duties, Functions and Compensation..- (a) The provincial governor, as the chief executive of the provincial government, shall exercise such powers and perform such duties and functions as provided by this Code and other laws.

xxx

(1) Exercise general supervision and control over all programs, projects, services, and activities of the provincial government, and in this connection shall:

xxx

(vi) Represent the province in all its business transactions and sign in its behalf all bonds, contracts and obligations, and such other documents upon authority of the sangguniang panlalawigan or pursuant to law or ordinance.

[28] Art. 1409. The following contracts are inexistent and void from the beginning:

- (1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;
- (2) Those which are absolutely simulated or fictitious;
- (3) Those whose cause or object did not exist at the time of the transaction;
- (4) Those whose object is outside the commerce of men;
- (5) Those which contemplate an impossible service;
- (6) Those where the intention of the parties relative to the principal object of the contract cannot be ascertained;
- (7) Those expressly prohibited or declared void by law. These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

[29] Annexes "F" and "G," rollo, pp. 147, 150.

[30] Annexes "H" and "I," id. at 151, 153.

[31] Emphasis supplied.

[32] Rollo, p. 147.

[33] Id. at 153.

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