# DANILO D. COLLANTES, PETITIONER, VS. HON. SIMEON MARCELO, IN HIS CAPACITY AS OMBUDSMAN, AND THE FACT FINDING INTELLIGENCE BUREAU AS REPRESENTED BY ATTY. MARIA OLIVIA ELENA A. RO...

*G.R. NOS. 167006-07. August 14, 2007*

Ponente: NACHURA, J.

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**NACHURA, J.:**

This special civil action for certiorari and prohibition under Rule 65 of the Rules of Court seeks to annul and set aside the Memorandum[1] of the Office of the Ombudsman (Ombudsman), dated May 11, 2004. The Ombudsman recommended the filing of an Information for violation of Section 3(e) of Republic Act (R.A) No. 3019 (Anti-Graft and Corrupt Practices Act), as amended, against Salvador Pleyto (Pleyto), Oscar Baraquero (Baraquero), Carlos Z. Rodenas (Rodenas), Teresita Fabian-Pamintuan (Pamintuan) and petitioner Danilo Collantes (Collantes). The petition likewise assails its Supplemental Order[2] dated December 14, 2004, which denied the Motion for Reconsideration filed by Baraquero, Rodenas and petitioner.

Virgilio Cervantes (Cervantes) was the owner of two (2) parcels of land located at Barangay Sampaloc, Tanay, Rizal, covered by Transfer Certificate of Title (TCT) Nos. M-10944 and M-15213 (448471), with land areas of 46,481 and 13,019 square meters, respectively, or a total of 59,500 square meters. Sometime in the 1970s, the government, through the Department of Public Works and Highways (DPWH), took 21,558 square meters of the said parcels of land and constructed thereon the Marikina-Infanta Road (Marcos Highway).[3] However, despite actual taking of the property, Cervantes did not demand nor receive just compensation, and he remained the registered owner until 1999.[4]

In 1998, Cervantes sold the subject parcels of land (59,500 sq. m.), together with other parcels, to R.J. Pamintuan Furnishing Corporation (RJ Pamintuan). Actual sale of the subject properties was effected on March 2, 1999. Consequently, the TCTs in the name of Cervantes were cancelled and new ones[5] were issued in the name of RJ Pamintuan.[6]

It appears that prior to the said transfer of titles, RJ Pamintuan already claimed just compensation for the affected portions of the parcels of land. The claim was referred to DPWH Regional Director Pleyto, who in turn requested[7] the Rizal Provincial Appraisal Committee (R-PAC)[8] to fix the "current market value" of the subject land. Initially, the R-PAC refused[9] to act on Pleyto's request. However, R-PAC later acceded and fixed the market value of the property at P606.66 per square meter.[10] The R-PAC, thus, concluded that the fair market value of the property may be fixed between P19,752,697.93 and P21,181,612.50, taking into consideration the value of the property as appraised, together with the consequential damages on the remaining land and fruit-bearing trees.[11]

After a series of consultation with the DPWH Legal Services, RJ Pamintuan, represented by Teresita Pamintuan, and the Republic of the Philippines, represented by Salvador Pleyto, executed a Deed of Absolute Sale with

Quitclaim,[12] involving 14,761 square meters, fixed at P982.54 per square meter, for a total consideration of P14,503,272.94. Pamintuan waived and renounced her rights on the remaining 6,797 square meters.

In a letter-complaint dated July 23, 1999, a certain "Gabriela" claimed that the above transaction is anomalous and thus requested the Office of the Ombudsman to conduct an investigation. Hence, the Ombudsman conducted a fact-finding investigation for possible violation of Section 3(e), (g), and (j) of R.A. No. 3019 against Pleyto, Romeo Panganiban, Lamberto A. Aguilar, and Godofredo T. Zabale of the DPWH, and the members of R-PAC, including herein petitioner. The cases were docketed as OMB-O-99-2364 to 2366.

After due proceedings, Graft Investigation Officer Wilfred L. Pascasio issued a Joint Resolution[13] recommending the filing of an Information for violation of Section 3(e) of R.A. No. 3019, as amended. This joint resolution was, however, set aside on October 2, 2002 by Graft Investigation Officer II Julita Calderon, who issued a Memorandum[14] recommending the provisional dismissal and further investigation of the cases. Thus:

> It appears therefore that the pieces of evidence at hand are still insufficient to establish the existence of undue injury or the giving of unwarranted benefits to private respondent absence of (sic) the disbursement vouchers, the check which the DPWH issued in payment to the private respondent or cash amount, if any, and such other documents which would sufficiently establish that the payment in the amount of P14,683,727.94 were actually effected by the DPWH in favor of the private respondent.
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> FOREGOING PREMISES BEING CONSIDERED, we most respectfully recommend these complaints lodged against respondents SALVADOR A. PLEYTO, TERESITA FABIAN-PAMINTUAN, OSCAR R. BARAQUEO (sic), DANILO O. COLLANTES and CARLOS Z. RODENAS be provisionally DISMISSED, without prejudice to the refiling of the same in case the complainant (FFIB) will be able to present sufficient evidence to establish that the contract alluded to in the complaint had been actually been implemented.
>
> Meanwhile, let [the] entire records of this case be reproduced, downgraded as a CPL and thereafter referred to the FFIB for further fact finding investigation.
>
> ACCORDINGLY, the herein Joint Resolution dated April 18, 2001 penned by GIO Pascasio is thus SET ASIDE.[15]

The Acting Ombudsman approved the recommendation on October 5, 2002.

After further fact-finding investigation, the Fact Finding and Intelligence Bureau (FFIB) revived the cases filed against the DPWH officials[16] and the members of R-PAC, with the case docketed as OMB C-C-03-0383-G.

Baraquero, Collantes, and Rodenas of the RPAC filed their Joint Counter-Affidavit (with Manifestation).[17] They moved for the dismissal of the case arguing that similar cases had already been filed and dismissed for lack of evidence, and, therefore, the revival is unwarranted. Likewise, they denied the charges against them alleging that they only acted on the request of Pleyto to fix the current market value of the property. They did so by conducting a hearing and investigation. Thereafter, they issued the appraisal report. Finally, they denied liability for the contract, arguing that they had no hand in its execution.

On March 31, 2004, Graft Investigator and Prosecution Officer Richard P. Palpal-Latoc submitted a Joint Resolution,[18] recommending the dismissal of the complaint. But the same was disapproved upon review by Assistant Ombudsman Pelagio S. Apostol, who found probable cause and recommended the filing of the Information for violation of Section 3(e) of R.A No. 3019:

> WHEREFORE, let an information be filed forthwith in Court for the prosecution of respondents SALVADOR A. PLEYTO, OSCAR R. BARAQUERO, DANILO O. COLLANTES, CARLOS Z. RODENAS, AND


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> TERESITA FABIAN PAMINTUAN for violation of Section 3 (e) of Republic Act 3019, as amended.
>
> The complaint against ROMEO PANGANIBAN, LAMBERTO A. AGUILAR and GODOFREDO T. ZABALE be DISMISSED for insufficiency of evidence.
>
> It is further recommended, that then Assistant Secretary Manuel G. Bunan (sic) and then Secretary Gregorio R. Vigilar be subjected to fact-finding investigation for possible gross inexcusable negligence in violation of Section 3 (e) of R.A. 3019, as amended.[19]

This was approved by the Ombudsman on September 20, 2004.

An Urgent Joint Motion for Reconsideration was filed by Baraquero, Collantes, and Rodenas, but the Ombudsman denied the same in the assailed Supplemental Order,[20] for having been tardily filed and for lack of merit.

Hence, this petition by Collantes, positing these issues:

> I
>
> WHETHER OR NOT PUBLIC RESPONDENT GRAVELY ABUSED HIS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE RECOMMENDED THE FILING OF INFORMATION AGAINST PETITIONER FOR ALLEGED VIOLATION OF SECTION 3(e) OF THE ANTI-GRAFT AND CORRUPT PRACTICES ACT DESPITE LACK OF PROBABLE CAUSE AGAINST HIM.
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> II
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> WHETHER OR NOT PUBLIC RESPONDENT GRAVELY ABUSED HIS DISCRETION WHEN HE FAILED TO RECONSIDER THE MEMORANDUM DATED 11 MAY 2004 DESPITE COMPELLING REASONS FOR THE REVERSAL THEREOF.[21]

We find merit in the petition.

The rule is that as far as crimes cognizable by the Sandiganbayan are concerned, the determination of probable cause during the preliminary investigation is a function that belongs to the Office of the Ombudsman. The Ombudsman is empowered to determine, in the exercise of his discretion, whether probable cause exists, and to charge the person believed to have committed the crime as defined by law.[22] As a rule, courts should not interfere with the Ombudsman's investigatory power, exercised through the Ombudsman Prosecutors, and the authority to determine the presence or absence of probable cause, except when the finding is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. In such case, the aggrieved party may file a petition for certiorari under Rule 65 of the Rules of Court.[23] Petitioner thus rightly elevated his case to this Court ascribing grave abuse of discretion on the part of the Ombudsman in giving due course to the complaint.

There is grave abuse of discretion where power is exercised in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility, so patent and gross as to amount to evasion of a positive duty or virtual refusal to perform a duty enjoined by law.[24] When the Ombudsman does not take essential facts into consideration in the determination of probable cause, there is abuse of discretion.[25] The Court has consistently issued a writ of certiorari in any of the following instances:

- When necessary to afford adequate protection to the constitutional rights of the accused;
- When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;
- When there is a prejudicial question that is sub judice;

- When the acts of the officer are without or in excess of authority;

- Where the prosecution is under an invalid law, ordinance or regulation;

- When double jeopardy is clearly apparent;

- Where the court has no jurisdiction over the offense;

- Where it is a case of persecution rather than prosecution;

- Where the charges are manifestly false and motivated by the lust for vengeance;

- When there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied.[26]

Petitioner was charged with violation of Section 3(e) of R.A. No. 3019, which states:

> SEC. 3. Corrupt Practices of Public Officers. - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
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> x x x x
>
> (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 corporations charged with the grant of licenses or permits or other concessions.

The elements of the offense are: 1) the accused must be a public officer discharging administrative, judicial or official functions; 2) he must have acted with manifest partiality, evident bad faith or inexcusable negligence; and 3) that his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.[27] Evidently, mere bad faith or partiality and negligence per se are not enough for one to be held liable under the law, since the act constitutive of bad faith or partiality must, in the first place, be evident or manifest, respectively, while the negligent deed should be both gross and inexcusable. It is further required that any or all of these modalities ought to result in undue injury to a specified party.[28]

The issue of whether or not there was evident bad faith on the part of petitioner in performing his function as a member of the R-PAC, is most relevant in the instant case. The Ombudsman, in finding probable cause, concluded that petitioner acted with evident bad faith because of the allegedly wrong appraisal he made on the subject properties which appeared to be unquestionably high and based on the current market value in 1998 and not at the time of the taking in 1970. We do not agree.

The creation of the PAC, as well its powers and functions, are set forth in Executive Order No. 132, the Procedure to Be Followed in the Acquisition of Private Property for Public Use and Creating Appraisal Committees. The said order clearly states that the just compensation of properties taken for public use should first be determined by the mutual agreement of the property owner and the government agency involved. In case of failure to arrive at an acceptable agreement, the PAC comes in to ascertain the market value of the property. If the recommendation of the PAC is not acceptable to the government entity or to the property owners, condemnation proceedings shall be commenced where the just compensation shall be fixed by independent commissioners. From the foregoing, it is clear that the PAC's power, in fixing the fair market value, is merely recommendatory. As such, it is subject to review by the property owners and the government agency concerned. The State was represented by the DPWH,

being the agency concerned with the taking of the property. It was incumbent upon DPWH to object to the appraisal made by the R-PAC as it appeared to be erroneously based on its current market value (value in 1998-1999), and not on the value at the time of the taking (in 1970).

The recommendatory nature of petitioner's function is not negated by DPWH Department Order No. 520, Series of 1998, which states that the just compensation determined by the appraisal committee shall be the basis of negotiation with the property owners for the purchase of the property involved.[29] Assuming that the DPWH indeed uses the appraisal made by the Committee, still, the same may be objected to by the property owner. The R-PAC's appraisal may likewise be set aside altogether, where the court intervenes through the commissioners. Neither did such Department Order exempt the DPWH from its obligation to protect the government from unlawful claims.

For a public officer to be charged/convicted under Section 3(e) of R.A. No. 3019, he must have acted with manifest partiality, evident bad faith or inexcusable negligence. We cannot subscribe to the Ombudsman's conclusion that petitioner acted with bad faith, or with "evident" bad faith, simply because its appraisal appeared to be unacceptable. In arriving at such conclusion, the Ombudsman failed to appreciate an important fact, that is, that the power of the R-PAC is merely recommendatory. [30]

Well-settled is the rule that good faith is always presumed and the Chapter on Human Relations of the Civil Code directs every person, inter alia, to observe good faith which springs from the fountain of good conscience.[31] Specifically, a public officer is presumed to have acted in good faith in the performance of his duties. Mistakes committed by a public officer are not actionable absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith.[32] "Bad faith" does not simply connote bad moral judgment or negligence. There must be some dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent or ill will. It partakes of the nature of fraud. It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes.[33]

The law also requires that the public officer's action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions. Did the petitioner's act of appraising the subject properties cause undue injury? We answer in the negative. Since the appraisal was still subject to approval by the parties and further acts had to be done to consummate the questioned transaction, which are way beyond the petitioner's control, the mere wrong appraisal is far from causing undue injury to any party.

Furthermore, the Ombudsman cannot impute bad faith on the part of the petitioner on the assumption that he, together with the other members of the R-PAC, was a "willing partner," thus, a part of a conspiracy to cause undue injury to the government. Noteworthy is the pronouncement of this Court in Sistoza v. Desierto,[34] citing Sabiniano v. Court of Appeals,[35] worded in this wise:

> Proof, not mere conjectures or assumptions, should be proferred to indicate that the accused had taken part in, x x x the planning, preparation and perpetration of the alleged conspiracy to defraud the government for, otherwise, any careless use of the conspiracy theory (can) sweep into jail even innocent persons who may have (only) been made unwitting tools by the criminal minds really responsible for that irregularity.

Again, the mere act of petitioner as a member of the R-PAC in appraising the subject properties cannot be considered an overt act in furtherance of one common design to defraud the government. A perusal of the Committee's Appraisal Report shows that the value fixed by the Committee was not conclusive, and to reiterate, merely recommendatory. Said report states: The appraised value arrived at should not be considered final and


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controlling as it is also expected from the DPWH to evaluate the report and draw their own conclusion as regards the equitable valuation of the property.[36]

Thus, where the evidence patently demonstrates the innocence of the accused, as in this case, we find no reason to continue with his prosecution; otherwise, persecution amounting to grave and manifest injustice would be the inevitable result.[37]

Agencies tasked with the preliminary investigation and prosecution of crimes should never forget that the purpose of a preliminary investigation is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect one from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, and also to protect the State from useless and expensive trials. It is, therefore, imperative upon such agencies to relieve any person from the trauma of going through a trial once it is ascertained that the evidence is insufficient to sustain a prima facie case or that no probable cause exists to form a sufficient belief as to the guilt of the accused.[38]

WHEREFORE, the instant petition is GRANTED. The Memorandum of the Office of the Ombudsman (Ombudsman), dated May 11, 2004, and its Supplemental Order dated December 14, 2004, are REVERSED and SET ASIDE insofar as Danilo Collantes is concerned. This Decision is without prejudice to the continuation of the proceedings promptly and without delay, insofar as the other accused therein are concerned.

**SO ORDERED.**

Austria-Martinez, and Chico-Nazario, JJ., concur.
Ynares-Santiago, J., no part due to relations to petitioners counsel.

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[1] Rollo, pp. 36-62.

[2] Id. at 63-71.

[3]Id. at 37-38.

[4] Id. at 38.

[5] The titles include TCT Nos. M-91211 and 91212.

[6] Rollo, p. 38.

[7] The request was embodied in a letter addressed to the Chairman of R-PAC dated November 10, 1998; id. at 75.

[8]The R-PAC was composed of Baraquero as Chairman and Rodenas and Collantes, as members.

[9] The reply of R-PAC to Pleyto was embodied in a letter dated November 19, 1998; rollo, p. 76.

[10] The market value of the property was arrived at by taking into consideration the fair market value applied as of 1998 which is P750.00 per square meter; the average value for 1995 which is P470.00 per square meter; and BIR's zonal value which is P600.00 per square meter.

[11]Rollo, p. 86.

[12] Dated May 19, 1999; records, pp. 311-315.

[13] Record, Vol. 1, pp. 10-15.

[14]Rollo, pp. 87-93.

[15] Id. at 92-93.

[16]The re-investigation included Romeo Panganiban, Lamberto A. Aguilar, and Godofredo T. Zabale.

[17] Rollo, pp. 94-98.

[18] Id. at 99-152.

[19]Id. at 62.

[20] Id. at 63-71.

[21] Id. at 291.

[22] Ramiscal, Jr. v. Sandiganbayan, G.R. Nos. 169727-28, August 18, 2006, 499 SCRA 375, 394.

[23] Ramiscal, Jr. v. Sandiganbayan, id.; Fuentes v. Sandiganbayan, G.R. No. 164664, July 20, 2006, 495 SCRA 784, 799.

[24] Sistoza v. Desierto, 437 Phil. 117, 129 (2002); Baylon v. Office of the Ombudsman, 423 Phil. 705, 720 (2001).

[25]Ramiscal, Jr. v. Sandiganbayan, supra note 23; Fuentes v. Sandiganbayan, supra note 23; Sistoza v. Desierto, id.

[26]Ramiscal, Jr. v. Sandiganbayan, supra note 22, at 395; Fuentes v. Sandiganbayan, supra note 23, at 800; Mendoza-Arce v. Office of the Ombudsman (Visayas), 430 Phil. 101, 113 (2002).

[27] Uriarte v. People, G.R. No. 169251, December 20, 2006; Santos v. People, G.R. No. 161877, March 23, 2006, 485 SCRA 185, 194; Cabrera v. Sandiganbayan, G.R. No. 162314-17, October 25, 2004, 441 SCRA 377, 386.

[28] Sistoza v. Desierto, supra note 24, at 130.

[29]Rollo, pp. 368-369.

[30]See Caugma v. People, G.R. No. 167048, April 7, 2006, 486 SCRA 611, 633; Principio v. Barrientos, G.R. No. 167025, December 19, 2005, 478 SCRA 639, 649.

[31] Venus v. Desierto, 358 Phil. 675, 697 (1998).

[32] Saber v. Court of Appeals, G.R. No. 132981, August 31, 2004, 437 SCRA 259, 278.

[33] Mendoza-Arce v. Office of the Ombudsman (Visayas), supra note 26, at 115; Baylon v. Office of the Ombudsman, supra note 24, at 724; Llorente, Jr. v. Sandiganbayan, 350 Phil. 820, 843 (1998).

[34] Supra note 24, at 136.

[35]319 Phil. 92, 98 (1995).

[36] Rollo, p. 86.

[37] Principio v. Barrientos, supra note 30, at 652.

[38] Baylon v. Office of the Ombudsman, supra note 24, at 709; Venus v. Desierto, supra note 31, at 699-700.


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