

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MELCHOR J. CHIPOCO,
CHRISTY C. BUGANUTAN,
CERIACO P. SABIJON,
THELMA F. ANTOQUE,
GLENDA G. ESLABON, AND
AIDA P. VILLAMIL,
Petitioners,

G.R. No. 239416

Present:

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

- versus -

THE HONORABLE OFFICE
OF THE OMBUDSMAN,
represented by HONORABLE
CONCHITA CARPIO-
MORALES, in her official
capacity as Tanodbayan,
HONORABLE RODOLFO M.
ELMAN, in his official
capacity as Deputy
Ombudsman for Mindanao,
HONORABLE HILDE C.
DELA CRUZ-LIKIT, in her
official capacities as Graft
Investigation and Prosecution
Officer III and Officer-in-
Charge, Evaluation and
Investigation Bureau-A, Office
of the Ombudsman-Mindanao,
and HONORABLE JAY M.
VISTO, in his official capacity
as Graft Investigation and

Reyes

**Prosecution Officer II, and
ROBERTO R. GALON,**
Respondents.

Promulgated:
July 24, 2019

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DECISION

A. REYES, JR., J.:

This resolves a Petition for *Certiorari*¹ under Rule 65 of the Rules of Court with Prayer for Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction assailing the Resolution² dated December 8, 2017 and the Order³ dated March 5, 2018 issued by the Office of the Ombudsman (Ombudsman) in OMB-M-C-16-0112.

Factual Antecedents

On November 26, 2010, then Mayor Wilfredo S. Balais (Balais) sold his Nissan Patrol Wagon 2001 model (subject vehicle) to Eduardo A. Ayunting (Ayunting) for ₱500,000.00. On January 28, 2011, Ayunting sold the subject vehicle to the local government unit of the Municipality of Labason, Zamboanga del Norte, represented by then Vice Mayor Virgilio J. Go (Go), for ₱960,000.00.⁴

On August 1, 2011, the Sangguniang Bayan of Labason passed Resolution No. 117, authorizing Balais to negotiate the rescission of the contract of sale of the subject vehicle as it was found that the purchase price of it was quite high compared when it was first sold to the vendor, thus, disadvantageous and prejudicial to the government.⁵

Thereafter, Roberto R. Galon (private respondent) filed a Complaint-Affidavit⁶ dated August 22, 2011 with the Ombudsman against petitioners Melchor J. Chipoco (Chipoco), in his capacity as then municipal treasurer and Bids and Awards Committee (BAC) chairperson; Christy C. Baganutan (Baganutan), in her capacity as then municipal accountant; Ceriaco P. Sabijon (Sabijon), Thelma F. Antoque (Antoque), and Aida P. Villamil (Villamil), in their capacity as then BAC members; and Glenda G. Eslabon (Eslabon), in her capacity as then BAC secretariat, charging them with violation of Sections 3(e), 3(g), and 3(h) of Republic Act (R.A.) No. 3019, or the "Anti-Graft and

¹ *Rollo*, pp. 3-40.

² Penned by Graft Investigation and Prosecution Officer II Jay M. Visto and Approved by the Tanodbayan on January 9, 2018; *id.* at 54-68.

³ *Id.* at 69-76.

⁴ *Id.* at 56.

⁵ *Id.* at 56-57.

⁶ *Id.* at 77-131.

Reyes

Corrupt Practices Act”; R.A. No. 9184, or the “Government Procurement Reform Act”; Government Auditing Rules and Regulations; R.A. No. 6713; Article 217 of the Revised Penal Code (RPC); and Presidential Decree No. 1829.⁷

Also impleaded were Balais, in his capacity as then municipal mayor; Go, in his capacity as municipal vice mayor; Riza T. Melicor, Shane C. Galon, Alfie L. Roleda, Clark C. Borromeo, Lucio S. Panos, Armony S. Delos Reyes, Allan B. Digamon, Severino Bangcaya, Ma. Michelle M. Chipoco, and Rey B. Josue, in their capacity as then members of the Sangguniang Bayan, Ernesto B. Ramirez, in his capacity as then legislative staff officer of the Sangguniang Bayan; the state auditor; the general services officer; and Ayunting as the vendor of the subject vehicle.⁸

Based on the foregoing facts, in OMB-M-C-11-0356-I, the Ombudsman found probable cause against Balais, Go, and Ayunting for violation of Section 3(e) of R.A. No. 3019.⁹ While the case was being tried in the Sandiganbayan, Ayunting turned as a state witness.¹⁰ On the basis of Ayunting’s letter to the Ombudsman and the attached documents thereto, private respondent filed another Complaint-Affidavit¹¹ dated February 5, 2016. Private respondent posited that with these new documents, there is sufficient evidence to hold the other local government officials named in his earlier complaint-affidavit as respondents liable as conspirators.¹² This case was docketed as OMB-M-C-16-0112.

The new documents submitted by Ayunting are the: (1) subscribed letter of Ayunting; (2) Disbursement Voucher dated January 26, 2011; (3) Obligation Request dated January 21, 2011; (4) Requisition and Issue Slip dated January 24, 2011; (5) Acceptance and Inspection Report dated January 20, 2011; (6) Purchase Order dated January 20, 2011; (7) Notice of Award dated January 20, 2011; (8) Minutes of Opening of Bids dated January 19, 2011; (9) Abstract of Bids as Read dated January 19, 2011; (10) Purchase Price Request/Price Quotation dated January 11, 2011; (11) Purchase Price Request/Price Quotation dated January 10, 2011; (12) Purchase Price Invitation to Apply for Eligibility and to Bid; (13) Purchase Request dated January 7, 2011; (14) Price Quotation of Oro Cars Display Center (Oro Cars) dated January 10, 2011; (15) Official Receipt dated August 5, 2011 of the refund of the amount to the local government unit of Labason; and (16) the affidavits of Paz G. Tawi of Oro Cars and William B. Nuneza of Catmon Car Sales that they did not participate in the bidding.¹³

⁷ Id. at 87-90.

⁸ Id.

⁹ Id. at 57.

¹⁰ Id.

¹¹ Id. at 166-188.

¹² Id. at 172-174.

¹³ Id. at 57-58.

Meyer

Chipoco contended that the BAC members were not negligent in their duties and that they have no knowledge of any scheme defrauding the government.¹⁴ Meanwhile, Baganutan, Sabijon, Antoque, and Villamil maintained that the expenditure of the subject vehicle was appropriated in their 2011 budget, that the required public bidding was conducted, and that the abstract of bids was prepared after the bidding and based on the bids submitted.¹⁵ For her part, Eslabon averred that her duty was only to record the proceedings and prepare the minutes as BAC secretariat and that she has no knowledge of the circumstances attendant to the sale.¹⁶

On December 8, 2017, the Ombudsman issued the assailed Resolution¹⁷ disposing the case as follows:

WHEREFORE, finding probable cause, let the corresponding Informations be filed with the proper court for:

- (1) Violation of Section 3(e) of Republic Act No. 3019 against Melchor J. Chipoco, Philip S. Balais, Ceriaco P. Sabijon, Aida P. Villamil, Thelma F. Antoque, Glenda G. Eslabon and Christy C. Baganutan relative to the sham bidding for the purchase of a motor vehicle;
- (2) Violation of Article 171(2) of the Revised Penal Code against Wilfredo S. Balais relative to the falsified Notice of Award;
- (3) Violation of Article 171(2) of the Revised Penal Code against Melchor J. Chipoco and Glenda G. Eslabon relative to the falsified Minutes of Opening of Bids; and
- (4) Violation of Article 171(2) of the Revised Penal Code against Virgilio J. Go, Melchor J. Chipoco, Philip S. Balais, Aida P. Villamil, Ceriaco P. Sabijon, and Christy C. Baganutan relative to the falsified Abstract of Bids as Read.

As to the other respondents, the case is dismissed.

SO ORDERED.¹⁸

Chipoco, Philip S. Balais, Sabijon, Villamil, Antoque, and Eslabon filed an Urgent Motion for Reconsideration (to the Resolution dated 08 December 2017)¹⁹ but the Ombudsman denied the same in the assailed Order.

Hence, the present recourse.

¹⁴ Id. at 58.

¹⁵ Id.

¹⁶ Id. at 58-59.

¹⁷ Id. at 54-68.

¹⁸ Id. at 64-65.

¹⁹ Id. at 517-531.

Meyer

Petitioners argue that the Ombudsman gravely abused its discretion amounting to lack or excess of jurisdiction: (1) when it ruled that the BAC members gave “unwarranted benefits” to “Ayunting and/or Oro Cars” when they themselves have judicially admitted not having received anything of value from the BAC members or from Balais himself; (2) when it ruled that the BAC members gave “unwarranted benefits” to “Ayunting and/or Oro Cars” when there is allegedly no conspiracy linking the BAC with the negotiations of the sale; (3) when it refused to dismiss the complaint on the basis of the rescission of the contract of sale by virtue of Resolution No. 117; and (4) when it found basis to charge the BAC members with falsification of public documents contrary to the evidence on record and the testimony of Gloria Q. Vallinas (Vallinas)²⁰ “pointing to Balais and Go as the culprits [of] the questioned transaction.”²¹

The Ombudsman, however, maintains that there was probable cause against petitioners, among others, for their respective violations of Section 3(e) of R.A. No. 3019 and Article 171(2) of the RPC.²² The Ombudsman asserts that the issues raised by petitioners are essentially evidentiary in nature, best passed upon in a full-blown trial, and cannot be categorically determined during the preliminary stage of the case.²³

The Issue

The sole issue for the resolution of this Court is whether or not the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction when it found probable cause to charge petitioners for their respective violations of Section 3(e) of R.A. No. 3019 and Article 171(2) of the RPC.

Ruling of the Court

The Court finds the instant petition bereft of merit. The assailed Resolution and the assailed Order of the Ombudsman are not tainted with grave abuse of discretion. Thus, the Court resolves to dismiss the petition on this ground.

While the investigatory and prosecutorial powers of the Ombudsman are plenary in nature, its acts may be reviewed by the Court when tainted with grave abuse of discretion.

²⁰ Id. at 21-22.

²¹ Id. at 18.

²² Id. at 666.

²³ Id. at 669.

Meyer

Well settled is the rule that a petition for *certiorari* is a special civil action that may lie only to rectify errors of jurisdiction and not errors of judgment.²⁴ In this regard, errors of jurisdiction arise from grave abuse of discretion or such capricious and whimsical exercise of judgment tantamount to lack of jurisdiction.²⁵ Here, petitioners fault the Ombudsman for allegedly having gravely abused its discretion.

The 1987 Philippine Constitution and R.A. No. 6770, otherwise known as “The Ombudsman Act of 1989,” vest the Ombudsman with great autonomy in the exercise of its investigatory and prosecutorial powers in resolving criminal complaints against public officials and employees.²⁶ Said discretion of the Ombudsman is unqualified so as to shield it from external demands and persuasion.²⁷

Nonetheless, the said plenary powers of the Ombudsman do not exempt it from the Court’s power of review.²⁸ When the act of the Ombudsman is tainted with grave abuse of discretion, the Court may strike down the same under its expanded jurisdiction.²⁹ The Ombudsman is considered to have gravely abused its discretion when it unduly disregarded crucial facts and evidence in the determination of probable cause or when it blatantly violated the Constitution, the law, or prevailing jurisprudence.³⁰

Observing the foregoing principles, the Court finds that the Ombudsman did not gravely abuse its discretion when it issued the resolution and the order. The issuance of the resolution and the order was properly grounded on probable cause to charge petitioners for their respective violations of Section 3(e) of R.A. No. 3019 and Article 171(2) of the RPC.

The Ombudsman duly exercised its investigatory and prosecutorial powers when it issued the assailed resolution and the assailed order.

²⁴ *Public Attorney’s Office v. Office of the Ombudsman*, G.R. No. 197613, November 22, 2017. 846 SCRA 90, 100.

²⁵ *Id.*

²⁶ *Gov. Garcia, Jr. v. Office of the Ombudsman, et al.*, 747 Phil. 445, 457 (2014).

²⁷ *Judge Angeles v. Ombudsman Gutierrez, et al.*, 685 Phil. 183, 195 (2012).

²⁸ *Supra* note 24, at 101.

²⁹ *Id.*

³⁰ *Supra* note 26, at 457-458.

Mejia

Time and again, probable cause is defined as “the existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation.”³¹

As probable cause is simply based on opinion and reasonable belief, it does not require absolute certainty.³² Probable cause does not demand an inquiry into the sufficiency of evidence to secure a conviction.³³ In determining probable cause, the belief that the act or omission complained of constitutes the crime charged is enough.³⁴ It is acceptable that the elements of the crime charged should be present in all practical probability.³⁵

A meticulous scrutiny of the records readily shows that the Ombudsman was able to substantiate its finding of probable cause against petitioners. The Ombudsman pointed out that the acts and/or omissions of petitioners satisfied the elements of Section 3(e) of R.A. No. 3019 and Article 171(2) of the RPC.

As to the violation of Section 3(e) of R.A. No. 3019, the following are the elements of this crime: (1) that the accused is a public officer discharging administrative, judicial or official functions; (2) that the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) that the accused caused undue injury to any party including the Government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.³⁶

The Ombudsman explained how the said elements were met in this case.

First, Chipoco, Baganutan, Sabijon, Eslabon, and Villamil were public officers performing official functions at the time of the negotiations and sale.³⁷ Even if Antoque was just an observer during the proceedings in the BAC, she failed to submit a report as legally required thereby assenting to the irregularities.³⁸

³¹ *Chan y Lim v. Secretary of Justice*, 572 Phil. 118, 132 (2008).

³² *Philippine Deposit Insurance Corp. v. Casimiro*, 768 Phil. 429, 437 (2015).

³³ *Id.*

³⁴ *Id.*

³⁵ *Gov. Garcia, Jr. v. Office of the Ombudsman, et al.* supra note 26, at 459.

³⁶ *Fuentes v. People of the Philippines*, 808 Phil. 586, 593 (2017).

³⁷ *Rollo*, p. 60.

³⁸ *Id.*

Meyer

Second, the Ombudsman found that there was bad faith on the part of Chipoco, Sabijon, Antoque, Eslabon, and Villamil when they specifically procured, in violation of Section 18 of R.A. No. 9184, the subject vehicle previously owned by Balais and when they made it appear in the documents that a bidding was conducted even if there was none.³⁹ On the part of Buganutan, it was found that she allowed the disbursement and procurement notwithstanding the obvious infirmity of the supporting documents.⁴⁰

Last, it was clarified that there was unwarranted benefit when petitioners recommended the award of the sale of the subject vehicle to Ayunting/Oro Cars even if the latter did not submit its bid.⁴¹ As aptly put by the Ombudsman, “they gave it a benefit without justification.”⁴²

With *respect* to the falsification by a public officer, employee, or a notary public under Article 171 of the RPC, the following are the elements of this crime: (1) the offender is a public officer, employee, or a notary public; (2) the offender takes advantage of his or her official position; and (3) the offender falsifies a document by committing any of the acts of falsification under Article 171.⁴³ Article 171 (2) provides that “[c]aus[ing] it to appear that persons have participated in any act or proceeding when they did not in fact so participate” is an act of falsification.

As resolved by the Ombudsman, the foregoing elements were met when it seemingly appeared in the Notice of Award, Abstract of Bids as Read, and Minutes of Opening of Bids that Oro Cars, Eves Display Center, and Catmon Car Sales participated in the procurement of the subject vehicle yet these establishments categorically denied participation in the bidding process. The Ombudsman elucidated that petitioners had control over the said documents in their respective capacities and that they signed these notwithstanding the utter falsities therein.⁴⁴

Clearly, the Ombudsman duly performed its mandate in ascertaining facts and circumstances that will reasonably warrant a belief that petitioners are probably guilty of violations of Section 3(e) of R.A. No. 3019 and Article 171(2) of the RPC. At that point in the proceedings, it was not incumbent upon the Ombudsman to require a modicum of evidence that will ensure the conviction of petitioners. The Court will not disturb the finding of probable cause of the Ombudsman so long as it has factual and legal basis, as in the instant case.

³⁹ Id. at 60-61.

⁴⁰ Id. at 61.

⁴¹ Id. at 72.

⁴² Id.

⁴³ *Malabanan v. Sandiganbayan*, G.R. No. 186329, August 2, 2017, 834 SCRA 21, 38.

⁴⁴ *Rollo*, pp. 63-64.

Meyer

As correctly pointed out by the Ombudsman, the arguments raised in this petition, *i.e.*, the non-existence of unwarranted benefits, the bearing of the rescission of the contract of sale, and the probative value of the testimony of Vallinas, are evidentiary in nature that are best threshed out in the full-blown trial of the case. These are matters of defense involving factual issues that petitioners have the burden to prove.

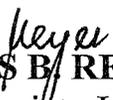
Anent the application for injunctive relief, this Court finds it inappropriate to grant the same given that it may result to the prejudgment of the main case.

Jurisprudence dictates that courts should avoid granting injunctive reliefs that consequently dispose of the main case without trial.⁴⁵ Otherwise, it will result in the prejudgment of the main case and a reversal of the rule on the burden of proof as it would adopt the allegations which petitioners ought to prove.⁴⁶

In their application for TRO, petitioners merely reiterated their defenses as discussed in the main petition as grounds for the issuance thereof.⁴⁷ Granting the application for TRO based on these grounds would effectively confirm the validity and strength of their defenses thereby prejudging the merits of the main case. Thus, this Court is constrained to deny the application for injunctive relief.

WHEREFORE, the petition is **DISMISSED** and the prayer for temporary restraining order and/or writ of preliminary injunction is **DENIED**. The Resolution dated December 8, 2017 and Order dated March 5, 2018 issued by the Office of the Ombudsman in OMB-M-C-16-0112 are **AFFIRMED**.

SO ORDERED.


ANDRES B. REYES, JR.
Associate Justice

⁴⁵ *Rep. of the Phils. v. Sps. Lazo*, 744 Phil. 367, 401 (2014).

⁴⁶ *Id.*

⁴⁷ *Rollo*, pp. 37-38.

WE CONCUR:



DIOSDADO M. PERALTA

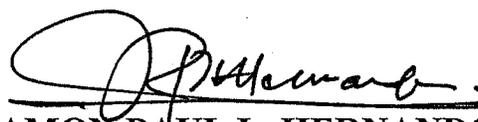
Associate Justice

Chairperson



MARVIC M.V.F. LEONEN

Associate Justice



RAMON PAUL L. HERNANDO

Associate Justice



HENRI JEAN PAUL B. INTING

Associate Justice

A T T E S T A T I O N

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

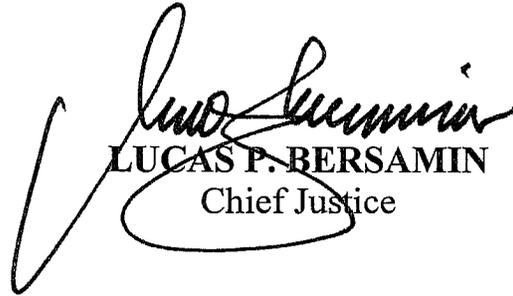
Associate Justice

Chairperson, Third Division

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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