

EDWARD THOMAS F. JOSON, PETITIONER, V. THE OFFICE OF THE OMBUDSMAN, AURELIO M. UMALI, GIOVANNI AGTAY, ALEJANDRO R. ABESAMIS, EDILBERTO M. PANCHO, AND JAIME P. PALLANAN, RESPONDE...

G.R. Nos. 197433 and 197435. August 09, 2017

Ponente: LEONEN, J.

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LEONEN, J.:

The suspension of rules of procedure may only be considered under a very narrow band of compelling reasons and always in consideration that due process of law must be accorded to both parties—the prosecution and the accused.

This is a Petition for Certiorari[1] under Rule 65 of the 1997 Rules of Civil Procedure, assailing the December 4, 2009 Joint Resolution[2] and May 9, 2011 Order[3] of the Office of the Ombudsman in OMB-C-C-08-0343-H and OMB-C-A-08-0383-H. The Office of the Ombudsman dismissed petitioner Edward Thomas F. Joson's (Joson) administrative and criminal complaints against Aurelio M. Umali (Umali), Giovanni G. Agtay (Agtay), Alejandro R. Abesamis (Abesamis), Edilberto M. Pancho (Pancho), and Jaime P. Pallanan (Pallanan) (collectively, private respondents) for graft and corruption, malversation, fraud, and grave misconduct, among others.[4]

This case arose from the alleged payment to a caterer that did not provide meals for an event and the consequent misappropriation of the amount paid.

In his Affidavit-Complaint[5] (Complaint) dated August 6, 2008, petitioner Joson charged private respondents before the Office of the Ombudsman with the following:

2.a GROSS VIOLATION OF [REPUBLIC ACT NO.] 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT), particularly Section 3 thereof; and/or

2.b VIOLATION OF ART. 213 OF THE REVISED PENAL CODE; and/or

2.c VIOLATION OF ART. 215 OF THE REVISED PENAL CODE; and/or

2.d VIOLATION OF ART. 216 OF THE REVISED PENAL CODE; and/or

2.e VIOLATION OF ART. 217 OF THE REVISED PENAL CODE; and/or

2.f VIOLATION OF [REPUBLIC] ACT NO. 6713; and/or

2.g GRAVE ABUSE OF DISCRETION, MISCONDUCT IN OFFICE, AND IRREGULARITY IN THE PERFORMANCE OF DU[T]IES, and/or

2.h COMMISSION OF A CRIME INVOLVING MORAL T[U]RPITUDE, and/or

2.i SUCH OTHER CRIMES OR ADMINISTRATIVE OFFENSES AS THIS HONORABLE OFFICE MAY DEEM APPROPRIATE IN THE PREMISES.[6]

The criminal case was docketed as OMB-C-C-08-0343-H, while the administrative case was docketed as OMB-C-A-08-0383-H.[7]

At the time of filing the Complaint, Joson was then Nueva Ecija's Vice Governor and its Sangguniang Panlalawigan's Presiding Officer, while Umali was Nueva Ecija's Governor. Agtay, Abesamis, and Pancho served as Nueva Ecija's Provincial Trade and Industry Officer, OIC-Provincial Administrator, and Treasurer, respectively. Pallanan was the former Provincial Administrator of Nueva Ecija.[8]

Joson alleged that on September 21, 2006, a Memorandum of Agreement was executed by the Provincial Government of Nueva Ecija and Ryan Angelo Sweets and Catering Services (Ryan Angelo Catering), which was owned by Cleopatra Gervacio (Cleopatra). Under this Agreement, Ryan Angelo Catering's services for two (2) years "shall include regular serving of meals for breakfast, lunch, dinner, and snacks at the canteen and the convention center, special meals and catering services shall be provided as may be required." [9]

Joson claimed that another caterer was hired during Umali's oath-taking ceremony on July 4, 2007. However, Agtay asked Ryan Angelo Catering, through Cleopatra, for a receipt of P1,272,000.00 under the name of the Provincial Government of Nueva Ecija, Joson claimed that Agtay made this request to make it appear that Ryan Angelo Catering actually catered and to justify the withdrawal of P1,344,000.00 from the treasury of Nueva Ecija's provincial government.[10]

According to Joson, the misrepresentations committed by Agtay caused the issuance of a P1,272,000.00 check to Ryan Angelo Catering. The check was received by Cleopatra's daughter-in-law, Jocelyn R. Gervacio (Jocelyn).[11]

Joson cited Cleopatra's Sworn Statement,[12] where she stated that after the P1,272,000.00 check was cleared, Jocelyn gave the proceeds of the check to Agtay.[13] Joson stated that Jocelyn deposited P734,000.00 in Agtay's account with Equitable-PCI Bank, Cabanatuan City branch and delivered the remaining amount to him personally. In depositing the P734,000.00, Jocelyn used a Banco San Juan check under the account name of Cleopatra.[14]

Joson contended that the fraudulent transaction committed by Agtay "was consummated with the knowledge and participation of, and in conspiracy with"[15] Umali, Pallanan, and Pancho, through the following acts:

13.a Respondent Gov. Aurelio M. Umali made it appear that he ordered meals from Ryan Angelo Catering as shown by the Purchase Order. . .

13.b An Obligation Request was issued and signed by respondent Jaime Pallanan for the meals eaten during the oath-taking ceremonies of respondent Gov. Aurelio M. Umali certifying that the supporting documents thereof are valid, proper and legal . . .

13.c A Resolution was rendered by the Bids and Awards Committee fraudulently stating that "the pronouncement of meals was directly procured from Ryan Angelo Sweets and Catering Services" and recommended the use of Direct Contracting Method for the procurement of meals worth P1,244,000.00 . . .

13.d A Disbursement Voucher was issued and signed by the following officials of the provincial government of Nueva Ecija: (a) respondent Edilberto Pancho who certified that "Funds (are) available"; and (b) respondent Governor Aurelio M. Umali who signed under the caption "Approved for Payment". This disbursement voucher was issued in favor of Ryan Angelo Catering as "payment of meals during the Oath Taking Ceremony for the use of Governor's Office ". . .

13.e DBP Check No. 23570768-69 in the amount of ONE MILLION TWO HUNDRED SEVENTY TWO

THOUSAND (P1,272,000.00) was issued by respondents Jaime P. Pallanan and Edilberto M. Pancho in favor of Ryan Angelo Catering . . .[16] (Emphasis in the original)

Copies of the Purchase Order,[17] the Obligation Request,[18] the Resolution[19] of the Bids and Awards Committee, and the Disbursement Voucher[20] were attached to Joson's Complaint.

Joson alleged that Abesamis persuaded Cleopatra to agree with the Memorandum of Agreement's early termination in exchange for the immediate payment of the provincial government's outstanding obligations with Ryan Angelo Catering. Despite this condition, the provincial government failed to pay Ryan Angelo Catering.[21]

Joson maintained that the acts of Agtay and Abesamis and the documents that Umali, Pallanan, and Pancho issued in their official capacities facilitated the illegal disbursement of public funds.[22]

Joson also mentioned that the number of packed lunches that was allegedly delivered to the Nueva Ecija Convention Center was about 7,000 units more than the number of persons that the center could accommodate.[23]

Finally, he alleged that the disbursement voucher did not have the provincial accountant's signature, which would have certified that an allotment from the public funds was made and that the documents were complete.[24]

Pallanan, Umali, Agtay, and Abesamis filed their respective counter-affidavits while Pancho failed to submit his counter-affidavit despite receiving notice.[25]

In his Counter-Affidavit dated September 11, 2008, Pallanan stated that the receipt under the name of Nueva Ecija's provincial government was evidence that Ryan Angelo Catering supplied the food for Umali's oath-taking ceremony. Likewise, he pointed out that neither Joson nor Cleopatra had personal knowledge regarding the deposit of the proceeds of the alleged check to Agtay's account.[26]

In his Counter-Affidavit[27] dated October 8, 2008, Umali argued that his signing of the Purchase Order and related papers was justified considering that "the documents had been certified to be in order and no discrepancy was apparent therein, and [he] had no reason to doubt the validity of the bidding process and subsequent disbursement of funds." [28]

In his Counter-Affidavit[29] dated October 16, 2008, Agtay denied the allegations of Joson against him. He countered that he was not yet an employee of the Provincial Government of Nueva Ecija when it secured the services of Ryan Angelo Catering.[30] He attached to his Counter-Affidavit his appointment paper,[31] showing that it was only on August 1, 2007 that he assumed office as Provincial Trade and Industry Officer. Agtay also denied receiving any amount from Jocelyn or maintaining a bank account with Equitable-PCI Bank. Lastly, he noted that Cleopatra's sworn statement did not state the amount allegedly deposited nor did it mention the Banco San Juan check.[32]

In his Counter-Affidavit[33] dated October 20, 2008, Abesamis denied having knowledge of the Memorandum of Agreement between the Provincial Government of Nueva Ecija and Ryan Angelo Catering. However, he knew that Ryan Angelo Catering operated the canteen inside the new provincial capitol compound. Abesamis also noted that the copy of the Memorandum of Agreement attached to Joson's Complaint contained Cleopatra's signature only and was not notarized.[34]

Abesamis further averred that after being appointed as provincial administrator in February 2008, Cleopatra asked for his help regarding her catering's collectibles from the provincial government. Upon inquiry with the accounting department, he found out that they had already told Cleopatra to submit the required documents. He advised her to complete the requirements as requested by the accounting department.[35]

Abesamis claimed that he did not persuade Cleopatra to prematurely terminate the Memorandum of Agreement. He narrated that due to Ryan Angelo Catering's non-payment of electricity, the power supply of the canteen was cut off. Cleopatra told him that she could not open the canteen since she could not afford to pay the bills. She also informed him to get another canteen operator as she no longer wanted to operate it. The Provincial General Services Office told Abesamis that it could negotiate the situation with the power supplier. However, Abesamis realized that if the result of the negotiation were favorable to the power supplier, the existence of the Memorandum of Agreement would present a legal issue. Abesamis discussed the situation with Cleopatra, who stated that she was amenable to prematurely terminate the Memorandum of Agreement. She also requested Abesamis to prepare the termination notice, which he did. Cleopatra presented the notice to her lawyer and gave the signed copy back to Abesamis.[36]

Abesamis contended that prior to his appointment on October 19, 2007, he had neither known nor met Agtay. For the charges imputed against him, Abesamis charged Joson with malicious prosecution and perjury.[37]

Joson filed his Reply-Affidavits dated October 24, 2008[38] and November 11, 2008,[39] where he denied the allegations of Umali, Pallanan, and Abesamis. He noted that there was no denial from Umali or Pallanan that Ryan Angelo Catering did not supply the packed food for the event. According to Joson, Pallanan blamed Agtay alone, while Umali shifted the blame to his subordinates. There was also no denial from Umali, Pallanan, Agtay, or Abesamis that the number of food provided was not proportional to the maximum capacity of the oath-taking ceremony venue. Furthermore, Umali and Pallanan's signing of the Purchase Order, Obligation Request, and Disbursement Voucher showed that they participated and prepared the documents.[40]

On December 4, 2009, Graft Investigation and Prosecution Officer I Francis Euston R. Acero (Prosecutor Acero) of the Office of the Ombudsman issued a Joint Resolution[41] dismissing all charges against Umali, Abesamis, Agtay, Pancho, and Pallanan. He cited lack of probable cause for dismissing the criminal charges and lack of merit for dismissing the administrative charge.[42] Prosecutor Acero found that Joson's allegations were not supported by evidence and were merely based on conjectures and suppositions.[43]

On the violation of Section 3(e) and (g) of Republic Act No. 3019, Prosecutor Acero held that the evidence was insufficient to prove undue injury on Cleopatra or on the Provincial Government of Nueva Ecija.[44] Likewise, Joson's allegation on the terms of the Purchase Order being "grossly disadvantageous to the government" was unsubstantiated.[45] Prosecutor Acero noted that the subject Purchase Order complied with the standard Purchase Order form.[46]

On the violation of Article 213 of the Revised Penal Code, Prosecutor Acero found that there was not enough evidence to prove that private respondents committed fraud to use public funds for their personal benefit. Joson failed to establish the existence of the other catering supplier that supposedly provided the food during the event, and of deposit slips proving that the proceeds of the check were deposited to Agtay's account.[47]

On the violations of Section 3(h) of Republic Act No. 3019, Section 7 of Republic Act No. 6713, and Article 215 of the Revised Penal Code, Prosecutor Acero held that there was no sufficient evidence that could establish private respondents' prohibited material or pecuniary interest in the unnamed caterer. Again, aside from the uncorroborated allegation of Joson, there was no indication that another caterer served the meals in the convention center.[48]

On the allegation of grave misconduct, Prosecutor Acero found that Joson was not able "to demonstrate that [private] respondents, in the performance of their functions, have engaged in intentional wrongdoing or have committed a deliberate violation of a rule of law or standard of behavior." [49]

On Abesamis' counter-charge of perjury against Joson, Prosecutor Acero held that there was no sufficient basis to conclude that Joson's statements on Abesamis and Agtay's conspiracy was "a deliberate assertion of a falsehood." [50] Joson did not mention in his complaint any circumstance which could show that Cleopatra and Abesamis met before the latter assumed office. Cleopatra also stated in her sworn affidavit that her meeting with Abesamis occurred when he was already serving as an officer in the provincial government. [51]

The dispositive portion of the Joint Resolution read:

WHEREFORE, premises considered, the undersigned Graft Investigation and Prosecution Officer respectfully recommends that:

- The charges against respondents Aurelio M. Umali, Alejandro R. Abesamis, Giovanni G. Agtay, Edilberto M. Pancho, and Jaime P. Pallanan for Violation of Secs. 3 (e), (g), and (h), Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act; Frauds on the Public Treasury; Prohibited Transactions; Possession of a Prohibited Interest; Malversation; and Violation of Republic Act No. 6713, be DISMISSED for lack of probable cause;
- The [charge] against respondents Aurelio M. Umali, Alejandro R. Abesamis, Giovanni G. Agtay, Edilberto M. Pancho, and Jaime P. Pallanan for Grave Misconduct be DISMISSED for lack of merit; and
- The counter-charge against complainant Edward Thomas F. Joson for Perjury be DISMISSED for lack of merit.

SO RESOLVED. [52] (Emphasis in the original)

Joson moved for reconsideration, [53] which was denied by Prosecutor Acero in his May 9, 2011 Order for being filed out of time. [54] Even if the Motion for Reconsideration would be given due course, it would still be denied for lack of merit. [55]

Hence, on July 15, 2011, Joson filed this Petition for Certiorari [56] against the Office of the Ombudsman, Umali, Agtay, Abesamis, Pancho, and Pallanan. He prays that the December 4, 2009 Joint Resolution and the May 9, 2011 Order of the Office of the Ombudsman be set aside. [57]

Petitioner argues that Cleopatra's testimony "remained rock solid." [58] There was no denial from respondents Umali and Pallanan on the truthfulness of Cleopatra's allegations in her sworn statement. Both respondents evaded responsibility by blaming their subordinates or fellow private respondents. Moreover, respondent Umali was "not only a mere signatory to the documents but a principal who acted in conspiracy with his co-respondents to commit fraud and corruption against the coffers of the provincial government." [59]

Petitioner also stresses the excessive quantity of packed lunches that was allegedly delivered to the Nueva Ecija Convention Center for the oath-taking ceremony. [60]

With respect to private respondent Abesamis, petitioner claims that he made contradicting statements in his Counter-Affidavit. Private respondent Abesamis stated that the Memorandum of Agreement was legally defective for not being signed by the former governor and the witnesses and for not being notarized, yet he recognized its validity when he was trying to arrange a new canteen operator. [61] Further, respondent Abesamis admitted that he talked to Cleopatra several times regarding the early termination of the Memorandum of Agreement and that he prepared the termination notice for Cleopatra's signature. [62]

Petitioner points out that private respondent Agtay's acknowledgment of his lack of participation to the catering transaction and of the documents' lack of his signature implies that the private respondents who signed these documents were principals of the complained acts. [63]

Lastly, petitioner avers that Cleopatra had no motive to implicate private respondents Abesamis and Agtay. [64]

Thus, the allegations in her sworn statement are "the truth and nothing else." [65]

On October 14, 2011, private respondents Umali, Abesamis, Pancho, and Pallanan filed their consolidated Comment. [66] They argue that petitioner's Motion for Reconsideration filed with the Ombudsman was not timely filed. [67] Also, petitioner lacked personality to sue considering that Cleopatra was the one allegedly prejudiced. [68] Furthermore, petitioner should have appealed the Decision of the Office of the Ombudsman, regarding the administrative case, to the Court of Appeals under Rule 43 of the Rules of Court instead of filing a Petition for Certiorari under Rule 65. [69]

Private respondents assert, that the re-election of Umali as governor of Nueva Ecija for the second time "operated as a condonation of his purported administrative infractions and the right to remove him from office." [70] Private respondents Umali, Pancho, and Pallanan add that they merely performed their usual duties when they signed the documents. [71]

On November 14, 2011, public respondent Office of the Ombudsman filed its Comment. [72] It maintains that petitioner should have elevated the administrative case to the Court of Appeals under Rule 43 of the Rules of Court. [73] It argues that the dismissal of private respondents' cases was based on sufficient basis; hence, it did not commit grave abuse of discretion. [74]

On February 3, 2012, private respondent Agtay filed his Comment. [75] He contends that petitioner's Motion for Reconsideration was filed out of time and that the Office of the Ombudsman did not commit grave abuse of discretion when it dismissed the cases against private respondents. [76]

On October 22, 2012, petitioner filed his Consolidated Reply. [77] He asserts that his Motion for Reconsideration before the Office of the Ombudsman and the Petition for Certiorari before this Court were both filed on time. [78] He also argues that the Petition for Certiorari under Rule 65 is proper since the remedy under Rule 43 "can only be availed of in all other cases except in the case when the respondent is absolved of the charge, among others." [79] Petitioner insists that the Office of the Ombudsman committed grave abuse of discretion when it dismissed the charges considering that "[t]he evidence on hand sufficiently supports a finding of probable cause." [80] He notes that private respondents did not deny the existence of another caterer; thus, they impliedly admitted that another caterer provided the meals in the event. [81]

On January 30, 2013, this Court issued a Resolution, [82] giving due course to the petition and requiring the parties to file their respective memoranda.

Respondents (1) Office of the Ombudsman; (2) Umali, Abesamis, and Pancho; (3) Agtay; and (4) Pallanan filed their respective Memoranda on May 15, 2013, [83] May 24, 2013, [84] May 27, 2013, [85] and October 1, 2013, [86] respectively. Petitioner submitted his Memorandum [87] on June 18, 2013. All Memoranda contained a rehash of the parties' arguments in their previous pleadings.

This Court resolves the following issues:

First, whether or not petitioner Edward Thomas F. Joson's late filing of his motion for reconsideration bars him from instituting a Petition for Certiorari under Rule 65;

Second, whether or not petitioner Edward Thomas F. Joson's resort to Rule 65 instead of Rule 43 is proper; and

Finally, whether or not public respondent Office of the Ombudsman committed grave abuse of discretion in dismissing the charges against private respondents Aurelio M. Umali, Giovanni G. Agtay, Alejandro R. Abesamis, Edilberto M. Pancho, and Jaime P. Pallanan,

I

Ombudsman Administrative Order No. 07, as amended by Ombudsman Administrative Order No. 09, provides for the procedure to be followed by an aggrieved party when moving for reconsideration of the Office of the Ombudsman's criminal or administrative decisions. Rule II, Section 7 and Rule III, Section 8 of the Rules of Procedure of the Office of the Ombudsman provide:

Rule II

PROCEDURE IN CRIMINAL CASES

....

Section 7. Motion for reconsideration -

a)

Only one motion for reconsideration or reinvestigation of an, approved order or resolution shall be allowed, the same to be filled within five (5) days from notice thereof with the Office of the Ombudsman, or the proper Deputy Ombudsman as the case may be, ...

....

RULE III

PROCEDURE IN ADMINISTRATIVE CASES

....

Section 8. Motion for reconsideration or reinvestigation; Grounds. - Whenever allowable, a motion for reconsideration or reinvestigation may only be entertained if filed within ten (10) days from receipt of the decision or order by the party ... (Emphasis supplied)

Under the Office of the Ombudsman's Rules of Procedure, an aggrieved party may file a motion for reconsideration (a) within five (5) days from receipt of notice of the assailed decision in a criminal case or (b) within 10 days from receipt of notice of the Office of the Ombudsman's decision in an administrative case.

Petitioner's Motion for Reconsideration was filed beyond the required period. Petitioner received a copy of the December 4, 2009 Joint Resolution on February 8, 2011.[88] He could have filed a motion for reconsideration of the decision in the criminal case within five (5) days from receipt or until February 13, 2011, or that in the administrative case within 10 days from receipt or until February 18, 2011. However, he filed his Motion for Reconsideration only on February 23, 2011,[89] which was 10 days late with respect to the criminal case and five (5) days late with respect to the administrative case.

The Office of the Ombudsman was correct in holding that it lost jurisdiction over the case as a result of the late filing of the motion and that its December 4, 2009 Joint Resolution had become final.

In *Asia United Bank v. Goodland Company, Inc.*, [90] this Court clarified;

The emerging trend of jurisprudence is more inclined to the liberal and flexible application of the Rules of Court. However, we have not been remiss in reminding the bench and the bar that zealous compliance with the rules is still the general course of action. Rules of procedure are in place to ensure the orderly, just, and speedy dispensation of cases; to this end, inflexibility or liberality must be weighed. The relaxation or suspension of procedural rules or the exemption of a case from their operation is warranted only by compelling reasons or when the purpose of justice requires it.

As early as 1998, in *Hon. Fortich v. Hon. Corona*, we expounded on these guiding principles:

Procedural rules, we must stress, should be treated with utmost respect and due regard since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. The requirement is in pursuance to the bill of rights inscribed in the Constitution which guarantees that "all persons shall have a right to the speedy disposition of their cases before all judicial, quasi-judicial and administrative bodies." The adjudicatory bodies and the parties to a case are thus enjoined to abide strictly by the rules. While it is true that a litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. There have been some instances wherein this Court allowed a relaxation in the application of the rules, but this flexibility was "never intended to forge a bastion for erring litigants to violate the rules with impunity," A liberal interpretation and application of the rules of procedure can be resorted to only in proper cases and under justifiable causes and circumstances.

In *Sebastian v. Hon. Morales*, we straightened out the misconception that the enforcement of procedural rules should never be permitted if it would prejudice the substantive rights of litigants:

Under Rule 1, Section 6 of the 1997 Rules of Civil Procedure, liberal construction of the rules is the controlling principle to effect substantial justice. Thus, litigations should, as much as possible, be decided on their merits and not on technicalities. This does not mean, however, that procedural rules are to be ignored or disdained at will to suit the convenience of a party. Procedural law has its own rationale in the orderly administration of justice, namely, to ensure the effective enforcement of substantive rights by providing for a system that obviates arbitrariness, caprice, despotism, or whimsicality in the settlement of disputes. Hence, it is a mistake to suppose that substantive law and procedural law are contradictory to each other, or as often suggested, that enforcement of procedural rules should never be permitted if it would result in prejudice to the substantive rights of the litigants.

. . . Hence, rules of procedure must be faithfully followed except only when for persuasive reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure. . .

Indeed, the primordial policy is a faithful observance of the Rules of Court, and their relaxation or suspension should only be for persuasive reasons and only in meritorious cases, to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. Further, a bare invocation of "the interest of substantial justice" will not suffice to override a stringent implementation of the rules.[91] (Emphasis in the original, citations omitted)

Nonetheless, this Court has allowed the relaxation of procedural rules to ensure the realization of substantial justice in several instances.[92] In *Barnes v. Hon. Quijano Padilla*: [93]

[T]he Rules of Court itself calls for its liberal construction, with the view of promoting their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. The Court is fully aware that procedural rules are not to be belittled or simply disregarded for these prescribed procedures insure an orderly and speedy administration of justice. However, it is equally true that litigation is not merely a game of technicalities. Law and jurisprudence grant to courts the prerogative to relax compliance with procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to put an end to litigation speedily and the parties' right to an opportunity to be heard. In numerous cases, the Court has allowed liberal construction of the Rules of Court with respect to the rules on the manner and periods for perfecting appeals, when to do so would serve the demands of substantial justice and in the exercise of equity jurisdiction of the Supreme Court, As the Court has expounded in *Aguam vs. Court of Appeals*: . . .

The court has the discretion to dismiss or not to dismiss an appellant's appeal. It is a power conferred on the court, not a duty. The "discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case." Technicalities, however, must be

avoided. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice."A litigation is not a game of technicalities." "Lawsuits unlike duels are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts." Litigations must be decided on their merits and not on technicality. Every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.

.....

In the Ginete case, the Court held:

....

Let it be emphasized that the rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. Even the Rules of Court reflect this principle. The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself has already declared to be final, as we are now constrained to do in the instant case.

The emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Time and again, this Court has consistently held that rules must not be applied rigidly so as not to override substantial justice.[94] (Emphasis in the original, citations omitted)

Although a motion for reconsideration is required before this Court can entertain a petition for certiorari,[95] this rule admits of certain exceptions, which were enumerated in *Tan v. Court of Appeals*:[96]

(a) [W]here the order is a patent nullity, as where the Court a quo had no jurisdiction; (b) where the questions raised in the certiorari proceeding have been duly raised and passed upon by [the] lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial [c]ourt is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings was ex parte or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.[97] (Emphasis supplied, citations omitted)

Even if this Court grants an exception to this case, the petition will still fail on other procedural grounds and on its merits.

II

Private and public respondents argue that petitioner should have appealed the assailed decisions of the Office of the Ombudsman by filing a Rule 43 petition. Petitioner insists that he availed of the correct remedy.

This Court finds for the respondents.

In administrative complaints, the Office of the Ombudsman's decision may be appealed to the Court of Appeals via Rule 43. Judicial review of decisions of the Office of the Ombudsman in administrative cases was previously directed to this Court as provided in Section 27 of Republic Act No. 6770 or The Ombudsman Act of 1989:

Section 27. Effectivity and Finality of Decisions. — (1) All provisional orders of the Office of the Ombudsman are immediately effective and executory.

A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice and shall be entertained only on any of the following grounds;

(1) New evidence has been discovered which materially affects the order, directive or decision;

(2) Errors of law or irregularities have been committed prejudicial to the interest of the movant. The motion for reconsideration shall be resolved within three (3) days from filing: Provided, That only one motion for reconsideration shall be entertained.

Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable.

In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for certiorari within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.

The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require. (Emphasis supplied)

However, in *Fabian v. Hon. Desierto*,^[98] this Court declared Section 27 unconstitutional for increasing this Court's appellate jurisdiction in violation of the proscription under Article VI, Section 30^[99] of the Constitution.^[100] This Court further held in *Fabian* that "appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under the provisions of Rule 43."^[101]

In the recent case of *Joson v. Office of the Ombudsman*,^[102] the same petitioner in this case filed a petition for certiorari under Rule 65 before this Court assailing the Office of the Ombudsman's Joint Resolution and Joint Order in OMB-L-C-08-0315-D and OMB-L-A-08-0245-D.^[103] The Ombudsman dismissed the administrative and criminal charges against respondents in that case, namely, Aurelio M. Umali, Alejandro R. Abesamis, Ferdinand R. Abesamis (Ferdinand), Edilberto M. Pancho, and Ma. Christina G. Roxas.^[104] These respondents were allegedly involved in the invalid appointment of Ferdinand as Consultant-Technical Assistant in Nueva Ecija's provincial government.^[105]

In the criminal case, this Court found no grave abuse of discretion on the part of the Office of the Ombudsman.^[106] In the administrative case, this Court held:

With respect to the dismissal of the administrative charge for gross misconduct, the Court finds that the same

has already attained finality because Joson failed to file a petition for certiorari before the Court of Appeals (CA).

The assailed ruling of the Ombudsman absolving the private respondents of the administrative charge possesses the character of finality and, thus, not subject to appeal. Section 7, Rule III of the Ombudsman Rules provides:

SECTION 7. Finality of decision.—Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final and unappealable. In all other cases, the decision shall become final after the expiration often (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for certiorari shall have been filed by him as prescribed in Section 27 of RA 6770.

In Reyes, Jr. v. Belisario, the Court wrote:

The clear import of Section 7, Rule III of the Ombudsman Rules is to deny the complainant in an administrative complaint the right to appeal where the Ombudsman has exonerated the respondent of the administrative charge, as in this case. The complainant, therefore, is not entitled to any corrective recourse, whether by motion for reconsideration in the Office of the Ombudsman, or by appeal to the courts, to effect a reversal of the exoneration. Only the respondent is granted the right to appeal but only in case he is found liable and the penalty imposed is higher than public censure, reprimand, one-month suspension or fine a[n] equivalent to one-month salary.

Though final and unappealable in the administrative level, the decisions of administrative agencies are still subject to judicial review if they fail the test of arbitrariness, or upon proof of grave abuse of discretion, fraud or error of law, or when such administrative or quasi-judicial bodies grossly misappreciate evidence of such nature as to compel a contrary conclusion. Specifically, the correct procedure is to file a petition for certiorari before the CA to question the Ombudsman's decision of dismissal of the administrative charge. Joson, however, failed to do this. Hence, the decision of the Ombudsman exonerating the private respondents from the charge of grave misconduct had already become final. In any event, the subject petition failed to show any grave abuse of discretion or any reversible error on the part of the Ombudsman to compel this Court to overturn its assailed administrative ruling.[107] (Emphasis supplied, citations omitted)

Incidentally, in Carpio-Morales v. Court of Appeals,[108] this Court also declared the first paragraph of Section 14 of Republic Act No. 6770 as ineffective and its second paragraph as unconstitutional.[109] Section 14 states:

Section 14. Restrictions. — No writ of injunction shall be issued by any court to delay an investigation being conducted by the Ombudsman under this Act, unless there is a prima facie evidence that the subject matter of the investigation is outside the jurisdiction of the Office of the Ombudsman.

No court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court, on pure question of law. (Emphasis supplied)

In Carpio-Morales, Ombudsman Conchita Carpio-Morales filed a petition for certiorari and prohibition before this Court assailing the Court of Appeals Resolutions, which issued a Temporary Restraining Order in favor of Jejomar Erwin S. Binay, Jr. and directed the Ombudsman to file her Comment.[110] She argued that under the second paragraph of Section 14 of Republic Act No. 6770, only this Court has "the sole jurisdiction to conduct a judicial review of [the Ombudsman's] decisions or findings[.]"[111]

This Court held that the second paragraph of Section 14 is similar to the fourth paragraph of Section 27, in that it "limits the remedy against 'decision or findings' of the Ombudsman to a Rule 45 appeal[.]"[112] Since the

provision "attempts to effectively increase the Supreme Court's appellate jurisdiction without its advice and concurrence, it is therefore . . . unconstitutional and perforce, invalid." [113]

Nonetheless, a party may elevate the Office of the Ombudsman's dismissal of a criminal complaint to this Court via a special civil action under Rule 65 of the 1997 Rules of Civil Procedure if there is an allegation of "grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law[.]" [114] In *Acuña v. Deputy Ombudsman for Luzon*: [115]

The remedy of an aggrieved party in criminal complaints before the Ombudsman is to file with this Court a petition for certiorari under Rule 65. Thus, we held in *Tirol, Jr. v. Del Rosario*:

The Ombudsman Act specifically deals with the remedy of an aggrieved party from orders, directives and decisions of the Ombudsman in administrative disciplinary cases. As we ruled in *Fabian [v. Desierto]*, the aggrieved party (in administrative cases) is given the right to appeal to the Court of Appeals. Such right of appeal is not granted to parties aggrieved by orders and decisions of the Ombudsman in criminal cases, like finding probable cause to indict accused persons.

However, an aggrieved party is not without recourse where the finding of the Ombudsman ... is tainted with grave abuse of discretion, amounting to lack (or) excess of jurisdiction. An aggrieved party may file a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure. [116] (Emphasis in the original, citations omitted)

Here, petitioner's failure to avail of the correct procedure with respect to the administrative case renders the Office of the Ombudsman's decision final. Furthermore, the present case fails even on its merits.

III

Petitioner charges private respondents of violating the following provisions of Republic Act No. 3019:

REPUBLIC ACT NO. 3019

(Anti-Graft and Corrupt Practices Act)

....

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:

(a)

Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.

....

(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.

....

(g)

Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

(h)

Directly or indirectly having financing or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

Likewise, petitioner charges them with the following provisions under the Revised Penal Code:

REVISED PENAL CODE

....

Article 213. Frauds Against the Public Treasury and Similar Offenses. — The penalty of prision correccional in its medium period to prision mayor in its minimum period, or a fine ranging from 200 to 10,000 pesos, or both, shall be imposed upon any public officer who:

- In his official capacity, in dealing with any person with regard to furnishing supplies, the making of contracts, or the adjustment or settlement of accounts relating to public property or funds, shall enter into an agreement with any interested party or speculator or make use of any other scheme, to defraud the Government[.]

....

Article 215. Prohibited Transactions. — The penalty of prision correccional in its minimum period or a fine ranging from 200 to 1,000 pesos, or both, shall be imposed upon any appointive public officer who, during his incumbency, shall directly or indirectly become interested in any transaction of exchange or speculation within the territory subject to his jurisdiction.

Article 216. Possession of Prohibited Interest by a Public Officer. — The penalty of arresto mayor in its medium period to prision correccional in its minimum period, or a fine ranging from 200 to 1,000 pesos, or both, shall be imposed upon a public officer who, directly or indirectly, shall become interested in any contract or business in which it is his official duty to intervene.

....

Article 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:

....

- The penalty of reclusion temporal in its minimum and medium periods, if the amount involved is more than

12,000 pesos but is less than 22,000 pesos. If the amount exceeds the latter, the penalty shall be reclusion temporal in its medium and maximum periods.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine ranging from one-half to the total value of the funds or property embezzled.

Petitioner also alleges that private respondents violated Republic Act No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees. This Code "punishes any public official or employee, regardless of whether or not he holds office or employment in a casual, temporary, holdover, permanent or regular capacity, who violates the provisions of said code." [117] Petitioner asserts that they should be held liable for "grave abuse of discretion, misconduct in office, and irregularity in the performance of duties." [118]

For dismissing the criminal and administrative charges against private respondents, petitioner maintains that the Office of the Ombudsman committed grave abuse of discretion.

Petitioner's contention has no merit.

At the onset, this Court reiterates the policy of non-interference with the Office of the Ombudsman's determination of probable cause. [119] Probable cause is defined as "the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted." [120] Thus, an allegation of grave abuse of discretion must be substantiated before this Court can exercise its power of judicial review. As held in *Tetangco v. Ombudsman*: [121]

It is well-settled that the Court will not ordinarily interfere with the Ombudsman's determination of whether or not probable cause exists except when it commits grave abuse of discretion. Grave abuse of discretion exists where a 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 positive duty or virtual refusal to perform a duty enjoined by, or in contemplation of law. Thus, we held in *Roxas v. Vasquez*,

... this Court's consistent policy has been to maintain non-interference in the determination of the Ombudsman of the existence of probable cause, provided there is no grave abuse in the exercise of such discretion. This observed policy is based not only on respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the Court will be seriously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped with cases if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant. [122] (Citations omitted)

In this case, petitioner Joson failed to show that the Office of the Ombudsman acted in an "arbitrary, capricious, whimsical or despotic manner." [123] The Office of the Ombudsman laboriously discussed each and every charge of petitioner by enumerating the elements of each law and pointing out where petitioner fell short in evidence. As correctly held by the Office of the Ombudsman:

There is insufficient evidence to prove undue injury, which, in contemplation of Sec. 3 (e) of the Anti-Graft and Corrupt Practices Act, has been defined as equivalent to actual damages in civil law, on either Cleopatra G. Gervacio or the Provincial Government of Nueva Ecija. The evidence shows that there was, for the benefit of the Provincial Government of Nueva Ecija, a catered reception in the Nueva Ecija Convention Center, for which payment was made by the Provincial Government of Nueva Ecija to Ryan Angelo Sweets & Catering pursuant to a Purchase Order dated 4 July 2007, and under the terms specified therein.

On the other hand, the assertions of complainant (1) that there was another catering service actually providing catering services that day; and (2) that respondent Agtay received any of the proceeds of DBP Check . . . both remain uncorroborated. In other words, there has been no showing of a cause of action on the part of Cleopatra G. Gervacio sufficient for her to claim actual damages by the acts or omissions of respondents, aside from the bare say-so of complainant. For these reasons, the evidence submitted is also insufficient to show precisely what actual damages on the part of Provincial Government of Nueva Ecija were caused by the acts or omissions of respondents.

....

As regards the grant of unwarranted benefit, advantage, or preference to a private party, the evidence is insufficient to support a finding that a caterer other than Ryan Angelo Sweets & Catering provided the meals, as to assume otherwise would be to delve in surmise and speculation.

....

As regards the Purchase Order dated 4 July 2007, complainant has offered no evidence to support [his] assertion why the terms of the Purchase Order dated 4 July 2007 is grossly disadvantageous to the government. It is noted that the terms of the Purchase Order were made through the standard Purchase Order form[.]

....

The evidence is insufficient to establish fraud on the part of respondents. Although the reception for respondent Umali's induction as Governor has been established, the existence of a catering service provider other than Ryan Angelo Sweets & Catering at the Nueva Ecija Convention Center on 4 July 2007 has not been established by the evidence. What the evidence supports is a finding that it was Ryan Angelo Sweets & Catering that provided the meals on that day. What is more, the deposit and/or constructive receipt of respondent Agtay of the proceeds of DBP Check . . . remains uncorroborated by a person with personal knowledge that the proceeds of the said check have been deposited into an account of respondent Agtay, or by deposit slips indicating that such a deposit has in fact been made.

....

A finding that respondents have violated [Article 215 of the Revised Penal Code, Section 3(h) of Republic Act No. 3019, and Section 7 of Republic Act No. 6713] cannot be made because such undue interest is an essential element for criminal liability under these provisions of law. The evidence bears no indication of the existence of a caterer other than Ryan Angelo Sweets & Catering operating in the Nueva Ecija Convention Center at the induction of respondent Umali, save from barefaced supposition of complainant based on an alleged transaction between Cleopatra G. Gervacio and respondent Agtay. Bare suppositions, without more, cannot support a finding that respondents have an undue interest in the said unknown caterer necessary to sustain criminal charges.

....

There is no evidence in the case at bar that demonstrates that respondent had either such manifest or clear intent to violate the law or exhibit a flagrant disregard for established rule, save for the bare suppositions and surmises of complainant, which by itself is not substantial evidence to support a finding in an administrative adjudication. Neither has complainant been able to demonstrate that respondents, in the performance of their functions, have engaged in intentional wrongdoing or have committed a deliberate violation of a rule of law or standard of behavior.[124] (Citations omitted)

Upon its finding that there is no sufficient evidence to support the charges against private respondents, the Office of the Ombudsman dismissed them in conformity with Rule II, Section 2[125] and Rule III, Section 4[126] of the Rules of Procedure of the Office of the Ombudsman. Thus, no grave abuse of discretion can be attributed to the

Office of the Ombudsman.

WHEREFORE, the Petition for Certiorari is DISMISSED. The December 4, 2009 Joint Resolution and May 9, 2011 Order of the Office of the Ombudsman in OMB-C-C-08-0343-H and OMB-C-A-08-0383-H are AFFIRMED.

SO ORDERED.

Carpio (Chairperson), Peralta, Mendoza, and Martires, JJ., concur.

[1] Rollo, pp. 3-19.

[2] Id. at 20-33. The Joint Resolution was penned by Graft Investigation and Prosecution Officer I Francis Euston R. Acero and reviewed by Director Mary Antonette Yalao of the Preliminary Investigation, Administrative Adjudication and Review Bureau. Overall Deputy Ombudsman Orlando C. Casimiro recommended the approval of the Joint Resolution, which was subsequently approved by Ombudsman Ma. Merceditas N. Gutierrez.

[3] Id. at 34-40. The Order was penned by Graft Investigation and Prosecution Officer I Francis Euston R. Acero and recommended for approval by Director Mary Antonette P. Yalao of the Preliminary Investigation, Administrative Adjudication and Review Bureau. Acting Ombudsman Orlando C. Casimiro approved the Order.

[4] Id. at 31.

[5] Id. at 41-52.

[6] Id. at 42-43.

[7] Id. at 20.

[8] Id. at 41-42.

[9] Id. at 43.

[10] Id. at 43-44.

[11] Id. at 44.

[12] Id. at 56-57.

[13] Id. at 56.

[14] Id. at 44-45, Affidavit-Complaint.

[15] Id. at 45.

[16] Id. at 45-46.

[17] Id. at 58.

[18] Id. at 59.

[19] Id. at 60.

[20] Id. at 61.

[21] Id. at 46.

- [22] Id. at 47.
- [23] Id.
- [24] Id.
- [25] Id. at 23-25.
- [26] Id. at 23.
- [27] Id. at 63-69.
- [28] Id. at 23, Office of the Ombudsman's Joint Resolution.
- [29] Id. at 82-84.
- [30] Id. at 24.
- [31] Id. at 85.
- [32] Id. at 24.
- [33] Id. at 70-77.
- [34] Id. at 72-73.
- [35] Id. at 73-74.
- [36] Id. at 74-75.
- [37] Id. at 77.
- [38] Id. at 87-92.
- [39] Id. at 93-100.
- [40] Id. at 25-26.
- [41] Id. at 20-33.
- [42] Id. at 31.
- [43] Id. at 26-31.
- [44] Id. at 26-27.
- [45] Id. at 28.
- [46] Id.
- [47] Id. at 28-29.
- [48] Id.
- [49] Id. at 31.
- [50] Id. at 30.
- [51] Id. at 30-31.
- [52] Id. at 31.

[53] Id. at 119-126.

[54] Id, at 37-38.

[55] Id. at 33-39.

[56] Id. at 3-19.

[57] Id. at 16-17.

[58] Id. at 9.

[59] Id. at 10.

[60] Id. at 11.

[61] Id. at 13.

[62] Id. at 14.

[63] Id.

[64] Id. at 13-14.

[65] Id. at 13.

[66] Id. at 288-305.

[67] Id. at 290-292.

[68] Id. at 292-293.

[69] Id. at 294.

[70] Id.

[71] Id. at 297-298.

[72] Id. at 306-320.

[73] Id. at 312-313.

[74] Id. at 313-318.

[75] Id. at 330-336.

[76] Id. at 331-335.

[77] Id. at 348-353.

[78] Id. at 348-349.

[79] Id. at 349.

[80] Id. at 350.

[81] Id.

[82] Id. at 368-369.

[83] Id. at 379-390.

[84] Id. at 402-427.

[85] Id. at 428-433.

[86] Id. at 464-468.

[87] Id. at 440-456.

[88] Rollo, p. 4.

[89] Id. at 119.

[90] 650 Phil. 174 (2010) [Per J. Nachura, Second Division].

[91] Id. at 183-185. See also *Lazaro v. Court of Appeals*, 386 Phil. 412, 417-418 (2000) [Per J. Panganiban, Third Division] and *Building Care Corporation/Leopard Security & Investigation Agency, et al. v. Macaraeg*, 700 Phil. 749, 755-756 (2012) [Per J. Peralta, Third Division].

[92] *Barnes v. Hon. Quijano Padilla*, 500 Phil. 303, 309-311 (2005) [Per J. Austria-Martinez, Second Division]; *Abaigar v. Abaigar*, 535 Phil. 860, 864 (2006) [Per J. Carpio Morales, Third Division]; *City of Dagupan v. Maramba*, 738 Phil. 71, 87-89 (2014) [Per J. Leonen, Third Division].

[93] 500 Phil. 303 (2005) [Per J. Austria-Martinez, Second Division].

[94] Id. at 309-311.

[95] *Office of the Ombudsman v. Laja*, 522 Phil. 532, 538 (2006) [Per J. Ynares-Santiago, First Division]; *Metro Transit Organization, Inc., et al v. PIGLAS NFWU-KMU, et al.*, 574 Phil. 481, 490-491 (2008) [Per J. Chico-Nazario, Third Division]; *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Ombudsman Desierto, et al.*, 603 Phil. 18, 31 (2009) [Per J. Carpio Morales, Second Division]; *Republic v. Pantranco North Express, Inc., et al.*, 682 Phil. 186, 193 (2012) [Per J. Villarama, Jr., First Division]; *Abdulrahman v. Office of the Ombudsman for Mindanao, et al.*, 716 Phil. 592, 603 (2013) [Per C.J. Sereno, First Division]; *Sen. Estrada v. Office of the Ombudsman, et al.*, 751 Phil. 821, 877- 878 (2015) [Per J. Carpio, En Banc].

[96] 341 Phil. 570 (1997) [Per J. Francisco, Third Division].

[97] Id. at 576-578.

[98] 356 Phil. 787 (1993) [Per. J. Regalado. En Banc].

[99] CONST., art. VI, sec. 30 provides:

Article VI. The Legislative Department.

....

Section 30. No law shall be passed increasing the appellate jurisdiction of the Supreme Court as provided in this Constitution without its advice and concurrence.

[100] *Fabian v. Hon. Desierto*, 356 Phil. 787, 810 (1998) [Per J. Regalado, En Banc].

[101] Id. at 808.

[102] G.R. No. 210220-21, April 6, 2016, 783 SCRA 647 [Per J. Mendoza, Second Division].

[103] Id. at 651.

[104] Id. at 656-657.

[105] Id. at 651-653.

[106] Id. at 657-664.

[107] Id. at 664-665.

[108] 772 Phil. 672 (2015) [Per J. Perlas-Bernabe, En Banc].

[109] Id. at 781.

[110] Id. at 694-695.

[111] Id. at 695.

[112] Id. at 716.

[113] Id.

[114] RULES OF COURT, Rule 65, sec. 1. See also *Enemecio v. Office of the Ombudsman*, 464 Phil. 102, 113 (2004) [Per J. Carpio, First Division], *Joson v. Office of the Ombudsman*, G.R. No. 210220-21, April 6, 2016, 788 SCRA 647 [Per J. Mendoza, Second Division]; and *Artex Development Co., Inc. v. Office of the Ombudsman*, G.R. No. 203538, June 27, 2016, < <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/203538.pdf> > [Per J. Brion, Second Division].

[115] 490 Phil. 640 (2005) [Per J. Carpio, First Division].

[116] Id. at 649, citing *Tirol, Jr. v. Justice Del Rosario*, 376 Phil. 115, 122 (1999) [Per J. Pardo, First Division].

[117] Rollo, p. 16.

[118] Id.

[119] *Dichaves v. Office of the Ombudsman*, G.R. Nos. 206310-11, December 7, 2016 < <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/december2016/206310-11.pdf> > 16-17 [Per J. Leonen, Second Division]; *Joson v. Office of the Ombudsman*, G.R. Nos. 210220-21, April 6, 2016, 788 SCRA 647, 663 [Per J. Mendoza, Second Division]; *Tetangco v. Ombudsman*, 515 Phil. 230, 234 (2006) [Per J. Quisumbing, Third Division]; *Casing v. Hon. Ombudsman, et al.*, 687 Phil. 468, 475-476 (2012) [Per J. Brion, Second Division].

[120] *Metropolitan Bank & Trust Co. v. Gonzales*, 602 Phil. 1000, 1009 (2009) [Per J. Chico-Nazario, Third Division].

[121] 515 Phil. 230 (2006) [Per J. Quisumbing, Third Division].

[122] Id. at 234-235.

[123] Id. at 234.

[124] Rollo, pp. 26-31.

[125] RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN, Rule II, sec. 2 provides:

Section 2. Evaluation - Upon evaluating the complaint, the investigating officer shall recommend whether it may be:

a) dismissed outright for want of palpable merit;

- b) referred to respondent for comment;
- c) indorsed to the proper government office or agency which has jurisdiction over the case;
- d) forwarded to the appropriate office or official for fact-finding investigation;
- e) referred for administrative adjudication; or
- f) subjected to a preliminary investigation. (Emphasis supplied)

[126] RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN, Rule in, sec. 4 provides:

Section 4. Evaluation. - Upon receipt of the complaint, the same shall be evaluated to determine whether the same may be:

a)

dismissed outright for any of the grounds stated under Section 20 of RA 6770, provided, however, that the dismissal thereof is not mandatory and shall be discretionary on the part of the Ombudsman or the Deputy Ombudsman concerned;

b)

treated as a grievance/request for assistance which may be referred to the Public Assistance Bureau, this Office, for appropriate action under Section 2, Rule IV of this Rules;

c)

referred to other disciplinary authorities under paragraph 2, Section 23, RA 6770 for the taking of appropriate administrative proceedings;

d)

referred to the appropriate office/agency or official for the conduct of further fact-finding investigation; or

e)

docketed as an administrative case for the purpose of administrative adjudication by the Office of the Ombudsman. (Emphasis supplied)

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