



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ABDON A. IMINGAN,

Petitioner,

G.R. No. 226420

Present:

- versus -

PERLAS-BERNABE, S.A.J.,
Chairperson,
REYES, A., JR.,
HERNANDO,
INTING, and
DELOS SANTOS, JJ.

THE OFFICE OF THE
HONORABLE OMBUDSMAN,
THE HONORABLE
SANDIGANBAYAN, AND THE
NATIONAL BUREAU OF
INVESTIGATION-CORDILLERA
ADMINISTRATIVE REGION,

Respondents.

Promulgated:

04 MAR 2020

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DECISION

INTING, J.:

This resolves a Petition for *Certiorari* under Rule 65, with Prayer for Temporary Restraining Order (TRO) and Preliminary Injunction¹ assailing the Office of the Ombudsman's (Ombudsman) finding of probable cause to charge Abdon A. Imingan (petitioner) with violation of Section 3(e) of Republic Act No. (RA) 3019.² Petitioner prays for the annulment of the Resolution³ dated November 4, 2014 of the Ombudsman in OMB-C-C-11-0107-C.

¹ Rollo, pp. 3-43.

² Anti-Graft and Corrupt Practices Act.

³ Rollo, pp. 45-70.

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Complainant Harry C. Dominguez (Dominguez) executed an Affidavit⁴ dated February 6, 2007 charging the persons mentioned under paragraph 1 thereof with multiple counts of *Estafa* through Falsification of Public Documents, violations of RA 6713,⁵ and RA 3019.

The affidavit reads:

I, HARRY C. DOMI[N]GUEZ, of legal [age], single, Filipino citizen and a resident of Tadian, Mt. Province, after having been duly sworn to in accordance to law, do hereby depose and state the following, to wit:

1. THAT, I am filing a complaint against the herein listed individuals, who acted jointly and confederated with one another, for ESTAFA THROUGH FALSIFICATION OF PUBLIC DOCUMENTS (multiple counts); Violations of Republic Acts 6713 and 3019;
 - i. GOV. MAXIMO B. DALOG, Provincial Governor, Mt. Province;
 - ii. RONALD C. KIMAKIM, Proprietor, RONHIL Trading;
 - iii. THEODORE B. MARRERO, Provincial Accountant;
 - iv. NENITA D. LIZARDO, M.D., Provincial Health Officer;
 - v. HELEN MACLI-ING, Provincial Nurse;
 - vi. ATTY BARTOLOME MACLI-ING, Notary Public;
 - vii. PAULO P. PAGTEILAN, BAC Chairman;
 - viii. LILY ROSE T. KOLLIN, BAC Vice-Chairman;
 - ix. FLORENCE GUT-OMEN, BAC Member;
 - x. EDWARD LIKIGAN, BAC Member;
 - xi. SOLEDAD THERESA F. WANAWAN, BAC Member;
 - xii. JEROME M. FALINGAO, BAC-TWG;
 - xiii. ABDON A. IMINGAN, BAC Secretariat;
 - xiv. ABELARD T. PACHINGEL, Inspector of Vehicle;
 - xv. THE[O]DORE L. DALOG, Engineer IV (Inspector of Vehicle); and,
 - xvi. CAWED A. GAMMONAC, Provincial Treasurer.
2. THAT, except for RONALD KIMAKIM and ATTY. BARTOLOME MACLI-ING, I am likewise filing an administrative complaint for GRAVE MISCONDUCT and DISHONESTY against the same persons mentioned at Paragraph

⁴ *Id.* at 101-103.

⁵ Code of Conduct and Ethical Standards for Public Officials and Employees.

- 1, items (i) to (xvi) of this same Affidavit, who are all government employees;
3. THAT, sometime in the month of February 2006 up to March 2006, the abovementioned persons, acting jointly and confederating with one another, and on various occasions during the span of said period, did then caused the preparations of various documents allegedly pertaining to the purchase of one unit Mitsubishi L300 Versa Van with Engine No. 4D56AR6686 and Serial No. PAEL65NV16B001509, which was made to appear to have been officially procured by the Provincial Government of Mt. Province represented by GOV. DALOG in the amount of Php999,000.00 from RONALD KIMAKIM;
4. THAT, however, I learned that the said Mitsubishi L300 Versa van with the same engine and serial numbers mentioned at the preceding paragraph was actually privately purchased in cash by HELEN MACLI-ING from the Motorplaza, Inc., Baguio City, in the amount of Php756,000.00 only;
5. THAT, for this reason, there is no official transaction that transpired between GOV. DALOG and KIMAKIM regarding the acquisition of the said one unit Mitsubishi L300 Versa Van with Engine No. 4D56AR6686 and Serial No. PAEL65NV16B001509;

X X X X

7. THAT, relative to this complaint, I likewise caused the initiation of complaints for Violations of Republic Acts 3019 and 9184, also known as ANTI-GRAFT AND CORRUPT PRACTICES ACT and AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION FOR THE PROCUREMENT ACT[IVITIES FOR THE GOVERNMENT AND OTHER PURPOSES, respectively, with the Office of the Deputy Ombudsman for Luzon, Quezon City, docketed as OMB Case No. L-C-07-0106-A;⁶

The complaint was referred to the National Bureau of Investigation (NBI) for investigation. Thereafter, the NBI Reporting Investigator issued a Case Report⁷ dated August 21, 2007.

⁶ *Rollo*, pp. 101-102.

⁷ *Id.* at 104-119.

To provide a backgrounder, portions of the NBI Case Report are hereunder quoted as follows:

01. This case stemmed from the LETTER COMPLAINT dated February 5, 2007 (Annex A) of HARRY C. DOMI[N]GUEZ, Bontoc, Mt. Province, requesting the NBI-CAR to investigate the alleged anomalous transaction regarding the purchase of one (1) unit Mitsubishi Van acquired by the Provincial Government of Mountain Province x x x.

x x x x

Perusal of the DEED OF SALE OF A MOTOR VEHICLE including the issued RECEIPT therefor shows that the vehicle in question was allegedly sold by RONALD KIMAKIM to the Provincial Government of Mt. Province represented by GOV. DALOG on 29 March 2006 in the amount of Php999,000.00, as evidenced by their respective signatures appearing therein. x x x

On the contrary, scrutiny of the Motorplaza's VSI and DR [Delivery Receipt] revealed that the Mitsubishi van was sold to RONALD KIMAKIM by the Motorplaza Inc., represented by its Sales Manager ADELON T. ESPIRITU on March 29, 2006, in the amount of Php756,000.00 only. x x x

Per se, the aforementioned DEED OF SALE contradicts with the aforesaid Motorplaza's VSI and DR. The probability of the authenticity of the sale of said Mitsubishi vehicle to GOV. DALOG by KIMAKIM and the sale of the same vehicle to KIMAKIM by the Motorplaza, Inc., both executed on the same day and occurring in two different places, is dubious.

x x x x

08. In view of KIMAKIM's assertions, substantiated by the declaration of ADELON ESPIRITU, it is safe to conclude that the transaction between KIMAKIM and GOV. DALOG re the sale of the subject van never really transpired, thus, the narrations contained at said DEED OF SALE OF MOTOR VEHICLE are absolutely false x x x.

09. x x x for reason that the narrations contained in the said DEED OF SALE OF MOTOR VEHICLE are untrue, all the herein listed preceding documents that were issued in support to the same DEED OF SALE OF MOTOR VEHICLE are deemed fabricated and/or falsified, to wit:

- a. Undated PURCHASE REQUEST No. 30-06 x x

x, re the purchase of L-300 Versa van, x x x;

- b. BIDS AND AWARDS COMMITTEE (BAC) LETTER x x x, *requesting for approval/ and approving the purchase of one (1) unit VERSA VAN, x x x;*
 - c. INVITATION TO APPLY FOR ELIGIBILITY AND TO BID x x x, *for the procurement of ONE (1) UNIT MITSUBISHI VAN, x x x;*
 - d. KIMAKIM'S accomplished BID FORM x x x, *quoting therein the price of PhP999,000.00 for 1 unit L300 Mitsubishi Versa Van, Brand New with aircon and markings;*
 - e. ABSTRACT OF BIDS x x x, *containing the description of (1) UNIT Mitsubishi Van, x x x;*
 - f. POST-QUALIFICATION EVALUATION REPORT x x x, *RE PROCUREMENT OF MITSUBISHI VAN, x x x;*
 - g. POST-QUALIFICATION EVALUATION SUMMARY REPORT x x x, *RE PROCUREMENT OF MITSUBISHI VAN, x x x;*
 - h. BID EVALUATION REPORT x x x, *RE PROCUREMENT OF MITSUBISHI VAN, x x x;*
 - i. BAC RESOLUTION NO. G-06 x x x *DECLARING LOWEST CALCULATED AND RESPONSIVE BID (LCRB) AND RECOMMENDING APPROVAL, FOR THE PROCUREMENT OF ONE (1) UNIT MITSUBISHI VAN, x x x;*
 - j. NOTICE OF AWARD/ACCEPTANCE x x x, *RE PROCUREMENT OF ONE (1) UNIT MITSUBISHI VAN, x x x;*
 - k. PURCHASE ORDER x x x, *for (1) unit MITSUBISHI VAN in the amount of Php999,000.00, x x x;*
10. In the same manner, all the subsequent documents issued in support of the same DEED OF SAL OF MOTOR VEHICLE are likewise believed falsified and made up purposely to justify the

disbursement of the payment of the said Mitsubishi van in the amount of PhP999,000.00, to wit:

- a. RONHIL TRADING Statement of Account x x x, *for the payment of one unit MITSUBISHI VAN in the amount of PhP999,000.00*, signed by a representative of KIMAKIM;
- b. ACCEPTANCE AND INSPECTION REPORT x x x, *of 1 unit MITSUBISHI VAN, BRAND NEW*, x x x;
- c. INSPECTION REPORT x x x, *on MITSUBISHI L300 VAN, BRAND NEW COLOR WHITE WITH ENGINE NO. 4D56AR6686*, x x x
- d. DISBURSEMENT VOUCHER x x x, *for the payment of ONE UNIT MITSUBISHI VAN in the amount of PhP999,000.00*, signed by GOV. MAXIMO B. DALOG; THEODORE B. MARRERO, Provincial Accountant; and RONALD KIMAKIM;

x x x x

11. The Mitsubishi L300 van that was made to appear to have been officially purchased in the amount of PhP999,000.00 by the Mt. Province Provincial Government was actually the same Mitsubishi L300 van that was privately purchased by the Spouses BARTOLOME and HELEN MACLI-ING from the Motorplaza, Inc., Baguio City, in the amount of PhP756,000.00 only;
12. In view that no transaction re the sale of the said van between KIMAKIM and GOV. DALOG transpired and through the concerted efforts of the latter including the abovementioned government employees signatories on the documents itemized at Paragraphs 9 (a to k) and 10 (a to d) of this Report, the Provincial Government of Mt. Province was defrauded in the entire amount of PhP999,000.00 only.

x x x x

17. Perusal of various documents (not certified true copies) attached to the Counter-Affidavit of GOV. DALOG are the following, to wit:
 - a. Undated and unnumbered PURCHASE REQUEST x x x, *re the purchase of L-300 Versa*

van (Brand New) Body Painting-white color, fully air-conditioned, 2.5 Diesel, with Ambulance Equipment and Accessories, x x x;

- b. BIDS AND AWARDS COMMITTEE (BAC) LETTER x x x, *requesting for approval/ and approving the purchase of Mitsubishi Van with Ambulance Equipments and other Accessories, x x x;*
- c. INVITATION TO APPLY FOR ELIGIBILITY AND TO BID x x x, *for the procurement of ONE (1) UNIT MITSUBISHI VAN with AMBULANCE EQUIPMENT AND OTHER ACCESSORIES, x x x;*

x x x

- e. MINUTES OF THE PRE-BID CONFERENCE HELD AT THE BAC OFFICE, PROVINCIAL CAPITOL BANTOC, MT. PROVINCE ON MARCH 3, 2006 x x x, *stating that the same was FOR THE CONSTRUCTION OF BANTOC COMMERCIAL CENTER PHASE 1 HELD AT THE BAC OFFICE, CALLED TO ORDER AT 10:02AM MARCH 3, 2006 AND WAS PRESIDED BY MR. PAULO PAGTEILAN;*
- f. ABSTRACT OF BIDS x x x, *containing the description of (1) UNIT Mitsubishi Van with AMBULANCE EQUIPMENT AND OTHER ACCESSORIES, x x x;*
- g. MINUTES OF THE REGULAR MEETING AND OPENING OF BIDS x x x, *NAME OF CONTRACT – PROCUREMENT OF ONE (1) UNIT MITSUBISHI L300 with AMBULANCE EQUIPMENT AND OTHER ACCESSORIES,*
- h. POST-QUALIFICATION EVALUATION REPORT x x x, *RE PROCUREMENT OF MITSUBISHI VAN with AMBULANCE EQUIPMENT AND OTHER ACCESSORIES,* signed by JEROME M. FALINGAO, BAC-TWG; and ABDON A. IMINGAN, BAC SECRETARIAT;
- i. POST-QUALIFICATION EVALUATION



SUMMARY REPORT x x x, *RE PROCUREMENT OF MITSUBISHI VAN WITH AMBULANCE EQUIPMENT AND OTHER ACCESSORIES*, signed by JEROME M. FALINGAO, BAC-TWG; and ABDON A. IMINGAN, BAC SECRETARIAT;

- j. BID EVALUATION REPORT x x x, *RE PROCUREMENT OF MITSUBISHI VAN with AMBULANCE EQUIPMENT AND OTHER ACCESSORIES*, signed by JEROME M. FALINGAO, BAC-TWG; and ABDON A. IMINGAN, BAC SECRETARIAT;
- k. BAC RESOLUTION NO. G-06 x x x, *DECLARING LOWEST CALCULATED AND RESPONSIVE BID (LCRB) AND RECOMMENDING APPROVAL, FOR THE PROCUREMENT OF ONE (1) UNIT L300 MITSUBISHI VAN with AMBULANCE EQUIPMENT AND OTHER ACCESSORIES*, x x x;
- l. NOTICE OF AWARD/ACCEPTANCE x x x, *RE PROCUREMENT OF ONE (1) UNIT MITSUBISHI VAN with AMBULANCE EQUIPMENT AND OTHER ACCESSORIES*, x x x;
- m. PURCHASE ORDER dated March 17, 2006 x x x, *for (1) unit MITSUBISHI VAN with AMBULANCE EQUIPMENT AND OTHER ACCESSORIES, in the amount of PhP999,000.00*, signed by GOV. DALOG and RONALD KIMAKIM;

x x x x

20. x x x x

Items a, b, c, e, f, g, h, i, j, and k of Paragraph 9 of this Report pertain to the purchase of one unit (basic) Mitsubishi L300 Versa Van with Engine No. 4D56AR6686 and Serial No. PAEL65NV16B001509, that was made to appear to have been procured by the provincial Government of Mt. Province represented by GOV. DALOG in the amount of PhP999,000.00 from KIMAKIM.

On the other hand, items a, b, c, f, h, i, j, k, l, and m of Paragraph 17, which were used as supporting documents in the Counter-Affidavit of GOV. DALOG, pertain to the purchase of a one unit Mitsubishi L300 Versa Van with the same engine and serial numbers to that of the said van mentioned at the preceding paragraph.

However, it is noteworthy that in all said specified documents under Paragraph 17, the phrase "*with AMBULANCE EQUIPMENT AND OTHER ACCESSORIES*", were already suffixed to the description "*one unit MITSUBISHI L300 VERSA VAN*"; thus, making it appear that what was purchased was one unit MITSUBISHI L300 VAN with AMBULANCE EQUIPMENT and OTHER ACCESSORIES, when in fact and in truth there is no official transaction that transpired between GOV. DALOG and KIMAKIM regarding the acquisition of the said "one unit MITSUBISHI L300 VERSA VAN with AMBULANCE EQUIPMENT AND OTHER ACCESSORIES.

What was took place was the private transaction between the Spouses MACLI-ING and ESPIRITU of the Motorplaza, Inc., Baguio City, re the purchase of one unit (basic) Mitsubishi L300 Versa Van with Engine No. 4D56AR6686 and Serial No. PAEL65NV16B001509 in the amount of Php756,000.00 only.

Apparently, when GOV. DALOG, Et Al., learned about the complaint filed against them by DOMINGUEZ, the Subjects, acting jointly and confederating with one another, did then caused the immediate reconstruction of all said specified documents under Paragraph 17, purposely to justify the disbursement of the amount of Php999,000.00.

21. Aside from the circumstances already cited at Paragraph 10 of this Report which substantiates the conclusion that the supporting documents re the purchase of the subject Mitsubishi Van were fabricated, this would be further corroborated by the document specified at Item E, Paragraph 17 of this Report, described as "MINUTES OF THE PRE-BID CONFERENCE HELD AT THE BAC OFFICE, PROVINCIAL CAPITOL BONTOC, MT. [PROVINCE] ON MARCH 3, 2006".

Scrutiny thereof shows that its purpose is FOR THE CONSTRUCTION OF BONTOC COMMERCIAL CENTER PHASE 1 HELD AT THE BAC OFFICE, CALLED TO ORDER AT 10:02AM MARCH 3, 2006 AND WAS PRESIDED BY MR. PAULO PAGTEILAN, hence, not for the purchase of the Mitsubishi L300 Versa Van. Yet, a COMMENT of Dr. NENITA LIZARDO appearing at the bottom of the document that reads, "I

would like to suggest that except for painting, the ambulance equipment and other accessories shall not be installed because it was planned that upon delivery of this vehicle, the same shall be used as service vehicle of the hospital for the meantime”, presupposes that same is indeed for the purchase of the subject van.

In view of the confusing/inconsistent contents in the said document, it is safe to conclude that same was fictitious.⁸ (Emphasis and underscoring omitted; italics in the original.)

Atty. Nestor M. Mantaring of the NBI transmitted the NBI Case Report to the Provincial Prosecutor of Mountain Province for preliminary investigation. Subsequently, Mountain Province Provincial Prosecutor Moses C. Aycchok endorsed the complete record of the case to the Ombudsman.⁹

In the Order¹⁰ dated March 17, 2011 of the Ombudsman in OMB-C-C-11-0107-C, respondents *a quo*,¹¹ including herein petitioner, were directed to file their respective counter-affidavits.

In his counter-affidavit,¹² petitioner contended, among others, that at the time of the subject transaction, he was an Executive Assistant at the Office of the Governor of Mountain Province and a member of the BAC Secretariat. He denied the NBI’s finding of cover up committed in the bid documents. He alleged that then BAC Chairman, Paolo P. Pagteilan, explained to him that what should be indicated as the “Name of the Project” in the Post-Qualification Evaluation Summary Report and Bid Evaluation Report is “Procurement of Mitsubishi Van with Ambulance Equipment and Accessories,” and not just “Procurement of Mitsubishi Van.”¹³ Thus, changes were correspondingly effected.

⁸ *Id.* at 104-115.


⁹ *Id.* at 46-47.

¹⁰ *Id.* at 98-100.

¹¹ Respondents in OMB-C-C-11-0107-C are the following: Governor Maximo B. Dalog, Cawed A. Gammonac (Provincial Treasurer), Theodore B. Marrero (Provincial Accountant), Nenita D. Lizardo, M.D. (Provincial Health Officer), Helen Macli-ling (Provincial Nurse), Paulo P. Pagteilan, Lily Rose T. Kollin, Florence R. Gut-omen, Edward B. Likigan, Emilio B. Pinangga, Soledad Theresa F. Wanawan (Chairman and Members, Bids and Awards), Jerome M. Falingao (Member, Technical Working Group), Abdon A. Imingan (BAC Secretariat), Abelard T. Pachangel, Theodore L. Dalog (Members, Technical & Inspection ALL C/O Provincial Government of Mountain Province Capitol Building, Bontoc, Mountain Province), Atty. Bartolome Macli-ling (Notary Public), and Ronald C. Kimakim (Proprietor, RONHIL Trading). (*Id.* at 98.)

¹² *Id.* at 132-135.

¹³ *Id.* at 134.



Meanwhile, in a separate case docketed as OMB-L-C-07-0106-A, entitled "*Harry C. Dominguez v. Governor Maximo B. Dalog, Paulo P. Pagteilan, Lily Rose T. Kollin, Florence R. Gut-omen, Edward B. Likigan, Emilio B. Pinangga Soledad Theresa F. Wanawan,*" respondents therein were charged with violations of Section 3(e) of RA 3019 and RA 9184 for the same transaction as in the present case, *i.e.*, the procurement of the Mitsubishi van. In the Resolution¹⁴ dated March 25, 2009, the Ombudsman dismissed the case. The subsequent motion for reconsideration was denied in the Order¹⁵ dated September 6, 2010. As can be culled from the Ombudsman's Resolution in that case, Dominguez claimed that there were irregularities in the purchase of the Mitsubishi van, thus:

1. The bidding was rigged because the vehicle was not procured through public bidding in violation of Section 10, Rule IV, Implementing Rules and Regulations (IRR for brevity) of R.A. 9184;

2. The required posting of the procurement of the vehicle at the G-EPS (Government Electronic Procurement System) was not complied with in violation of Section 8, Rule III of the Implementing Rules and Regulations of R.A. 9184;

3. The vehicle was acquired from an unauthorized dealer;

4. There is no transparency with respect to said procurement because in the Invitation to Apply for Eligibility and to Bid, it was indicated that the funding will come from the trust fund but in the disbursement voucher, it was indicated that the funding came from the general fund; and

5. The purchase price in the amount of Nine Hundred Ninety-Nine Thousand, Nine Hundred Ninety-Nine Pesos Philippine Currency (PhP999,000.00) is excessive based on the price quotation submitted by MotorPlaza, Inc. in the amount of PhP781,000.00 for a Mitsubishi Van with the same specifications.¹⁶ (Citations omitted.)

There were attempts to consolidate OMB-L-C-07-0106-A with OMB-C-C-11-0107-C.¹⁷ However, the attempts were futile by reason of the dismissal of OMB-L-C-07-0106-A.

¹⁴ *Id.* at 79-92.

¹⁵ *Id.* at 93-97.

¹⁶ *Id.* at 80.

¹⁷ *Id.* at 60.

On November 4, 2014, the Ombudsman rendered the assailed Resolution.¹⁸ It noted that the charges against respondents *a quo* were anchored on the documents alleged to have been modified to hide the irregularities in the procurement of the Mitsubishi van. The Ombudsman picked up on the report of the NBI, and pointed out that, initially, what was reflected in the bid documents was the procurement of a *Mitsubishi van*. However, it was subsequently made to appear in some bid documents that the procurement was for an *ambulance* for the Bontoc General Hospital (BGH).

Specifically as regards the charge for violation of Section 3(e) of RA 3019, the Ombudsman found that the elements thereof are present to constitute as basis for a finding of probable cause against petitioner and his co-respondents *a quo*.

The Ombudsman disposed of the case in this wise:

WHEREFORE, this Office finds probable cause to prosecute MAXIMO B. DALOG, THEODORE A. MARRERO, NENITA D. LIZARDO, HELEN K. MACLI-ING, PAULO P. PAGTEILAN, LILY ROSE T. KOLLIN, FLORENCE R. GUT-OMEN, EDWARD B. LIKIGAN, SOLEDAD THERESA F. WANAWAN, JEROME M. FALINGAO, ABDON A. IMINGAN, ABELARD T. PACHINGEL and private respondent RONALD C. KIMAKIM, acting in conspiracy with one another, for violation of Section 3(e) of RA 3019, as amended. Accordingly, let the appropriate Information be FILED against them before the Sandiganbayan for one count of violation of Section 3(e) of RA 3019, as amended.

The charges of Estafa through Falsification and Violation of Section 4, Republic Act No. 6713 are DISMISSED for lack of merit.

Furthermore, the charges against public respondents CAWED A. GAMMONAC, THEODORE L. DALOG, EMILIO B. PINANGGA, and private respondent ATTY. BARTOLOME MACLI-ING are DISMISSED for insufficiency of evidence.

SO ORDERED.¹⁹

¹⁸ *Id.* at 45-71.

¹⁹ *Id.* at 69.



Petitioner moved for a partial consideration²⁰ of the Resolution, but the Ombudsman denied it in an Order²¹ dated August 8, 2016.

Hence, this petition for *certiorari* where petitioner essentially argues that the Ombudsman committed grave abuse of discretion in finding probable cause against him for violation of Section 3(e) of RA 3019.

The Court's Ruling

The petition lacks merit.

The Constitution and RA 6770²² empower the Ombudsman, in the exercise of its investigatory and prosecutory powers, to act on criminal complaints involving public officials and employees.²³ Generally, the Court does not interfere in the Ombudsman's exercise of discretion in determining probable cause.²⁴

For the purpose of filing a criminal information, probable cause 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.²⁵

Explaining the concept of probable cause, the Court held in *Philippine Deposit Insurance Corp. (PDIC) v. Hon. Casimiro, et al.*²⁶ that:

x x x The term [probable cause] does not mean "actual or positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Probable cause 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.

²⁰ *Id.* at 145-166.

²¹ *Id.* at 73-78.

²² The Ombudsman Act of 1989.

²³ *Casing v. Hon. Ombudsman, et al.*, 687 Phil. 468, 475 (2012), citing *PCGG v. Hon. Desierto*, 445 Phil. 154 (2003) and *Quiambao v. Hon. Desierto*, 481 Phil. 852 (2004).

²⁴ *Cam v. Casimiro, et al.*, 762 Phil. 72, 88 (2015).

²⁵ *Philippine Deposit Insurance Corp. (PDIC) v. Hon. Casimiro, et al.*, 768 Phil. 429, 437 (2015), citing *Fenequito, et al. v. Vergara, Jr.*, 691 Phil. 335, 345 (2012).

²⁶ 768 Phil. 429 (2015).

A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction.²⁷ (Emphasis and underscoring omitted.)

The Ombudsman's investigatory and prosecutorial powers, while plenary in nature,²⁸ are not beyond the scope of the Court's power of review.²⁹ Where there is an allegation of grave abuse of discretion, the Ombudsman's act cannot escape judicial scrutiny under the Court's constitutional power and duty to decide whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.³⁰

However, not every error in the proceedings or erroneous conclusion of law or fact constitutes grave abuse of discretion.³¹ In the same way, mere disagreement with the Ombudsman's findings is not enough to constitute grave abuse of discretion.³² Petitioner must clearly show that the Ombudsman acted with grave abuse of discretion amounting to lack or excess of jurisdiction in arriving at the conclusion she reached.³³ There is grave abuse of discretion where it is shown that that the discretionary power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility.³⁴ The abuse of discretion must be so patent and gross as to amount to an evasion of a

²⁷ *Id.* at 437-438, citing *Fenequito, et al. v. Vergara, Jr.*, 691 Phil. 335, 345-346 (2012).

²⁸ *Public Attorney's Office v. Office of the Ombudsman*, G.R. No. 197613, November 22, 2017, 846 SCRA 90, 100, citing *Soriano v. Marcelo*, 597 Phil. 308, 316 (2009).

²⁹ *Id.*, citing *Angeles v. Gutierrez*, 685 Phil. 183, 193 (2012).

³⁰ *Casing v. Hon. Ombudsman, et al.*, *supra* note 23 at 476, citing Section 1, Article VIII, 1987 CONSTITUTION.

³¹ *Gatchalian v. Office of the Ombudsman*, G.R. No. 229228, August 1, 2018, citing *Information Technology Foundation of the Philippines v. Commission on Elections*, G.R. Nos. 159139 & 174777, June 6, 2017, 826 SCRA 112, 132.

³² *Reyes v. The Office of the Ombudsman, et al.*, 810 Phil. 106, 115 (2017).

³³ *Gatchalian v. Office of the Ombudsman, supra* at 132.

³⁴ *Id.*

positive duty or to a virtual refusal to perform the duty enjoined or to act in contemplation of law.³⁵ On this score, where there is an imputation of errors of jurisdiction proceeding from grave abuse of discretion, the special civil action of *certiorari* may be resorted to.³⁶

Guided by the foregoing, the Court shall now discuss the issue at hand.

In his imputation of grave abuse of discretion on the part of the Ombudsman, petitioner denies that there were alterations in the bid documents for the purchase of the Mitsubishi van to hide the alleged irregularities. He maintains that the changes made in the bid documents were done in order to reflect that what was actually purchased and delivered to the provincial government was an ambulance unit with equipment and accessories as originally intended, and not just one Mitsubishi van. Petitioner further submits that there was no change in the purpose or use of the purchased vehicle; thus, no injury was caused to the government. Neither was there any unwarranted benefit granted by him and his co-respondents *a quo* to any private party. The Ombudsman has no basis to conclude that Ronald Kimakim, the owner of Ronhil Trading, was the sole bidder.

After a careful study of the case, the Court finds that petitioner failed to show that the Ombudsman conducted the preliminary investigation in an arbitrary and despotic manner. On the contrary, the Ombudsman properly performed its duty in determining whether petitioner is probably guilty of Section 3(e) of RA 3019.

Section 3(e) of RA 3019 provides:

Sec. 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

- (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in

³⁵ *Id.*

³⁶ *Public Attorney's Office v. Office of the Ombudsman*, *supra* note 28.

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.

Contrary to what petitioner would impress upon the Court, the Ombudsman, in finding probable cause, did not have to inquire as to whether there was sufficient evidence to secure a conviction. A reading of the assailed Resolution shows that the Ombudsman was of the well-founded belief that the complained acts and omissions constituted a violation of Section 3(e) of RA 3019. The Ombudsman categorically found as follows:

Contrary to Pagteilan, Kollin, Gut-omen, Likigan and Wanawan's claim, Kimakim was the *sole bidder* for the procurement of the Mitsubishi van. Without showing its basis, the Provincial Government declared Kimakim as the winner. This was done despite the presence of irregularities in the procurement process, i.e. modification of the procurement documents upon discovery that the actual intent of the procurement was for a service vehicle and not for an ambulance. Such violation of the Procurement Law should have alerted public respondents before the procurement was finalized. By allowing the procurement process to continue despite the manifest irregularities in the procurement, public respondents caused undue injury to the government in the amount of ₱87,700.91 and gave Kimakim unwarranted/undue benefit, to the detriment of public service.³⁷ (Emphasis and citations omitted; underscoring in the original.)

As established below and admitted by petitioner, the latter's participation in the subject transaction was in the preparation of the Post-Qualification Evaluation Report, Post-Qualification Evaluation Summary Report and Bid Evaluation Report, which the NBI reported to have been fabricated or falsified in order to hide the anomalies in the transaction between Ronald C. Kimakim and Gov. Maximo B. Dalog regarding the procurement of the Mitsubishi van. In finding probable cause against petitioner, the Ombudsman held:

Also, inasmuch as not one from the respondents lifted a finger to stop the procurement, despite the glaring irregularities, clearly indicate the conspiratorial design of respondents to favor Kimakim

³⁷ Rollo, pp. 65-66.

through the circumvention of RA 9184, deception of the government and complete disregard of the principles of accountability, responsibility and transparency.

Further, by allowing the deviation or change in the actual use of the Mitsubishi van and their failure to *outrightly* reflect the word ‘ambulance equipment and accessories’ in the majority of the procurement documents, clearly establishes the *badge of conspiracy* as without the indispensable participation of each of respondents, the whole process would have not been completed. Although it appears that their acts were independent, it were, *in reality*, concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments.³⁸ (Emphasis and citations omitted; underscoring in the original.)

Petitioner also makes much of the dismissal of OMB-L-C-07-0106-A. He contends that since the case has already been dismissed, the charge for violation of Section 3(e) of RA 3019 cannot be revived in OMB-C-C-11-0107-C. Petitioner goes as far as invoking the principle of finality on resolutions and even alleging forum shopping.

The contention lacks merit primarily because petitioner was not even a party in OMB-L-C-07-0106-A. At any rate, the Court observes that the justification for the dismissal of the charge for violation of RA 3019 in OMB-L-C-07-0106-A was not because the investigating officer did not strongly and honestly believe that respondents therein were not guilty of the crime charged. Instead, it was, because, as exactly worded in the Resolution:³⁹

x x x [T]he complainant charged the respondents of violation of the anti-graft law without even specifying the acts which should constitute any of the corrupt practices defined in Section 3 of R.A. 3019. The indiscriminate accusation that respondents violated the law without any reference to any corrupt acts does not merit any consideration, adding to it the fact that it is not, in the least, corroborated by any evidence. Hence, the charge must fail.⁴⁰

But more importantly, the dismissal of OMB-L-C-07-0106-A is not a judgment on the merits. Hence, petitioner cannot invoke finality of resolutions. As the Court held:

³⁸ *Id.* at 66.

³⁹ *Id.* at 79-92.

⁴⁰ *Id.* at 89.

Jurisprudence has long settled that preliminary investigation does not form part of trial. Investigation for the purpose of determining whether an actual charge shall subsequently be filed against the person subject of the investigation is a purely administrative, rather than a judicial or quasi-judicial, function. It is not an exercise in adjudication: no ruling is made on the rights and obligations of the parties, but merely evidentiary appraisal to determine if it is worth going into actual adjudication.

The dismissal of a complaint on preliminary investigation by a prosecutor "cannot be considered a valid and final judgment." As there is no former final judgment or order on the merits rendered by the court having jurisdiction over both the subject matter and the parties, there could not have been *res judicata* x x x.⁴¹

Another matter raised by petitioner is denial of due process. According to him, he was not given an opportunity to controvert the charge of violation of RA 3019 as what he was directed to file a counter-affidavit to was only the charge of falsification. Petitioner further gives the impression that the allegations below against him, such as those contained in the NBI Report, focused on the charge of falsification and not on Section 3(e) of RA 3019. Thus, in stating his defenses below, he also did not focus on the charge for violation of Section 3(e) of RA 3019. He was then surprised to find out that the Ombudsman found probable cause to indict him for violation of Section 3(e) of RA 3019.

Petitioner's allegations do not persuade and are belied by the record. *First*, Dominguez's affidavit specifically charged him and his co-respondents *a quo* with violation of RA 3019. The affidavit expressly cited the documents that petitioner prepared and signed in connection with the procurement of the Mitsubishi van. *Second*, the NBI Case Report categorically recommended, among other things, that petitioner and some of his co-respondents *a quo* be charged with violation of Section 3 of RA 3019. Significantly, the NBI Case Report provided a detailed and lengthy report in support of its conclusion and recommendation. *Third*, nowhere in the Order dated March 17, 2011 of the Ombudsman did it require petitioner and his co-respondents *a quo* to file a counter-affidavit only to the charge of falsification. Also, all the charged offenses were explicitly stated in the first page of the Order. *Fourth*, petitioner filed a counter-affidavit. Therein, he even acknowledged being charged with violation of RA 3019. The filing of the counter-affidavit was an opportunity for him to explain his side of

⁴¹ *Pavlow v. Mendenilla*, 809 Phil. 24, 49 (2017). Citations omitted.

the controversy. *Fifth*, with respect to the Ombudsman's Resolution, petitioner had the chance to question it and seek reconsideration thereof, which he actually did through his Motion for Partial Consideration. Thus, petitioner has no basis at all to claim that he was deprived of an opportunity to be heard.

Lastly, petitioner invokes his right to a speedy disposition of cases, saying that it took the Ombudsman a long time to resolve the complaint.

It bears stressing that the right to a speedy disposition of cases is a flexible concept.⁴² A mere mathematical reckoning of the time involved is not sufficient.⁴³ Due regard must be given to the facts and circumstances surrounding each case.⁴⁴ The right is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays.⁴⁵ Petitioner has failed to substantiate his claim, or to even show that there was an unreasonable, arbitrary, and oppressive delay on the part of the Ombudsman in conducting the preliminary investigation. He even admits not following up on his case believing that it was dismissed since OMB-L-C-07-0106-A had already been dismissed.

In the case of *Tilendo v. Ombudsman*,⁴⁶ the Court held:

Even assuming there was delay in the termination of the preliminary investigation, Tilendo is deemed to have slept on his right to a speedy disposition of cases. From 22 October 1999, when he submitted to the NBI his counter-affidavit, after asking for several extensions of time, Tilendo did nothing until December 2002. It seems that Tilendo was insensitive to the implications and contingencies of the projected criminal prosecution posed against him. He did not take any step whatsoever to accelerate the disposition of the matter. Tilendo's inaction gives the impression that he did not object to the supervening delay, and hence it was impliedly with his acquiescence. He did not make any overt act like, for instance, filing a motion for early resolution. He asserted his right to a speedy disposition of cases only when the Deputy Ombudsman-Mindanao required him to file his counter-affidavit to the NBI complaint.

⁴² *The Ombudsman v. Jurado*, 583 Phil. 132, 145 (2008).

⁴³ *Id.* at 138.

⁴⁴ *Id.* at 145.

⁴⁵ *Id.*

⁴⁶ 559 Phil 739 (2007).

Tilendo's contention of violation of his right to speedy disposition of cases must fail. There was no unreasonable and unjustifiable delay which attended the resolution of the complaints against him in the preliminary investigation phase.⁴⁷

For the foregoing reasons, the Court finds the present petition to be without basis.

To emphasize the basic concept that must be borne in mind throughout this Decision, the Court quotes the following:

x x x [S]o long as *substantial evidence* supports the Ombudsman's ruling, his decision should stand. In a criminal proceeding before the Ombudsman, the Ombudsman merely determines whether probable cause exists x x x. Probable cause is a reasonable ground of presumption that a matter is, or may be, well founded on such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so. As the term itself implies, probable cause is concerned merely with probability and not absolute or even moral certainty; it is merely based on opinion and reasonable belief. x x x⁴⁸

WHEREFORE, the Petition for *Certiorari* is **DENIED**. The Resolution dated November 4, 2014 of the Ombudsman in OMB-C-C-11-0107-C is **AFFIRMED**.

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

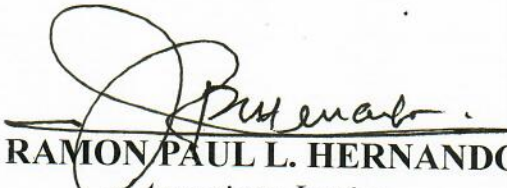
⁴⁷ *Id.* at 751.


⁴⁸ *Casing v. Hon. Ombudsman, et al.*, *supra* note 23 at 477. Citations omitted.

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

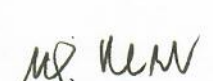

ANDRES B. REYES, JR.
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.


ESTELA M. PERLAS-BERNABE
Acting Chief Justice

