



**Republic of the Philippines**  
**Supreme Court**  
**Manila**

**SPECIAL THIRD DIVISION**

**JOSE MIGUEL T. ARROYO,**  
 Petitioner,

**G.R. No. 210488**

Present:

LEONEN, J.,  
*Chairperson,*  
 CARANDANG,  
 ZALAMEDA,  
 LOPEZ, M., and  
 GAERLAN, JJ.

- versus -

**THE HON. SANDIGANBAYAN –**  
**FIFTH DIVISION and THE PEOPLE**  
**OF THE PHILIPPINES,**

Promulgated:

Respondents.

December 1, 2021

*MisDcBatt*

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**RESOLUTION**

**CARANDANG, J.:**

For resolution is the Motion for Reconsideration<sup>1</sup> filed by petitioner Jose Miguel T. Arroyo (Arroyo) assailing the Court’s Decision<sup>2</sup> dated January 27, 2020, the dispositive portion of which reads:

**WHEREFORE,** the instant Petition for Certiorari is **DISMISSED.** The Sandiganbayan’s August 15, 2013 and November 6, 2013 Resolutions in relation to Criminal Case No. SB-12-CRM-0164 are **AFFIRMED.**

**SO ORDERED.**<sup>3</sup> (Emphasis in the original)

<sup>1</sup> *Rollo*, pp. 1547-1579.

<sup>2</sup> Decision dated January 27, 2020. Penned by Associate Justice Marvic M.V.F. Leonen, with the concurrence of Associate Justices Rosmari D. Carandang, Rodil V. Zalameda, Mario V. Lopez, and Samuel H. Gaerlan; *id.* at 1528-1546.

<sup>3</sup> *Id.* at 1546.

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Through the Field Investigation Office of the Ombudsman (FIO-OMB), a Complaint<sup>4</sup> was filed charging Arroyo, his brother Ignacio “Iggy” Arroyo (Iggy), Manila Aerospace Products Trading Corporation (MAPTRA) President Hilario “Larry” De Vera (De Vera), and officials of the Philippine National Police (PNP) with violation of several administrative and penal laws including *inter alia* Section 3(e) and (g) of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

The FIO-OMB alleged that in 2009, the PNP purchased from MAPTRA one fully-equipped Robinson R44 Raven II Light Police Operational Helicopter for ₱42,312,913.10 and two Standard Robinson R44 Raven I Light Police Operational Helicopters for ₱62,672,086.90, for a total consideration of ₱104,985,000.00. Though the National Police Commission (NAPOLCOM) prescribed that the helicopters to be purchased should be brand new, only one brand new Robinson Raven II Helicopter was delivered while the two Standard Robinson Raven I Helicopters with Serial Numbers (SN) 1372 and 1374 delivered were allegedly pre-owned by Arroyo.

The FIO-OMB primarily relied on the Affidavit<sup>5</sup> executed by Archibald L. Po (Po), owner of Lionair Inc. (Lionair) and Asian Spirit Inc. (Asian Spirit), and the statements he made during the Senate Blue Ribbon Committee hearing implicating Arroyo as a participant in the alleged irregular procurement of the two pre-owned helicopters.

Po narrated that in 2003, Arroyo inquired about chartering helicopters from him. When Po informed Arroyo that there were no longer any helicopters available, he suggested to Arroyo that the latter purchase five Robinson R44 Raven 1 helicopters. Arroyo allegedly remitted to Po the US\$475,000.00 (comprising of US\$95,000.00 for each unit, plus other expenses) required deposit and Po’s Lionair remitted the same to its manufacturer, Robinsons Helicopter Company (RHC). To facilitate the importation of the helicopters, Arroyo allegedly asked Po to course it through his other company, Asian Spirit, as it is located at the Clark Export Processing Zone and eligible to import tax free.<sup>6</sup>

While the respective Air Transportation Office (ATO) certificates of registration of the helicopters were in the name of Asian Spirit, Po alleged that Arroyo made him sign five deeds of sale over these helicopters and that he retained no copy.<sup>7</sup> Po maintained that Lionair provided maintenance services over the helicopters and sent bills to Arroyo who paid for them in cash.<sup>8</sup> Po added that in 2006, Arroyo wanted to sell the helicopters. To do this, Po suggested that Asian Spirit sell the helicopters to Lionair so that the customs duties and taxes could properly be paid before the helicopters were sold to third parties.<sup>9</sup>

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<sup>4</sup> Id. at 1181-1212.

<sup>5</sup> Id. at 1471-1477.

<sup>6</sup> Id. at 1472-1473.

<sup>7</sup> Id. at 1473.

<sup>8</sup> Id. at 1474.

<sup>9</sup> Id.

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In June 2009, after several negotiations and revisions in the proposal, Lionair submitted a proposal for the sale of the two pre-owned helicopters to MAPTRA at US\$448,173.73 each, including taxes and other costs.<sup>10</sup> Po allegedly acceded to the request of MAPTRA to make it appear that MAPTRA is a marketing arm of Lionair so that MAPTRA could be authorized to sell Robinson helicopters to PNP in behalf of Lionair.<sup>11</sup> He averred that the two helicopters were turned over to MAPTRA in December 2009. Po claimed that MAPTRA paid Lionair the full purchase price on April 16, 2010 and the same was remitted to Arroyo.<sup>12</sup>

In his Counter-Affidavit<sup>13</sup>, Arroyo vehemently denied the allegations against him and insisted that he is a complete stranger to MAPTRA, the seller of the helicopters, or its representative, De Vera.<sup>14</sup> Arroyo explained that it was Lourdes T. Arroyo, Incorporated (LTA), through its President, Iggy, who transacted with Po for the advancement of money so that Po's Lionair could acquire five helicopters from RHC.<sup>15</sup> He added that he had divested from LTA long before the purchase of the helicopters from RHC.<sup>16</sup> He also offered the explanation given to him by Iggy that the wire transfer was made by way of advance lease scheme in favor of Po and Lionair.<sup>17</sup> Arroyo rationalized that the intention of LTA and Po's Lionair was to apply the advances made by LTA as rentals for the latter's use of the helicopters.<sup>18</sup>

In refuting the allegations against him, Arroyo also supplied copies of various documents including *inter alia* the Applications for Export Certificate of Airworthiness,<sup>19</sup> and Export Certificates<sup>20</sup> for the two helicopters issued and authenticated by the Federal Aviation Administration (FAA) of the United States (US)<sup>21</sup> showing that Lionair was the purchaser. Aircraft Invoices issued by RHC, and Certificates of Registration<sup>22</sup> issued by the ATO were also submitted to prove that Lionair was the owner of the helicopters.<sup>23</sup>

Arroyo also pointed out inconsistencies in the documents proffered by Po which supposedly showed his propensity for fabricating documents relative to the ownership and use of the subject aircrafts. He stressed that despite these inconsistencies, what remains obvious is that the helicopters were owned by Lionair and/or Asian Spirit, companies owned by Po, prior to the sale to PNP.<sup>24</sup>

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<sup>10</sup> Id. at 1475.  
<sup>11</sup> Id. at 1476.  
<sup>12</sup> Id. at 1476-1477.  
<sup>13</sup> Id. at 920-938.  
<sup>14</sup> Id. at 911.  
<sup>15</sup> Id. at 913-914.  
<sup>16</sup> Id. at 914.  
<sup>17</sup> Id.  
<sup>18</sup> Id. at 914-195.  
<sup>19</sup> Id. at 961-962; 965-966.  
<sup>20</sup> Id. at 963.  
<sup>21</sup> Id. at 964.  
<sup>22</sup> Id. at 970-971, 975.  
<sup>23</sup> Id. at 915-916.  
<sup>24</sup> Id. at 916-918.



On May 30, 2012, the Special Investigating Panel tasked to conduct a preliminary investigation issued a Joint Resolution<sup>25</sup> recommending *inter alia* the filing of criminal case against Arroyo and his co-accused for violation of Section 3(e) of R.A. No. 3019.<sup>26</sup>

In finding probable cause, the Ombudsman (OMB) was not convinced that Arroyo had already divested himself of any interest in LTA long before the subject procurement. Though Arroyo was able to produce a Deed of Assignment<sup>27</sup> dated March 15, 2001 indicating that he had assigned his shares in LTA to Benito Araneta (Araneta), and that he became a shareholder of LTA again only on November 24, 2010, the OMB did not consider this as evidence of a valid transfer, except between him and the named assignee therein. The OMB highlighted that Section 63 of the Corporation Code<sup>28</sup> requires that the transfer must be properly recorded in the books of the corporation to be valid.<sup>29</sup> The OMB also pointed out that there is a stipulation in the Deed of Assignment<sup>30</sup> stating that:

Section 4. *Irrevocable Proxy* – Upon the signing of this Deed, the ASSIGNOR hereby appoints the ASSIGNEE as his duly constituted PROXY, with full power and authority to represent and vote the Subject Shares at any and all stockholder's meetings, or at any adjournment thereof, on all matters that may be brought before said meetings, including the election of directors, as fully to all intents and purposes as the ASSIGNOR might do if present and acting in person.<sup>31</sup>

For the OMB, the foregoing stipulation indicates that Arroyo is the true stockholder, even after the execution of the Deed of Assignment and that Araneta is only his proxy or representative.<sup>32</sup>

The OMB also relied on the Sinumpaang Salaysay of Domingo Lazo (Lazo), flight dispatcher of Lionair, who averred that Arroyo first contacted him in April 2004, and that Arroyo gave instructions to be followed in the use of the helicopters. The OMB found it also questionable that LTA was the one

<sup>25</sup> Id. at 1246-1385.

<sup>26</sup> Id. at 1381-1382.

<sup>27</sup> Id. at 944-945.

<sup>28</sup> Section 63 of Batas Pambansa Blg. 68 states:

Section 63. *Certificate of stock and transfer of shares.* – The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.

No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation.

<sup>29</sup> *Rollo*, pp. 1345-1347.

<sup>30</sup> Id. at 944-945.

<sup>31</sup> Id. at 945.

<sup>32</sup> Id. at 1347.

which leased the helicopters despite the fact that Arroyo had no more holdings in the corporation and that the members of his family used the helicopters.<sup>33</sup> The OMB also banked on the statement of Po that Arroyo instructed him in 2003 to register the helicopters under the name of Po's old company, Asian Spirit, for tax purposes.<sup>34</sup> Thus, even if the helicopters were registered under a person or entity different from Arroyo, the OMB concluded that a trust relationship existed between Arroyo and Po and that the beneficial ownership over the helicopters belonged to the former.<sup>35</sup>

The OMB also considered the subsidiary ledger Editha Solano-Juguan prepared, covering the period of May 2004 to May 2011 and showing that Lionair was able to collect from Arroyo ₱18,250,000.00 representing *inter alia* hangar fees, take-off and landing charges, expenses for maintenance, pilotage, gasoline, oil and lubricants, as well as fees for the renewal of aircraft certificate of registration and certificate of airworthiness. The subsidiary ledger also showed that Arroyo and his family were among those who used the helicopters.<sup>36</sup>

The OMB also found that the Aircraft Fleet Service Agreement produced by Iggy did not support the theory of Arroyo that LTA merely leased the helicopters from Lionair and that the rentals for LTA's use of the helicopters would be applied to the money advanced by LTA to Lionair for the purchase of the helicopters.<sup>37</sup> The OMB highlighted Agreement No. 5 which states that:

Upon execution of this agreement, the LESSEE shall immediately remit to LESSOR, the amount equivalent to Twenty Five (25%) percent of the Minimum Monthly Cost of Charter for Five (5) Helicopter units as advance payment, and thereafter, the same amount every 15<sup>th</sup> days of service.<sup>38</sup>

For OMB, this is an indication that the agreement is merely simulated because there is no reason for LTA to agree to this stipulation when it already advanced the payment for the helicopters.<sup>39</sup>

The OMB inferred that without the approval of Arroyo to sell the two helicopters to MAPTRA, the deal and contract of the latter with the PNP would not have prospered.<sup>40</sup>

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<sup>33</sup> Id. at 1348-1349.

<sup>34</sup> Id. at 1349-1351.

<sup>35</sup> Id. at 1349, 1352.

<sup>36</sup> Id. at 1352-1353.

<sup>37</sup> Id. at 1354.

<sup>38</sup> Id. at 1354-1355.

<sup>39</sup> Id. at 1355.

<sup>40</sup> Id. at 1356.

Arroyo filed a Motion for Reconsideration<sup>41</sup> assailing the Joint Resolution of the OMB. However, in an Order<sup>42</sup> dated February 15, 2013, the OMB resolved to deny Arroyo's motion for lack of merit.<sup>43</sup>

Subsequently, an Information<sup>44</sup> docketed as SB-12-CRM-0164 was filed charging Arroyo, among others, for alleged conspiracy with several PNP officials and other private persons in the subject procurement in violation Section 3(e) of R.A. No. 3019. The Information alleged that the sale of the two pre-owned helicopters, purportedly owned by Arroyo, caused undue injury to the PNP and the government in the amount of at least ₱34,632,187.50, representing the overpriced amount the PNP paid.<sup>45</sup> Arroyo voluntarily surrendered before the Sandiganbayan and posted the bail bond to obtain his provisional liberty.<sup>46</sup>

On May 27, 2013, Arroyo filed with the Sandiganbayan a Motion for Judicial Determination of Probable Cause,<sup>47</sup> seeking the dismissal of the case on the ground of lack of probable cause.

In a Resolution<sup>48</sup> dated August 15, 2013, the Sandiganbayan denied Arroyo's motion. It held that the prosecution's evidence sufficiently showed that there is probable cause that Arroyo participated in the transaction.

Arroyo filed a Motion for Reconsideration<sup>49</sup> but this was denied in a Resolution<sup>50</sup> dated November 6, 2013. Thereafter, on January 20, 2013, Arroyo filed a petition for *certiorari* and prohibition under Rule 65 of the Rules with prayer for temporary restraining order and/ or preliminary injunction.

In his petition,<sup>51</sup> Arroyo pointed out that there are no direct overt acts and evidence that may be attributed to him and may implicate him to the offense charged, except for the uncorroborated testimony of Po.<sup>52</sup> Arroyo repleaded the documentary evidence he submitted comprising of official records of the Civil Aviation Authority of the Philippines such as letters of Asian Spirit in 2004; Approved Applications for Import Permit for the two helicopters; Applications for Certificate of Airworthiness; Aircraft Invoices; ATO Certificates of Registration and their respective renewals from 2004-2010; Deeds of Absolute Sale dated March 23, 2004 and March 30, 2004 between Lionair (as vendor) and Asian Spirit (as vendee); Secretary's

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<sup>41</sup> Id. at 1088-1104.

<sup>42</sup> Id. at 1402-1430.

<sup>43</sup> Id. at 711, 1430.

<sup>44</sup> Id. at 588-599; 1390-1401.

<sup>45</sup> Id. at 597.

<sup>46</sup> Id. at 711.

<sup>47</sup> Id. at 881-908.

<sup>48</sup> Penned by Associate Justice Roland B. Jurado, with the concurrence of Associate Justices Alexander G. Gesmundo (now a Member of this Court) and Amparo M. Cabotaje-Tang; id. at 850-880.

<sup>49</sup> Id. at 1170-1178.

<sup>50</sup> Penned by Associate Justice Roland B. Jurado, with the concurrence of Associate Justices Alexander G. Gesmundo (now a Member of this Court) and Alex L. Quiroz; id. at 362-366.

<sup>51</sup> Id. at 3-45, 807-846.

<sup>52</sup> Id. at 822.

Certificate dated March 23, 2004 and March 30, 2004; and Aircraft Lease Agreement between Asian Spirit (as lessor), and Lion Air (as lessee) – all indicating that Po and his companies, Asian Spirit and Lionair, were the owners of the subject helicopters.<sup>53</sup> Between the uncorroborated and hearsay testimonies insisting that Arroyo owned the helicopters and the documentary evidence proving Po and his companies' ownership over the helicopters, Arroyo maintains that the latter should prevail.<sup>54</sup>

Arroyo also highlighted that the OMB failed to distinguish him from LTA, stressing that the time of the material dates of the questioned transaction, he did not have any interest in LTA as he had divested from LTA on March 15, 2001. It was only on November 24, 2010, long after the sale to PNP, that he repurchased shares in LTA from Araneta.<sup>55</sup> Even Po and Renato Sia (Sia), General Manager of Lionair, clarified that it was LTA, not Arroyo, who gave the instruction to provide the deposit of US\$500,000.00 to RHC through wire transfer.<sup>56</sup> He also claimed that there is no proof that he performed any act indicating his participation in the subject offense.<sup>57</sup> He also questioned the trust relationship which purportedly governed him and Po wherein he was the beneficial owner of the helicopters. He insisted that the speculative assumption of trusteeship should not prevail over the overwhelming evidence of ownership of Po, Lionair, and Asian Spirit.<sup>58</sup>

Arroyo also averred that there is no proof of conspiracy between him and MAPTRA's De Vera as it was not shown that he has ever met nor talked to De Vera. He stressed that De Vera himself admitted that he only dealt with Po when the helicopters were sold to PNP. He posited that since there was no proof of conspiracy, the Investigating Panel erred in finding probable cause against him.<sup>59</sup>

Arroyo argued that the Sandiganbayan's reliance on *Leviste v. Almeda*<sup>60</sup> is misplaced because an accused may assail a finding of probable cause when there is a clear grave abuse of discretion.<sup>61</sup>

In its Comment,<sup>62</sup> the People of the Philippines, through the Office of the Solicitor General (OSG), maintained that the Sandiganbayan correctly denied Arroyo's Motion for Judicial Determination of Probable Cause as none of the recognized instances where the Courts may intervene in the investigative functions of the OMB are present.<sup>63</sup> The OSG emphasized that the determination of the existence of probable cause, which led to the filing

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<sup>53</sup> Id. at 822-824.

<sup>54</sup> Id. at 825-828.

<sup>55</sup> Id. at 833-834.

<sup>56</sup> Id. at 830-832, 790-795.

<sup>57</sup> Id. at 833-836.

<sup>58</sup> Id. at 788-789, 836-838.

<sup>59</sup> Id. at 797-800, 838-841.

<sup>60</sup> G.R. No. 177727, January 19, 2018.

<sup>61</sup> *Rollo*, pp. 800-802, 841-843.

<sup>62</sup> Id. at 704-722.

<sup>63</sup> Id. at 713-715.

of the information, lies within the full discretion of the OMB.<sup>64</sup> Lastly, the OSG insisted that a preliminary investigation is not the occasion for the full and exhaustive display of the parties' respective evidence.<sup>65</sup>

In his Reply,<sup>66</sup> Arroyo pointed out that Po, the prosecution's own witness, clarified during the preliminary investigation before the FIO-OMB that it was LTA, and not Arroyo which made the initial deposit to RHC.<sup>67</sup> He also reiterated that the mere use of the helicopters in question cannot be equated with ownership.<sup>68</sup> He averred that the testimony of Lazo to the effect that he or his family owned the subject helicopters is hearsay and cannot be the basis of a finding of probable cause. He also asserted that the OMB and Sandiganbayan both ignored the documentary proofs he presented establishing his lack of interest in LTA during the time material to the case.<sup>69</sup> He also defended the remedy he resorted to in assailing the denial of his Motion for Judicial Determination of Probable Cause. He insisted that the Sandiganbayan cannot blindly follow the prosecutor's finding of probable cause and disregard the issues he raised.<sup>70</sup>

On January 27, 2020, the Court rendered its Decision<sup>71</sup> dismissing the petition for *certiorari* based mainly on the judicial policy of non-interference with the discretion of the OMB regarding the determination of probable cause. The Court declared that the petition had been rendered moot and academic since the Sandiganbayan had already judicially determined that there is probable cause to proceed with trial.<sup>72</sup> The Court added that even if the petition is given due course, it must still fail absent any grave abuse of discretion on the part of the OMB's finding of probable cause.<sup>73</sup> The Court found no grave abuse of discretion because the evidence adduced by the OMB provided basis to maintain a reasonable belief that Arroyo is the owner of the helicopters in question.<sup>74</sup> The Court was convinced that the OMB was able to discharge its duty of substantiating its finding of probable cause.<sup>75</sup> The Court stressed that mere disagreement with the appreciation of the evidence by the OMB does not translate to jurisdictional error.<sup>76</sup>

In his Motion for Reconsideration,<sup>77</sup> Arroyo asks the Court to take a second hard look at his petition. Arroyo insists that there is an abundance of proof that Po, Lionair, or Asian Spirit were the owners of the helicopters.<sup>78</sup>

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<sup>64</sup> Id. at 714-717.  
<sup>65</sup> Id. at 718-722.  
<sup>66</sup> Id. at 729-740.  
<sup>67</sup> Id. at 729-732.  
<sup>68</sup> Id. at 732-733.  
<sup>69</sup> Id. at 735-737.  
<sup>70</sup> Id. at 738-739.  
<sup>71</sup> Id. at 1528-1546.  
<sup>72</sup> Id. at 1540.  
<sup>73</sup> Id.  
<sup>74</sup> Id. at 1541-1543.  
<sup>75</sup> Id. at 1543-1544.  
<sup>76</sup> Id. at 1545.  
<sup>77</sup> Id. at 1547-1577.  
<sup>78</sup> Id. at 1550-1553.



Arroyo highlights the testimonies of Sia and Po wherein they admitted that Lionair and Asian Spirit were the true owners of the helicopters.<sup>79</sup>

The OSG opposed the Motion for Reconsideration of Arroyo, insisting that the arguments raised are mere rehash of his petition for *certiorari* that the Court had already passed upon.

In his Supplemental Reply,<sup>80</sup> Arroyo argued that conspiracy must first be established in order that probable cause, as against a private person, may be appreciated in offenses punished under R.A. No. 3019, which are generally committed by public officers.<sup>81</sup> Arroyo highlighted that the evidence relied upon by the Sandiganbayan in judicially determining probable cause provided nothing to show who among the accused public officers in the case he conspired with and how the conspiracy was carried out.<sup>82</sup>

### Issues

The critical issues to be resolved in this Motion for Reconsideration are:

1. Whether the Sandiganbayan committed grave abuse of discretion in finding probable cause and exercising jurisdiction over a case for violation of Section 3(e) of R.A. No. 3019 against Arroyo, a private individual, despite the absence of evidence of conspiracy with any of the respondent public officers;
2. Whether Arroyo's right to speedy disposition of the case against him had been violated on account of the length of time of his prosecution vis-à-vis the lack of evidence against him and the hanging issue of the Sandiganbayan's jurisdiction over the case

### Ruling of the Court

**The Motion for Reconsideration of Arroyo is meritorious.**

#### I

The OMB and Sandiganbayan committed grave abuse of discretion in finding probable cause against Arroyo. The evidence the prosecution adduced to substantiate its claim of conspiracy is insufficient to maintain a reasonable belief that Arroyo is probably guilty of violating Section 3(e) of R.A. No. 3019. The element of conspiracy with a public officer was not established.

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<sup>79</sup> Id. at 1554-1557.

<sup>80</sup> Id. at 642-682.

<sup>81</sup> Id. at 665.

<sup>82</sup> Id. at 670.



There are two recognized classes of probable cause: (1) executive and (2) judicial. Executive probable cause is determined by the prosecutor during preliminary investigation. Section 1, Rule 112 of the Rules of Court states that probable cause is established when there is “sufficient [evidence or] ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.” In contrast, under the Constitution, the determination of probable cause is made by a judge in issuing a warrant of arrest. Section 5(a), Rule 112 of the same Rules reiterated that a “judge shall personally evaluate the resolution of the prosecutor and its supporting evidence” in issuing a warrant of arrest.<sup>83</sup>

In a judicial determination of probable cause, the judge must ascertain whether a warrant of arrest should be issued against the accused. He must satisfy himself that based on the evidence submitted, there is a necessity for placing the accused under custody in order not to frustrate the ends of justice. The “personal determination” required by the Constitution to be performed by a judge in the issuance of a warrant of arrest pertains to “the exclusive and personal responsibility of the issuing judge to satisfy himself as to the existence of probable cause.”<sup>84</sup> In *Borlongan, Jr. v. Pena*,<sup>85</sup> the Court explained how this duty is performed:

[T]o this end, he may: (a) personally evaluate the report and the supporting documents submitted by the prosecutor regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (b) if on the basis thereof he finds no probable cause, disregard the prosecutor's report and require the submission of supporting affidavits of witnesses to aid him in determining its existence. **What he is never allowed to do is to follow blindly the prosecutor's bare certification as to the existence of probable cause. Much more is required by the constitutional provision. Judges have to go over the report, the affidavits, the transcript of stenographic notes if any, and other documents supporting the prosecutor's certification. Although the extent of the judge's personal examination depends on the circumstances of each case, to be sure, he cannot just rely on the bare certification alone but must go beyond it. This is because the warrant of arrest issues not on the strength of the certification standing alone but because of the records which sustain it.** He should even call for the complainant and the witnesses to answer the court's probing questions when the circumstances warrant.<sup>86</sup>  
(Citations omitted; emphasis and underscoring supplied)

Similarly, in *People v. Gray*,<sup>87</sup> the Court elucidated the duty of a judge in resolving the existence of probable cause for the issuance of warrant of arrest as follows:

<sup>83</sup> *Baya v. Sandiganbayan*, G.R. Nos. 204978-83, July 6, 2020.

<sup>84</sup> *Borlongan, Jr. v. Pena*, 634 Phil. 179, 200 (2010).

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 200-201.

<sup>87</sup> 639 Phil. 535 (2010).

What the law requires as personal determination on the part of a judge is that **he should not rely solely on the report of the investigating prosecutor.** This means that **the judge should consider not only the report of the investigating prosecutor but also the affidavit and the documentary evidence of the parties, the counter-affidavit of the accused and his witnesses, as well as the transcript of stenographic notes taken during the preliminary investigation, if any, submitted to the court by the investigating prosecutor upon the filing of the Information.**

The Court has also ruled that the personal examination of the complainant and his witnesses is not mandatory and indispensable in the determination of probable cause for the issuance of a warrant of arrest. The necessity arises only when there is an utter failure of the evidence to show the existence of probable cause. Otherwise, the judge may rely on the report of the investigating prosecutor, provided that he likewise evaluates the documentary evidence in support thereof.<sup>88</sup> (Citations omitted; italics in the original; emphasis and underscoring supplied)

Accordingly, the Sandiganbayan must exercise independent judgment, personally evaluate the documents and evidence adduced at the preliminary investigation level, and determine for itself the existence of probable cause for the issuance of a warrant of arrest.

As a rule, the determination of probable cause is an executive, not a judicial, function. Following the fundamental principle of separation of powers, it is generally not for a Court to disturb the conclusion made by a public prosecutor.<sup>89</sup> The Court has found in a number of cases that it is superfluous for an accused to seek the judicial determination of probable cause because the Sandiganbayan already acted and proceeded independently of the executive determination of probable cause.<sup>90</sup>

However, there is a recognized exception to the general rule on non-interference. In *Duque v. Ombudsman and Fact-Finding Investigation Bureau*,<sup>91</sup> the Court explained:

**x x x [T]he Court is not precluded from reviewing the action of the Office of the Ombudsman when it is shown to be tainted with grave abuse of discretion that amounts to lack or excess of jurisdiction,** in which case its *certiorari* jurisdiction under Section 1, Article VIII of the Constitution may be exceptionally invoked. Indeed, when the outcome of the preliminary investigation by the Office of the Ombudsman is shown to have resulted from the

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<sup>88</sup> Id. at 549-550.

<sup>89</sup> *Tupaz v. Office of the Deputy Ombudsman for the Visayas*, G.R. Nos. 212491-92, March 6, 2019.

<sup>90</sup> *Sy v. Sandiganbayan*, G.R. No. 240855, October 5, 2020; *Balindong v. Court of Appeals*, 771 Phil. 456 (2015).

<sup>91</sup> G.R. Nos. 224648, 224805-07, 225188 & 225277, August 28, 2019.

exercise of discretion in an arbitrary, capricious, whimsical, or despotic manner by reason of passion or personal hostility, patent and gross enough as to amount to an evasion of a positive duty or virtual refusal to perform a duty enjoined by law, **the Court may step in, and may ultimately resolve the existence or non-existence of probable cause by examining the records of the preliminary investigation when necessary for the orderly administration of justice. Although judicial policy usually calls for the widest latitude of deference to the findings by the Office of the Ombudsman, the Court should never shirk from exercising its power of judicial review whenever the circumstances warrant in order to determine whether or not the findings are supported by the facts, and by the law. Surely, the Office of the Ombudsman's determination of probable cause is not unlimited.** The Court ought always to be mindful of the primary objectives of preliminary investigation to secure the innocent against hasty, malicious and oppressive prosecution, and to protect the innocent from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, while at the same time saving the State from useless and expensive trials.<sup>92</sup> (Citations omitted, emphases supplied)

While the issuance by the Sandiganbayan of a warrant of arrest upon filing of the Information and supporting papers already implies the determination of probable cause for the offense imputed against Arroyo, the apparent grave abuse of discretion on the part of the prosecution warrants a reversal of the finding of probable cause.

The Court had previously enumerated in *Brocka v. Enrile*,<sup>93</sup> the exceptional circumstances wherein criminal prosecution may be restrained or stayed by injunction, preliminary or final. The recognized exceptions include:

- a. To afford adequate protection to the constitutional rights of the accused;
- b. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;
- c. When there is a pre-judicial question which is sub judice;
- d. When the acts of the officer are without or in excess of authority;
- e. Where the prosecution is under an invalid law, ordinance or regulation;
- f. When double jeopardy is clearly apparent;
- g. Where the court has no jurisdiction over the offense;
- h. Where it is a case of persecution rather than prosecution;
- i. Where the charges are manifestly false and motivated by the lust for vengeance; and
- j. When there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied.<sup>94</sup> (Citations omitted)

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<sup>92</sup> Id.

<sup>93</sup> 270 Phil. 271 (1990).

<sup>94</sup> Id. at 276-277.

The present case may fall under the second category, “[w]hen necessary for the orderly administration of justice or to avoid oppression x x x.” This is due to the fact that the Joint Resolution and the supporting evidence adduced during the preliminary investigation by the OMB failed to substantiate and demonstrate how Arroyo conspired with the other accused public officers, an essential element in prosecuting a private individual of violating Section 3(e) of R.A. No. 3019. The reasoning given by the OMB are mere implications of ownership by Arroyo of the subject helicopters, as against the documentary proofs that LTA, a corporation distinct from Arroyo and which advanced the money for the purchase of the helicopters. This is clearly different from the ownership of Lionair, Asian Spirit, and MAPTRA, the true owners of the helicopters.

The Court is mindful that it is not a trier of facts and that the calibration of evidence to determine whether there is probable cause to pursue a case against Arroyo necessarily involves questions of fact that cannot be entertained in a petition for *certiorari*. Nevertheless, after a judicial review of the case, the Court finds that the OMB has grossly misappreciated the attendant and clear facts in a manner that is tantamount to grave abuse of discretion amounting to lack or excess of jurisdiction.

In order that probable cause to file a criminal case may be arrived at, or in order to engender the well-founded belief that a crime has been committed, the elements of the crime charged should be present. This is consistent with “the principle that every crime is defined by its elements, without which there should be—at the most—no criminal offense.”<sup>95</sup> Arroyo is charged with violating Section 3(e) of R.A. No. 3019. The elements of the offense defined in Section 3(e) are enumerated as follows:

x x x (a) that the accused must be a public officer discharging administrative, judicial, or official functions **(or a private individual acting in conspiracy with such public officers)**; (b) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (c) that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his functions.<sup>96</sup> (Emphasis and underscoring supplied)

While the first element of Section 3(e) of R.A. No. 3019 explicitly requires that the offender is a public officer, private persons, **when acting in conspiracy with public officers**, may be indicted, and if found guilty, be held liable for the offense.<sup>97</sup> Though the existence of conspiracy is a factual issue that is best threshed out in a full-blown trial on the merits, **the prosecution has a duty to establish at the preliminary investigation level that there is**

<sup>95</sup> *Sy Thiong Shiou v. Sy Chim*, 601 Phil. 510, 523 (2009).

<sup>96</sup> *Fuentes v. People*, 808 Phil. 586, 593 (2017), citing *Cambe v. Ombudsman*, 802 Phil. 190 (2016) and *Presidential Commission on Good Government v. Navarro-Gutierrez*, 772 Phil. 91 (2015).

<sup>97</sup> *Singian, Jr. v. Sandiganbayan*, 718 Phil. 455 (2013).

**a reasonable belief that Arroyo connived with public officers to commit the offense charged against him.** Otherwise, the Sandiganbayan cannot take cognizance of the case and put Arroyo on trial. The court cannot blindly follow the prosecutor's certification as to the existence of probable cause.<sup>98</sup>

Noticeably, even the testimony of De Vera, owner of MAPTRA, who admitted not personally knowing Arroyo, supports the conclusion that Arroyo is not connected to MAPTRA, as revealed in the following exchange:

|                        |  |
|------------------------|--|
| SEN. EJERCITO ESTRADA. | Okay. Let me ask- before I get back to you- <b>Mr. de Vera, kilala mo ba si First Gentleman?</b> |
| MR. DE VERA.           | <b>Not personally, Your Honor.</b> <sup>99</sup> (Emphasis supplied)                             |

The quoted testimony is consistent with the theory that Arroyo could not have connived with MAPTRA, the business entity which sold the helicopters to PNP, because its owner does not even personally know him.

The element of conspiracy between the public officers and Arroyo has not been proven by any connection to achieve even the low threshold of probable cause and find him probably liable for violation of Section 3(e) of R.A. No. 3019. This is not a mere disagreement on the appreciation of evidence by the OMB but a glaring hole or gap in the prosecution's case that it failed to fill to maintain a reasonable belief that Arroyo connived with public officers in the procurement of the helicopters. Since the OMB cannot establish the element of conspiracy, the case of the State against Arroyo will immediately fall apart and there will be no need to provide proof for the other elements of the offense to support a reasonable belief that Arroyo is complicit in the purported irregularities in the procurement of the helicopters.

Here, a careful scrutiny of all the evidence the prosecution submitted to establish the existence of probable cause against Arroyo reveals that no evidence of the prosecution demonstrated the manner by which Arroyo connived with any public officer in the purported anomalous procurement. Even if the unverified statements of the prosecution's witnesses are admitted, these still fail to show how Arroyo connived with any public officer. The Sandiganbayan should have gone beyond the Joint Resolution of the OMB to determine the existence of any link that would connect Arroyo's participation in the subject procurement in conspiracy with any of the respondent public officers and not just assume that LTA and Arroyo are one and the same. There is simply no overt act that could be attributed to Arroyo showing that he conspired with any of the respondent public officers.

<sup>98</sup> *Borlongan v. Pena*, supra note 85 at 201.

<sup>99</sup> TSN Senate Blue Ribbon Committee Hearing dated August 2, 2011, p. 1.

Had the Sandiganbayan carefully reviewed the OMB's report, supporting documents, and the submissions of Arroyo, the graft court would have readily seen that the OMB erroneously equated the ownership of LTA as Arroyo's ownership. This conclusion contravenes the fundamental principle in corporation law that a corporation has a separate juridical entity from its directors, officers, and shareholders. Section 2 of the Corporation Code, as amended, defines a corporation as:

x x x [A]n artificial being created by operation of law, having the right of succession and the powers, attributes, and properties expressly authorized by law or incidental to its existence.

To sustain a finding of probable cause against Arroyo, the prosecution must necessarily justify the deviation from the general principle of separate juridical entity and the application of piercing of the corporate veil of entity before Arroyo may be held for trial. It is worth noting that at the time of the disputed procurement, Arroyo was not even a shareholder, director, nor an officer of LTA. He had already divested from LTA and assigned his shares to Araneta, as evidenced by the Deed of Assignment<sup>100</sup> and Secretary's Certificate.<sup>101</sup>

Even if it is proven that the transfer was not registered in LTA's stock and transfer book, this does not automatically negate the fact that Arroyo assigned his shares to Araneta. Arroyo even presented Form No. 1954 or the Certificate Authorizing Registration<sup>102</sup> from the Bureau of Internal Revenue certifying that the capital gains tax<sup>103</sup> and documentary stamp tax<sup>104</sup> for the transfer of his shares to Araneta were duly paid. Having no interest in LTA during the period leading up to the procurement, Arroyo could not have connived with any public officer in carrying out the procurement.

It is also worthy to point out that even if the transfer of shares carried out in the Deed of Assignment was not registered in the stock and transfer book, this is not an *indicium* that no assignment of shares took place. The transfer of shares was in fact supported by documentary evidence including *inter alia* those proving that the corresponding capital gains tax and documentary stamp tax were paid. Moreover, the irrevocable proxy stipulation in the Deed of Assignment is not inconsistent with the terms of the deed and was intended to allow the assignee to exercise the rights of the assignor immediately before the transfer is reflected in the books of the corporation.

Furthermore, one of the justifications of the FIO-OMB in finding probable cause to charge Arroyo is the hearsay statement of Lazo, a flight

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<sup>100</sup> *Rollo*, pp. 944-945.

<sup>101</sup> *Id.* at 957.

<sup>102</sup> *Id.* at 947.

<sup>103</sup> *Id.* at 950.

<sup>104</sup> *Id.* at 953.



dispatcher, during the Senate Blue Ribbon Committee hearing, the pertinent portion of which is reproduced below:

SEN. LACSON. Hindi nga, ano ang ibig sabihin nuon?  
Sino ang may-ari?

MR. LAZO. **Ang pagkasabi po sa akin ni Mr. Po, my former boss. Si FG po ang may ari.**<sup>105</sup> (Emphasis supplied)

While hearsay evidence may be considered at the preliminary investigation stage in finding probable cause, the prosecution committed grave abuse of discretion in disregarding the documentary evidence Arroyo presented to refute the claim that he participated in the subject procurement. Between the hearsay statement of Lazo and the documentary evidence submitted by Arroyo, the OMB and the Sandiganbayan committed grave abuse of discretion in giving weight to the former and in disregarding the latter.

In this case, despite the statements given by witnesses of the prosecution supporting Arroyo's contention that he is not the owner of the two helicopters, the OMB and the Sandiganbayan disregarded these and continued to conclude that LTA and Arroyo are one and the same. Likewise, the OMB and Sandiganbayan erred in concluding that the frequent use of the helicopters by Arroyo and his family is evidence of his ownership since Lionair is in the business of offering its fleet to selected clients.

When the evidence submitted by the prosecution contradicts its own claim of conspiracy, the OMB would be committing grave abuse of discretion in finding probable cause against the private individual respondent. Likewise, the Sandiganbayan would be committing grave abuse of discretion in upholding the prosecution's finding of probable cause, through the issuance of a warrant of arrest, when the evidence relied upon shows that Arroyo had already divested from LTA approximately eight years before the questioned procurement. When these factors are taken together with the fact that the prosecution failed to allege and demonstrate how Arroyo connived with any of the public officer respondents at any point during the preliminary investigation, both the OMB and Sandiganbayan gravely erred in finding probable cause and putting him on trial. Accordingly, the Sandiganbayan committed grave abuse of discretion in issuing the warrant of arrest and in assuming jurisdiction over the case.

## II

The OMB did not violate Arroyo's right to speedy disposition of the case against him.

The Constitution in Article III, Section 16 provides:



<sup>105</sup>

TSN Senate Blue Ribbon Committee Hearing dated August 11, 2011, pp. 6-7; *rollo*, p. 888.

Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

The Court recognized in *Cagang v. Sandiganbayan*<sup>106</sup> that:

**The determination of whether the delay was inordinate is not through mere mathematical reckoning but through the examination of the facts and circumstances surrounding the case.** Courts should appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case. If there has been delay, the prosecution must be able to satisfactorily explain the reasons for such delay and that no prejudice was suffered by the accused as a result. The timely invocation of the accused's constitutional rights must also be examined on a case-to-case basis.<sup>107</sup> (Emphasis supplied)

In this case, while the case had been pending for almost a decade now from the date (May 30, 2012) the Information against Arroyo was filed, there is no proof to show that the period was characterized by vexatious, capricious or oppressive delays amounting to a violation of his right to speedy disposition of the case against him. It must be highlighted that the administrative and criminal aspects of the subject procurement involved approximately 33 respondents. The submissions of each party had to be thoroughly reviewed by the OMB. The resolution of the complex factual and legal issues involved in the criminal case against Arroyo cannot be sacrificed in favor of expediency especially when public money is involved. Therefore, a mere mathematical computation is not enough to conclude that his right to speedy disposition of cases was violated.

**WHEREFORE**, premises considered, the Motion for Reconsideration filed by petitioner Jose Miguel T. Arroyo is hereby **GRANTED**. The Sandiganbayan is **ORDERED** to drop petitioner Jose Miguel T. Arroyo from the Information filed in the criminal case docketed as SB-12-CRM-0164 at any stage of the proceedings.

**SO ORDERED.**

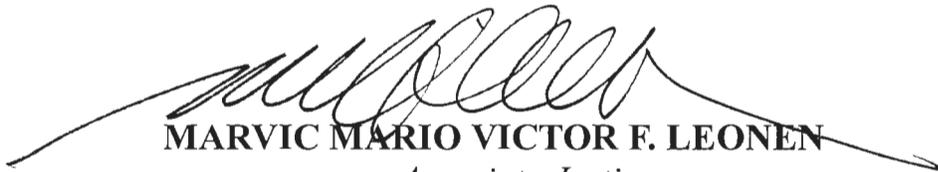
  
**ROSMARI D. CARANDANG**  
Associate Justice

<sup>106</sup> G.R. Nos. 206438 & 206458, July 31, 2018.

<sup>107</sup> Id.

**WE CONCUR:**

*I dissent. See separate opinion*

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

  
**RODIL V. ZALAMEDA**  
*Associate Justice*

  
**MARIO Y. LOPEZ**  
*Associate Justice*

  
**SAMUEL H. GAERLAN**  
*Associate Justice*

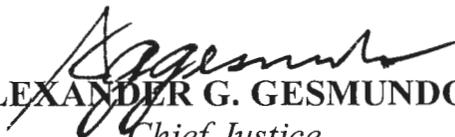
**ATTESTATION**

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

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

**CERTIFICATION**

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

  
**ALEXANDER G. GESMUNDO**  
*Chief Justice*