BRIG. GEN. (RET.) JOSE S. RAMISCAL, JR., PETITIONER, VS. SANDIGANBAYAN (4TH DIVISION) AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. NOS. 169727-28. August 18, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court is a Petition for Certiorari under Rule 65 of the Rules of Court for the nullification of the Resolution[1] of the Sandiganbayan (4th Division) in Criminal Case Nos. 28022 and 28023, as well as its Resolution denying the motion for reconsideration thereof.

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 the alleged anomalies" in the Armed Forces of the Philippines-Philippine Retirement Benefits Systems

(AFP-RSBS). In its Report dated December 23, 1998, the Senate Blue Ribbon Committee outlined, among others, the anomalies in the acquisition of lots in Tanauan, Batangas, Calamba, Laguna and Iloilo City by the AFP-RSBS, and described the modus operandi of the perpetrators as follows:

> The modus operandi in the buying of the lots was to cover the same transactions with two deeds of sale. One deed of sale would be signed only by the seller or sellers (unilateral deed). Another deed of sale would be signed by the seller or seller and the buyer, AFP-RSBS (bilateral deed).
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> The devious gimmicking was uncovered by your Committee which also found out that the buying prices stated in the unilateral deeds did not match those stated in the bilateral deeds. To borrow a word from lawyers, the "consideration" (i.e., prices) in the unilateral deeds of sale and the bilateral deeds of sale did not tally even if they covered the same transaction.
>
> Without exception, the deed(s) signed by the seller(s) only (unilateral deeds) were the one registered with the registrar (sic) of deeds. These Unilateral Deeds of Sale recorded lower consideration paid by the System to the buyer(s) than those stated in the Bilateral Deeds. The motivation was obviously to evade payment of the correct taxes to the government and save money for the seller(s), broker(s) and who knows, probably even for the kickbacks going to certain officials of RSBS, the buyer.
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> x x x x
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> The bilateral deeds were kept in the dark files [of] the System over the years. They were uncovered only recently as a result of your Committee's investigation. Your Committee submits that the reason why the bilateral deeds were kept in the vaults of the System was to justify the huge lot payments made by the System just in case any soldier-member of RSBS would be bold or curious enough to inquire about the matter directly with the System. The curious soldier would then be shown the bilateral deed to impress upon him/her that indeed the System has spent huge amounts for the purchase of the lots in question.

> Until the investigation uncovered the anomaly, the matter of the two sets of documents covering the purchases of the same parcels of land made by the System were, like the Clinton-Lewinsky trysts, kept from the prying eyes officials of the System but so unfair because the public continues to shoulder, in behalf of the RSBS, the payments for the pension and retirement benefits of the soldiers." (Emphasis supplied)

The Initial Report of the Senate Blue Ribbon Committee, which was cited by the Feliciano Commission in its Report to the President of the Philippines, included the following discussion:

> 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, totaled about seven hundred three million pesos (P703 Million). The two 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.[2]

Pursuant to the recommendation of the Senate Blue Ribbon Committee to "prosecute and/or cause the prosecution of Gen. Jose Ramiscal Jr. (Ret), past AFP-RSBS President, who had signed the unregistered deeds of sale covering the acquisition of certain parcels of land," Ombudsman Investigators Ricardo Sullano, Rodil Buenaventura and Anatolio Alejandrino of the Office of the Deputy Ombudsman for the Military conducted a fact-finding investigation. They executed a Joint Affidavit-Complaint,[3] stating that based on their findings, the following may be charged with falsification of public documents and violation of Section 3(e) and (g) of Republic Act (R.A.) No. 3019: petitioner B/Gen. Jose Ramiscal, Jr., former AFP-RSBS president; Atty. Meinrado Enrique Bello, Head of the AFP-RSBS Legal Department in charge of Land Acquisition; Capt. Perfecto Enrique Quilicot, AFP-RSBS Project Officer, Tanauan, Batangas, Land Acquisition; and Notaries Public Alfredo Nasser and Manuel Satuito.

The matter was further looked into by a panel of Ombudsman Investigators, which issued on March 30, 2001 a Joint Resolution[4] finding probable cause to file the corresponding Informations for 148 counts of violation of Article 315, in relation to Article 171, paragraph 4 of the Revised Penal Code, and Section 3 (e) of R.A. No. 3019 against Meinrado Bello and Atty. Manuel Satuito. However, it was likewise recommended that the complaint against petitioner be dismissed, without prejudice to a thorough fact-finding investigation on his liability in light of this Court's ruling in Arias v. Sandiganbayan.[5]

The Ombudsman did not act on this recommendation. Instead, another panel of prosecutors was directed to review the Joint Resolution and conduct a thorough investigation of the case. After conducting clarificatory hearings, the investigating panel issued a Memorandum[6] dated June 15, 2004, recommending to the Ombudsman that petitioner be charged with 148 counts of estafa through falsification of public documents, and one count violation of Section 3(e) of R.A. No. 3019. Petitioner's allegation that he merely relied on the legal staff of the AFP-RSBS when he signed the unregistered bilateral deeds of sale was considered untenable. The panel declared that the deeds were used purposely to facilitate the payment of amounts in excess of that paid to the landowners. Moreover, petitioner, as AFP-RSBS president, could not claim that he was merely involved in top- level policy

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implementation.

The Memorandum also stated that the AFP-RSBS had an Investment Committee tasked to screen project proposals, which was headed by petitioner, Oscar Martinez and other AFP-RSBS officers; these potential investments were then elevated for further screening and approval to the Executive Committee, of which petitioner and Martinez were also members. The panel found that petitioner knew of the unilateral deeds of sale, considering that they were duly registered with the Register of Deeds and titles were issued on the basis thereof. The investigating panel clarified that the ruling of this Court in Arias does not apply because petitioner's participation consisted of signing and approving documents prepared by his subordinates relative to the transactions, from the time of conceptualization until payment by AFP-RSBS.

The panel further found that the culpability of petitioner, Quilicot, Bello and Satuito is evidenced by the fact that they signed documents in manifest bad faith, with full knowledge of the anomalous transactions. The bilateral deeds of absolute sale were prepared by the Legal Department of AFP-RSBS where Bello and Satuito were assigned, later enabling them to amass enormous profits. The investigating panel "confirmed" the observations of the Senate Blue Ribbon Committee as follows:

> We have also noted that in all the 148 transactions of lot acquisition, the Bilateral Deeds of Sale never bore the marks/annotations of the Bureau of Internal Revenue and the Register of Deeds of Tanauan, Batangas, as would always appear, if they were used as basis for transfer of title. These Bilateral Deeds of Sale were attached to the payment vouchers to justify the payment of the much higher price considerations of the acquired lots, yet, no one of the respondents and the concerned AFP-RSBS officials and employees questioned the fact that the Bilateral Deeds of Sale never bore the marks and annotations of the Bureau of Internal Revenue indicative that the proper taxes have been paid nor that of the Register of Deeds of Tanauan, Batangas particularly the assigned Entry Number and the date of said entry as reflected in its Primary Entry Book.
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> From the concerted silence and inaction of the respondents on the glaring irregularities attendant to the transaction, we can draw the conclusion that these officers of the AFP-RSBS who passed upon the Disbursement Voucher and the Status Transaction Forms were aware of the forgeries and the result thereof. All the respondents were acting under a common design and purpose to give a semblance of regularity to the acquisition of the subject one hundred forty eight (148) lots at a price very much higher than what was actually paid to the individual lot owners. The element of conspiracy was therefore present.[7]

The panel opined that the AFP-RSBS funds used to purchase the parcels of land were trust funds and for administration purposes.[8] Moreover, Presidential Decree (P.D.) No. 361, the charter of the AFP-RSBS, intended to create a trust fund for the specific purpose of benefiting the members of the armed forces, hence contributions thereto were compulsory. Since soldiers and military personnel rely on the administration of the AFP-RSBS for their retirement, pension and separation benefits, petitioner and his co-officers occupy positions of trust, with obligations and responsibilities akin to those imposed on directors and officers of a corporation; and considering that the responsible officers are not mere directors but trustees, there is all the more reason to apply the fiduciary relationship principle in this case.

The Ombudsman approved the recommendation of the Panel of Prosecutors without prejudice to the liability of the landowners involved in the transactions.

Petitioner and his co-accused filed their respective Motions for Reconsideration of the investigating panel's June 15, 2004 Memorandum. Petitioner alleged the following:

> - RESPONDENT RAMISCAL'S PARTICIPATION IN THE SUBJECT SALE TRANSACTIONS, WHICH WERE DULY APPROVED BY THE RSBS BOARD, WAS PURELY MINISTERIAL AS PART OF HIS LIMITED FUNCTIONS AS PRESIDENT OF RSBS.

> - THE CONSPIRACY THEORY LINKING RESPONDENT RAMISCAL TO THE CHARGES IS DEVOID OF FACTUAL AND/OR LEGAL BASIS. IN FACT, THE MEMORANDUM FAILED TO SHOW, AS THERE IS NONE (SIC) ANY OVERT ACT OF CONSPIRACY COMMITTED BY RESPONDENT RAMISCAL.
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> - IN ANY EVENT, THE CHARGES OF FALSIFICATION BASED ON THE BILATERAL DEEDS HAVE NO LEGAL LEG TO STAND ON AS AGAINST RESPONDENT RAMISCAL.
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> - MORE THAN THAT, THE CHARGES OF ESTAFA AND VIOLATION OF SECTION 3(E) R.A. 3019 HAVE NO FACTUAL AND/OR LEGAL BASES INASMUCH AS THE AMOUNTS PAID BY AFP-RSBS TO THE VENDORS ARE THOSE THAT WERE INDICATED IN THE BILATERAL DEEDS OF SALE, HENCE, NO UNWARRANTED BENEFITS WERE AFFORDED THE SELLERS NOR DID THE [AFP-RSBS] AND THE GOVERNMENT SUFFER UNDUE INJURY INCIDENT THERETO.[9]

On September 27, 2004, the Panel of Prosecutors issued a Memorandum[10] to the Ombudsman recommending that the motion be denied, which the latter duly approved.

Thereafter, the panel of Prosecutors and the Special Prosecutors had a series of meetings with the Ombudsman, where it was agreed upon that only five Informations for estafa through falsification of public documents and five Informations for violation of Section 3(e) of R.A. No. 3019 would be initially filed with the Sandiganbayan instead of the 148 counts previously recommended by the Ombudsman. This was due to the lack of prosecutors who would handle the voluminous cases.[11]

Of the Informations filed, two were raffled to the Fourth Division of the Sandiganbayan, one of which was docketed as Criminal Case No. 28022 for violation of Section 3(e) of R.A. No. 3019. The accusatory portion reads:

> That on April 23, 1997 and sometime prior or subsequent thereto, in the Province of Batangas and Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused public officers, namely: Brigadier General Jose Servando Ramiscal, Jr., a high-ranking public official, being then the President of the Armed Forces of the Philippines-Retirement, Separation and Benefit System (AFP-RSBS); Atty. Meinrado Enrique A. Bello, Head of Legal Division; Atty. Manuel Se Satuito, Chief of Documentation, Legal Division; Captain Perfecto O. Quilicot, Jr., Project Officer, and certain John and John Does, also of the AFP-RSBS, a government entity, being a government owned or controlled corporation, while in the performance of their official functions and committing the offense in relation to their office, acting with evident bad faith, conspiring, confederating and mutually helping one another, with private individuals John Does and Jane Does, did then and there willfully, unlawfully and criminally cause undue injury to AFP-RSBS and its members by purchasing a parcel of land covering an area of seven thousand five hundred eighty-two square meters (7,582 sq. m.), more or less, situated at Tanauan, Batangas, registered in the name of Marianito V. Plaza, Glicerio V. Plaza and Petra Maunahan and covered by OCT-11835 and TCT 65973 of the Registry of Deeds of Tanauan, Batangas, under a bilateral Deed of Absoute Sale dated April 23, 1997, making it appear therein that the afore-described real property was sold by the said owners and purchased by the AFP-RSBS, represented by accused BGen. Jose Servando Ramiscal, Jr., for the amount of ONE MILLION FIVE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED SIXTY-FOUR PESOS (P1,531,564.00), Philippine Currency, paid under AFP-RSBS General Voucher No. 61789 dated May 28, 1997 with corresponding Philippine National Bank Check No. 72789 dated June 3, 1997, when in truth and in fact, accused knew fully well that the true and real consideration thereof is only TWO HUNDRED TWENTY-SEVEN THOUSAND FOUR HUNDRED SIXTY PESOS (P227,460.00), Philippine Currency, as correctly indicated in a unilateral Deed of Absolute Sale dated April 14, 1997 executed by the said owners, thereby resulting to an overprice of ONE MILLION THREE HUNDRED FOUR THOUSAND ONE HUNDRED FOUR PESOS (P1,304,104.00) to the damage and prejudice of AFP-RSBS and its members.

CONTRARY TO LAW.[12]

The other, for estafa thru falsification of public documents, was docketed as Criminal Case No. 28023. The accusatory portion reads:

That on April 23, 1997 and sometime prior or subsequent thereto, in the Province of Batangas and Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused public officers, namely: Brigadier General Jose Servando Ramiscal, Jr., a high ranking public official, being then the President of the Armed Forces of the Philippines-Retirement Separation and Benefit System (AFP-RSBS); Atty. Meinrado Enrique A. Bello, Head of Legal Division; Atty. Manuel Se Satuito, Chief of Documentation, Legal Division; Captain Perfecto O. Quilicot, Jr., Project Officer, and certain John and Jane Does, also of the AFP-RSBS, a government entity, being a government owned or controlled corporation, while in the performance of their official functions and committing the offense in relation to their office, acting with unfaithfulness and abuse of confidence, conspiring, confederating and mutually helping one another, with private individuals John Does and Jane Does, and with intent to defraud the AFP-RSBS and its members, did then and there willfully, unlawfully and feloniously falsify or cause to be falsified a bilateral Deed of Absolute Sale dated April 23, 1997 covering seven thousand five hundred eighty-two square meters (7,582 sq. m.), more or less, of real property situated at Tanauan, Batangas, registered in the name of Marianito V. Plaza, Glicerio V. Plaza and Petra Maunahan and covered by OCT-11835 and TCT 65973 of the Registry of Deeds of Tanauan, Batangas, by making it appear therein that the aforedescribed real property was sold by the said owners and purchased by the AFP-RSBS, represented by accused BGen. Jose Servando Ramiscal, Jr., for the overpriced amount of ONE MILLION FIVE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED SIXTY-FOUR PESOS (P1,531,564.00), Philippine Currency, from its funds held by the accused AFP-RSBS officials in trust and for administration, when in truth and in fact, accused knew fully well that the true and real consideration thereof is only TWO HUNDRED TWENTY-SEVEN THOUSAND FOUR HUNDRED SIXTY PESOS (P227,460.00), Philippine Currency, as correctly indicated in a unilateral Deed of Absolute Sale dated April 14, 1997 executed by the said owners, and thereafter, to facilitate the payment of the said overpriced amount by the AFP-RSBS, the accused used the said falsified bilateral Deed of Absolute Sale as supporting document, among others, to the AFP-RSBS General Voucher No. 61789 dated May 28, 1997, and relying on said fraudulent acts, AFP-RSBS released the amount of ONE MILLION FIVE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED SIXTY-FOUR PESOS (P1,531,564.00) by way of Philippine National Bank Check No. 72789 dated June 3, 1997, which amount included the overprice of ONE MILLION THREE HUNDRED FOUR THOUSAND ONE HUNDRED FOUR PESOS (P1,304,104.00) and which the accused subsequently misappropriated and converted to their personal use and benefit, to the damage and prejudice of the AFP-RSBS and its members.

CONTRARY TO LAW.[13]

Raffled to the First Division of the anti-graft court were two other cases docketed as Criminal Case No. 28026[14] for violation of Section 3(e) of R.A. 3019, and Criminal Case No. 28027[15] for estafa through falsification of public documents. Criminal Case No. 28028[16] for violation of Section 3(e), R.A. No. 3019 and Criminal Case No. 28029[17] for estafa through falsification of public documents were raffled to the Second Division, while Criminal Case No. 28021[18] for estafa through falsification of public documents was raffled to the Third Division. Criminal Case No. 28024[19] for violation of Section 3(e) of R.A. No. 3019 and Criminal Case No. 28025[20] for estafa through falsification of public documents were raffled to the Fifth Division.

Petitioner filed in the Fourth Division of the anti-graft court (in Criminal Case Nos. 28022 and 28023) an "Urgent Motion for Hearing to Determine Probable Cause and Consolidate All Cases in One Information with Prayer to Defer Issuance of An Arrest Warrant Pending Resolution Hereof."[21] The Sandiganbayan denied the motion on January 17, 2005, holding that the judicial determination of probable cause is not an adversarial proceeding but summary in nature. While it ordered the issuance of warrants of arrest against the accused, it resolved to hold in

abeyance the resolution on the matter of consolidation of all the cases until after it had acquired jurisdiction over their persons.[22] After petitioner posted bail for his provisional release, the Sandiganbayan denied the motion for the consolidation of the cases, considering that the other cases filed were pending in its other divisions.

Petitioner filed a motion for reconsideration of the resolution and sought to have the cases dismissed for lack of probable cause.[23] He alleged that, in finding probable cause, the Sandiganbayan merely relied on the findings of the Ombudsman and did not take into account the other affidavits on record. The Sandiganbayan again denied the motion on February 22, 2005.[24]

Undaunted, petitioner filed a Motion to Quash[25] in Criminal Cases Nos. 28022 and 28023 on the following grounds:

> - This Court has no jurisdiction over the offenses charged in both Informations;
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> - In Criminal Case No. 28023 (estafa through falsification), the facts charged being an essential part of the continuing crime of Estafa separately charged in Criminal Cases Nos. 28021, 28025, 28027 and 28029, pending in the 3rd, 1st, 5th and 2nd divisions, respectively, only one Information must be filed for all these cases including those covered by the OSP memorandum dated June 15, 2004; and,
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> - In Criminal Case No. 20822 (violation of RA No. 3019), the said case is abated by Criminal Case No. 20823 (Estafa through falsification) because the very facts alleged in the former are also the very facts alleged in the latter.[26]

On June 2, 2005, the Sandiganbayan resolved to deny the motion, holding that contrary to petitioner's claim, it had jurisdiction over the crimes charged.[27] Petitioner filed a motion for reconsideration which was also denied on August 17, 2005.[28] Petitioner then posted bail for his provisional liberty.

When arraigned on September 1, 2005, petitioner refused to enter a plea, prompting the anti-graft court to enter a plea of not guilty in both cases.[29]

On October 7, 2005, petitioner filed the instant petition for certiorari under Rule 65, praying that the said Resolution be nullified on the following grounds:

> - THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN SUSTAINING THE OMBUDSMAN'S FINDING OF PROBABLE CAUSE FOR THE COMMISSION OF ONE HUNDRED FORTY EIGHT (148) COUNTS OF ESTAFA THRU FALSIFICATION OF PUBLIC DOCUMENT AND ANOTHER ONE HUNDRED FORTY EIGHT (148) COUNTS OF VIOLATION OF REPUBLIC ACT NO. 3019 AND IN NOT DISMISSING THE INFORMATIONS.
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> - THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN NOT QUASHING THE INFORMATIONS AND IN NOT DISMISSING THE CASES NOTWITHSTANDING THAT IT HAD NO JURISDICTION OVER THE OFFENSE CHARGED IN THE INFORMATION.
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> - THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN NOT QUASHING THE INFORMATION IN CRIMINAL CASE NO. 28023 (ESTAFA THROUGH FALSIFICATION), NOTWITHSTANDING THAT THE FACTS CHARGED THEREIN WERE AN ESSENTIAL PART OF ONE CONTINUING CRIME OF ESTAFA SEPARATELY CHARGED IN CRIMINAL CASES NOS. 28021, 28025, 28027 AND 28029, PENDING IN THE THIRD, FIRST, FIFTH AND SECOND DIVISIONS OF THE SANDIGANBAYAN, RESPECTIVELY, CONSIDERING THAT BASED ON THE DOCUMENTS ADDUCED BY THE PEOPLE AND FOR OBVIOUS WANT OF RELIABLE EVIDENCE, ONLY ONE INFORMATION FOR ESTAFA SHOULD

HAVE BEEN FILED FOR ALL THESE CASES INCLUDING THE REMAINING ONE HUNDRED FORTY THREE (143) COUNTS COVERED BY THE OSP MEMORANDUM DATED JUNE 15, 2004, ANNEX T;

- THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN NOT QUASHING THE INFORMATION IN CRIMINAL CASE NO. 20822 (VIOLATION OF RA NO. 3019) NOTWITHSTANDING THAT THE SAID CASE WAS ABATED BY CRIMINAL CASE NO. 20823 (ESTAFA THROUGH FALSIFICATION) BECAUSE THE VERY FACTS ALLEGED IN THE FORMER WERE ALSO THE VERY FACTS ALLEGED IN THE LATTER, THUS VIOLATING THE RULE ON DOUBLE JEOPARDY.[30]

Petitioner insists that, in finding probable cause against him for estafa through falsification of public document and violation of Section 3(e) of R.A. 3019, the Sandiganbayan committed grave abuse of discretion amounting to lack of jurisdiction, as it relied solely on the Memorandum of the investigation panel of Ombudsman Prosecutors. He posits that it behooved the anti-graft court to review the Ombudsman's findings and scrutinize the evidence, the affidavits on record, including the transcript of stenographic notes. As gleaned from the Joint Resolution dated March 30, 2001, the initial finding of the Ombudsman Prosecutors was that there was no probable cause to charge him for the acts complained of, in the light of the Court's ruling in the Arias case. He asserts that there was no evidence of bad faith on his part relative to the deeds of sale subject of the Informations filed against him. He insists that based on the Joint Resolution, and even the report of the Senate Blue Ribbon Committee, he had no part whatsoever in the commission of the crimes charged. The disparity of the prices of the properties in the bilateral deeds of sale, vis-à-vis the unilateral deeds of sale, do not support the finding of probable cause against him made by the investigating panel of Ombudsman Prosecutors. Petitioner asserts that there is no evidence on record that he conspired with the other accused in the commission of the crimes charged.

Petitioner further posits that the Sandiganbayan likewise committed grave abuse of its discretion when it found probable cause for the issuance of a warrant of arrest against him instead of setting the case for hearing. He insists that the anti-graft court failed to consider the other evidence on record and erred in relying solely on the evaluation and resolution of the investigating panel of Prosecutors; the fact that he posted bail bonds for his provisional liberty does not estop him from raising the issue in his Motion to Quash.

Petitioner avers that the Sandiganbayan has no jurisdiction over the crimes charged as provided in Section 4 of R.A. 8249. He insists that the AFP-RSBS is not a government-owned or controlled corporation and that he does not fall under Salary Grade 27 as required in Section 4 of the law, inasmuch as his position as AFP-RSBS President is not even included under the Compensation and Classification Act of 1989. Petitioner cites the ruling of this Court in Inding v. Sandiganbayan[31] to support his claim.

Petitioner asserts that the charges filed against him constitute only one crime of estafa through falsification of public document, in the nature of delito continuado, or a series of repetition of the same acts arising from one and the same criminal intent. He maintains that while there are 148 bilateral deeds of sale signed by him and 145 unilateral deeds of sale signed by the sellers, it cannot thereby be concluded that he is criminally liable for each deed executed. The number of transactions purportedly entered into is not a gauge in ascertaining criminal intent for the several transactions. The best test should be the presence of clear, convincing and positive evidence showing distinct criminal intent for each sales transaction, which in any event, is wanting in this case. Petitioner further alleges that for multiple transactions to be considered as separate and distinct crimes, there must be a series of acts with individual sellers such as (a) negotiations; (b) discussion of the terms of the sale; (c) finalizing the terms thereof; and (d) instruction to prepare payment and (e) actual payment. He points out that there is no evidence that he and the other accused involved ever met with any of the sellers. While he admits the possibility that he could have signed the bilateral deeds of sale in one sitting, he insists that these documents were notarized

separately; there is even no evidence on record that the sellers of the property transacted separately with him. He points out that the corporate officers of AFP-RSBS, especially its President, do not personally deal with any of the sellers. The bare fact that he executed the bilateral deeds of sale and that the project was approved by the higher level of the management, cannot lead to the conclusion that he took part in the implementation of the transactions.

Petitioner maintains that the Sandiganbayan committed grave abuse of discretion amounting to lack of or excess of jurisdiction in filing the charges against him. He insists that the delictual acts contained in the two Informations, Criminal Case No. 28022 (for violation of R.A. 3019) and Criminal Case No. 28023 (for estafa through falsification of public document), are one and the same; to charge him under Section 3(e) of R.A. 3019 despite his indictment for estafa is to duplicate the very same charge under another name, which under the principle of double jeopardy, is proscribed. He further argues that while it is true that, in Section 3(e) of R.A. 3019, the charge against him for said crime is "in addition" to his criminal liability under the Revised Penal Code, the phrase connotes cumulativeness and simultaneity of liability.

Petitioner points out that the panel of Ombudsman Prosecutors recommended the filing of only one count of violation of Section 3(e) of R.A. No. 3019, but the Ombudsman filed five (5) counts thereof.

The issues are the following: (1) whether the Ombudsman committed grave abuse of discretion amounting to excess or lack of jurisdiction in finding probable cause against petitioner for estafa through falsification of public document and for violation of Section 3(e) of R.A. No. 3019; (2) whether the Sandiganbayan committed grave abuse of discretion amounting to excess of jurisdiction in finding probable cause against petitioner for the issuance of warrants for petitioner's arrest without first conducting a hearing; (3) whether petitioner may be charged and prosecuted for five (5) counts of estafa thru falsification of public documents; and (4) whether petitioner may be prosecuted for both estafa through falsification of a public document and violation of Section 3(e) of R.A. No. 3019 without violating his right against double jeopardy.

The petition has no merit.

On the first issue, the rule is that as far as crimes cognizable by the Sandiganbayan are concerned, the determination of probable cause during the preliminary investigation, or reinvestigation for that matter, 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. Whether or not the Ombudsman has correctly discharged his function, i.e., whether or not he has made a correct assessment of the evidence of probable cause in a case, is a matter that the trial court may not be compelled to pass upon.

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,[32] 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.[33] Indeed, if the Ombudsman does not take essential facts into consideration in the determination of probable cause, there is abuse of discretion.[34] As we ruled in Mendoza-Arce v. Office of the Ombudsman (Visayas),[35] a writ of certiorari may issue 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 which is sub judice;

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

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- 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.[36]

In this case, however, petitioner failed to establish that the Ombudsman committed grave abuse of discretion amounting to excess or lack of jurisdiction in finding probable cause to charge him with violation of Section 3(e) of R.A. No. 3019 and for estafa through falsification of a public document.

We are not convinced by petitioner's claim that there is no probable cause on record for the filing of the Information against him. It bears stressing that probable cause need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt and definitely not on evidence establishing absolute certainty of guilt. It implies probability of guilt and requires more than bare suspicion but less than evidence which would justify conviction.[37] The Ombudsman's finding of probable cause against petitioner is buttressed by his encompassing and comprehensive resolution, independent of the findings of the Senate Committees, as well as the documents appended to the Informations. Petitioner's bare claim to the contrary cannot prevail over such positive findings of the Ombudsman. In fine, the Ombudsman's finding of probable cause prevails over petitioner's bare allegations of grave abuse of discretion; that he was not involved in the step-by-step consummation of the anomalous transaction; and that as President he was involved only in the top level policy formulation and implementation.

It is true that in the Joint Resolution dated March 30, 2001, the Panel of Ombudsman Prosecutors found no sufficient evidence that petitioner acted in bad faith and that he merely relied on the recommendations of his subordinates. However, after a thorough investigation, another panel of Ombudsman Prosecutors found that, indeed, petitioner not merely relied on the recommendations of his subordinates but likewise perpetrated overt acts, which, along with those of the other accused, resulted in the consummation of the crimes charged. Thus, as maintained by the respondents in their Comment on the petition, petitioner signed documents, indicating his evident bad faith on the highly anomalous transactions; petitioner was aware of the forgeries and anomalies in the buying of the parcels of land, yet gave his conformity thereto, causing grave injury to its members and to the public in general. Thus, it was also found that petitioner, together with his cohorts, conspired to perpetuate clear fraud on the government and the AFP-RSBS members by giving a semblance of regularity to real estate acquisitions at bloated prices.

The fact alone that petitioner was aware, in each transaction, that the two (2) deeds of sale contain contradictory costs for every acquisition, and that he failed to rectify the same eloquently speak of his participation in the criminal malevolence. He was a member of the Investment Committee of the AFP-RSBS, which screened potential investments, that were thereafter subjected to further screening and approval by the Executive Committee of which he was also a member; hence, petitioner had full knowledge of the transactions, from the time they were conceptualized until the properties were paid for. The records show that the Tanauan, Batangas properties alone were overpriced by about 600%. Thus, petitioner consented to the crimes charged by the following overt acts:

(1) Petitioner and his co-accused prepared or caused to be prepared two (2) deeds of sale covering the same

transactions: a deed of sale with the seller or sellers as the sole signatory or signatories therein (unilateral deeds); and a deed of sale with the seller or sellers and the buyer, AFP-RSBS, represented by petitioner (bilateral deeds);

(2) The considerations in the unilateral deeds of sale and the bilateral deeds of sale did not tally, notwithstanding the fact that they covered the same subject matter and transaction, with the bilateral deeds of sale bearing a bloated price; and,

(3) Of these two deeds, the unilateral deeds of sale bore the correct value given to the seller(s) as evinced, among others, by the fact that the same were the ones registered with the Registry of Deeds.

The bilateral deeds of sale could not possibly be the basis of the transfer of the properties because the supporting bilateral deeds carried dates much later than the date of issue of the titles, which were likewise not filed with the Bureau of Internal Revenue (BIR) and the Registry of Deeds of Tanauan, Batangas. The Court cannot supplant the findings of the Ombudsman that the unilateral deeds of sale were prepared by the Legal Department of AFP-RSBS, in as much as both the unilateral and bilateral deeds of sale have exactly the same print and form. The residence certificate number of petitioner which is indicated in the bilateral deeds of sale is likewise printed in the unilateral deeds. Petitioner's fraudulent intent is further proven by the fact that the Status of Transaction Form (STF), where the subject lots were endorsed for payment, bore his signature. The unilateral deeds of sale resulted in the issuance of the titles, which were also the supporting documents enumerated in the STF. In many instances, the bilateral deeds of sale carry dates much later than the dates their corresponding titles were issued.

Petitioner was likewise unable to establish his claim that the Sandiganbayan committed grave abuse of discretion in finding probable cause for the issuance of a warrant for his arrest. His bare claim that the Sandiganbayan merely relied on the Memoranda of the Panel of Prosecutors to the Ombudsman and did not scrutinize the evidence appended thereto is not supported by the records. In the first place, the Sandiganbayan is presumed to have performed its duty as provided in the Revised Rules of Criminal Procedure, which can likewise be gleaned from its February 22, 2005 Resolution:

> [1] While accused Ramiscal is correct in stating that this Court, in determining the existence of probable cause for the issuance of the warrant of arrest against the accused, had evaluated the resolution of the Office of the Ombudsman and its supporting documents, he is, however, wrong in presuming that such process failed to consider the evidence the accused adduced during preliminary investigation. It should be noted that the supporting documents submitted by the Office of the Ombudsman to this Court included, among others, the counter-affidavits submitted by the accused at the preliminary investigation. Parenthetically, there is no need, and the rules do not require this Court, to enumerate in detail what were the supporting documents it considered in determining the existence of probable cause for the issuance of the warrant of arrest because the same are matters of record that the parties can easily verify.[38]

We agree with the Sandiganbayan's ruling that the Revised Rules of Criminal Procedure do not require cases to be set for hearing to determine probable cause for the issuance of a warrant for the arrest of the accused before any warrant may be issued. Section 6, Rule 112 mandates the judge to personally evaluate the resolution of the Prosecutor (in this case, the Ombudsman) and its supporting evidence, and if he/she finds probable cause, a warrant of arrest or commitment order may be issued within 10 days from the filing of the complaint or Information; in case the Judge doubts the existence of probable cause, the prosecutor may be ordered to present additional evidence within five (5) days from notice. The provision reads in full:

> SEC. 6. When warrant of arrest may issue. – (a) By the Regional Trial Court. – Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if

> the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint of information.[39]

The periods provided in the Revised Rules of Criminal Procedure are mandatory, and as such, the judge must determine the presence or absence of probable cause within such periods. The Sandiganbayan's determination of probable cause is made ex parte and is summary in nature, not adversarial. The Judge should not be stymied and distracted from his determination of probable cause by needless motions for determination of probable cause filed by the accused.

We hold that petitioner likewise failed to establish his claim that the Sandiganbayan committed a grave abuse of authority in denying his motion to quash the Information.

First. The anti-graft court correctly ruled that it has jurisdiction over the crimes charged.

In People v. Sandiganbayan[40] and Ramiscal, Jr. v. Sandiganbayan,[41] this Court ruled that the AFP-RSBS is a government-owned and controlled corporation, and that its funds are in the nature of public funds. Under Section 4(a)(1)(g) of R.A. No. 8249, the Sandiganbayan has exclusive jurisdiction over offenses committed by presidents, directors, trustees or managers of government owned or controlled corporations.[42] Under Section 4(b) of R.A. No. 8249, the Sandiganbayan has exclusive jurisdiction over offenses committed by public officers and employees in relation to their office, whether simple or complexed with other crimes.[43]

As gleaned from the material averments of the Information in Criminal Case No. 28023, the charge against petitioner is estafa through falsification of public document in the performance of his duties and in relation to his position as president of the AFP-RSBS.

Second. On petitioner's claim that he should be charged with only one count of estafa through falsification of public document instead of five (5) charges, respondents counter that the criminal acts petitioner and his co-accused are not continuous crimes. Respondents argue that a continuous crime may exist only if there is only a single criminal intent and the commission of diverse acts is merely a partial execution of said single criminal resolution. In the instant cases, the requirement of singularity of criminal intent does not exist because there are as many criminal intents as there are anomalous transactions, causing grave damage to the government at each instance. There was no need for the accused to perform another or other delictual acts to consummate the felony. Respondents maintain that petitioner was motivated by separate intents as he signed each document, all of which are criminal in character; hence, it is but proper that corresponding Informations be filed against him for each and every act of falsification committed.

The Sandiganbayan, for its part, sustained the contention of respondents and ruled that the determination of (a) the charge/s and the person/s against whom the charge is filed are addressed to the sound discretion of the Prosecutors based on the facts before them; and (b) the crimes committed by petitioner are separate, and not a single crime consisting of series of acts arising from a single criminal resolution. Thus:

> In the first place, the question of the number of criminal charges that must be instituted against a criminal respondent (whether one count or multiple counts of the same offense) is one addressed to the sound discretion of the prosecution service. It is enough, as this Court has already ruled, that the informations filed in these cases are based on facts establishing probable cause for the offenses charged. This Court will not compel the Office of the Ombudsman to file only one information for Estafa through Falsification of Public Documents when its preliminary investigation established the commission of several counts thereof as such action on the

> part of this Court would constitute undue interference with the Office of the Ombudsman's control over the prosecution of these cases.
>
> In the second place, this Court is not persuaded that what is involved in these cases is a continuous crime, that is to say, a single crime consisting of a series of acts arising from a single criminal resolution or intent not susceptible of division, with each act in that series being merely the partial execution of a single delict. On the contrary, the Court is of the view that what is involved herein are several completed and distinct purported criminal acts which should be prosecuted as multiple counts of the same type of offense. Thus, as correctly perceived by the prosecution, there are as many alleged offenses as there are alleged anomalous transactions involved in these cases.[44]

When required to comment on the motion of petitioner and his co- accused for a consolidation of the charges filed against them before the Sandiganbayan, the Special Prosecutor objected thereto, insisting that there were as many crimes committed by the accused as there were sales contracts forged by them.

Indeed, the determination of what charges to file and who are to be charged are matters addressed to the discretion of the Ombudsman, including the matter of whether the crime perpetrated by petitioner and his co-accused under the Informations pending in the Divisions of the Sandiganbayan constitute delito continuado or classified as concurso de delitos; or involve separate crimes under the category of concurso real delito involve factual issues.[45] Such factual issues should be resolved after trial on the merits, and not in this case. The Court is being tasked to determine whether the several sales contracts executed by petitioner and his co-accused were set afoot or triggered by a single impulse and operated by an uninterrupted force however long a time it may occupy, which, however, is a matter best left to the determination of the trial court, in this case, the Sandiganbayan.[46]

Thus, the present petition for certiorari under Rule 65 of the Revised Rules of Court is hardly the appropriate remedy and forum for petitioner to ventilate the issues he has raised, as only jurisdictional issues can be resolved therein. As eloquently expressed by Justice Florenz D. Regalado, speaking for this Court in Iligan v. Court of Appeals:[47]

> If, as petitioners seem to apprehend, the adverse actions of two lower courts could create a scenario of multiple prosecutions for the same offense or, more candidly expressed, of double jeopardy, then this is neither the procedural stage nor the proper occasion to pass upon that possibility. For, squarely imputable to petitioners is the evident lack of factual basis for and a grossly defective presentation of that issue for this Court to rule thereon in this proceeding and at this time.[48]

It must be stressed that our disposition of the matters in the present recourse will not foreclose petitioner's right to ventilate the same in the Sandiganbayan, for as declared in Iligan:

> However, this observation would not foreclose relief to petitioners if at the trial of this case the evidence presented and the developments therein suffice to establish the supervening fact that indeed there could possibly be a breach of the rule of double jeopardy. Under Section 8 of Rule 117, they can still hereafter raise that defense of non bis in idem, provided that they can lay the evidentiary bases therefor and refute from the standpoint of substantive penal law what was earlier said on the nature and the non-identity of the several crimes of Estafa involved which, to repeat, we pronounced purely on the bases of existing records sans the benefit of any evidentiary fact since none has been adduced.[49]

On the last issue, we agree with the contention of respondents that the crimes committed by public officers and employees in relation to their offices defined and penalized under the Anti-Graft Law do not exclude prosecution for felonies defined and penalized under the Revised Penal Code and vice versa. Section 3 of R.A. No. 3019 reads:

> Section 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: x x x (Emphasis supplied)

It is clear then that one may be charged of violation of R.A. No. 3019 in addition to a felony under the Revised Penal Code for the same delictual act, that is, either concurrently or subsequent to being charged with a felony under the Code.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED. Costs against the petitioner.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez and Chico-Nazario, JJ., concur.

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[1] Penned by Associate Justice Gregory S. Ong with Associate Justices Jose R. Hernandez and Rodolfo A. Ponferrada concurring; rollo, pp. 222-223.

[2] See Ramiscal, Jr. v. Sandiganbayan, G.R. Nos. 140576-99, December 13, 2004, 446 SCRA 166, 190.

[3] Rollo, pp. 60-61.

[4] Id. at 84-109.

[5] G.R. No. 81563, December 19, 1989, 180 SCRA 309.

[6] Rollo, pp. 110-148.

[7] Id. at 139-140.

[8] In its Final Report No. 51, the Senate Blue Ribbon Committee made the following findings on the nature of the AFP-RSBS funds:

By pouring in the System's money in highly speculative investments, the RSBS managers, including Ramiscal, violated the spirit, if not the letter, of its charter. By its very nature, the System's funds are trust funds. Therefore, it was incumbent upon Ramiscal and other responsible officials of the RSBS to exercise utmost prudence and use the System's funds only in a conservative, secure manner in order to protect the soldier's money. (Emphasis supplied)

[9] Rollo, p. 151.

[10] Id at 150-161.

[11] Id. at 163.

[12] Id. at 165-167.

[13] Id. at 169-171.

[14] Id. at 173-176.

[15] Id. at 177-180.

[16] Id. at 181-184.

[17] Id. at 185-188.

[18] Id. at 193-196.

[19] Id. at 197-200.

[20] Id. at 201-204.

[21] Id. at 205-220.

[22] Id. at 222-223.

[23] Id. at 224-232.

[24] Id. at 233-235.

[25] Id. at 236-249.

[26] Id. at 236-237.

[27] Id. at 250-260.

[28] Id. at 268-273.

[29] Id. at 274.

[30] Id. at 23.

[31] G.R. No. 143047, July 14, 2004, 434 SCRA 388.

[32] Cabahug v. People, 426 Phil. 490, 500 (2002).

[33] Garcia-Rueda v. Pascasio, 344 Phil. 323, 329 (1997).

[34] Sistoza v. Desierto, 437 Phil. 117, 129 (2002).

[35] 430 Phil. 101 (2002).

[36] Id. at 113.

[37] Drilon v. Court of Appeals, 327 Phil. 922, 923 (1996), citing Webb v. De Leon, G.R. No. 121234, August 23, 1995, 247 SCRA 652.

[38] Rollo, p. 233.

[39] In Administrative Matter No. 05-8-26-SC dated August 26, 2005, which took effect October 3, 2005, the rule reads:

> SEC. 5. When warrant of arrest may issue.—
>
> (a) By the Regional Trial Court. — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order when the complaint or information was filed pursuant to section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.
>
> Rule 1, Section 2, of the Revised Internal Rules of the Sandiganbayan provides:
>
> The Rules of Court, resolutions, circulars, and other issuances promulgated by the Supreme Court relating to or affecting the Regional Trial Courts and the Court of Appeals, insofar as applicable, shall govern all actions and proceedings filed with the Sandiganbayan.

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[40] G.R. No. 141951, August 12, 2003, 408 SCRA 672.

[41] G.R. Nos. 140576-99, December 13, 2004, 446 SCRA 166.

[42] The provision reads in full:

SEC. 4. Jurisdiction.– The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

> - Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

x x x x

> (g) Presidents, directors or trustees, or managers of government-owned or-controlled corporations, state universities or educational institutions or foundations.

[43] The pertinent portion reads "[o]ther offenses or felonies whether simple or complexed with other crime committed by the public officials and employees mentioned in subsection (a) of this section in relation to their office."

[44] Rollo, p. 256.

[45] In People v. Zapata and Bondoc, 88 Phil. 688, 691 (1951), the Court held that "[f]or a delito continuado to exist, there should be plurality of acts committed separately during a period of time or even as to same occasions; unity of penal provisions infringed upon or violated; and unity of criminal intent or purpose, which means that two or more violations of the same penal provisions are united in one and the same intent leading to the perpetration of the same criminal purpose or aim."

[46] See Mallari v. People, No. L-58886, December 13, 1998, 168 SCRA 422, 429.

[47] G.R. No. 110617, December 29, 1994, 239 SCRA 575.

[48] Id. at 590.

[49] Id.

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