

## SPECIAL THIRD DIVISION

G.R. No. 210488 — JOSE MIGUEL T. ARROYO, *petitioner* v. THE HON. SANDIGANBAYAN FIFTH DIVISION AND PEOPLE OF THE PHILIPPINES, *respondents*.

Promulgated:

December 1, 2021

*Mis-DCB*

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## DISSENTING OPINION

**LEONEN, J.:**

This Court must not interfere with the Office of the Ombudsman's exercise of prerogatives, unless there is clear showing of grave abuse of discretion. Allegations that it has misappreciated evident facts are not sufficient to establish that it gravely abused its discretion.

This resolves the Motion for Reconsideration<sup>1</sup> filed by Jose Miguel T. Arroyo, praying for the reconsideration of this Court's Decision<sup>2</sup> that affirmed the Sandiganbayan's Resolutions<sup>3</sup> and Information in Criminal Case No. SB-12-CRM-0164. The Sandiganbayan Resolutions denied Arroyo's Motion for Judicial Determination of Probable Cause<sup>4</sup> and affirmed the Office of the Ombudsman's finding of probable cause in indicting Arroyo for the violation of Section 3(e) of Republic Act No. 3019.

In 2011, the Office of the Ombudsman created a panel to investigate the alleged anomalies in the purchase of light operational police helicopters by the Philippine National Police in 2009. The investigation resulted in a filing of a complaint against Arroyo, his brother Ignacio Arroyo, Hilario De Vera, and other officials of the Philippine National Police.<sup>5</sup>

The Office of the Ombudsman found that two Robinson R44 Raven helicopters preowned by Arroyo were sold to the Philippine National Police through the Manila Aerospace Products Trading Corporation in 2009.<sup>6</sup> This

<sup>1</sup> Rollo, pp. 1547–1577.

<sup>2</sup> *Arroyo v. Sandiganbayan Fifth Division*, G.R. No. 210488, January 27, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66176>> [Per J. Leonen, Third Division].

<sup>3</sup> Rollo, pp. 46–76, 362–366. The August 15, 2013 and November 6, 2013 Resolutions were penned by Associate Justice Roland B. Jurado and concurred in by Associate Justices Alexander G. Gesmundo (now a member of this Court) and Amparo M. Cabotaje-Tang, and Associate Justices Gesmundo and Alex L. Quiroz, respectively, of the Fifth Division of Sandiganbayan.

<sup>4</sup> Id. at 77–105.

<sup>5</sup> Id. at 6–7.

<sup>6</sup> Id. at 445–446.

was despite the rule that the helicopters must be brand new.<sup>7</sup> Thus, Arroyo and others were indicted for violating Section 3(e) of Republic Act No. 3019 on the ground that the sale caused undue injury to the Philippine National Police and the government.<sup>8</sup>

Arroyo voluntarily surrendered before the Sandiganbayan and posted the bail bond to obtain his provisional liberty. During arraignment, he pleaded not guilty as a condition precedent in obtaining authority to travel abroad.<sup>9</sup>

Arroyo later filed a Motion for Judicial Determination of Probable Cause,<sup>10</sup> praying for the dismissal of the criminal case. He alleged that there was no evidence that he owned the two helicopters and that the evidence on record instead showed that it was Archibald Po or his companies, Lion Air and Asian Spirit, that owned the helicopters. He added that there was no evidence that pointed him as a party or participant, in any manner or degree, to the purchase of the helicopters and that there was absolutely no proof of conspiracy. Finally, he claimed that the lack of probable cause against him justifies the dismissal of the case.<sup>11</sup>

The Sandiganbayan denied his Motion. It concluded that there was probable cause that Arroyo participated in the transaction based on the evidence on record.<sup>12</sup> It ruled:

Based on the foregoing discussion, the existence of the elements of Section 3 (e) of [Republic Act] No. 3019 is undisputed. It is evident that: (1) all the accused are public officers, being members of the [Philippine National Police], while Arroyo and De Vera are private individuals charged in conspiracy with the [Philippine National Police] officers; (2) the alleged acts were committed in relation to their public positions; (3) the transactions in question allegedly caused undue injury to the [Philippine National Police] vis-à-vis the accused public officers and the Government; (4) that the transaction gave unwarranted benefits, advantage[,] and preference to Arroyo and De Vera; and, (5) the accused acted with manifest partiality, evident bad faith or, at the very least, gross inexcusable negligence in the purchase of two (2) units standard Robinson R44 Raven I helicopter and one (1) unit fully-equipped Robinson R44 Raven II helicopter.<sup>13</sup>

Moreover, the Sandiganbayan held that Arroyo cannot insist on a hearing for judicial determination of probable cause as he cannot determine beforehand how exhaustive the judge's examination of the records should

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<sup>7</sup> Id. at 446.

<sup>8</sup> Id. at 592–598.

<sup>9</sup> Id. at 711.

<sup>10</sup> Id. at 77–105.

<sup>11</sup> Id. at 11.

<sup>12</sup> Id. at 46–76.

<sup>13</sup> Id. at 12.



be. It explained that the extent of the judge's examination depends on the exercise of their sound discretion as the circumstances of the case require. The Sandiganbayan ruled that the proper procedure was followed in determining probable cause for filing the Informations. Absent evidence to the contrary, it cannot reverse or overturn the Ombudsman's findings.<sup>14</sup>

Arroyo moved for reconsideration, but it was denied.<sup>15</sup>

Arroyo filed a Petition for Certiorari and Prohibition<sup>16</sup> under Rule 65 before this Court. In his petition, he mainly argued that the Sandiganbayan committed grave abuse of discretion in disregarding the lack of evidence that he owned the two helicopters.<sup>17</sup>

In its Decision, this Court dismissed the petition, the dispositive portion of which reads:

WHEREFORE, the 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.<sup>18</sup>

Hence, Arroyo filed this Motion for Reconsideration.<sup>19</sup>

In his Motion, petitioner reiterates that respondent erred in finding probable cause against him on account of his ownership of helicopters. He submits that there is no prima facie nor substantial proof that he owned the helicopters. On the contrary, evidence allegedly shows that he did not own them.<sup>20</sup>

Petitioner stresses that the only proof of his alleged ownership is the uncorroborated testimony of Po. He claims that this cannot prevail over several documentary evidence showing that Po and his company are the real owners of the helicopters. He adds that Po and his companies consistently exercised rights of ownership over the helicopters until they were sold to the government.<sup>21</sup> Po's ownership is further supported by his payment of taxes for the income from the sale of the helicopters to the government.<sup>22</sup>

Petitioner refutes the claim that Po's testimony was supported by the

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<sup>14</sup> Id. at 61.

<sup>15</sup> Id. at 362–366.

<sup>16</sup> Id. at 3–45.

<sup>17</sup> Id. at 17.

<sup>18</sup> *Arroyo v. Sandiganbayan Fifth Division*, G.R. No. 210488, January 27, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66176>> [Per J. Leonen, Third Division].

<sup>19</sup> *Rollo*, pp. 1547–1577.

<sup>20</sup> Id. at 1549–1550.

<sup>21</sup> Id. at 1551–1553.

<sup>22</sup> Id. at 1556.

testimony of three witnesses, namely Renato Sia, Police Superintendent Claudio Gaspar, Jr., and Domingo Lazo. He claims that during the Senate Blue Ribbon Committee hearing, Sia, as general manager of Lion Air, stated that it was Asian Spirit that owned the helicopters. Meanwhile, Gaspar did not testify that petitioner owned the helicopters. In his Counter-Affidavit, he merely stated that he was placed on special detail at the Office of the President and was instructed to fetch members of the first family. He allegedly also confirmed that the helicopters were owned by Lion Air. Lastly, Lazo's statement that Arroyo owned the helicopters was mere hearsay.<sup>23</sup>

Petitioner stresses that the first family used the helicopters due to his brother's lease agreement with Po, to which he was not a party. He further asserts that respondent erred in sustaining the Office of the Ombudsman's findings that he leased Lion Air's hangar beginning 2004 for ₱10,000.00 a month and paying for the hangar fees, operational expenses, gasoline, and renewal of the registrations. He adds that he already disputed the authenticity of the subsidiary ledger evidencing these payments. Moreover, he alleges that the bookkeeper never identified him as the payor of the fees.<sup>24</sup>

Petitioner belies the Office of the Ombudsman's finding that he advanced the payment for Lion Air's purchase of the helicopters. As clarified by Po, it was Lourdes T. Arroyo, Inc. that paid the initial deposit for Lion Air. He claims that this was supported by Sia's testimony, which pointed out that the instruction to open an account at the Union Bank for the payment of the helicopters was from Lourdes T. Arroyo, Inc., and not from the petitioner.<sup>25</sup>

Contrary to the finding of the Office of the Ombudsman, he contends that the divestment of his shares in Lourdes T. Arroyo, Inc. was recorded in the stock and transfer book of the corporation and evidenced by the payment of tax and a certification of divestment of interest issued by the corporation. He argues that Section 4 of the deed of assignment that provides for the appointment of the assignee as a proxy is only meant to make the transfer of the interest immediately executory. He allegedly sold his interest in the corporation long before the questioned sale and he only repurchased the shares after the helicopters were sold.<sup>26</sup>

On the allegations of conspiracy, petitioner claims that there is no sufficient evidence to show that there was a trust agreement between him and Po, considering that Po's testimony was baseless. Moreover, the money paid for the helicopters came from Lourdes T. Arroyo, Inc., not from the petitioner. He further stresses that there is no proof that he was involved in

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<sup>23</sup> Id. at 1553–1555.

<sup>24</sup> Id. at 1555–1557.

<sup>25</sup> Id. at 1559–1561.

<sup>26</sup> Id. at 1562–1563.



the sale of the helicopters and that it is absurd to claim that he was the true owner when the allegations only stated that he only received half of the purchase price.<sup>27</sup>

Petitioner further emphasizes that there is no allegation of him influencing the Philippine National Police in the sale of the helicopters. There was no proof that he took part in a conspiracy. Even Po denied that he mentioned petitioner in his transactions with De Vera. De Vera also denied that he personally knew petitioner. Without proof of conspiracy with public officers, he claims he cannot be charged under Republic Act No. 3019.<sup>28</sup>

Lastly, petitioner asserts that when he filed his Motion for Determination of Probable Cause, there was yet an order finding probable cause for the issuance of an arrest warrant. He claims that up until this time, there is no warrant of arrest issued against him. Thus, when he was arraigned as a requisite for his motion to travel, respondent did not issue an order finding probable cause for the issuance of an arrest warrant. His arraignment before respondent was only a condition precedent in obtaining an authority to travel abroad. Thus, during his arraignment, he had no intent to waive his right to question the judicial finding of probable cause.<sup>29</sup>

In its Comment,<sup>30</sup> respondent argues that petitioner's motion is merely a rehash of his arguments in his earlier Petition. It points out that the Motion raises no substantial arguments for this Court to reconsider its Decision. Ultimately, petitioner failed to establish that respondent acted with grave abuse of discretion.<sup>31</sup>

Respondent contends that petitioner's arraignment rendered his Petition moot. His arraignment for travel is permanent because the Information under which he was conditionally arraigned was not subsequently amended. The pretrial and trial already proceeded where the prosecution already rested its case and the defense has commenced with the presentation of evidence. In participating in the pretrial and trial proceedings, petitioner has availed of the plain, speedy, and adequate remedy. His subsequent recourse is to appeal the adverse decision that may be rendered by the Sandiganbayan.<sup>32</sup>

Moreover, respondent explains that the purpose of the judicial determination of probable cause is to determine the existence of probable cause for the issuance of a warrant of arrest. Considering petitioner's voluntary appearance and posting of bail, there is no need to issue a warrant

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<sup>27</sup> Id. at 1564–1568.

<sup>28</sup> Id. at 1569–1573.

<sup>29</sup> Id. at 1575–1576.

<sup>30</sup> Id. at 1631–1645. This has been revised to reflect the correct pagination in Volume II of the Rollo.

<sup>31</sup> Id. at 1632–1633.

<sup>32</sup> Id. at 1634–1635.

of arrest. It adds that a motion for judicial determination of probable cause is superfluous, even prohibited under the Revised Guidelines for Continuous Trial of Criminal Cases.<sup>33</sup>

Moreover, petitioner allegedly failed to show that the Office of the Ombudsman acted with grave abuse of discretion to warrant interference with its exercise of investigatory and prosecutory powers. Probable cause does not have to be based on clear and convincing evidence of guilt. Respondent argues that the Office of the Ombudsman correctly determined that there was probable cause against petitioner. It did not conduct the preliminary investigation in an arbitrary or despotic manner. At this stage, there is no need to assess the evidence in detail and the judge only needs to personally evaluate the report and supporting documents by the prosecution.<sup>34</sup>

Respondent submits that there is no reason to dismiss the case against petitioner and his contentions are factual and evidentiary in nature. The errors he raised are, at best, errors of judgment, which may not be corrected through a writ of certiorari.<sup>35</sup>

In any case, respondent claims that there is sufficient evidence showing petitioner's involvement in the transaction. Petitioner's defenses go into the probative value and weight of the evidence, which should be resolved in a full-blown trial. Technical rules of evidence do not apply in a preliminary investigation.<sup>36</sup>

In his Reply,<sup>37</sup> petitioner rejects the claim that his petition is moot considering that the trial is still ongoing. He reasons that there is still a relief that can be granted because the reversal of the finding of probable cause will necessarily result in the termination of the trial. Petitioner asserts that the proceedings may be enjoined because the acts of the officer are without or in excess of authority and amount to persecution rather than prosecution.<sup>38</sup>

Moreover, he posits that his participation in the proceedings is not the plain, speedy, and adequate remedy contemplated under Rule 65. In any case, the petition may still prosper despite the availability of this remedy due to its exceptional circumstances, namely, (a) public welfare and public policy are involved; (b) interest of substantial justice so requires; (c) and the assailed order amounts to an oppressive exercise of judicial authority.<sup>39</sup>

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<sup>33</sup> Id. at 1634.

<sup>34</sup> Id. at 1635–1638.

<sup>35</sup> Id. at 1638–1639.

<sup>36</sup> Id. at 1640–1641.

<sup>37</sup> Id. at 1610–1627.

<sup>38</sup> Id. at 1611–1613.

<sup>39</sup> Id. at 1612–1621.



Petitioner reiterates that respondent has no jurisdiction over him absent evidence that he acted in conspiracy with his coaccused, who are public officers. He repeats that there is no proof that he owned the helicopters.<sup>40</sup> In any case, even if he owned them or had interest in Lourdes T. Arroyo, Inc., this does not necessarily translate to probable cause because there is no proof that he participated in the sale.<sup>41</sup>

Petitioner maintains that there is grave abuse of discretion because “there has been a gross misapprehension of facts.”<sup>42</sup> He further claims that the issues he raised, such as his divestment from Lourdes T. Arroyo, Inc., the ownership of helicopters by Lion Air, and the absence of conspiracy, are not factual issues because they are matters of record.<sup>43</sup>

The sole issue is whether or not respondent Sandiganbayan committed grave abuse of discretion in denying petitioner Jose Miguel T. Arroyo’s Motion and affirming the finding of probable cause to charge petitioner. Subsumed under this issue is whether or not the Office of the Ombudsman committed grave abuse of discretion in finding probable cause against petitioner.

I vote to deny the motion.

## I

As a rule, this Court does not interfere with the Office of the Ombudsman’s exercise of investigatory and prosecutory prerogatives, unless there is clear showing of grave abuse of discretion.<sup>44</sup> It is an executive function that must be respected based on the principle of separation of powers.<sup>45</sup>

The Office of the Ombudsman is given wide latitude to act on criminal complaints. This is in consonance with its unique role as mandated by the Constitution.<sup>46</sup>

Moreover, the policy of noninterference is due to the highly factual nature of determination of probable cause.<sup>47</sup> This Court is not a trier of facts. As such, we must defer to the factual findings of the Office of the Ombudsman given its power to investigate. It is in a “better position to assess the strengths or weaknesses of the evidence on hand needed to make a

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<sup>40</sup> Id. at 1613–1617.

<sup>41</sup> Id. at 1618–1622.

<sup>42</sup> Id. at 1622.

<sup>43</sup> Id. at 1625.

<sup>44</sup> *Ramiscal, Jr. v. Sandiganbayan*, 645 Phil. 69 (2010) [Per J. Carpio, Second Division].

<sup>45</sup> *Dichaves v. Office of the Ombudsman*, 802 Phil. 564 (2016) [Per J. Leonen, Second Division].

<sup>46</sup> Id.

<sup>47</sup> *People v. Court of Appeals*, 361 Phil. 401 (1999) [Per J. Panganiban, Third Division].

finding of probable cause.”<sup>48</sup> Given the facts and circumstances of a case, it has the discretion to determine whether a criminal case should be filed. If the complaint is insufficient in form and substance, it can dismiss the complaint; otherwise, it can continue with the inquiry and investigation.<sup>49</sup>

At the preliminary investigation, the Office of the Ombudsman determines probable cause, which merely involves weighing of facts and circumstances and relying on common sense, without resorting to technical rules of evidence.<sup>50</sup> “[A] preliminary investigation is merely an inquisitorial mode of discovering whether . . . there is reasonable basis to believe that a crime has been committed and that the person charged should be held responsible for it.”<sup>51</sup>

“Being merely based on opinion and belief, a finding of probable cause does not require an inquiry as to whether there is sufficient evidence to secure a conviction.”<sup>52</sup> It does not demand clear and convincing evidence. It does not establish absolute certainty of guilt. Probable cause is not actual and positive cause. It only needs evidence showing “that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused.”<sup>53</sup> In *Pilapil v. Sandiganbayan*,<sup>54</sup>

Probable cause is a reasonable ground of presumption that a matter is, or may be, well founded, 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” The term does not mean “actual and positive cause” nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of 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. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.<sup>55</sup>

To have a finding of probable cause, the prosecution only has to satisfy a low evidentiary threshold. In *Reynes v. Office of the Ombudsman (Visayas)*,<sup>56</sup> we characterized probable cause as a “matter [that] rests on likelihood rather than on certainty” and it merely “relies on common sense rather than on clear and convincing evidence.”<sup>57</sup> If probable cause is

<sup>48</sup> *Dichaves v. Office of the Ombudsman*, 802 Phil. 564, 590 (2016) [Per J. Leonen, Second Division].

<sup>49</sup> *Kalalo v. Office of the Ombudsman*, 633 Phil. 160 (2010) [Per J. Peralta, Third Division].

<sup>50</sup> *Trinidad v. Office of the Ombudsman*, 564 Phil. 382, 388 (2007) [Per J. Carpio-Morales, En Banc].

<sup>51</sup> *Presidential Commission on Good Government v. Navarro-Gutierrez*, 772 Phil. 91, 101 (2015) [Per J. Perlas-Bernabe, First Division].

<sup>52</sup> *Id.*

<sup>53</sup> *Galario v. Office of the Ombudsman*, 554 Phil. 86, 101 (2007) [Per J. Chico-Nazario, Third Division].

<sup>54</sup> 293 Phil. 368 (1993) [Per J. Nocon, En Banc].

<sup>55</sup> *Id.* at 382.

<sup>56</sup> G.R. No. 223405, February 20, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65054>> [Per J. Leonen, Third Division].

<sup>57</sup> *Id.*

satisfied, the complaint may be filed. Any questions on the parties' evidence should be raised during trial. *Estrada v. Office of Ombudsman*<sup>58</sup> explained:

The quantum of evidence now required in preliminary investigation is such evidence sufficient to "engender a well-founded belief" as to the fact of the commission of a crime and the respondent's probable guilt thereof. A preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence; it is for the presentation of such evidence only as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof.<sup>59</sup>

"A preliminary investigation is 'merely inquisitorial' and is only conducted to aid the prosecutor in preparing the information."<sup>60</sup> It is preparatory to a trial. "An accused's right to a preliminary investigation is purely statutory; it is not a right guaranteed by the Constitution. Hence, any alleged irregularity in an investigation's conduct does not render the information void nor impair its validity."<sup>61</sup>

## II

The executive determination of probable cause is different from the judicial determination of probable cause. The Supreme Court has explained:

There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom [they believe] to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. *Whether or not that function has been correctly discharged by the public prosecutor, i.e., whether or not [they have] made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.*

The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy [themselves] that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.<sup>62</sup> (Emphasis in the original; citation omitted)

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<sup>58</sup> 751 Phil. 821 (2015) [Per J. Carpio, En Banc].

<sup>59</sup> Id. at 864.

<sup>60</sup> *De Lima v. Reyes*, 776 Phil. 623, 648 (2016) [Per J. Leonen, Second Division].

<sup>61</sup> Id.

<sup>62</sup> Id. at 647.

The determination of probable cause for the purpose of filing an information is a function within the exclusive sphere and competence of the Office of the Ombudsman. “The courts must respect the exercise of such discretion when the information filed against the person charged is valid on its face, and that no manifest error or grave abuse of discretion can be imputed to the public prosecutor.”<sup>63</sup>

To assail the Office of the Ombudsman’s determination of probable cause, an allegation of grave abuse of discretion must be substantiated. “Grave abuse of discretion exists where a power is exercised in an arbitrary, capricious, whimsical[,] or despotic manner by reason of passion or personal hostility so patent and gross as to amount to evasion of positive duty or virtual refusal to perform a duty enjoined by, or in contemplation of law.”<sup>64</sup>

“[I]n a special civil action for certiorari, this Court cannot correct errors of fact or law not amounting to grave abuse of discretion. This Court may review [the Office of the Ombudsman's exercise of its investigative and prosecutorial powers, but only upon a clear showing that it abused its discretion in an ‘arbitrary, capricious, whimsical, or despotic manner.’”<sup>65</sup>

To justify the issuance of the writ of certiorari on the ground of abuse of discretion, the abuse must be grave and so patent as to amount to having acted without jurisdiction.<sup>66</sup> Petitioner bears the burden to show not merely reversible error or mere abuse of discretion, but grave abuse of discretion.<sup>67</sup>

Mere disagreement with the factual findings of the Office of the Ombudsman is not tantamount to grave abuse of discretion. In *Binay v. Office of the Ombudsman*,<sup>68</sup> we held:

Mere "disagreement with the Ombudsman's findings is not enough to constitute grave abuse of discretion." It is necessary for the petitioner to prove "that the Ombudsman conducted the preliminary investigation in such a way that amounted to a virtual refusal to perform a duty under the law."<sup>69</sup>

Subsequently, when an information is filed, the court acquires jurisdiction over the case and a judicial determination of probable cause is made by the judge for the purpose of issuing a warrant of arrest. At this

<sup>63</sup> *People v. Castillo*, 607 Phil. 754, 765 (2009) [Per J. Quisumbing, Second Division].

<sup>64</sup> *Joson v. Office of the Ombudsman*, 816 Phil. 288, 320 (2017) [Per J. Leonen, Second Division], citing *Tetangco v Ombudsman*, 515 Phil. 230 (2006) [Per J. Quisumbing, Third Division].

<sup>65</sup> *Degamo v. Office of the Ombudsman*, G.R. No. 212416, December 5, 2018, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64805>> [Per J. Leonen, Third Division].

<sup>66</sup> *Vergara v. Ombudsman*, 600 Phil. 26, 45 (2009) [ Per J. Carpio, En Banc].

<sup>67</sup> *Office of the Ombudsman v. Magno*, 592 Phil. 636 (2008) [Per J. Chico-Nazario, Third Division].

<sup>68</sup> G.R. No. 213957-58, August 7, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65552>> [Per J. Leonen, Third Division].

<sup>69</sup> *Id.*

stage, any motion to dismiss or determine the conviction or acquittal of the accused is within the sound discretion of the court.<sup>70</sup> In *Crespo v. Mogul*,<sup>71</sup> we explained:

The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.<sup>72</sup>

Once probable cause has been judicially determined, questions on the executive determination of probable cause are rendered moot.<sup>73</sup> Moreover, motions for judicial determination of probable cause become superfluties because the rules already direct the judge to make a personal finding of probable cause.<sup>74</sup> Any error that requires a review of evidence should be addressed to the trial court.<sup>75</sup> In *Drilon v. Court of Appeals*:

Probable cause should be determined in a summary but scrupulous manner to prevent material damage to a potential accused's constitutional right of liberty and the guarantees of freedom and fair play. The preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence. It is for the presentation of such evidence as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof. It is means of discovering the persons who may be reasonably charged with a crime. The validity and merits of a party's defense and accusation, as well as admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level.<sup>76</sup>

Thus, a writ of certiorari cannot be issued because once probable cause has been judicially determined, a petition assailing the executive determination of probable cause is no longer the plain, speedy, and adequate remedy.

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<sup>70</sup> *De Lima v. Reyes*, 776 Phil. 623, 649 (2016) [Per J. Leonen, Second Division].

<sup>71</sup> 235 Phil. 465 (1987) [Per J. Gancayco, En Banc].

<sup>72</sup> *Id.* at 476.

<sup>73</sup> *De Lima v. Reyes*, 776 Phil. 623, 649 (2016) [Per J. Leonen, Second Division].

<sup>74</sup> *Leviste v. Alameda*, 640 Phil. 620, (2010) [Per J. Carpio-Morales, Third Division].

<sup>75</sup> *Drilon v. Court of Appeals*, 327 Phil. 916 (1996) [Per J. Romero, Second Division].

<sup>76</sup> *Id.* at 923.

### III

In this case, the Sandiganbayan has already judicially determined, independently of the finding of the Office of the Ombudsman, that there is probable cause to proceed to trial. The present Petition has been rendered moot by the dismissal of petitioner's Motion for Judicial Determination of Probable Cause, the conduct of his arraignment, and the ongoing trial.

In the first place, petitioner's Motion is a superfluity because the Sandiganbayan is already mandated by law to evaluate the resolution of the Office of the Ombudsman together with the supporting evidence. The ongoing trial forecloses any questions on the Office of the Ombudsman's executive determination of probable cause.

Further, petitioner's participation in the ongoing trial is his plain, speedy, and adequate remedy. Should respondent render an adverse decision, his next recourse is to appeal

In any case, the petition was correctly dismissed because there is no grave abuse of discretion on the part of respondent. It correctly affirmed the Office of the Ombudsman's finding of probable cause.

Petitioner's allegations essentially assail the Office of the Ombudsman's appreciation of evidence and factual findings, leading to the determination of probable cause. In his Motion for Reconsideration, petitioner repeats his claims, questioning the evidence used during the preliminary investigation and raising the degree of quantum of evidence required in insisting that there was a misappreciation of evidence.

However, the conduct of preliminary investigation is geared only to determine whether probable cause exists to hold petitioner for trial. Considering the lower quantum of evidence required in preliminary investigation, there is no grave abuse of discretion in the findings of respondent and the Office of the Ombudsman.

To reiterate, probable cause simply implies probability of guilt. It is based merely on opinion and reasonable belief. The preliminary investigation is not the proper venue to rule on petitioner's guilt. Probable cause is determined in a summary manner. The trial is precisely to allow a full assessment of petitioner's case. In this case, petitioner's arguments, which go into the elements of the criminal charge, are matters of evidence better subjected to the scrutiny after an extensive trial on the merits. 

Nevertheless, even if this Motion for Reconsideration is resolved, there is no imputable grave abuse of discretion in the determination of the

Office of the Ombudsman and respondent. The evidence on record engenders reasonable belief that petitioner may have committed the crime and that he should stand trial.

In his Motion for Reconsideration, petitioner reiterates his arguments, asserting that respondent grossly misappreciated the facts and evidence of the case. The *ponencia* ruled in his favor, concluding that the evidence proffered by the prosecution does not indeed show reasonable belief of guilt and that the element of conspiracy with a public officer was not established.<sup>77</sup> In particular, it found that respondent relied on mere implications of petitioner's ownership of the helicopters when the documentary evidence shows that Lion Air, Asian Spirit, and the Manila Aerospace Products Trading Corporation are their true owners.<sup>78</sup> Further, it ruled that there are no overt acts attributable to petitioner that proves that he conspired with any of the public officers.<sup>79</sup>

A careful review of the case would show that there is nothing capricious, whimsical, or even arbitrary in respondent's findings and conclusions and that the Office of the Ombudsman had sufficiently established probable cause for the filing of the Information against petitioner. The evidence gathered and relied upon by respondent evinces a reasonable belief that petitioner is involved in the transaction.

In its Resolution, respondent explained its findings and discussed how the documents on record result in a finding of probable cause. It found that the documents cited by petitioner did not conclusively show that Asian Spirit or Lion Air was the true owner of the helicopters before they were sold to the Philippine National Police.<sup>80</sup> The Resolution was supported by the findings of the panel. In the Office of the Ombudsman Panel's Joint Resolution,<sup>81</sup> the panel found that there is evidence that Po, the owner of Asian Spirit and Lion Air, does not have complete control over the helicopters.

Respondent relied upon Po's allegation that petitioner instructed him to facilitate the purchase and sale of the helicopters and that he remitted the proceeds of the sale to petitioner. Moreover, it noted that petitioner and his family repeatedly used the helicopters and the Lion Air's flight dispatcher took instructions from petitioner as to the flight plan. It was convinced that these pieces of evidence were indicia of petitioner's ownership over the helicopters.<sup>82</sup>

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<sup>77</sup> *Ponencia*, p. 14.

<sup>78</sup> *Id.* at 16.

<sup>79</sup> *Id.* at 14.

<sup>80</sup> *Rollo*, p. 69.

<sup>81</sup> *Id.* at 719–720.

<sup>82</sup> *Id.* at 68–69



Respondent also relied on Po's statements showing that petitioner instructed him to register the helicopters under the name of Asian Spirit only for tax purposes in 2003.<sup>83</sup> It also consider documents showing that petitioner has not totally divested himself of his interest in Lourdes T. Arroyo, Inc.

Respondent further found that the deed of assignment offered by petitioner to show that he had already assigned his shares in Lourdes T. Arroyo, Inc. is not an evidence of a valid transfer, except between him and the named assignee in the deed. The certification attached to the deed did not mention that the transfer was duly registered in the books of Lourdes T. Arroyo, Inc. Hence, insofar as third parties are concerned, there is no valid divestment of petitioner's interest in Lourdes T. Arroyo, Inc.<sup>84</sup> This is indication that petitioner benefitted from the anomalous sale.

Respondent also stressed that there is a stipulation in the deed that the supposed assignee was merely constituted as petitioner's proxy.<sup>85</sup> Section 4 of the deed reads:

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 it present and acting in person.<sup>86</sup>

This evinces a reasonable belief that petitioner still had an interest in Lourdes T. Arroyo, Inc.

With respect to the defense that the use of the helicopters is consistent with a fleet lease agreement, the Joint Resolution highlights questions on the agreement's authenticity, thus:

First, the lease agreement involved, among others, the helicopters sold to the PNP bearing serial numbers 1372 and 1374. Note that the lease agreement was notarized on March 16, 2004 and indicated the same day as the start of the lease period. However, the helicopters with serial numbers 1372 and 1374 only arrived in the Philippines on March 17, a day after the first day of the purported lease agreement.

Second, according to the testimony of Mr. Sia, he was simply asked to affix his signature, sometimes in the year 2005 or 2006, on the page containing his name. The entire lease document, drafted solely by the Arroyos, was not even given to him. This testimony supports this

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<sup>83</sup> Id.

<sup>84</sup> Id. at 68.

<sup>85</sup> Id.

<sup>86</sup> Id. at 945.

Committee's belief that the lease agreement does not reflect a true agreement.

....

Lastly, it makes no sense for any party to enter into lease agreement which would end on May 15, 2004 and the same party would continue to pay the lessor for the maintenance and operating expenses amounting to ₱18,250,000.00 until 2011.<sup>87</sup>

The *ponencia* ruled that there is grave abuse of discretion because respondent and the Office of the Ombudsman gave weight to Lazo's hearsay statement over petitioner's documentary evidence.<sup>88</sup> During the Senate Blue Ribbon Committee hearing, Lazo claimed that he knew petitioner is the owner of the helicopters based on what Po said.

As already explained earlier, technical rules of evidence do not apply in a preliminary investigation proceeding. Hearsay evidence can be admitted in determining probable cause. In *Estrada v. Office of the Ombudsman*,<sup>89</sup>

Thus, probable cause can be established with hearsay evidence, as long as there is substantial basis for crediting the hearsay. Hearsay evidence is admissible in determining probable cause in a preliminary investigation because such investigation is merely preliminary, and does not finally adjudicate rights and obligations of parties.<sup>90</sup>

Thus, Lazo's statement may be admitted for purposes of determining probable cause. In any case, Po himself testified and his statements were not mere hearsay but were based on his personal knowledge that petitioner is the owner of the helicopters. Moreover, respondent and the Office of the Ombudsman did not rely solely on these testimonies. They also considered several pieces of documentary evidence, such as the subsidiary ledger and the flight log report.

The *ponencia* concluded that there was no sufficient evidence establishing conspiracy and that equating Lourdes T. Arroyo, Inc.'s ownership to petitioner's ownership is a deviation from the principle of separate juridical entity.<sup>91</sup>

In *Reyes v. Ombudsman*,<sup>92</sup> this Court held that "[c]onspiracy can be inferred from and established by the acts of the accused themselves when said acts point to a joint purpose and design, concerted action[,] and

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<sup>87</sup> Id. at 552.

<sup>88</sup> *Ponencia*, p. 20.

<sup>89</sup> *Estrada v. Office of the Ombudsman*, 751 Phil. 821 (2015) [Per J. Carpio, En Banc].

<sup>90</sup> Id. at 874.

<sup>91</sup> *Ponencia*, pp. 15.

<sup>92</sup> *Reyes v. Ombudsman*, 783 Phil. 304 (2016) [Per J. Perlas-Bernabe, En Banc].

community of interests.”<sup>93</sup> Thus, there is conspiracy when an accused is involved in the commission of the crime, regardless of the degree of participation.<sup>94</sup>

In establishing conspiracy, it is not necessary to show “direct proof of an agreement concerning the commission of a felony and the decision to commit[.]”<sup>95</sup> An accused’s act of conspiring with their coaccused may be inferred from their acts before, during, or after the commission of the crime, which, in totality, would reveal a community of criminal design.<sup>96</sup>

In this case, there is reasonable belief that petitioner was involved in the anomalous sale as the owner of the helicopters.

There are pieces of evidence establishing that petitioner retained his financial interest in Lourdes T. Arroyo, Inc. and that he exercised acts of ownership over the helicopters. He instructed Po to register the helicopters under the name of Asian Spirit merely for tax purposes and he personally paid for the hangar fees, take-off and landing charges, expenses for maintenance, pilotage, gasoline, oil and lubricants, as well as fees for the renewal of the aircraft registration and certificate of airworthiness.<sup>97</sup> Petitioner continued to pay for the maintenance and operating fees until 2011, even if he claimed that he merely leased the helicopters until 2004.<sup>98</sup>

Moreover, there were indications that the negotiation committee of the National Police Commission intended to unduly favor petitioner in the purchase of the helicopters. The prosecution showed petitioner was able to dispose of the helicopters with the participation and cooperation of the officers and personnel of the Philippine National Police.<sup>99</sup>

In any event, this Court has ruled that questions on the lack of finding of conspiracy is an evidentiary matter, which should be resolved during trial on merits. In *Go v. Sandiganbayan*:

It is well established that the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits. In the same manner, the absence (or presence) of any conspiracy among the accused is evidentiary in nature and is a matter of defense, the truth of which can be best passed upon after a full-blown trial on the merits.<sup>100</sup>

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<sup>93</sup> Id. at 351.

<sup>94</sup> Id.

<sup>95</sup> *Go v. Sandiganbayan*, 549 Phil. 783, 805 (2007) [Per J. Callejo, Sr., Third Division].

<sup>96</sup> Id.

<sup>97</sup> *Rollo*, p. 721–722.

<sup>98</sup> Id. at 552.

<sup>99</sup> Id. at 66.

<sup>100</sup> *Go v. Sandiganbayan*, 549 Phil. 782, 804 (2007) [Per J. Callejo, Sr., Third Division]; See also *Ganaden v. Ombudsman*, 665 Phil. 224 (2011) [Per J. Villarama, Jr., Third Division].

In the same vein, questions on the true ownership of the helicopters and the degree of involvement of petitioner through Lourdes T. Arroyo, Inc. in the sale are highly factual matters, which cannot be resolved at this stage.

In all, respondent and the Office of the Ombudsman discharged their duty by discussing the bases of their findings of probable cause against petitioner. The possible involvement of petitioner in the sale surfaced during the investigations, which raised questions and must be threshed out in a full-blown trial. Petitioner's counterarguments and controverting evidence do not completely rule out his participation in the sale. At this point, questions on the propriety of the determination of executive and judicial probable cause are moot. Petitioner's remedy is to present his evidence in the trial before respondent.

Allegations that respondent has misappreciated evident facts are not tantamount to jurisdictional error. To reiterate, "[m]ere 'disagreement with the Office of the Ombudsman's findings is not enough to constitute grave abuse discretion.'"<sup>101</sup> "The mere exercise of prosecutorial discretion, when done within the bounds of law and the rules of procedure, should not be subject to this Court's review."<sup>102</sup>

There being no clear showing that respondent and the Office of the Ombudsman acted with grave abuse of discretion, this Court should not interfere with their findings of probable cause.

**ACCORDINGLY**, I vote to **DENY** the Motion for Reconsideration.

  
**MARVIC M.V.F. LEONEN**  
Associate Justice

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<sup>101</sup> *Binay v. Office of the Ombudsman*, G.R. No. 213957-58, August 7, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65552>> [Per J. Leonen, Third Division].

<sup>102</sup> *Non v. Office of the Ombudsman*, G.R. No. 239168, September 15, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67097>> [Per J. Reyes, Jr., En Banc].