



Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
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**THIRD DIVISION**

**PARINA R. JABINAL,**  
Petitioner,

**G.R. No. 232094**

**Present:**

- versus -

PERALTA, J., Chairperson,  
LEONEN,  
REYES, A., JR.,  
HERNANDO, and  
INTING, JJ.

**HON. OVERALL DEPUTY**  
**OMBUDSMAN,**  
Respondent.

**Promulgated:**

July 24, 2019

Mis-DC Batt

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**DECISION**

**PERALTA, J.:**

Before the Court is a petition for *certiorari* under Rule 65 of the Rules of Court seeking to reverse and set aside the Resolution<sup>1</sup> dated May 16, 2016 and the Joint Order<sup>2</sup> dated December 2, 2016 issued by the Office of the Ombudsman in OMB-C-C-15-0487.

On December 4, 2015, the Field Investigation Office of the Ombudsman, represented by Teddy F. Parado, filed a complaint against petitioner Atty. Parina R. Jabinal, Division Manager, Legal Services Department, National Housing Authority (NHA), for violation of Section 7(b)(2) of Republic Act No. (R.A.) 6713, otherwise known as the *Code of Conduct and Ethical Standards for Public Officials and Employees*, which prohibits all public officials and employees from engaging in the private practice of their profession unless authorized. The complaint alleged that

<sup>1</sup> Per Graft Investigation and Prosecution Officer III Myla Teona N. Teologio and approved by Overall Deputy Ombudsman Melchor Arthur H. Carandang; *rollo*, pp. 49-54.

<sup>2</sup> Per Graft Investigation and Prosecution Officer III Myla Teona N. Teologio and approved by Ombudsman Conchita Carpio Morales; *id.* at 61-66.

petitioner, a legal officer of the NHA in 2008, had notarized two documents, *i.e.*, a Deed of Sale dated August 20, 2008 between the NHA and Milagros Daez, Rosauro D. Villaluz and K-Bon Construction Corporation, and a Deed of Assignment dated September 30, 2008 between Milagros Daez and Rosauro D. Villaluz (First Party), K-Bon Construction Corporation (Second Party) and Alex Uson and Ernesto Yao (Third Party), and she was paid the amount of ₱30,000.00 for both documents;<sup>3</sup> that as petitioner's acts of notarization were within the ambit of the term private practice of law, there should have been a prior request made by her to the NHA for authority to engage in the practice of her profession and the NHA's approval thereof, however, there was no document on file of such written authority in 2008;<sup>4</sup> and that the Branch Clerk of Court of the Regional Trial Court of Quezon City also certified that petitioner was not a commissioned notary public for Quezon City in 2008.<sup>5</sup>

In her counter affidavit, petitioner alleged that on April 17, 2006, while she was a Legal Staff at the Office of the General Manager of the NHA, she filed a petition for appointment as a notary public for and in Quezon City, attaching the authority issued by the NHA to engage in private practice, which was granted by the Executive Judge of RTC Quezon City on May 4, 2006, covering the period from 2006-2007. On February 9, 2008, she filed another petition for a notarial commission, attaching a letter of authority issued by the NHA, but the certificate for notarial commission was issued by the RTC Judge on March 3, 2009 for the period from 2009-2010; that she claimed inadvertence made in good faith when she notarized the two above-mentioned documents in August and September 2008 when her notarial commission was still on petition; and her act was based on her customary notarial practice in 2006-2007.

On May 16, 2016, the Ombudsman found probable cause against petitioner, the dispositive portion of which reads:

WHEREFORE, finding probable cause to indict PARINA R. JABINAL, for violation of Section 7, (b), (2), R.A. 6713 (2 counts) for engaging in notarial practice while employed as Legal Officer of NHA in 2008 without prior authority from the NHA, let the corresponding Informations be filed against her in the Metropolitan Trial Court of Quezon City.<sup>6</sup>

Petitioner filed a motion for reconsideration and a supplemental motion for reconsideration. In a Joint Order dated December 2, 2016, petitioner's motion for reconsideration, with regard to the instant criminal case, was denied, and the May 16, 2016 Resolution was affirmed.

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<sup>3</sup> *Id.* at 50.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 51.

<sup>6</sup> *Id.* at 53-54.



The corresponding Informations for two (2) counts of violation of Section 7(b)(2) of R.A. 6713 were subsequently filed before the Metropolitan Trial Court of Quezon City.

Petitioner files the instant petition for *certiorari* on the following grounds:

The Hon. Over-All Deputy Ombudsman gravely erred and abused his discretion, amounting to lack or excess of jurisdiction, in factually assuming that petitioner's acts in notarizing the two (2) documents in August and September 2008 constituted habitual and/or unauthorized private practice of law contemplated under Section 7(b)(2) of R.A. 6713.

The Hon. Overall Deputy Ombudsman gravely erred and abused his discretion, amounting to lack or excess of jurisdiction, in finding that probable cause exists against the petitioner and that she should be criminally indicted before the court for violation of Section 7(b)(2), R.A. 6713, in utter disregard of existing judicial pronouncements by the Supreme Court.<sup>7</sup>

Petitioner avers that there is no contest that she notarized the two documents, but she did so in good faith believing in all honesty that she was a commissioned notary public for the year 2008; that it was an honest mistake or oversight to assume that she had filed her petition for notary for the year 2008-2009; and that she has been a notary public in Quezon City from 2004 to 2010. She claims that she had been notarizing documents involving NHA as it was part of her duties and responsibilities, hence, it would be a mistaken factual conclusion for the Ombudsman to deem that notarial practice at NHA *ipso facto* constitutes private practice of law. Petitioner contends that under jurisprudential pronouncements, private practice referred to in Section 7(b)(2) of R.A. 6713 contemplates a succession of acts of the same nature habitually or customarily holding one's self to the public as a lawyer and demanding payment for such services, which does not obtain under the circumstances of this case. She claims that she had served the government with utmost dedication and integrity from 2005 until her dismissal from work.

The sole issue for resolution is whether the Ombudsman committed grave abuse of discretion in finding that probable cause exists against petitioner.

We dismiss the petition.



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<sup>7</sup>

*Id.* at 17-18.

Both the Constitution<sup>8</sup> and R.A. No. 6770<sup>9</sup> or *The Ombudsman Act of 1989*, give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. Since the Ombudsman is armed with the power to investigate, it is in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause.<sup>10</sup> As this Court is not a trier of facts, We defer to the sound judgment of the Ombudsman. This Court's consistent policy has been to maintain non-interference in the determination by the Ombudsman of the existence of probable cause.<sup>11</sup>

Nonetheless, this Court is not precluded from reviewing the Ombudsman's action when there is a charge of grave abuse of discretion.<sup>12</sup> 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 an evasion of positive duty or a virtual refusal to perform the duty enjoined by, or in contemplation of law.<sup>13</sup>

In order for the instant petition for *certiorari* to succeed, it is incumbent upon petitioner to sufficiently establish her allegations that the Ombudsman committed grave abuse of discretion in finding probable cause for her violation of Section 7(b)(2) of R.A. 6713. Probable cause, for the purpose of filing a criminal information, has been defined to constitute such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof.<sup>14</sup> Probable cause does not mean "actual or positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. It does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged.<sup>15</sup>

Section 7(b)(2) of R.A. 6713, in relation to Section 11 of the same law, provides:

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<sup>8</sup> 1987 CONSTITUTION, Article XI. Section 12 provides:

The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

<sup>9</sup> *An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes (1989)*.

<sup>10</sup> *Villarosa v. The Honorable Ombudsman*, G.R. No. 221418, January 23, 2019.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Fuentes Jr., v. Office of the Ombudsman*, 511 Phil. 402, 413 (2005).

<sup>14</sup> *Philippine Deposit Insurance Corporation v. Casimiro*, 768 Phil. 429, 436 (2015).

<sup>15</sup> *Id.*

Section 7. *Prohibited Acts and Transactions.* - In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

x x x x

(b) Outside employment and other activities related thereto. - Public officials and employees during their incumbency shall not:

x x x x

(2) Engage in the private practice of their profession unless authorized by the Constitution or law, provided, that such practice will not conflict or tend to conflict with their official functions; or

x x x x

Section 11. *Penalties.* - x x x Violations of Sections 7, 8 or 9 of this Act shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (P5,000), or both, and, in the discretion of the court of competent jurisdiction, disqualification to hold public office.

Clearly, public officials and employees during their incumbency are prohibited from engaging in the private practice of their profession unless authorized by law or the Constitution and such practice should not be in conflict with their official functions. Memorandum Circular No. 17<sup>16</sup> of the Executive Department allows government employees to engage directly in the private practice of their profession provided there is a written permission from the Department head.

<sup>16</sup> Issued by the Office of the President, entitled Revoking Memorandum Circular No. 1025 Dated November 25, 1977.

**Memorandum Circular No. 17:**

The authority to grant permission to any official or employee shall be granted by the head of the ministry or agency in accordance with Section 12, Rule XVIII of the Revised Civil Service Rules, which provides:

Sec. 12. No officer or employee shall engage directly in any private business, vocation, or profession or be connected with any commercial, credit, agricultural, or industrial undertaking without a written permission from the head of Department; *Provided*, That this prohibition will be absolute in the case of those officers and employees whose duties and responsibilities require that their entire time be at the disposal of the Government: *Provided, further*, That if an employee is granted permission to engage in outside activities, the time so devoted outside of office hours should be fixed by the chief of the agency to the end that it will not impair in any way the efficiency of the other officer or employee: *And provided, finally*, That no permission is necessary in the case of investments, made by an officer or employee, which do not involve any real or apparent conflict between his private interests and public duties, or in any way influence him in the discharge of his duties, and he shall not take part in the management of the enterprise or become an officer or member of the board of directors", subject to any additional conditions which the head of the office deems necessary in each particular case in the interest of the service, as expressed in the various issuances of the Civil Service Commission.

In this case, petitioner admitted having notarized a Deed of Sale and a Deed of Assignment in August and September 2008, respectively. It appears that she was paid the amount of ₱30,000.00 for notarizing said documents. The acts of notarization are within the ambit of the term "practice of law,"<sup>17</sup> thus, a prior request and approval thereof by the NHA are required. However, there is no showing of any written authority from the NHA issued in 2008 allowing petitioner to engage in notarial practice. In fact, she was not a commissioned notary public in Quezon City in 2008.

In *Abella v. Atty. Cruzabra*,<sup>18</sup> the respondent, who was then the Deputy Register of Deeds of General Santos City, had notarized around 3,000 documents without obtaining prior authority from the Secretary of Justice to engage in the private practice of his profession. She was found guilty of engaging in notarial practice without the written authority from the Secretary of Justice. Thus:

It is clear that when respondent filed her petition for commission as a notary public, she did not obtain a written permission from the Secretary of the DOJ. Respondent's superior, the Register of Deeds, cannot issue any authorization because he is not the head of the Department. And even assuming that the Register of Deeds authorized her, respondent failed to present any proof of that written permission. Respondent cannot feign ignorance or good faith because respondent filed her petition for commission as a notary public after Memorandum Circular No. 17 was issued in 1986.<sup>19</sup>

We found that petitioner failed to substantiate her allegations of grave abuse of discretion on the part of the Ombudsman's finding of probable cause. The evidence presented during the preliminary investigation on which the Ombudsman based its conclusion proved that the act complained of constituted the offense charged, to wit:

The pieces of evidence on record show that, on two occasions, respondent engaged in notarial service while being employed as Legal Officer of the NHA in 2008. On August 20, 2008, she notarized the Deed of Absolute Sale and entered the same in her Notarial Register as document number 742 on page 79, Book No. II, series of 2008. On September 30, 2008, she notarized the Deed of Assignment and entered the same in her Notarial Register as document number 805 on page 81, Book No. II, series of 2008.

Respondent disclosed that her 2006 petition for Notarial Commission with authority issued by NHA was granted on May 4, 2006 by Executive Judge Natividad Giron-Dizon and was issued on May 5, 2006, covering the period 2006-2007. On the other hand, her February 9, 2008

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<sup>17</sup> *Yumol, Jr. v. Atty. Ferrer Sr.*, 496 Phil. 363, 376 (2005).

<sup>18</sup> 606 Phil 200 (2009).

<sup>19</sup> *Id.* at 206-207.



Petition for Notarial Commission with authority issued by NHA, was granted and issued on March 3, 2009 by Executive Judge Teodor A. Bay covering the period 2009-2010. She stressed that when she notarized the alluded documents in August and September 2008, her Notarial Commission was still on petition.

A closer look on the alleged 2008 petition shows that the petition bears the date February 9, 2008. However, it was stamped received by the Office of the Clerk of Court on February 10, 2009. It also appears on the signature page of the petition that the petitioner was issued IBP No. 751924 on January 14, 2009 and PTR No. 0472089 on January 12, 2009. From the foregoing, it can be deduced that the petition prepared on February 9, 2008, was only filed on February 10, 2009. Clearly, there is no pending petition for notarial commission when the alluded documents were notarized in August and September 2008, respectively. Since there was no petition filed on the said dates, and the authority given by the NHA comes as an attachment to the petition, the logical conclusion is that there was no authority given by the NHA in order for respondent to engage in the limited practice of notarial services when she notarized the documents in August and September 2008.

Section 7, paragraph b(2), R.A. 6713, prohibits any public official and employee to engage in the private practice of their profession unless authorized by the Constitution or law. Respondent is a government employee and is prohibited from engaging in the private practice of her profession unless authorized by the NHA.

Complainant has established that on two occasions respondent engaged in notarial practice while employed as Legal Officer of [the] NHA in 2008, without prior authority from the NHA.<sup>20</sup>

Petitioner claims good faith in notarizing the two documents as she believed in all honesty that she was a commissioned notary public for that year; and that her acts do not constitute habituality. Such claim is evidentiary in nature and a matter of defense, the truth of which can be best passed upon after a full-blown trial on the merits. It is not for the public prosecutor to decide whether there is evidence beyond reasonable doubt of the guilt of the person charged.<sup>21</sup> A preliminary investigation is conducted for the purpose of determining whether a crime has been committed, and whether there is probable cause to believe that the accused is guilty thereof and should be held for trial. It is not the occasion for full and exhaustive display of the parties' evidence; it is for the presentation of such evidence only as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof.<sup>22</sup>

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<sup>20</sup> *Rollo*, pp. 52-53. (Citations omitted)

<sup>21</sup> See *Nava v. Commission on Audit*, 419 Phil. 544, 554 (2001).

<sup>22</sup> *Id.*, citing *Deloso v. Desierto*, 372 Phil. 805, 814 (1999); *Olivarez v. Sandiganbayan*, 319 Phil. 45, 62 (1995).

**WHEREFORE**, the Petition for *Certiorari* is **DISMISSED**. The Resolution dated May 16, 2016 and the Joint Order dated December 2, 2016 issued by the Office of the Ombudsman in OMB-C-C-15-0487 are hereby **AFFIRMED**.

**SO ORDERED.**

A handwritten signature in black ink, appearing to read 'Diosdado M. Peralta', written in a cursive style.

**DIOSDADO M. PERALTA**  
Associate Justice

**WE CONCUR:**

  
**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice

  
**ANDRES B. REYES, JR.**  
Associate Justice

  
**RAMON PAUL L. HERNANDO**  
Associate Justice

  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**DIOSDADO M. PERALTA**  
Associate Justice  
Chairperson, Third Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**LUCAS P. BERSAMIN**  
Chief Justice