



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

RAINIER A. ESPINA,
Petitioner,

G.R. No. 208436

Present:

- versus -

GESMUNDO, C.J.,
Chairperson,

**HERNANDO,
ZALAMEDA,
ROSARIO,* and
MARQUEZ, JJ.**

HON. CHAIRMAN MANUEL SORIANO, JR., VICE-CHAIRMAN JULITA M. CALDERON, EMERITA DT. FRANCIA, AND MYLA TEONA N. TEOLOGIO in their capacity as Members of the Investigating Panel created pursuant to Office Order No. 248, Series of 2012, THE FACT-FINDING INVESTIGATION BUREAU, OFFICE OF THE DEPUTY OMBUDSMAN FOR THE MILITARY AND OTHER LAW ENFORCEMENT OFFICES (FFIB-MOLEO), THE HONORABLE OMBUDSMAN CONCHITA CARPIO MORALES, AND THE HONORABLE FOURTH DIVISION OF THE SANDIGANBAYAN,
Respondents.

X-----X

* On leave.

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HENRY YLARDE DUQUE,
Petitioner,

G.R. No. 208569

- versus -

**HON. OMBUDSMAN and
FACT-FINDING
INVESTIGATION BUREAU,
OMBUDSMAN FOR THE
MILITARY AND OTHER LAW
ENFORCEMENT OFFICES,**
Respondent.

X-----X

EULITO T. FUENTES,
Petitioner,

G.R. Nos. 209279 and 209288

- versus -

**HON. OMBUDSMAN, THE
FACT-FINDING
INVESTIGATION BUREAU,
OFFICE OF THE DEPUTY
OMBUDSMAN FOR THE
MILITARY AND OTHER LAW
ENFORCEMENT OFFICES
(FFIB-MOLEO),
SANDIGANBAYAN FIFTH
DIVISION, SECRETARY OF
THE DEPARTMENT OF
INTERIOR AND LOCAL
GOVERNMENT, CHIEF OF
THE PHILIPPINE NATIONAL
POLICE,**

Promulgated:

JUL 25 2023 *mitbuhala*

Respondents.

X-----X

DECISION

HERNANDO, J.:

Before this Court are two Petitions for *Certiorari*¹ and a Petition for *Certiorari* and Prohibition² under Rule 65 of the Rules of Court which challenged the December 27, 2012 Joint Resolution,³ the January 18, 2013 Supplemental Joint Resolution,⁴ and the July 8, 2013 Joint Order⁵ (Assailed Resolutions) rendered by the Ombudsman in the consolidated criminal and administrative cases entitled *Fact-Finding Investigation Bureau, Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices v. P/Dir. Avelino L. Razon, et al* and docketed as OMB-P-C-12-0503-G and OMB-P-A-12-0532-G, respectively.

Antecedent Facts

In response to several news reports on the alleged ghost repairs of 28 V-150 Light Armored Vehicles (LAVs) used by the Special Action Force (SAF) and the Regional Mobile Group of the Philippine National Police (PNP) in 2007, the Office of the Ombudsman created a team to conduct a comprehensive fact-finding investigation on the alleged anomalous repairs.⁶ The investigation conducted by the Fact-Finding Investigation Bureau-Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices (FFIB-MOLEO) yielded the following findings:

1. PNP Police Director Oscar C. Calderon initiated the request for the repair and refurbishing of 10 V-150 LAVs for the PNP SAF's capacity build-up program.⁷ Former Department of Interior and Local Government Secretary Ronaldo V. Puno indorsed the approved request of then PNP Avelino C. Razon for supplemental budget for the repair and refurbishing of the remaining 18 V-150 LAVs.⁸
2. The Department of Budget and Management (DBM) issued two Special Allotment Release Orders (SARO) to the Philippine National Bank (PNB). Pursuant to the SAROs, P/Dir. Geary L. Barias as Director of Comptrollership issued PNP-Logistics Support Service (LSS) Notices of Fund Availability for the repowering and refurbishment of 10 V-150 LAVs and procurement of 40 tires for the V-150 LAVs in the amount of ₱144,940,000.00. PNP Police Director Eliseo de la Paz issued a Notice of Fund Availability for ₱264,800,000.00 to support the transportation, delivery

¹ *Rollo* (G.R. No. 208436), Vol 1., pp. 3-38; *Rollo* (G.R. No. 209279 & 209288), Vol. I, p. 3-31.

² *Rollo* (G.R. No. 208569), Vol 2., pp. 3-46

³ *Rollo* (G.R. Nos. 209279 & 209288), Vol. 1, pp. 134-239.

⁴ *Id.* at 245-253. The January 18, 2023 Supplemental Joint Resolution was assailed in Eulito T. Fuentes' Petition.

⁵ *Id.* at 297-363.

⁶ *Rollo* (G.R. No. 208569), Vol. 1, p. 855.

⁷ *Rollo* (G.R. Nos. 209279 & 209288), Vol. 1, pp. 33-34.

⁸ *Id.*

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expenses, repair, and maintenance of 8 V-150 LAVs. A total of ₱409,740,000.00 was allotted for the repair, repowering, refurbishing, and transport of 28 V-150 LAVs.⁹

3. On December 12, 2007, the PNP National Headquarters Bids and Awards Committee (PNP NHQ-BAC) issued Resolution No. 2007-12, which delegated to the LSS Bids and Awards Committee (LSS-BAC) the procurement of the repair and refurbishing of the V-150 LAVs, which FFIB noted to be in violation of NHQ-BAC Resolution No. 04-06. NHQ-BAC Resolution No. 04-06 limits the authority of the LSS-BAC in the procurement of infrastructure, supply and consultancy contract in the following cases: (a) where the approved budget for said contract does not exceed ₱5,000,000.00, (b) where the LSS is the end-user, and (c) where the needed supplies or materials will be utilized PNP-wide.¹⁰
4. The procurement process for the repair and refurbishing of the V-150 LAVs was marred by the following irregularities: (a) the LSS-BAC did not provide bidding documents to possible bidders; (b) there was no pre-procurement conference, which is a mandatory requirement for the procurement of goods costing ₱2,000,000.00; (c) the Invitations to Bid were published in Alppa Times News, which is not a newspaper of general circulation or may not even exist; (d) there was no pre-bid conference; (e) the eligibility requirements of the bidders, including the technical and financial documents, were not required to be submitted; (f) there was no post qualification; and (g) the award and payments were hurriedly made on December 27, 2007.¹¹
5. There were ghost deliveries of engines and transmissions. Upon ocular inspection of the V-150 vehicles stationed in Camp Crame and the SAF Headquarters in Bicutan, Taguig, the engines carried the brand *Commando* instead of *Detroit*.¹²
6. There was no Record of Inventory, Inspection Report of Unserviceable Property and Waste Report, or any other documentation pertaining to the repair of 28 V-150 LAVS which would indicate that the engine and parts have actually been replaced.¹³

In light of its findings, the FFIB-MOLEO filed an Affidavit-Complaint on July 11, 2012 against several PNP officials involved in the procurement of tires, repowering, refurbishing, and repair of V-150 LAVs, inspection of deliveries of the goods covered by the procurement, and the consequent processing of payments to the private suppliers of the goods procured, which include petitioners Rainier A. Espina (Espina), in his capacity as former Acting

⁹ Id. at 34 and 136.

¹⁰ Id. at 34-35.

¹¹ Id. at 35.

¹² Id. at 35-36.

¹³ Id. at 36.

Chief of the Management Division, Henry Y. Duque (Duque), as member of the LSS-BAC, and Eulito T. Fuentes (Fuentes), as Supply Accountable Officer. The Affidavit-Complaint charged them with violations of Republic Act No. (RA) 7080 (Plunder), RA 3019 (Anti-Graft and Corrupt Practices Act), RA 9184 (Government Procurement Reform Act), and Article 220 of the Revised Penal Code (RPC; Malversation thru Falsification of Public Document), as well as administrative cases of grave misconduct and serious dishonesty.¹⁴

Briefly stated, the petitioners were implicated for allegedly committing the following acts:

- (a) Duque, as a member of the LSS-BAC, signed the bidding documents, making it appear that a public bidding was conducted when there was none, thereby recommending the award of contracts which are grossly disadvantageous to the PNP;¹⁵
- (b) Fuentes, as a Supply Accountable Officer of the LSS, accepted the purported equipment and materials and certifying that they were received in good order and condition;¹⁶ and
- (c) Espina, as Former Acting Chief of the Management Division, processed the payments for the bidders without exercising due diligence to ensure that the procedures in the procurements were faithfully observed.¹⁷

On July 17, 2012, respondent FFIB-MOLEO filed a Supplemental Affidavit Complaint¹⁸ which further detailed: (a) the transactions that caused the government a total of ₱409,740,000.00, specifically (i) the procurement of tires; (ii) the repowering and refurbishing of 10 units of V-150 LAVs; (iii) the repair and maintenance of 18 units of V-150 LAVs, and (iv) transportation and delivery expenses; and (b) the irregularities in the procurement process and the participation of the PNP officials on the same.

The FFIB-MOLEO further noted the specific participation of petitioners in these transactions:

- (a) Espina noted the Inspection Report Form (IRF) for the ₱2,940,000.00 procurement of tires, for the ₱142,000,000.00 repair of 10 V-150 units, and for the ₱9,200,000.00 transportation and delivery expenses;¹⁹

¹⁴ Id. at 32-41.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id. at 46-71.

¹⁹ Id. at 49, 52 and 58.

- (b) Duque certified a disbursement voucher, which was issued to pay for the V-150 tires in the amount of ₱2,782,121.43;²⁰ and
- (c) Fuentes signed an Inspection and Acceptance Form dated December 9, 2007 with regard to the 40 pieces of V-150 tires, with a note that the “items were inspected, verified and found OK as to quantity and specifications.”²¹ Fuentes also signed three requisition and issue slips for the same requisition of 40 pieces of V-150 tires dated September 24, 2007 and December 9, 2007.²²

On July 30, 2012, Fuentes filed an Omnibus Motion requesting for forensic examination on signatures affixed over his name in the Inspection and Acceptance Form, and the three requisition and issue slips referred to in FFIB-MOLEO’s Affidavit-Complaint and Supplemental Complaint. He alleged that he did not sign the said documents.²³ The Ombudsman denied the motion in its August 1, 2012 Order.²⁴ Fuentes moved for reconsideration, which was denied in the Ombudsman’s September 11, 2012 Resolution.²⁵

The Office of the Ombudsman, under Office Order No. 248, series of 2012, created an Investigating Panel to determine the criminal and administrative liabilities of the named officials. The named PNP and COA public officials, as well as concerned bidders and suppliers, were directed to submit their respective Counter-Affidavits to the newly created Investigating Panel.²⁶ In his counter-affidavit, Fuentes denied any participation in the allegations against him and reiterated that the signatures on the purported documents are not his.²⁷ For his part, Espina asserted that his act of signing the IRFs was merely nominal and ministerial, that his duty was merely to note the report and that he had no reason to doubt the regularity of the IRFs.²⁸

Subsequently, the Investigating Panel issued a **December 27, 2012 Joint Resolution**²⁹ in OMB-P-C-12-0503-G and OMB-P-A-12-0532-G finding probable cause against several PNP officials, including petitioners Duque, Espina, and Fuentes for violations of Section 3(e) of RA 3019, Sec. 65(b)(4) of RA 9184, and Art. 217 in relation to Art. 171(4) of the RPC. Probable cause was found against Duque in relation to the purchase of 40 tires, and against Espina with respect to the repair and maintenance of 18 V-150 LAVs, the repair and maintenance of 10 V-150 LAVs, and the disbursement and expenditure of the

²⁰ Id. at 49.

²¹ Id. at 48, 55 and 58.

²² Id. at 49.

²³ Id. at 88-90.

²⁴ Id. at 91.

²⁵ Id. at 111-114.

²⁶ *Rollo* (G.R. No. 208436), Vol. 1, pp. 12, 254-256; *rollo* (G.R. No. 208569), Vol. 1, pp. 266-272.

²⁷ *Rollo* (G.R. Nos. 209279 & 209288), Vol. 1, pp. 115-124.

²⁸ Id. at 167.

²⁹ Id. at 134-239.

transportation and delivery expenses corresponding to its V-150 LAVs. Accordingly, respondent Investigating Panel recommended the filing of the corresponding Informations against them with the Sandiganbayan.³⁰ The dispositive portion of the said Resolution reads:

WHEREFORE, the Panel:

- a) **FINDS** that there is **PROBABLE CAUSE** against:
- (i) Respondents **TEODORIDO R. LAPUZ IV, EMMANUEL D. OJEDA, REUEL LEVERNE L. LABRADO, ANNALEE R. FORRO, EDGAR B. PAATAN, HENRY V. DUQUE** and **VICTOR M. PUDDAO**, all **Members of the LSS-BAC**, **JOSEFINA B. DUMANEW**, Purchasing Officer, and **ANTONIO P. RETRATO**, Chief, Accounting Division, **WARLITO T. TUBON**, Inspection Officer, LSS, **GEARY L. BARIAS**, former Director for Comptrollership, **ALEX R. BARRAMEDA**, **EULITO T. FUENTES**, **Supply Accountable Officer**, **RAINIER A. ESPINA**, **Acting Chief, PNP Management Division**, all of the Philippine National Police and **OSCAR MADAMBA** of Serpenair, **acting in conspiracy, for violations of Section 3(e) of R.A. 3019, Sec. 65 (b)(4), R.A. 9184, and Article 217 in relation to Article 171 (par. 4) of the Revised Penal Code (Malversation through Falsification) in relation to the purchase of forty (40) tires by the PNP in 2007;**
 - (ii) Respondents **AVELINO I. RAZON, JR.**, former Chief of Police, **TEODORIDO R. LAPUZ, IV, EMMANUEL D. OJEDA, REUEL LEVERNE L. LABRADO, ANNALEE R. FORRO, EDGAR B. PAATAN**, and **VICTOR M. PUDDAO**, all **Members of LSS-BAC**, **JOSEFINA B. DUMANEW**, Purchasing Officer, and **ANTONIO P. RETRATO**, Chief, Accounting Division, **WARLITO T. TUBON**, Inspection Officer, LSS, **ALFREDO M. LAVIÑA**, Responsible Supply Police Non-Commissioned Officer of the LSS, **NUP MARIA TERESA M. NARCISE, ELISEO D. DELA PAZ**, former Director for Comptrollership, **EULITO T. FUENTES**, **Supply Accountable Officer**, **VICTOR G. AGARCIO**, Chief, TMD, LSS, **RAINIER A. ESPINA**, **Acting Chief Management Division**, **NUP PATRICIA ENAJE**, Property Inspector, all of the Philippine National Police, **HAROLD ONG** and **TYRONE ONG**, both of Enviro-Aire, **PAMELA PENSOTES**, of RJP and **EVANGELINE BAIS** of Evans, and **ARTEMIO B. ZUNIGA**, Editor of ALPPA Times News, **acting in conspiracy, for violation of Section 3(e) of R.A. 3019, Sec. 65 (b)(4), R.A. 9184, and Article 217 in relation to Article 171 (par. 4) of the Revised Penal Code (Malversation through Falsification) in relation to the repair and maintenance of P'P's eighteen (18) V-150 Light Armored Vehicles in 2007;**
 - (iii) Respondents **AVELINO I. RAZON, JR.**, former Chief of Police, **REYNALDO P. VARILLA**, and **CHARLEMAGNE S. ALEJANDRINO**, both of the NHQ-BAC, **TEODORIDO R.**

³⁰ Id. at 233-236.

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LAPUZ, IV, EMMANUEL D. OJEDA, REUEL LEVERNE L. LABRADO, ANNALEE R. FORRO, EDGAR B. PAATAN, and VICTOR M. PUDDAO, all Members of the LSS-BAC, JOSEFINA B. DUMANEW, Purchasing Officer, and ANTONIO P. RETRATO, Chief, Accounting Division, WARLITO T. TUBON, Inspection Officer, LSS, ALFREDO M. LAVIÑA, Responsible Supply Police Non-Commissioned Officer of the LSS, GEARY L. BARIAS, former Director for Comptrollership, ALEX R. BARRAMEDA, **EULITO T. FUENTES, Supply Accountable Officer, RAINIER A. ESPINA, Acting Chief, PNP Management Division**, NUP NANCY M. BASALLO, Property Inspector, all of the Philippine National Police, HAROLD ONG and TYRONE ONG, both of Enviro-Aire, PAMELA PENSOTES, of RJP and EVANGELINE BAIS of Evans, and ARTEMIO B. ZUNIGA, Editor of ALPPA Times News, **acting in conspiracy, for violation of Section 3(e) of R.A. 3019, Sec. 65(b)(4), R.A. 9184, and Article 217 in relation to Article 171(par. 4) of the Revised Penal Code (Malversation through Falsification) in relation to the repair and maintenance of the 'PNP's ten (10) V-150 Light Armored Vehicles in 2007;**

(iv) Respondents TEODORIDO R. LAPUZ IV, EMMANUEL D. OJEDA, REUEL LEVERNE L. LABRADO, ANNALEE R. FORRO, EDGAR B. PAATAN, and VICTOR M. PUDDAO, all Members of LSS-BAC, JOSEFINA B. DUMANEW, Purchasing Officer, and ANTONIO P. RETRATO, Chief, Accounting Division, ELISEO D. DELA PAZ, former Director for Comptrollership, **RAINIER A. ESPINA, Acting Chief, PNP Management Division**, NUPs PATRICIA C. ENAJE and NANCY M. BASALLO, Property Inspection Officers, ALFREDO M. LAVIÑA, RSPNO, LSS, all of the Philippine National Police, GIGIE MARPA and MARIANNE JIMENEZ, both of RKJK, RASITA ZABALLERO, and CARMENCITA SALVADOR, both of Dex-Lan, acting in conspiracy, for violations of Section 3(e) of R.A. 3019, Sec. 65 (b)(4), R.A. 9184, and Article 217 in relation to Article 171 (par. 4) of the Revised Penal Code (Malversation through Falsification) in relation to the disbursement and expenditure of the PNP's transportation and delivery expenses corresponding to its V-150 Light Armored Vehicles in 2007; And **RECOMMENDS** the filing of the corresponding informations against them with the Sandiganbayan:

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SO ORDERED.³¹

Further, in OMB-P-A-12-0532-G, substantial evidence was found against petitioners Duque and Espina for Grave Misconduct and Serious Dishonesty and they were ordered dismissed for government service. The Ombudsman noted that several individuals, including Duque, failed to file their respective

³¹ Id. at 233-238. Emphasis supplied.

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counter-affidavits despite notice, prompting the Ombudsman to consider their right to file the same waived.³²

Fuentes moved for reconsideration of the December 27, 2012 Joint Resolution and maintained his earlier arguments.³³

In its **January 18, 2013 Supplemental Joint Resolution**,³⁴ the Ombudsman found substantial evidence against Fuentes for Grave Misconduct and Serious Dishonesty in connection with his participation with respect to the repair and maintenance of 18 V-150 LAVs, repair and maintenance of 10 V-150 LAVs, and disbursement and expenditure of the PNP's transportation and delivery expenses corresponding to its V-150 LAVs.³⁵

Aggrieved, the concerned PNP and COA officials filed their respective motions for reconsideration and/or reinvestigation to the Joint Resolution of the Ombudsman. Espina filed a motion for reconsideration and inhibition alleging that he had no participation in the selection, qualification, and award of contracts, and that he merely relied on the doctrine of presumption of regularity in the performance of duties of his subordinates when he affixed his signatures on the questionable documents.³⁶

Duque filed an Omnibus Motion for Reconsideration and Motion for Reinvestigation dated February 4, 2013, averring that his right to due process was violated because he never received a copy of the assailed Joint Resolution, requesting that he be given a chance to submit his counter-affidavit relative to the criminal and administrative complaints filed against him. Moreover, Duque asserted that he was an ordinary member of the LSS-BAC; that the 40 tires were procured below the allocated fund of ₱2,940,000.00, and the PNP even saved ₱157,878.57; that he only participated in the procurement of the 40 tires and he was not involved in the procurement of spare parts for the 10 units of V-150 LAVs, repair and maintenance of the 18 units of V-150 LAVs, as well as the realignment of the ₱9,200,000.00 funds, since he was relieved as Budget and Fiscal Officer of the LSS on January 23, 2008 in view of his reassignment to the CALABARZON Police Regional Office.³⁷

For his part, Fuentes moved for reconsideration against the January 18, 2013 Supplemental Joint Resolution. He asserted that the Supplemental Joint Resolution is null and void considering his right to present evidence as well as the doctrine of finality of judgment was violated.³⁸

³² Id. at 237.

³³ Id. at 240-253.

³⁴ Id. at 245-253.

³⁵ Id. at 245-253.

³⁶ *Rollo* (G.R. No. 208436), Vol. 4, pp. 1552-1590

³⁷ *Rollo* (G.R. No. 208569), Vol. 1, pp. 428-450.

³⁸ *Rollo* (G.R. Nos. 209279 & 209288), Vol. 1, pp. 265-266.

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In a **July 8, 2013 Joint Order**,³⁹ respondent Investigating Panel maintained the finding of probable cause against Duque and denied his Motion for Reconsideration/Reinvestigation. The Investigating Panel noted that the order to file counter-affidavit addressed to Duque was served at Camp Crame, albeit not personally received by him, and in any event, Duque answered the Affidavit Complaint and Supplemental Complaint in his Omnibus Motion for Reconsideration and Motion for Reinvestigation, and his explanations and contentions in the Omnibus Motion were duly considered in the July 8, 2013 Joint Order. Thus, Duque was notified of the accusations against him and was able to exercise his right to be heard.⁴⁰ However, the Investigating Panel partially granted Espina and Fuentes' motion for reconsideration, thereby setting aside the charge against them for violation of Sec. 65(b)(4) of RA 9184, but maintaining the finding of probable cause against Fuentes and Espina for violation of Sec. 3(e) of RA 3019, and Malversation of Public Funds through Falsification of Public Documents.⁴¹

Verily, the Investigating Panel ordered the filing of Informations for violation of Sec. 3(e) of RA 3019 and Malversation of Public Funds through Falsification of Public Documents against the (a) three petitioners in connection with the purchase of 40 tires for the V-150 LAVs; (b) Espina and Fuentes, in relation to the alleged repair and maintenance of 10 V-150 LAVs and 18 V-150 LAVs respectively; and (c) Espina, in relation to the disbursement of the PNP funds originally allotted for transportation and delivery expenses.⁴² The Investigating Panel likewise ordered the filing of an information against Duque for violating Sec. 65(b)(4) of RA 9184.⁴³

Hence, these Petitions.⁴⁴ The Court initially dismissed Espina and Fuentes' Petitions for *Certiorari* in its September 2, 2013 and November 13, 2013 Resolutions, respectively. Espina and Fuentes moved for reconsideration, which was granted by the Court in its December 9, 2015 Resolution, thereby reinstating their petitions and ordering respondents to comment on the same.⁴⁵

In essence, petitioners argue that the Ombudsman committed grave abuse of discretion in the issuance of the Assailed Resolutions.

Our Ruling

The Petitions are dismissed for lack of merit.

³⁹ *Rollo* (G.R. No. 209279 & 209288), Vol. 1, pp. 297-363.

⁴⁰ *Id.* at 336-337.

⁴¹ *Id.* at 355-360.

⁴² *Id.*

⁴³ *Id.* at 358-359.

⁴⁴ *Rollo* (G.R. No. 208436), Vol. 1, pp. 3-38; *rollo* (G.R. No. 208569), Vol. 1, pp. 3-46; *rollo* (G.R. Nos. 209279 & 209288), Vol. 1, pp. 3-31.

⁴⁵ *Rollo* (G.R. Nos. 209279 & 209288), Vol. 1, pp. 570-571.

The Court's jurisdiction over decisions of the Ombudsman is limited to the criminal, and not administrative aspect of the case

Preliminarily, Fuentes seeks the reversal of the Assailed Resolutions of the Ombudsman in both its criminal and administrative aspects. On this point, the OSG asserts that Fuentes' petition on the administrative case should be dismissed since it was improperly brought before the Court, and avers that a review of administrative disciplinary cases must be brought to the Court of Appeals (CA) under Rule 43 of the 1997 Rules of Civil Procedure.

Section 7, Rule III of the Ombudsman Rules provides:

Section 7. *Finality and execution of decision.* — Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. **In all other cases, the decision may be appealed to the Court of Appeals** on a verified petition for review under the requirements and conditions set forth in **Rule 43 of the Rules of Court**, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.⁴⁶

*Fabian v. Desierto*⁴⁷ pronounced that appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the CA under Rule 43.⁴⁸ In contrast, the remedy of aggrieved parties from resolutions of the Office of the Ombudsman finding probable cause in criminal cases or non-administrative cases, when tainted with grave abuse of discretion, is to file an original action for *certiorari* with this Court and not with the CA.⁴⁹

We have since stressed that all remedies involving the orders, directives, or decisions of the Ombudsman must first be filed with the CA in observance of the doctrine of hierarchy of courts, thus:

As a preliminary procedural matter, we observe that while the petition asks this Court to set aside the Supplemental Resolution, which dismissed both administrative and criminal complaints, it is clear from the allegations therein that what petitioners are questioning is the criminal aspect of the assailed resolution, *i.e.*, the Ombudsman's finding that there is no probable cause to indict the respondents in the Ombudsman cases. Movants in G.R. No. 159139 similarly question this conclusion by the Ombudsman and accordingly pray that the Ombudsman be directed to file an information with the Sandiganbayan against the responsible COMELEC officials and conspiring private individuals.

⁴⁶ Emphasis supplied.

⁴⁷ *Fabian v. Desierto*, 356 Phil. 787 (1998).

⁴⁸ *Id.* at 799.

⁴⁹ *Gatchalian v. Office of the Ombudsman*, 838 Phil. 140, 156 (2018).

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In *Kuizon v. Desierto* and *Mendoza-Arce v. Office of the Ombudsman*, we held that **this Court has jurisdiction over petitions for certiorari questioning resolutions or orders of the Ombudsman in criminal cases. For administrative cases, however, we declared in the case of *Dagan v. Office of the Ombudsman (Visayas)* that the petition should be filed with the Court of Appeals in observance of the doctrine of hierarchy of courts.** The *Dagan* ruling homogenized the procedural rule with respect to administrative cases falling within the jurisdiction of the Ombudsman — first enunciated in *Fabian v. Desierto* — that is, **all remedies involving the orders, directives, or decisions of the Ombudsman in administrative cases, whether by an appeal under Rule 43 or a petition for certiorari under Rule 65, must be filed with the Court of Appeals.**

Accordingly, we shall limit our resolution to the criminal aspect of the Ombudsman's Supplemental Resolution dated September 27, 2006.⁵⁰

That the Ombudsman rendered a consolidated ruling does not alter the nature of the prescribed remedy corresponding to the aspect of the Ombudsman ruling being assailed. After the Ombudsman renders a consolidated ruling, the aggrieved party is required to take the appropriate procedural remedies to separately assail the administrative and criminal components of the same in the appropriate mode and to the proper tribunal.⁵¹

Verily, the administrative aspect of the cases should be resolved by the CA, in proper observance of the hierarchy of courts and in accordance with prevailing rules and jurisprudence.⁵² Fuentes should have elevated the administrative aspect of the case by filing a Rule 43 Petition before the CA. Considering his failure to do so, the administrative aspect of the Ombudsman's findings as to Fuentes has already attained finality.⁵³

In addition, Fuentes asserts that the Ombudsman violated the principle of immutability of judgments when it issued the January 18, 2013 Supplemental Joint Resolution which found him administratively liable of Grave Misconduct and Serious Dishonesty despite the Ombudsman's previously December 27, 2012 Joint Resolution which had no disposition as to Fuentes' administrative liability. However, it should be borne in mind that Fuentes was not among those initially adjudged guilty of Gross Misconduct and Serious Dishonesty in the December 27, 2012 Joint Resolution. The Ombudsman merely omitted a discussion on Fuentes' liability therein, and did not purport to acquit Fuentes of any liability. As there was no disposition or ruling as to Fuentes' administrative liability when the January 18, 2013 Supplemental Joint Resolution was issued, the doctrine of immutability of judgments does not find application.

⁵⁰ *Information Technology Foundation of the Philippines v. Commission on Elections*, 810 Phil. 400, 409-410 (2017). Emphasis supplied.

⁵¹ *Yatco v. Office of the Deputy Ombudsman for Luzon*, G.R. No. 244775, July 6, 2020.

⁵² *Province of Bataan v. Casimiro*, G.R. Nos. 197510-11 & 201347, April 18, 2022.

⁵³ *Joson v. Ombudsman*, 784 Phil. 172, 189-191 (2016).

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In fine, and for guidance of the parties, the Ombudsman's January 18, 2013 Supplemental Resolution did not operate to violate the principle of immutability of judgments as to warrant its reversal as to Fuentes. As stated, the finding of administrative liability against Fuentes has attained finality for his failure to avail of the proper remedy to assail the same.

The requirement of due process in preliminary investigations is satisfied when respondents are given reasonable opportunity to be heard

Petitioners assert that their right to due process was violated by the Ombudsman in the assailed Resolutions. These contentions fail to convince.

At the outset, the purpose of the Office of the Ombudsman in conducting a preliminary investigation is to determine probable cause for filing an information, and not to make a final adjudication of the rights and obligations of the parties under the law. Probable cause merely implies probability of guilt and should be determined in a summary manner.⁵⁴

Further, a preliminary investigation is not a part of the trial and it is only in a trial where an accused can demand the full exercise of his or her rights, such as the right to confront and cross-examine his or her accusers to establish his or her innocence. "The right to such investigation is not a fundamental right guaranteed by the constitution. At most, it is statutory. And rights conferred upon accused persons to participate in preliminary investigations concerning themselves depend upon the provisions of law by which such rights are specifically secured, rather than upon the phrase 'due process of law.'"⁵⁵ In other words, the rights of a respondent in a preliminary investigation are limited to those granted by procedural law and are merely statutory rights. An investigation to determine probable cause for the filing of an information does not initiate a criminal action so as to trigger into operation Sec. 14 (2), Art. III of the Constitution.⁵⁶

Duque claims that he was denied due process since he was deprived of his right to file a counter-affidavit during preliminary investigation, considering he never received the July 18, 2012 Order to File Counter-Affidavit of FFIB-MOLEO. He asserts that a copy of the Order to File Counter-Affidavit intended for him was served at Camp Crame, Quezon City and not personally to him who has already been reassigned in Camp Simon Ola, Legaspi City. Thus, he avers that the finding of probable cause against him is null and void since the Ombudsman violated his constitutional right to due process and equal

⁵⁴ *Estrada v. Office of the Ombudsman*, 751 Phil. 821, 863, 867 (2015).

⁵⁵ *Lozada v. Hernandez*, 92 Phil. 1051, 1053 (1953). Citations omitted.

⁵⁶ *Estrada v. Office of the Ombudsman*, supra, at 869.

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protection of law when he was deprived of his right to be heard and adduce evidence in his behalf in the conduct of preliminary investigation by the Investigating Panel.⁵⁷

To counter this, the OSG asserts that Duque was afforded due process because he was given the chance to be heard in a motion for reconsideration when he filed an Omnibus Motion for Reconsideration and Motion for Reinvestigation dated February 4, 2013.⁵⁸

On this point, it is worthy to stress that defects in procedural due process during preliminary investigation may be cured by the filing of a motion for reconsideration of the action or ruling complained of.⁵⁹ The essence of due process is simply an opportunity to be heard. What the law prohibits is not the absence of previous notice but the absolute absence thereof and lack of opportunity to be heard. Thus, where a party has been given a chance to be heard during preliminary investigation with respect to the latter's motion for reconsideration, and the defenses raised in his motion for reconsideration are adequately considered and acted upon by the Office of the Ombudsman, there is sufficient compliance with the requirements of due process.⁶⁰

Moreover, in a recent case, the Court noted that a complainant's allegations that the Ombudsman failed to acknowledge receipt of his counter-affidavit and its consequent failure to consider the same in the determination of probable cause is immaterial, as he had already exercised his right to be heard when he filed his motion for reconsideration and interposed his defenses against the Joint Resolution finding probable cause against him. As he had already been given an opportunity to give his side, it necessarily follows that he was duly accorded due process.⁶¹

Similarly, any purported procedural defects during preliminary investigation against Duque was cured when he was able to interpose his defenses upon filing his motion for reconsideration against the finding of probable cause against him in the Ombudsman's December 27, 2012 Joint Resolution. Duque was able to intelligently answer the charges against him in the Complaint and the Joint Resolution and to respond with his own defenses, as he in fact did so when he filed his motion for reconsideration. These defenses were then adequately considered and acted on by the Office of the Ombudsman in its July 8, 2013 Joint Order. Thus, Duque was given reasonable opportunity to address the charges against him and was accorded due process.

For his part, Fuentes asserts that he was denied due process when the Ombudsman denied his request for forensic examination to establish forgery of

⁵⁷ *Rollo* (G.R. Nos. 209279 & 209288), Vol. 1, pp. 913-916.

⁵⁸ *Id.* at 837.

⁵⁹ *Baterina v. Sandiganbayan*, G.R. Nos. 236408 & 236531-36, July 7, 2021.

⁶⁰ *Artillero v. Casimiro*, 686 Phil. 1055, 1074 (2012).

⁶¹ See *Baterina v. Sandiganbayan, Second Division*, *supra*

his signatures in the Acceptance and Inspection Reports. However, it bears reiterating that preliminary investigation is not properly a trial but is merely preparatory thereto, its only purpose being to determine whether a crime has been committed and whether there is probable cause to believe the accused guilty thereof. The right to such investigation is statutory, and not a fundamental right guaranteed by the Constitution.⁶²

Further, Fuentes' defense of forgery cannot be presumed and must be proven by clear, positive and convincing evidence.⁶³ Determining the existence of forgery does not depend entirely on the testimonies of handwriting experts since the judge must conduct an independent examination of a questioned signature in order to arrive at a reasonable conclusion as to its authenticity.⁶⁴ Sec. 22, Rule 132 of the Rules of Court explicitly authorizes the court, by itself, to make a comparison of the disputed handwriting with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine.⁶⁵

It is further vital to note that any evidence of forgery or findings of purported handwriting experts on the matter cannot be readily credited at the preliminary investigation stage. The findings on the issue of forgery during preliminary investigation should be ventilated in a full-blown trial, as the duty to determine the authenticity of a signature rests on the judge who must conduct an independent examination of the signature itself in order to arrive at a reasonable conclusion as to its authenticity.⁶⁶

Thus, while Fuentes should rightfully be given the opportunity to substantiate his defense of forgery, the best avenue for him to assail the genuineness of the signatures in the purported documents is during his turn to present evidence in court, where there is an opportunity for the presentation and cross-examination of an expert witness and an independent examination by the judge on the veracity of the purported signatures.

Lastly, Espina alleges that his right to due process was violated since one of the overt acts imputed against him is his supposed signature in the Pre/Post Inspection Reports relating to Work Orders for the repairs and refurbishment of the V-150s, which were attached as annexes of a COA Report; however, the COA Report and its annexes were purportedly only referenced as a footnote in the Joint Resolution, and Espina was never furnished a copy of COA Report nor was the same attached to the Affidavit Complaint or Supplemental Affidavit.⁶⁷

⁶² *Lozada v. Hernandez*, supra, note 55.

⁶³ *Marquez v. Sandiganbayan*, 656 Phil. 177, 185-186 (2011).

⁶⁴ *Tolentino v. Spouses Latagan*, 761 Phil. 108, 131-132 (2015).

⁶⁵ *Cambe v. Office of the Ombudsman*, 802 Phil. 190, 220 (2016).

⁶⁶ *Id.*

⁶⁷ *Rollo* (G.R. No. 208436), Vol. 1, pp. 790-794.

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However, the records show that Espina had a copy of the said Pre/Post Inspection Reports containing his signature, which he attached in his Motion for Leave to Admit attached Reply Position Paper filed with the Ombudsman on November 28, 2012,⁶⁸ and which was duly considered by the Ombudsman in the Assailed Resolutions.⁶⁹ He even admitted that he signed the said Pre/Post Inspection Reports.⁷⁰ Copies of the foregoing Work Orders referred to by the Pre/Post Inspection Reports were also attached as annexes to the Supplemental Complaint furnished to Espina.⁷¹ Verily, Espina was accorded the opportunity to be heard and intelligently address the charges against him in relation to the Requests for Pre/Post-Inspection Reports containing his signature.

The determination of probable cause by the Ombudsman is accorded due respect and shall not be disturbed, except in cases of grave abuse of discretion

Finally, Duque and Espina assail the Ombudsman's finding of probable cause against them in the Assailed Resolutions.

On this point, the Constitution and RA 6770 vests the Ombudsman, as an independent constitutional body, with wide latitude to act on criminal complaints against public officials and government employees.⁷² Moreover, the determination of probable cause is an executive determination and a highly factual inquiry which the Ombudsman is best suited to make.⁷³ The Court has thus maintained a policy of non-interference with the Ombudsman's exercise of its investigatory and prosecutorial powers, including its determination of probable cause, in the absence of grave abuse of discretion, not only out of respect for these constitutionally mandated powers but also upon considerations of practicality owing to the various functions of the courts.⁷⁴

However, the Court may review the acts of the Ombudsman if a party invoking Rule 65 of the Rules of Court alleges and substantiates that there was grave abuse of discretion in the exercise of the Ombudsman's powers. Grave abuse of discretion implies a capricious and whimsical exercise of judgment

⁶⁸ *Rollo* (G.R. No. 208436), Vol. 4, pp. 1530, 1550-1551.

⁶⁹ *Rollo* (G.R. No. 208569), Vol. 1, p. 203.

⁷⁰ *Rollo* (G.R. No. 208436), Vol. 4, p. 1530.

⁷¹ *Id.*

⁷² *Estrada v. Office of the Ombudsman*, 837 Phil. 913, 937. See also 1987 CONSTITUTION, Article XI, Section 12 which reads:

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

⁷³ *Camp John Hay Development Corporation v. Office of the Ombudsman*, G.R. No. 225565, January 13, 2021, citing *Dichaves v. Ombudsman*, 802 Phil. 564, 590-591 (2016).

⁷⁴ *Vergara v. Ombudsman*, 600 Phil. 26, 48 (2009).

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tantamount to lack of jurisdiction.⁷⁵ When the outcome of the preliminary investigation by the Office of the Ombudsman is shown to have resulted from the 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 a 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.⁷⁶ However, mere disagreement with the findings of the Ombudsman is not enough to say that the latter committed any grave abuse of discretion.⁷⁷

Guided by these considerations, the Court finds that the Ombudsman did not commit grave abuse of discretion in finding probable cause against Espina and Duque.

Probable Cause Against Espina

In essence, the Ombudsman established probable cause against Espina for violations of Sec. 3 (e) of RA 3019 and Malversation of Public Funds through Falsification of Public Documents in relation to the disbursement and expenditure of the transportation and delivery expenses corresponding to its V-150 LAVs, the repair and maintenance of 28 V-150 LAVs, and the purchase of the 40 tires by the PNP.⁷⁸

The Ombudsman's finding of probable cause rests on its actual participation in the said transactions in its capacity as Acting Chief of the PNP Management Division of the PNP Director for Comptrollership, *i.e.* noting six IRFs for the foregoing by affixing his signature therein and signing two Requests for Pre-Repair Inspection, which shows that Pre-Repair and Post Repair Inspections were conducted.⁷⁹ The Ombudsman avers that Espina acted in unison with the other co-conspirators to carry out the irregular transactions, and performed the foregoing overt acts as his direct contribution to the execution of the crimes committed, without which the illegal transactions would not have prospered.⁸⁰

The OSG echoes the Ombudsman and avers that Espina's signature on the said documents shows a total abandonment of his duties for failing to ensure the veracity and accuracy of the items subject of the said transactions.⁸¹ Considering the various transactions involved millions, Espina should have exercised greater prudence and diligence in coordinating and reviewing compliance with the

⁷⁵ *Dela Cruz v. Office of the Ombudsman*, G.R. No. 256337, February 13, 2023.

⁷⁶ *Duque v. Ombudsman and Fact-Finding Investigation Bureau*, 860 Phil. 692, 705 (2019).

⁷⁷ *Relampagos v. Office of the Ombudsman*, G.R. Nos. 234868-69, July 27, 2022.

⁷⁸ *Rollo* (G.R. No. 209279 & 209288), Vol. I, pp. 233-238, 335-360.

⁷⁹ *Rollo* (G.R. No. 208569), Vol. I, pp. 56, 112, 114, 116.

⁸⁰ *Id.* at 144 and 149-150.

⁸¹ *Id.* at 876-877.

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required standards and conducting a thorough and conclusive inspection before affixing his signature on the said documents.⁸² The OSG further cites Espina's signature in the Pre/Post Repair Inspection Report, which effectively certifies the satisfactory completion of the repair and refurbishment of the V-150 LAVs within eight days or less despite the repairs not being accomplished and the sheer improbability that the repair of the V-150 LAVs could have been accomplished within such period. The OSG avers that this evinces an intent to mislead the Finance and Accounting Division of the PNP into hastily processing the disbursement vouchers and issuance of the checks to the winning bidders during the bidding despite non-completion of their tasks.⁸³

Espina does not deny that he signed the said forms⁸⁴ but maintains his innocence, arguing that it was the duty of the property inspectors to inspect the deliveries and prepare the IRFs and copies of the photographs taken during the inspection, delivery receipts, and other supporting documents which would then serve as annexes to the IRF that would be submitted to him for approval. He asserts that his signature in the documents was merely in the performance of a mechanical or ministerial act, and that he had no reason to doubt.⁸⁵

The Court has previously noted that the Chief of the Management Division of the PNP Directorate for Comptrollership, which Espina held in an acting capacity when he signed the relevant forms, revolve primarily around accounting and fund or resource management of the agency and not the technicalities involved in the inspection of goods or services procured.⁸⁶ Nevertheless, Espina admits that as Acting Chief of the PNP Management Division of the PNP Director for Comptrollership, one of the divisions under him is the Internal Control and Inspection Division, which is tasked with conducting inspection of deliveries, among others.⁸⁷

Thus, while he is not tasked with personally conducting the physical inspection, petitioner cannot escape liability by passing the buck to his subordinates. The records show that the Management Division is tasked not only in the inspection of deliveries but also in the review of all supporting and obligating instruments, and in ensuring that all claims are supported by complete and pertinent documents.⁸⁸ As Acting Chief of this Division, Espina is required to be more circumspect in his actions and in the discharge of his official duties. A public officer cannot trivialize his role in the disbursement of funds and blindly adhere to the findings and opinions of his or her subordinates, lest he or she be reduced to a mere clerk with no authority over the personnel and the sections he or she oversees.⁸⁹

⁸² Id. at 877.

⁸³ *Rollo* (G.R. Nos. 209279 & 209288), Vol. 2, pp. 829-830.

⁸⁴ *Rollo* (G.R. No. 208436), Vol. 4, p. 1530.

⁸⁵ *Rollo* (G.R. No. 208436), Vol. 2, pp. 785-790.

⁸⁶ *Lukban v. Carpio-Morales*, G.R. No. 238563, February 12, 2020.

⁸⁷ *Rollo* (G.R. No. 208436), pp. 418-419.

⁸⁸ *Rollo* (G.R. Nos. 209279 & 209288), p. 831.

⁸⁹ *Chen v. Field Investigation Bureau*, G.R. No. 247916, April 19, 2022.

Further, before an approving official affixes his or her signature on the document, he or she is expected to perform basic verification procedures to inquire into the legality and regularity of the transaction, independent from those done by other lower-ranking approving officials. For instance, if it shall become apparent on the face of the document that the transaction violates prevailing laws and regulations or that the document under review lacks key supporting documents, a prudent official is expected to withhold his or her approval. To be sure, he or she cannot rely completely on existing approvals or certifications. Otherwise, his or her function would be reduced to mere rubber stamping.⁹⁰

Here, a cursory review of the IRFs reveals that numerous supplies relating to the repair and refurbishment of the V-150s and costing an aggregate amount of ₱121,196,556.00 were delivered by the private suppliers and received and properly inspected by the Inspection and Acceptance Committee and the Property Inspector on the same date, i.e. December 27, 2007.⁹¹ As stated by the Ombudsman, Espina should have flagged this irregularity, i.e. the impossibility of the indicated one-day delivery by private suppliers and receipt and acceptance by the end-user of 7,000 pieces of spare parts, undescribed materials of unspecified quantity, and other supplies.⁹² In failing to flag these badges of irregularity and signing the IRFs, Espina evidently failed in his duty to ensure that actual deliveries were made and to be prudent and cautious in signing the IRFs and after checking the completeness and propriety of the IRFs and its attachments. As it turns out, the Ombudsman noted that even the Property Inspection Officers involved impliedly admitted that the inspection required several days to complete when they averred during preliminary investigation that the tires and spare parts were counted by them at the LSS warehouse for days.⁹³

Espina likewise cannot find refuge in *Arias v. Sandiganbayan*⁹⁴ to exculpate himself from the Ombudsman's finding of probable cause against him. While all heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations, this rule is not a magic cloak that can be used as a cover by a public officer to conceal himself in the shadows of his subordinates and necessarily escape liability. Unlike in *Arias*, there exists in the instant case circumstances which should have roused Espina's suspicion and compelled him to further confirm the veracity of the facts alluded to in the IRFs before signing the same. These circumstances should have prompted Espina, as a head of office, to exercise a higher degree of circumspection and, necessarily, go beyond what their subordinates had prepared.⁹⁵

⁹⁰ *Patadon v. Commission on Audit*, G.R. No. 218347, March 15, 2022.

⁹¹ *Rollo* (G.R. No. 208436), Vol. 1, pp. 412-417.

⁹² *Id.* at 194-196.

⁹³ *Id.*

⁹⁴ 259 Phil. 794 (1989).

⁹⁵ *People v. Caballes*, G.R. Nos. 250367 & 250400-05, August 31, 2022.

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In order to hold a person liable under Sec. 3(e) of RA 3019, the following elements must concur: (a) the accused must be a public officer discharging administrative, judicial, or official functions; (b) he or she must have acted with manifest partiality, evident bad faith, *or* gross inexcusable negligence; and (c) that his or her 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 or her functions.⁹⁶

On the other hand, Malversation of Public Funds through Falsification of Public Documents under Art. 217 of the RPC, in relation to Arts. 171 and 48 of the same Code requires the following elements: (1) the offender is a public officer; (2) he or she had custody or control of funds or property by reason of the duties of his or her office; (3) those funds or property were public funds or property for which he or she was accountable; and (4) he or she appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.⁹⁷

To engender a well-founded belief that a crime has been committed, and to determine if the suspect is probably guilty of the same, the elements of the crime charged should, in all reasonable likelihood, be present. This is based on the principle that every crime is defined by its elements, without which there should be, at the most, no criminal offense.⁹⁸ Moreover, considering the nature and purpose of a preliminary investigation, the elements of the crime are not required to be definitively established. It is enough that the elements are reasonably apparent.⁹⁹

Considering Espina's acts, the foregoing elements of both crimes charged are, in all reasonable likelihood, present in the instant case. Espina, who was a public officer at the time of the alleged commission of the crime, apparently acted with manifest partiality, evident bad faith – or at the very least, gross inexcusable negligence - when signing the pertinent documents, which led to the payment to the various suppliers despite the apparent non-completion of careful and proper inspection of the delivered supplies during the stated dates. Moreover, in his capacity as Acting Chief of the PNP Management Division of the PNP Director for Comptrollership, there is probable cause that he consented or, through abandonment or negligence, to the misappropriation of public funds or property through the payment of suppliers despite the apparent non-delivery and/or non-inspection of the completeness of the deliveries on the purported inspection dates.

⁹⁶ Id.

⁹⁷ *Cabarios v. People*, G.R. Nos. 228097-103 & 228139-41, September 29, 2021.

⁹⁸ *Garcia, Jr. v. Office of the Ombudsman*, 747 Phil. 445, 459 (2014).

⁹⁹ *Relampagos v. Office of the Ombudsman*, *supra* note 77.

The Court is not unaware that in *Lukban v. Carpio-Morales*,¹⁰⁰ the Court absolved petitioner Lukban therein, who also held the same position as Espina, for serious dishonesty or conduct prejudicial to the best interest of the service, considering his duties mainly revolved around accounting and fund management and his reliance on the Resolution of the Inspection and Acceptance Committee and the findings of the property inspections within his division as regards the compliance of the LPOH units with the NAPOLCOM specifications negated any dishonest intent when he noted the IRFs.¹⁰¹ The Court likewise acquitted Lukban from a violation of Sec. 3 (e) of RA 3019 and the crime of falsification of public documents, as the same are *mala in se* and require criminal intent.¹⁰² However, unlike in *Lukban* wherein Lukban reasonably relied on the IRFs and the Inspection and Acceptance Committee's Resolution as to the conformity of the light police operations helicopters to the PNP's technical specifications,¹⁰³ a close scrutiny of four of the six IRFs in the present case reveal patent irregularities that do not require technical expertise to reasonably rouse suspicion on Espina's part and to compel him to investigate the actions of his subordinates.

In light of the foregoing, the Court finds that the Ombudsman did not gravely abuse its discretion in finding probable cause to indict Espina.

Probable Cause Against Duque

For Duque's part, the Ombudsman held that there is probable cause to charge Duque with violations of Sec. 3(e) of RA 3019, Sec. 65 (b)(4), RA 9184, and Art. 217 in relation to Art. 171 (par. 4) of the RPC in relation to the purchase of 40 tires by the PNP. The finding of probable cause is anchored on the following:

Firstly, his signature and participation in his capacity as one of the members of the LSS BAC, specifically the Minutes of the Bidding dated September 24, 2007 where eight bidders/suppliers complied and passed the bid qualification requirements within 1½ hours and with Serpenair Group, Inc. (SGI) proclaimed as the winning bidder¹⁰⁴ and the issuance of the Abstract of Bids and Recommendation of Award to SGI.¹⁰⁵ The Ombudsman avers that these documents which Duque signed made it appear that a public bidding was conducted when there was none and recommended the award of contracts which are grossly disadvantageous to the PNP. The Ombudsman notes that

¹⁰⁰ G.R. No. 238563, February 12, 2020.

¹⁰¹ Id.

¹⁰² *Lukban v. Sandiganbayan-Seventh Division*, G.R. Nos. 254312-15, March 2, 2022.

¹⁰³ Id.

¹⁰⁴ *Rollo* (G.R. No. 208569), Vol. 1, p. 55.

¹⁰⁵ Id. at 105.

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the large number of prospective bidders who participated in the schedule of biddings as well as the numerous items to be procured reveals that it should have taken more than 1½ hours in order for the LSS-BAC to substantially appraise both the technical and financial capabilities of prospective bidders, as well as their respective bid proposals.¹⁰⁶ The Ombudsman likewise flagged various irregularities in the procurement process, such as non-posting of the Invitations to Bid in a newspaper of general circulation, the lack of a pre-bid conference or post-qualification conference, and the lack of submission of a bid security.¹⁰⁷

Secondly, Duque in his capacity as Chief of the Budget and Finance Section-LSS signed the Disbursement Voucher, which was issued to pay for the 40 tires, to certify that expenses for the procurement of the tires were necessary, lawful, and incurred under his direct supervision, despite such expenses being illegal and irregular for failure to comply with RA 9184 and pertinent regulations¹⁰⁸

In his defense, Duque contends that he was not a member of the LSS-BAC during the conduct of bidding for the 40 tires as he only assumed office in this capacity on October 8, 2007, and that the Minutes of Bidding and Abstract of Bids and Recommendation of Awards containing his signature may have been inadvertently signed by him since these were among the documents presented to him when he was a new member of the LSS-BAC.¹⁰⁹ As regards the Disbursement Voucher, Duque asserts that he made the Certification not as part of the LSS-BAC but in his capacity as Chief of the Budget and Finance Section after all documents presented to him appeared to be regular and in order on its face. As Chief of the Budget and Finance Section, Duque based his certification on existence of budget/appropriation since the budget was included in the general appropriation of the PNP where it was already found to be necessary for the V-150 tires maintenance. Having been included in the annual budget of the PNP, the necessity of the expense is beyond dispute, and he cannot be made to review the works of other units to ensure for himself that the other units did their respective jobs.¹¹⁰

Moreover, Duque alleges that the Ombudsman failed to establish probable cause against him since he was not a member of the LSS-BAC when the subject bidding was conducted. In addition, he stresses that FFIB-MOLEO admitted that there was indeed a delivery of 40 tires of V-150 LAVs by SGI.¹¹¹

¹⁰⁶ Id. at 129.

¹⁰⁷ Id. at 127-130.

¹⁰⁸ *Rollo* (G.R. No. 208569), Vol. 1, pp. 56-57, 115, 200.

¹⁰⁹ *Rollo* (G.R. No. 208569), Vol. 2, pp. 916-920.

¹¹⁰ Id. at 920-921.

¹¹¹ Id. at 923-931.

For its part, the OSG avers that Duque's defense that he could not recall his signature in the documents or may have inadvertently signed the same and that he was not yet a member of the LSS-BAC at the time of the bidding hardly weaken the probative value of the evidence against him. These operate as admissions that he affixed his signature in these documents and establish his indispensable cooperation in the bogus bidding for the 40 tires for V-150.¹¹²

Based on the records, Duque participated as a member of the BAC in the irregular procurement process when he signed the Minutes of the Bidding dated September 24, 2007 and the issuance of the Abstract of Bids and Recommendation of Award to SGI. As a member of the BAC, he had the duty to ensure that the necessary procedures and standards under procurement laws and regulations were complied with.¹¹³ In view of his evident participation in the highly irregular procurement process, We shall not disturb the finding of probable cause against Duque and defer to the Ombudsman's findings that in all reasonable likelihood, Duque's participation as a public officer in the irregular procurement process, which was attended with manifest partiality, evident bad faith, or at the very least, gross inexcusable negligence, contributed to the award of contracts to the undue advantage of the private supplier and to the gross disadvantage of the PNP and the public.¹¹⁴

¹¹² Id. at 828.

¹¹³ Section 12, RA 9184 reads:

SECTION 12. *Functions of the BAC.*— The BAC shall have the following functions: advertise and/or post the invitation to bid, conduct pre-procurement and pre-bid conferences, determine the eligibility of prospective bidders, receive bids, conduct the evaluation of bids, undertake post-qualification proceedings, recommend award of contracts to the Head of the Procuring Entity or his duly authorized representative: Provided, That in the event the Head of the Procuring Entity shall disapprove such recommendation, such disapproval shall be based only on valid, reasonable and justifiable grounds to be expressed in writing, copy furnished the BAC; recommend the imposition of sanctions in accordance with Article XXIII, and perform such other related functions as may be necessary, including the creation of a Technical Working Group from a pool of technical, financial and/or legal experts to assist in the procurement process.

In proper cases, the BAC shall also recommend to the Head of the Procuring Entity the use of Alternative Methods of Procurement as provided for in Article XVI hereof.

The BAC shall be responsible for ensuring that the Procuring Entity abides by the standards set forth by this Act and the IRR, and it shall prepare a procurement monitoring report that shall be approved and submitted by the Head of the Procuring Entity to the GPPB on a semestral basis. The contents and coverage of this report shall be provided in the IRR.

¹¹⁴ Section 65 (b) (4) of RA 9184 reads:

SECTION 65. *Offenses and Penalties.* — x x x

x x x x

(b) Private individuals who commit any of the following acts, including any public officer, who conspires with them, shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than fifteen (15) years:

x x x x

(4) When a bidder, by himself or in connivance with others, employ schemes which tend to restrain the natural rivalry of the parties or operates to stifle or suppress competition and thus produce a result disadvantageous to the public.

In addition, the persons involved shall also suffer the penalty of temporary or perpetual disqualification from public office and be permanently disqualified from transacting business with the government.

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The validity of Duque's claim that he could not be held liable for the crimes charged since he was not yet a member of the LSS-BAC at the time and that he merely signed the documents out of inadvertence, when juxtaposed against his signatures in the bidding-related documents, is a matter of evidence best ventilated during a full-blown trial on the merits. It is worthy to stress that in a preliminary investigation, there is no full and exhaustive display of the prosecution's evidence; the validity and merits of a party's defense or accusation, as well as the admissibility of testimonies and evidence, are better threshed out during trial.¹¹⁵ It suffices that the evidence on record during preliminary investigation engenders a reasonable belief that Duque is probably guilty of the crimes charged. Since the finding of probable cause against Duque is duly supported by the overt acts committed in his capacity as member of the LSS-BAC, We shall dispense with further discussion on Duque's purported signature on the disbursement voucher issued to pay for the tires.

To recapitulate, the determination of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction, as it merely binds over the suspect to stand trial for the full reception of evidence of the prosecution and defense in relation to the charge. It is by no means a pronouncement of guilt. Thus, it is sufficient that based on the preliminary investigation conducted, it is believed that the act or omission complained of constitutes the offense charged.¹¹⁶ Withal, the executive determination of probable cause is a highly factual matter and the Office of the Ombudsman is armed with the power to investigate. It is in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. As the Court is not a trier of facts, We shall defer to the findings of the Ombudsman absent any showing of grave abuse of discretion.¹¹⁷

All told, the Court finds that there is no grave abuse of discretion on the part of the Ombudsman in finding probable cause against petitioners.

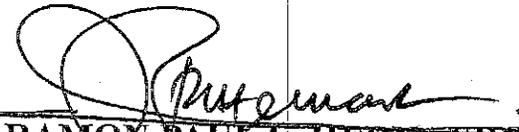
WHEREFORE, the Petitions are **DISMISSED**. Accordingly, the December 27, 2012 Joint Resolution, the January 18, 2013 Supplemental Joint Resolution, and the July 8, 2013 Joint Order issued by the Office of the Ombudsman in OMB-P-C-12-0503-G are **AFFIRMED**.

¹¹⁵ *Relampagos v. Office of the Ombudsman*, supra note 77.

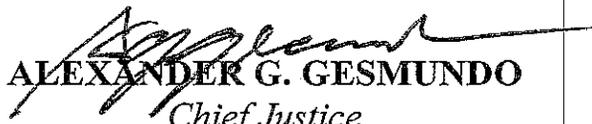
¹¹⁶ *Ampil v. Office of the Ombudsman*, 715 Phil. 733, 761-762 (2013).

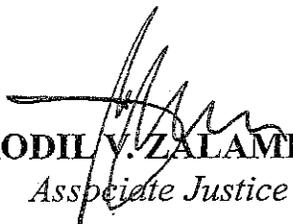
¹¹⁷ *Dela Cruz v. Office of the Ombudsman*, supra, note 75, citing *Dichaves v. Office of the Ombudsman*, supra note 73 at 590.

SO ORDERED.

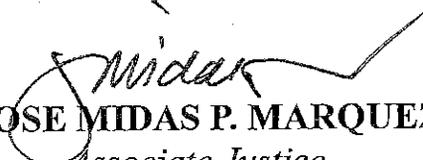

RAMON PAUL L. HERNANDO
Associate Justice
Working Chairperson

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice
Chairperson


RODIL V. ZALAMEDA
Associate Justice

(On leave)
RICARDO R. ROSARIO
Associate Justice


JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

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


ALEXANDER G. GESMUNDO
Chief Justice