

SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

OFFICE OF THE OMBUDSMAN, G.R. No. 198201
Petitioner,

-versus-

**MAYOR RODRIGO R.
DUTERTE, WENDEL E.
AVISADO, JOSE D. GESTUVEO,
JR., ELMER B. RAÑO, J.
MELCHOR QUITAIN, and
YUSOP A. JIMLANI,**
Respondents.

X-----X
PROSPERO C. NOGRALES,
Petitioner,

X-----X
G.R. No. 198334

Present:

-versus-

LEONEN, J., Chairperson,
**LAZARO-JAVIER,
INTING*,
LOPEZ, J., and
KHO, JR., JJ.**

**MAYOR RODRIGO R.
DUTERTE, WENDEL E.
AVISADO, JOSE D. GESTUVEO,
JR., ELMER R. RAÑO, J.
MELCHOR QUITAIN, and
YUSOP A. JIMLANI,**
Respondents.

**Promulgated:
MAR 15 2023**

X-----X

DECISION

* Designated additional Member vice J. M. Lopez per Raffle date March 8, 2023.

LEONEN, J.:

There is misconduct when a public officer transgresses an established and definite rule of action through unlawful behavior or gross negligence, such as the failure to comply with the established procedures before demolishing a public structure. Any penalty by the Office of the Ombudsman in cases of misconduct is immediately executory and may not be stayed even through an injunctive writ.

This Court resolves the Petitions for Review on *Certiorari*¹ assailing the Decision² and Resolution³ of the Court of Appeals, which found that simple misconduct did not apply to the local officials who summarily demolished a canal cover allegedly without complying with the procedure laid down by law.

The controversy in this case arose from a Canal-Cover Project by then Representative of the First District of Davao City, Prospero C. Nograles (Representative Nograles). The project in Quezon Boulevard, Davao City was allegedly made “to secure the residents and children from any untoward accident, prevent disposal of garbage and clogging of canal and prevent emission of foul odors.”⁴ The project was completed on February 16, 2006, and included the improvement and beautification of the public park where the canal cover was located.⁵

Since concrete flooring was constructed on top of the drainage canal, silt and garbage could not be dredged, impeding the flow of water. Thus, Sta. Ana and Quezon Boulevard would be submerged in water whenever there was a downpour of rain. In the first quarter of 2008, the city government informed the Department of Public Works and Highways of the problem. The Department created several manholes on the concrete flooring to dredge silt through the canal but the problem remained. On April 17, 2008, the City Engineer’s Office wrote to the Department of its plan to remove the concrete flooring.⁶

On September 17, 2008, then City Legal Officers Elmer B. Raño (Atty. Raño) and J. Melchor Quitain (Atty. Quitain) issued a legal opinion stating that the Canal-Cover Project was a public nuisance obstructing the free passage of water, and that it was constructed on top of the city’s

¹ *Rollo* (G.R. No. 198201), pp. 9–39 and *rollo* (G.R. No. 198334), pp. 12–46.

² *Rollo* (G.R. No. 198201), pp. 41–58. The January 28, 2011 Decision was penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Ramon M. Bato, Jr., and Samuel H. Gaerlan (now a Member of this Court) of the Special Eleventh Division, Court of Appeals, Manila.

³ *Id.* at 60–61. The August 9, 2011 Resolution was penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Ramon M. Bato, Jr. and Samuel H. Gaerlan (now a Member of this Court) of the Former Special Eleventh Division, Court of Appeals, Manila.

⁴ *Id.* at 63.

⁵ *Id.*

⁶ *Id.* at 46.

drainage system without permit from the local building official. Thus, Atty. Raño and Atty. Quitain concluded that the project, being a nuisance per se, may be abated or summarily demolished.⁷

On October 16, 2008, then City Engineer Jose D. Gestuveo, Jr. (City Engineer Gestuveo) sent a letter to then District Engineer Isagani G. Javier advising him of the demolition of the Canal-Cover Project on October 20, 2008, which proceeded on the same date.⁸

On October 22, 2008, Representative Nograles sent a letter to then Secretary of Justice Raul M. Gonzales (Justice Secretary Gonzales), requesting an opinion on the demolition.⁹

In Opinion No. 10 dated November 12, 2008, Justice Secretary Gonzales opined that the erection, construction, alteration, repair, or demolition of structures requires a building permit from the building official assigned in the place where the structure is located. The lack of permit, however, does not per se make the structure subject to immediate demolition since Section 103¹⁰ of the Revised Implementing Rules and Regulations of the National Building Code allows these structures to be “legalized” once they conform to the rules and regulations and are later issued the proper permits and certificates.¹¹

The Opinion likewise added that under Section 216¹² of the Revised

⁷ *Id.* at 44, 64.

⁸ *Id.* at 64.

⁹ *Id.*

¹⁰ SECTION 103. Scope and Application. —

1. The scope of this IRR shall cover the following disciplines: architectural, civil/structural, electrical, mechanical, sanitary, plumbing, and electronics. This shall also apply to the design, location, siting, construction, alteration, repair, conversion, use, occupancy, maintenance, moving, demolition of, and addition to public and private buildings and structures, except traditional indigenous family dwellings, and those covered by Batas Pambansa Bilang 220 otherwise known as the “Economic and Socialized Housing Projects.”

2. Existing buildings or structures without appropriate building permits/certificates of occupancy may be legalized and issued the necessary permits and certificates, provided, they are made to conform to these rules and regulations. However, they shall be subject to the imposition of penalties, surcharges, fines and other appropriate measures.

3. The applicable and consistent provisions of the allied professional codes and other government agency codes as approved by the DPWH Secretary shall serve as the referral codes of PD 1096 and this IRR.

¹¹ *Rollo* (G.R. No. 198201), pp. 64–65.

¹² PROCEDURE FOR ABATEMENT/DEMOLITION OF DANGEROUS/RUINOUS BUILDINGS/STRUCTURES

1. There must be a finding or declaration by the Building Official that the building/structure is a nuisance, ruinous or dangerous.

2. Written notice or advice shall be served upon the owner and occupant/s of such finding or declaration giving him at least fifteen (15) days within which to vacate or cause to be vacated, repaired, renovated, demolished and removed as the case may be, the nuisance, ruinous or dangerous building/structure or any part or portion thereof.

3. Within the fifteen (15) day period, the owner may, if he so desires, appeal to the Secretary the finding or declaration of the Building Official and ask that a re-inspection or re-investigation of the building/structure be made.

4. In case the owner should ask the Building Official for a reconsideration on his order, same shall be given not more than not more than fifteen (15) days within which to render his final decision

Implementing Rules and Regulations of the National Building Code, it is ultimately the Department of Public Works and Highways that determines if a structure is a nuisance per se and that it may be demolished only upon the failure of the structure to comply with the order of the building official or the Secretary of Public Works and Highways.¹³

As a result, Representative Nograles filed with the Office of the Ombudsman a complaint for grave abuse of authority¹⁴ against City Engineer Gestuveo, then City Administrator Wendel E. Avisado (City Administrator Avisado), and then Chief of the Drainage Maintenance Unit Yusop A. Jimlani (Chief Jimlani), and a complaint for grave misconduct¹⁵ against then City Mayor Rodrigo R. Duterte (Mayor Duterte), City Administrator Avisado, City Engineer Gestuveo, City Legal Officers Atty. Raño and Atty. Quitain, and Chief Jimlani.¹⁶

In their defense, the concerned city officials alleged that the Canal-Cover Project was constructed by the Department of Public Works and Highways on top of a main drainage artery/canal, which receives water from Uyanguren, Gempesaw, Ponce, and Sauzo Streets, the Mini-Forest, Magsaysay Park, and a portion of Quezon Boulevard before flowing to the

appealable to the Office of the Secretary.

5. If the appeal is meritorious, the Secretary may designate a competent representative/s other than the Building Official to undertake the re-inspection or re-investigation of the building/structure. The representative/s so designated shall make or complete his/their report/s within the period of thirty (30) days from the date of termination of re-inspection or re-investigation.

6. If after re-inspection, the finding is the same as the original one, the Secretary through the Building Official shall notify the owner, giving him not more than fifteen (15) days from receipt of notice with affirmed finding to vacate or cause to be vacated and make necessary repair, renovation, demolition and removal of the subject building/structure or parts thereof, as the case may be.

7. If the Building Official has determined that the building/structure must be repaired or renovated, the Order to be issued shall require that all necessary permits therefor be secured and the work be commenced physically within such reasonable time as may be determined by the Building Official.

8. If the Building Official has determined that the building/structure must be demolished, the Order shall require that the building/structure be vacated within fifteen (15) days from the date of receipt of the Order; that all required permits be secured therefor within the same fifteen (15) days from the date of the Order, and that the demolition be completed within such reasonable time as may be determined by the Building Official.

9. The decision of the Secretary on the appeal shall be final.

10. Upon failure of the owner to comply with the Order of the Building Official or of the Secretary, in case of appeal, to repair, renovate, demolish and remove the building/structure or any part thereof after fifteen (15) days from the date of receipt of the Order, the Building Official shall cause the building or structure to be repaired, renovated, demolished and removed, partly or wholly, as the case may be, with all expenses therefor chargeable to the owner.

11. The building/structure as repaired or in case of demolition, the building materials gathered after the demolition thereof shall be held by the OBO until full reimbursement of the cost of repair, renovation, demolition and removal is made by the owner which, in no case, shall extend beyond thirty (30) days from the date of completion of the repair, renovation, demolition and removal. After such period, said building materials of the building thus repaired, renovated or removed shall be sold at public auction to satisfy the claim of the OBO. Any amount in excess of the claim of the government realized from the sale of the building and/or building materials shall be delivered to the owner.

12. The procedures, actions and remedies herein are without prejudice to further action that may be taken by the Building Official against the owner/occupants of the building/structure found or declared to be nuisance/s, dangerous, and/or ruinous under the provisions of Articles 482 and 694 to 707 of the Civil Code of the Philippines.

¹³ *Rollo* (G.R. No. 198201), p. 65.

¹⁴ Docketed as OMB M-A-09-061-B. *Rollo* (G.R. No. 198201), p. 42.

¹⁵ Docketed as OMB C-A-090269-F. *Rollo* (G.R. No. 198201), p. 42.

¹⁶ *Id.* at 42-43.

sea. They likewise alleged that the concrete cover was named "Nograles Park" in violation of the Local Government Code, which requires the approval of the Sangguniang Panlungsod for the naming and construction of public parks.¹⁷

On April 21, 2010, the Office of the Ombudsman rendered its Decision¹⁸ finding Mayor Duterte, City Administrator Avisado, City Engineer Gestuveo, City Legal Officers Atty. Raño and Atty. Quitain, and Chief Jimlani guilty of simple neglect of duty and imposed the penalty of suspension from office for six months. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, we find respondents RODRIGO R. DUTERTE, WENDEL E. AVISADO, JOSE D. GESTUVEO, JR., ELMER B. RAÑO, J. MELCHOR V. QUITAIN AND YUSOP A. JIMLANI GUILTY of simple neglect of duty and the penalty of suspension for six (6) months is hereby imposed. Let a copy of this Decision be endorsed to the Department of Interior and Local Government for its immediate implementation.

SO ORDERED.¹⁹

The Office of the Ombudsman later issued a May 6, 2010 Order²⁰ addressing a typographical error by correcting the offense from simple neglect of duty to simple misconduct:

WHEREFORE, premises considered, we find respondents RODRIGO R. DUTERTE, WENDEL E. AVISADO, JOSE D. GESTUVEO, JR., ELMER B. RAÑO, J. MELCHOR V. QUITAIN AND YUSOP A. JIMLANI GUILTY of simple misconduct and the penalty of suspension for six (6) months is hereby imposed. Let a copy of this Decision be endorsed to the Department of Interior and Local Government for its immediate implementation.

SO ORDERED.²¹

Aggrieved, Mayor Duterte, City Administrator Avisado, City Engineer Gestuveo, City Legal Officers Atty. Raño and Atty. Quitain, and Chief Jimlani filed a Petition for Review with the Court of Appeals, arguing, among other things, that their demolition of the Canal-Cover Project without a permit from the local building official was not simple misconduct since the project was a nuisance per se that caused flooding in the city.²²

¹⁷ *Id.* at 45-46.

¹⁸ *Id.* at 62-85.

¹⁹ *Id.* at 84.

²⁰ *Id.* at 86-88.

²¹ *Id.* at 87.

²² *Id.* at 49-50.

On August 4, 2010, the Court of Appeals issued a Writ of Preliminary Injunction, enjoining the Office of the Ombudsman from enforcing its April 21, 2010 Decision pending the promulgation of the Court of Appeals on the merits.²³

In its January 28, 2011 Decision,²⁴ the Court of Appeals found that while the Canal-Cover Project was not a nuisance per se, the concerned public officials could not be held liable for simple misconduct for the project's demolition. It held that under Section 477²⁵ of the Local Government Code, the city engineer shall also act as the local building official, thus, a permit from the local building official was unnecessary for the demolition.²⁶

The Court of Appeals likewise pointed out that City Engineer Gestuveo's declaration of the project as dangerous, as well as his letter informing the Department of Public Works and Highways of the planned demolition and its representatives' active participation, constituted sufficient compliance with the requirement of a permit under Section 216 of the Implementing Rules and Regulations of the National Building Code.²⁷ The dispositive portion of the Decision reads:

WHEREFORE, the petition is GRANTED. The Decision dated April 21, 2010 and Order dated May 6, 2010 of the Office of the Ombudsman in OMB-M-A-09-061-B and OMB-C-A-09-0269-F are REVERSED and SET ASIDE. In lieu thereof, judgment is rendered, exonerating petitioners from the administrative charge of simple misconduct.

Consequently, the writ of preliminary injunction issued by this Court on August 4, 2010 – which became effective on August 10, 2010 – against public respondent Office of the Ombudsman, as well as its agents, representatives or other persons acting in its behalf from enforcing the assailed Decision dated April 21, 2010, as amended on May 6, 2010, is made PERMANENT.

SO ORDERED.²⁸

The Office of the Ombudsman and Representative Nograles separately filed their Motions for Reconsideration. Representative Nograles also filed a Supplement to the Motion for Reconsideration with Motion for Execution of the Decision of the Office of the Ombudsman Pending Appeal.²⁹ All Motions were denied by the Court of Appeals in its August 9,

²³ *Id.* at 53.

²⁴ *Id.* at 41–58.

²⁵ LOCAL GOV'T. CODE (1991), Section 477. Qualifications, Powers and Duties. —

The appointment of an engineer shall be mandatory for the provincial, city, and municipal governments. The city and municipal engineer shall also act as the local building official.

²⁶ *Rollo* (G.R. No. 198201), pp. 54–56.

²⁷ *Id.* at 56–57.

²⁸ *Id.* at 57–58.

²⁹ *Id.* at 60.

2011 Resolution.³⁰

Thus, both the Office of the Ombudsman and Representative Nograles filed Petitions for Review on *Certiorari*³¹ with this Court, docketed as G.R. No. 198201 and G.R. No. 198334, respectively. In a November 28, 2011 Resolution, this Court consolidated the Petitions.³²

Petitioner Ombudsman argues that Section 216 of the Implementing Rules and Regulations of the National Building Code was applicable to this case since the Canal-Cover Project was a project funded by the national government. It pointed out that respondents “blatantly neglected to follow the rules”³³ when it demolished the project without complying with the 15-day notice requirement under Section 216.³⁴ It asserted that the Canal-Cover Project was not a nuisance per se merely because it may have caused flooding, as it did not affect the safety and property of persons or was injurious to the rights of property or the health and comfort of the community.³⁵

Petitioner Ombudsman submits that respondents committed simple misconduct when they breached the norms and standards of public service by summarily demolishing the Canal-Cover Project without observance of the proper procedure, causing damage to the national government amounting to PHP 2,000,000.00.³⁶

Petitioner Nograles, for his part, echoes the arguments of the Office of the Ombudsman and posits that while Section 477 of the Local Government Code provides that the city engineer shall act as the local building official, Sections 203³⁷ and 207³⁸ of the Implementing Rules and Regulations of the National Building Code provides that the city engineer’s decisions and orders are subject to review by the Secretary of Public Works and

³⁰ *Id.* at 60-61.

³¹ *Rollo* (G.R. No. 198201), pp. 9-39 and *rollo* (G.R. No. 198334), pp.12-46.

³² *Rollo* (G.R. No. 198201), p. 90 and *rollo* (G.R. No. 198334), p. 296. The Consolidated Comment was submitted on March 7, 2012 (*Rollo* [G.R. No. 198201], pp. 101-128). The Office of the Ombudsman submitted a Manifestation and Motion in Lieu of Reply on September 21, 2012 (*Rollo* [G.R. No. 198201], pp. 172-176) while Nograles filed his Reply on October 14, 2012 (*Rollo* [G.R. No. 198201], pp. 186-196). The parties were later ordered to submit their respective memoranda (*Rollo* [G.R. No. 198201], pp. 200-201).

³³ *Rollo* (G.R. No. 198201), p. 272.

³⁴ *Id.* at 268-272.

³⁵ *Id.* at 272-273.

³⁶ *Id.* at 274-275.

³⁷ SECTION 203. General Powers and Functions of the Secretary

....
3. Exercise appellate jurisdiction over the decisions and orders of the Building Official. The order or decision of the Secretary shall be final and executory subject only to review by the Office of the President of the Republic.

³⁸ SECTION 207. Duties of the Building Official:

The Building Official shall have the following duties:

1. Be primarily responsible for the enforcement of the provisions of the Code and its IRR, as well as circulars, memoranda, opinions and decisions/orders issued pursuant thereto. His actions shall always be guided by appropriate orders/directives from the Secretary.

Highways.³⁹ Petitioner Nograles alleges that respondent City Engineer Gestuveo's letter to the Department of Public Works and Highways cannot be sufficient compliance with the procedures mentioned, since the demolition was done without complying with the 15-day notice requirement and without the required demolition permit.⁴⁰ He argues that under Section 27 (2)⁴¹ of Republic Act No. 6770, the factual findings of the Office of the Ombudsman are conclusive when supported by substantial evidence. Its decision on respondents' suspension should thus have been immediately executory.⁴²

Respondents, on the other hand, counter that the Canal-Cover Project was a public nuisance per se since its concrete floor made it impossible to dredge the silt in the canal, causing flooding in the area.⁴³ They contend that the concrete canal cover, while known in the locality as "Nograles Park" was not a park as understood in the law and, thus, its summary demolition cannot be considered misconduct.⁴⁴ Respondents assert that there was no need for the city engineer to apply for a demolition permit since the Office of the City Engineer was the issuing authority.⁴⁵

Respondents likewise argue that the Court of Appeals did not err in staying the execution of the Office of the Ombudsman's decision since it was "patently erroneous and reeked of political flavor,"⁴⁶ the order of suspension having been imposed only days before the 2010 National and Local Elections, where respondent Mayor Duterte was running for reelection.⁴⁷ They also mention that even if there was misconduct, the offense had already been condoned by the reelection of respondents Duterte, Avisado, and Quitain to public office, per the condonation doctrine.⁴⁸

³⁹ *Rollo* (G.R. No. 198201), pp. 248–249.

⁴⁰ *Id.* at 253–255.

⁴¹ Republic Act No. 6770 (1989), sec. 27.

Effectivity and Finality of Decisions. — (1) All provisional orders of the Office of the Ombudsman are immediately effective and executory.

A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice and shall be entertained only on any of the following grounds:

(1) New evidence has been discovered which materially affects the order, directive or decision;
 (2) Errors of law or irregularities have been committed prejudicial to the interest of the movant. The motion for reconsideration shall be resolved within three (3) days from filing: Provided, That only one motion for reconsideration shall be entertained.

Findings of fact by the Officer of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable.

In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for certiorari within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.

The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require.

⁴² *Rollo* (G.R. No. 198201), pp. 256–261.

⁴³ *Id.* at 222–223.

⁴⁴ *Id.* at 223–225.

⁴⁵ *Id.* at 225–227.

⁴⁶ *Id.* at 227.

⁴⁷ *Id.* at 233–234.

⁴⁸ *Id.* at 234–235.

While this case was pending, or on May 10, 2016, Rodrigo R. Duterte was elected President of the Philippines in the 2016 National and Local Elections.⁴⁹

On October 20, 2016, the Office of the Solicitor General, through then Solicitor General Jose C. Calida (Solicitor General Calida), filed a Motion to Withdraw Petition for Review dated September 23, 2011,⁵⁰ requesting that the Petition it earlier filed in representation of the Office of the Ombudsman in G.R. No. 198201 be withdrawn on three grounds: (1) respondents, including the newly-elected President Duterte, did not commit simple misconduct;⁵¹ (2) the penalty had already been rendered moot since respondents were no longer holding local public offices;⁵² and (3) President Duterte enjoyed immunity from suit.⁵³

Considering the shift in arguments, this Court directed the Office of the Ombudsman to comment on the Motion to Withdraw.⁵⁴

In its Comment, the Office of the Ombudsman, through its Office of Legal Affairs, asserts that the case had not been rendered moot. The legal provision relied upon by the Office of the Solicitor General, Section 66 (b)⁵⁵ of the Local Government Code, does not apply to administrative disciplinary actions filed by the Office of the Ombudsman.⁵⁶ It likewise points out that the President's immunity from suit is applicable only during his or her tenure and has the effect of merely suspending the proceedings, since "immunity does not equate to impunity."⁵⁷ It argues that even assuming the presidential immunity would be applicable, the same immunity would not extend to his co-respondents, who could still be found guilty of simple misconduct.⁵⁸

Since the Comment⁵⁹ the Ombudsman submitted contradicted the Solicitor General's arguments, this Court required the Office of the Solicitor General to manifest whether it was still representing the Office of the Ombudsman.⁶⁰

⁴⁹ Respondent Wendel E. Avisado was the Secretary of Budget and Management but resigned due to health reasons, respondent Yusop A. Jimlani was the Presidential Adviser on Local Extremist Groups, and respondent Melchor V. Quitain was currently the Chief Presidential Legal Counsel.

⁵⁰ *Rollo* (G.R. No. 198201), pp. 298–307.

⁵¹ *Id.* at 298–301.

⁵² *Id.* at 302.

⁵³ *Id.* at 301.

⁵⁴ *Id.* at 308.

⁵⁵ LOCAL GOV'T. CODE (1991), sec. 66. Form and Notice of Decision. —

(b) The penalty of suspension shall not exceed the unexpired term of the respondent or a period of six (6) months for every administrative offense, nor shall said penalty be a bar to the candidacy of the respondent so suspended as long as he meets the qualifications required for the office.

⁵⁶ *Rollo* (G.R. No. 198201), pp. 323–327.

⁵⁷ *Id.* at 327–328.

⁵⁸ *Id.* 328–329.

⁵⁹ *Id.* at 318–334.

⁶⁰ *Id.* at 341.

Thus, on April 5, 2018, the Office of the Solicitor General manifested to this Court that it no longer represented the Office of the Ombudsman in this case.⁶¹ The Office of the Ombudsman is currently being represented by its Office of Legal Affairs.

From the arguments of the parties, this Court is confronted with the following issues:

first, whether the Petitions should be dismissed in view of the doctrine of presidential immunity;

second, whether respondents committed simple misconduct when they demolished a project of the national government on the ground that the project was a nuisance per se; and

third, whether the Court of Appeals erred in issuing a writ of preliminary injunction to enjoin the Office of the Ombudsman from executing the penalty of suspension of six months on respondents.

I

It would be remiss of this Court not to point out that one of the respondents of this case has since gone on to become the President of the Republic.

It is settled that the President is immune from suit during his or her tenure in office. As stated in *David v. Macapagal-Arroyo*.⁶²

Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government. However, this does not mean that the President is not accountable to anyone. Like any other official, he remains accountable to the people but he may be removed from office only in the mode provided by law and that

⁶¹ *Id.* at 349–354.

⁶² 522 Phil. 705 (2006) [Per J. Sandoval-Gutierrez, *En Banc*].

is by impeachment.⁶³

This immunity, however, is not absolute. *Estrada v. Desierto*⁶⁴ explains that the privilege of immunity does not do away with our fundamental ideal of accountability from public officers:

It will be anomalous to hold that immunity is an inoculation from liability for unlawful acts and conditions. The rule is that unlawful acts of public officials are not acts of the State and the officer who acts illegally is not acting as such but stands in the same footing as any trespasser.⁶⁵

Presidential immunity is not a magical cloak that can erase all wrongdoing simply by being elected to office. The immunity only covers *liability* from suit to free the President from any hindrance that may cause inability to perform his or her functions and to protect the dignity of the office. Thus, while the President cannot be held liable for civil, criminal, and administrative infractions while in office, suits of this nature could be held in abeyance until after the President's term ends. Hence, in the recent *Nacino v. Ombudsman*,⁶⁶ a criminal complaint against former President Benigno Simeon Aquino III filed after his tenure was given due course without any mention or invocation of the privilege of presidential immunity, despite the alleged acts done during his tenure.

To recall, Solicitor General Calida, representing the Office of the Ombudsman, filed a Motion to Withdraw Petition in this case, invoking presidential immunity from suit. The Motion was filed without informing his client, the Office of the Ombudsman. When asked by this Court if it was affirming the Solicitor General's stance, the Office of the Ombudsman vehemently denied that it was intending to withdraw its Petition.

Lest we forget, the Office of the Solicitor General "represent[s] the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer."⁶⁷ The only exception is when the Office of the Solicitor General acts as the "people's tribune." In *Pimentel, Jr. v. COMELEC*.⁶⁸

True, the Solicitor General is mandated to represent the Government, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services

⁶³ *David v. Macapagal-Arroyo*, 522 Phil. 705, 763–764 (2006) [Per J. Sandoval-Gutierrez, *En Banc*] citing 2 HECTOR DE LEON, PHILIPPINE CONSTITUTIONAL LAW, p. 302 (2004); CONST., Art. XI, secs. 1, 2.

⁶⁴ 406 Phil. 1 (2001) [Per J. Puno, *En Banc*].

⁶⁵ *Estrada v. Desierto*, 406 Phil. 1, 76 (2001) [Per J. Puno, *En Banc*] citing *Wallace v. Board of Education*, 280 Ala. 635, 197 So 2d 428 (1967) [United States of America].

⁶⁶ G.R. Nos. 234789–91, September 3, 2019 [Per J. Jardeleza, *En Banc*].

⁶⁷ ADM. CODE (1987), Book IV, Title III, Chap. 12, sec. 35.

⁶⁸ 352 Phil. 424 (1998) [Per J. Kapunan, *En Banc*].

of a lawyer. However, the Solicitor General may, as it has in instances take a position adverse and contrary to that of the Government on the reasoning that it is incumbent upon him to present to the court what he considers would legally uphold the best interest of the government although it may run counter to a client's position.⁶⁹

Ultimately, the Office of the Solicitor General's client is the Filipino people. In *Gonzales v. Hon. Chavez*:⁷⁰

Indeed, in the final analysis, it is the Filipino people as a collectivity that constitutes the Republic of the Philippines. Thus, the distinguished client of the OSG is the people themselves of which the individual lawyers in said office are a part.

....

Moreover, endowed with a broad perspective that spans the legal interests of virtually the entire government officialdom, the OSG may be expected to transcend the parochial concerns of a particular client agency and instead, promote and protect the public weal. Given such objectivity, it can discern, metaphorically speaking, the panoply that is the forest and not just the individual trees. Not merely will it strive for a legal victory circumscribed by the narrow interests of the client office or official, but as well, the vast concerns of the sovereign which it is committed to serve.⁷¹

It is clear from its mandate that the Office of the Solicitor General represents the Republic, and ultimately, the people from which the power of the Republic emanates from. It is not, and has never been, intended to be the personal counsel of the President, especially for legal matters that arose even before the President was elected to office.

While the privilege of presidential immunity serves to free the President "from any form of harassment, hindrance or distraction to enable him [or her] to fully attend to the performance of his [or her] official duties and functions . . . this does not mean that the President is not accountable to anyone."⁷² Thus, the Office of the Ombudsman, as an independent constitutional body, and as "the champion of the people and the preserver of the integrity of public service"⁷³ may investigate and prosecute cases of all public officers, including the President.

⁶⁹ *Pimentel, Jr. v. COMELEC*, 352 Phil. 424, 431-432 (1998) [Per J. Kapunan, *En Banc*] citing Presidential Decree No. 478 (1974), sec. 1; ADM. CODE, Book IV, Title III, Chap. 12, sec. 35; *Sec. Orbos v. Civil Service Commission*, 267 Phil. 476, (1990) [Per J. Gancayco, *En Banc*]; *Martinez v. Court of Appeals*, 307 Phil. 592 (1994) [Per C.J. Narvasa, Second Division].

⁷⁰ 282 Phil. 858 (1992) [Per J. Romero, *En Banc*].

⁷¹ *Gonzales v. Hon. Chavez*, 282 Phil. 858, 889-891 (1992) [Per J. Romero, *En Banc*].

⁷² *David v. Macapagal-Arroyo*, 522 Phil. 705, 763-764 (2006) [Per J. Sandoval-Gutierrez, *En Banc*] citing 2 HECTOR DE LEON, PHILIPPINE CONSTITUTIONAL LAW, p. 302 (2004); CONST., Art. XI, secs. 1, 2.

⁷³ *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Ombudsman Desierto*, 415 Phil. 135, 151 (2001) [Per J. Pardo, *En Banc*].

It was therefore imperative for the Office of the Solicitor General to first confer with its actual client, the Office of the Ombudsman, if it is still interested in pursuing the case. The Solicitor General's act of directly filing the Motion to Withdraw without first informing the Office of the Ombudsman or even furnishing it a copy of the Motion, reeked of excusable ignorance at best and political patronage at worst. The Solicitor General is reminded that the Office of the Solicitor General's duty is to the people. The people, not the President, will always be the true power behind the Republic.

II

Article 694 of the Civil Code defines a nuisance as "any act, omission, establishment, business, condition of property, or anything else which: (1) injures or endangers the health or safety of others; or (2) annoys or offends the senses; or (3) shocks, defies or disregards decency or morality; or (4) obstructs or interferes with the free passage of any public highway or street, or any body of water; or (5) hinders or impairs the use of property."⁷⁴ It further defines a public nuisance as a nuisance which "affects a community or neighborhood or any considerable number of persons, although the extent of the annoyance, danger or damage upon individuals may be unequal."⁷⁵

Nuisances are further defined by the method by which they could be abated. In *Monteverde v. Generoso*.⁷⁶

Nuisances are of two classes: Nuisances *per se* and *per accidens*. As to the first, since they affect the immediate safety of persons and property, they may be summarily abated under the undefined law of necessity. But if the nuisance be of the second class, even the municipal authorities, under their power to declare and abate nuisances, would not have the right to compel the abatement of a particular thing or act as a nuisance without reasonable notice to the person alleged to be maintaining or doing the same of the time and place of hearing before a tribunal authorized to decide whether such a thing or act does in law constitute a nuisance.⁷⁷

Thus, *nuisances per se* are those nuisances that could be summarily abated without need of further notice while *nuisances per accidens* are those that may only be abated after due notice and hearing.

The root of this controversy lays in the summary demolition of the Canal-Cover Project in Quezon Boulevard, Davao City by local officials. The local officials involved here claim that the concrete covers a drainage canal, causing flooding in the area. This allegedly makes the structure a

⁷⁴ CIVIL CODE (1949), art. 694.

⁷⁵ CIVIL CODE (1949), art. 695.

⁷⁶ 52 Phil. 123 (1928) [Per J. Malcolm *En Banc*].

⁷⁷ *Monteverde v. Generoso*, 52 Phil. 123, 127 (1928) [Per J. Malcolm, *En Banc*].

nuisance per se.⁷⁸ The Office of the Ombudsman insists, however, that the canal cover, even though it caused flooding, was not a structure that injured or endangered the health and safety of others.⁷⁹

Both the Office of the Ombudsman and the Court of Appeals concluded that the Canal-Cover Project was not a nuisance per se, since it “did not affect the immediate safety of persons and property as an open canal would.”⁸⁰ While the local government of Davao City may have the power to declare and abate nuisances within their territory, it cannot unilaterally state as a fact that the Canal-Cover Project is a nuisance that must be abated if it is not a nuisance per se:

It is clear that municipal councils have, under the code, the power to declare and abate nuisances, but it is equally clear that they do not have the power to find as a fact that a particular thing is a nuisance when such thing is not a nuisance per se; nor can they authorize the extrajudicial condemnation and destruction of that as a nuisance which in its nature, situation, or use is not such. These things must be determined in the ordinary courts of law.⁸¹

Considering that the courts of law have concluded as a fact that the Canal-Cover Project is not a nuisance per se, the question then is whether the local government of Davao City, in demolishing the Canal-Cover Project, followed the legal procedure to abate such a nuisance.

Section 103 (a)⁸² of the National Building Code⁸³ states that its provisions shall apply to the demolition of both public and private buildings and structures. The Code likewise states that “Building Officials” shall be responsible for carrying out its provisions:

SECTION 205. Building Officials

Except as otherwise provided herein, the Building Official shall be responsible for carrying out the provisions of this Code in the field as well as the enforcement of orders and decisions made pursuant thereto.

Due to the exigencies of the service, the Secretary may designate incumbent Public Works District Engineers, City Engineers and Municipal Engineers to act as Building Officials in their respective areas of jurisdiction.

⁷⁸ *Rollo* (G.R. No. 198201), pp. 222–223.

⁷⁹ *Id.* at 272–273.

⁸⁰ *Id.* at 83. *See also* p. 53.

⁸¹ *Iloilo Ice and Storage Co. v. Municipal Council of Iloilo*, 24 Phil. 471, 484 (1913) [Per J. Trent, *En Banc*].

⁸² SECTION 103. Scope and Application

(a) The provisions of this Code shall apply to the design, location, siting, construction, alteration, repair, conversion, use, occupancy, maintenance, moving, demolition of, and addition to public and private buildings and structures, except traditional indigenous family dwellings as defined herein.

⁸³ Presidential Decree No. 1096 (1977).

The designation made by the Secretary under this Section shall continue until regular positions of Building Official are provided or unless sooner terminated for causes provided by law or decree.⁸⁴

The law provides that the building official, in this instance the respondent City Engineer Gestuveo, may order the demolition or abatement of dangerous buildings and structures:

SECTION 214. Dangerous and Ruinous Buildings or Structures

Dangerous buildings are those which are herein declared as such or are structurally unsafe or not provided with safe egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use, constitute a hazard to safety or health or public welfare because of inadequate maintenance, dilapidation, obsolescence, or abandonment; or which otherwise contribute to the pollution of the site or the community to an intolerable degree.

SECTION 215. Abatement of Dangerous Buildings

When any building or structure is found or declared to be dangerous or ruinous, the Building Official shall order its repair, vacation or demolition depending upon the degree of danger to life, health, or safety. This is without prejudice to further action that may be taken under the provisions of Articles 482 and 694 to 707 of the Civil Code of the Philippines.⁸⁵

The procedure for the abatement of dangerous structures is outlined in Section 216 of the National Building Code's Implementing Rules and Regulations:

PROCEDURE FOR ABATEMENT/DEMOLITION OF DANGEROUS/RUINOUS BUILDINGS/STRUCTURES

1. There must be a finding or declaration by the Building Official that the building/structure is a nuisance, ruinous or dangerous.
2. Written notice or advice shall be served upon the owner and occupant/s of such finding or declaration giving him at least fifteen (15) days within which to vacate or cause to be vacated, repaired, renovated, demolished and removed as the case may be, the nuisance, ruinous or dangerous building/structure or any part or portion thereof.
3. Within the fifteen (15)-day period, the owner may, if he so desires, appeal to the Secretary the finding or declaration of the Building Official and ask that a re-inspection or re-investigation of the building/structure be made.
4. In case the owner should ask the Building Official for a reconsideration on his order, same shall be given not more than not more than fifteen (15) days within which to render his final decision appealable

⁸⁴ BLDG. CODE (1977), sec. 205.

⁸⁵ BLDG. CODE (1977), secs. 214, 215.

to the Office of the Secretary.

5. If the appeal is meritorious, the Secretary may designate a competent representative/s other than the Building Official to undertake the re-inspection or re-investigation of the building/structure. The representative/s so designated shall make or complete his/their report/s within the period of thirty (30) days from the date of termination of re-inspection or re-investigation.

6. If after re-inspection, the finding is the same as the original one, the Secretary through the Building Official shall notify the owner, giving him not more than fifteen (15) days from receipt of notice with affirmed finding to vacate or cause to be vacated and make necessary repair, renovation, demolition and removal of the subject building/structure or parts thereof, as the case may be.

7. If the Building Official has determined that the building/structure must be repaired or renovated, the Order to be issued shall require that all necessary permits therefor be secured and the work be commenced physically within such reasonable time as may be determined by the Building Official.

8. If the Building Official has determined that the building/structure must be demolished, the Order shall require that the building/structure be vacated within fifteen (15) days from the date of receipt of the Order; that all required permits be secured therefor within the same fifteen (15) days from the date of the Order, and that the demolition be completed within such reasonable time as may be determined by the Building Official.

9. The decision of the Secretary on the appeal shall be final.

10. Upon failure of the owner to comply with the Order of the Building Official or of the Secretary, in case of appeal, to repair, renovate, demolish and remove the building/structure or any part thereof after fifteen (15) days from the date of receipt of the Order, the Building Official shall cause the building or structure to be repaired, renovated, demolished and removed, partly or wholly, as the case may be, with all expenses therefor chargeable to the owner.

11. The building/structure as repaired or in case of demolition, the building materials gathered after the demolition thereof shall be held by the OBO until full reimbursement of the cost of repair, renovation, demolition and removal is made by the owner which, in no case, shall extend beyond thirty (30) days from the date of completion of the repair, renovation, demolition and removal. After such period, said building materials of the building thus repaired, renovated or removed shall be sold at public auction to satisfy the claim of the OBO. Any amount in excess of the claim of the government realized from the sale of the building and/or building materials shall be delivered to the owner.

12. The procedures, actions and remedies herein are without prejudice to further action that may be taken by the Building Official against the owner/occupants of the building/structure found or declared to be nuisance/s, dangerous, and/or ruinous under the provisions of Articles 482 and 694 to 707 of the Civil Code of the Philippines.⁸⁶

⁸⁶ Rules and Regulations Implementing the National Building Code, Presidential Decree 1069, sec. 216

The Rules provide that once a structure has been found and declared a nuisance, “[w]ritten notice or advice shall be served upon the owner and occupant/s of such finding or declaration giving him *at least* fifteen (15) days within which to vacate or cause to be vacated, repaired, renovated, demolished and removed as the case may be, the nuisance, ruinous or dangerous building/structure or any part or portion thereof.”⁸⁷ Within this 15-day period, the “owner” of the structure may appeal to the Secretary of Public Works and Highways.⁸⁸

Since the Canal-Cover Project is a project of the national government under the Department of Public Works and Highways, the “owner” of the structure is the State. Thus, it would be logical to presume that notices regarding the project would also be sent to the Department.

The facts state that the local government of Davao City had informed the Department of the flooding issue in the first quarter of 2008. As a result, the Department created several manholes through the concrete flooring and dredged silt through the canal. Despite these remedies, the flooding issue remained unresolved. As early as April 17, 2008, the City Engineer’s Office had written to the Department of its plan to remove the concrete flooring.⁸⁹

It is undisputed that respondent City Engineer Gestuveo only sent a letter to then District Engineer Isagani G. Javier advising him of the demolition of the Canal-Cover Project on October 16, 2008, or only three days before the planned demolition on October 20, 2008.⁹⁰ However, as found by the Court of Appeals:

It is also apt to emphasize that the DPWH did not object to the Davao City Government’s planned demolition of Nograles Park, upon being informed of the same by respondent Gestuveo. Instead, the DPWH advised respondent Gestuveo that since Nograles Park is a national government-funded project, an Inspectorate Team consisting of representatives from the Davao City Engineering District of the DPWH, the Commission on Audit and the Office of the City Engineer should be organized for the inventory of the salvaged materials. It is also undisputed by respondents that a number of DPWH representatives assisted the DMU of the City Engineer’s Office of Davao City in the conduct of the demolition of the subject canal cover by cutting the reinforcing steel bars of its concrete flooring.⁹¹

(2004).

⁸⁷ Rules and Regulations Implementing the National Building Code, Presidential Decree 1069, sec. 216 (2) (2004).

⁸⁸ Rules and Regulations Implementing the National Building Code, Presidential Decree 1069, sec. 216 (3) (2004).

⁸⁹ *Rollo* (G.R. No. 198201), p. 46.

⁹⁰ *Id.* at 64.

⁹¹ *Id.* at 56–57.

The applicability and interpretation of the National Building Code can be somewhat confusing in this case, since its provisions presume that the owner of the structure, the Secretary of Public Works and Highways, the building official, and the persons ordered to carry out the demolition are four separate entities without any overlap. However, in this instance, the owner of the structure is the State, represented by the Secretary of Public Works and Highways, while the demolition team is headed by the building official. The Rules cannot be interpreted as in private structures.

Thus, when petitioner Nograles pointed out the alleged non-compliance with the 15-day notice and the lack of a demolition permit, it cannot be immediately concluded that the local officials of Davao City failed to comply with the procedure outlined in Section 216 of the Implementing Rules and Regulations.

First, the "owner" of the structure, represented by the Department of Public Works and Highways, was aware as early as the first quarter of 2008 that the Canal-Cover Project caused flooding and that the local government of Davao City was taking steps to rectify the issue. While the 15-day requirement was not strictly complied with, its rationale to inform the representative of the "owner" that the structure was a nuisance, ruinous, or dangerous had been sufficiently followed.

The 15-day period also allows the structure's owner to appeal the planned demolition to the Secretary of Public Works and Highways. Since the Department of Public Works and Highways, being the representative of the owner, did not object to the planned demolition and even sent representatives to assist in the demolition, it can be concluded that the 15-day period was unnecessary for this purpose.

Second, the demolition permit was unnecessary since the entity that would be issuing the permit, i.e., the building official, was the same entity carrying out the demolition. The Rules state:

8. If the Building Official has determined that the building/structure must be demolished, the Order shall require that the building/structure be vacated within fifteen (15) days from the date of receipt of the Order; that all required permits be secured therefor within the same fifteen (15) days from the date of the Order, and that the demolition be completed within such reasonable time as may be determined by the Building Official.

....

10. Upon failure of the owner to comply with the Order of the Building Official or of the Secretary, in case of appeal, to repair, renovate, demolish and remove the building/structure or any part thereof after fifteen (15) days from the date of receipt of the Order, the Building Official shall cause the building or structure to be repaired, renovated, demolished and

removed, partly or wholly, as the case may be, with all expenses therefor chargeable to the owner.⁹²

Under these Rules, the building official should secure within 15 days the demolition permit to be issued by the Office of the Building Official. In case of failure to secure the necessary permit, it is also the building official which "shall cause the . . . structure to be . . . demolished and removed, partly or wholly, as the case may be."⁹³ There would arise the absurd situation where in case of failure of the building official to issue the demolition permit to itself, it would also be tasked to take on the demolition by default. Thus, the building official cannot be expected to strictly comply with this requirement.

Respondents were charged with simple misconduct for their alleged failure to comply with the procedure for demolition under the Rules. Misconduct is defined as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."⁹⁴ "The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be established by substantial evidence. Otherwise, the misconduct is only simple."⁹⁵

Respondents' defense for non-compliance with the established rule of procedure was that the demolished structure had been a nuisance per se, and thus could be summarily abated. The Office of the Ombudsman and the Court of Appeals, however, have made a common factual determination that the Canal-Cover Project was not a nuisance per se, as the flooding that the structure caused did not affect the immediate safety of the community.

Not being a nuisance per se, it was imperative for the respondents to comply with the procedure for demolition outlined in Section 216 of the Implementing Rules and Regulations. However, as explained, several provisions of Section 216 could not be strictly complied with, since the structure to be demolished was a public edifice, and the demolition was carried out with the participation of the Department of Public Works and Highways, the entity which had constructed the structure.

There is thus no error in the Court of Appeals' finding that respondents were not guilty of simple misconduct.

⁹² Rules and Regulations Implementing the National Building Code, Presidential Decree 1069, sec. 216 (2004).

⁹³ Rules and Regulations Implementing the National Building Code, Presidential Decree 1069, sec. 216 (10) (2004).

⁹⁴ *Estarija v. Ranada*, 525 Phil. 718, 728 (2006) [Per J. Quisumbing, *En Banc*] citing *Bureau of Internal Revenue v. Organo*, G.R. No. 149549, February 26, 2004.

⁹⁵ *Civil Service Commission v. Ledesma*, 508 Phil. 569, 579 (2005) [Per J. Carpio, *En Banc*] citing *Civil Service Commission v. Lucas*, 361 Phil. 486 (1999) and *Landrito v. Civil Service Commission*, G.R. Nos. 104304-05, June 22, 1993.

III

Decisions of the Office of the Ombudsman on administrative cases are immediately executory. A pending appeal or the issuance of an injunctive writ will not stay its execution.

Under Office of the Ombudsman Administrative Order No. 7, as amended by Administrative Order No. 17, Rule III, Section 7:

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.

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer. (Emphasis supplied)

This Court has always adopted a policy of non-interference in the Office of the Ombudsman's findings, in deference to its role as an independent constitutional body tasked with upholding the integrity of public service. Thus, the executory nature of its decision in administrative cases prevails even if the erring public officer is absolved on appeal, since public officers do not have a vested right in their offices. In *Lee v. Sales*:⁹⁶

The Ombudsman is the Constitutional body tasked to preserve the integrity of public service, and must be beholden to no one. To uphold its independence, this Court has adopted a general policy of non-interference with the exercise of the Ombudsman of its prosecutorial and investigatory powers. The execution of its decisions is part of the exercise of these powers to which this Court gives deference.

Further, after a ruling supported by evidence has been rendered and

⁹⁶ 835 Phil. 594 (2018) [Per J. Leonen, Third Division].

during the pendency of any motion for reconsideration or appeal, the civil service must be protected from any acts that may be committed by the disciplined public officer that may affect the outcome of this motion or appeal. The immediate execution of a decision of the Ombudsman is a protective measure with a purpose similar to that of preventive suspension, which is to prevent public officers from using their powers and prerogatives to influence witnesses or tamper with records.

Moreover, public office is a public trust. There is no vested right to a public office or an absolute right to remain in office that would be violated should the decision of the Ombudsman be immediately executed. In case the suspended or removed public official is exonerated on appeal, Administrative Order No. 17, Rule III, Section 7 itself provides for the remedial measure of payment of salary and such other emoluments not received during the period of suspension or removal. No substantial prejudice is caused to the public official.⁹⁷

Thus, the Court of Appeals erred in issuing its writ of preliminary injunction dated August 4, 2010⁹⁸ enjoining the Office of the Ombudsman from enforcing its April 21, 2010 Decision pending the promulgation of the Court of Appeals of its decision on the merits. Even granting that the Court of Appeals would later absolve respondents, and that its Decision would later be affirmed by this Court, Administrative Order No. 17, Rule III, Section 7 requires that the penalty be served immediately. There can be no prejudice caused to the public official since there is always a remedial measure in the form of payment of salaries and such other emoluments not received during the period of suspension.

Respondents point out that the Office of the Ombudsman's decision was "patently erroneous and reeked of political flavor,"⁹⁹ the order of suspension having been imposed only days before the 2010 National and Local Elections, where respondent Duterte was running for reelection.¹⁰⁰

As earlier stated, the Office of the Ombudsman is an independent constitutional body tasked with the protection and preservation of the integrity and dignity of public office. To imply that the Office of the Ombudsman is politically biased simply because it issued an unfavorable decision is to question the values of our public institutions. In any case, there is no law or rule which states that a public official running for

⁹⁷ *Lee v. Sales*, 835 Phil. 594, 610–611 (2018) [Per J. Leonen, Third Division], citing *Alba v. Nitorreda*, 325 Phil. 229 (1996) [Per J. Francisco, *En Banc*]; *Dichaves v Ombudsman*, 802 Phil. 564 (2016) [Per J. Leonen, Second Division]; *Dimayuga v. Ombudsman*, 528 Phil. 42 (2006) [Per J. Azcuna, Second Division]; *Reyes v. Ombudsman*, 810 Phil. 196 (2017) [Per J. Leonen, Second Division]; *Joson v. Ombudsman*, 816 Phil. 288 (2017) [Per J. Leonen, Second Division]; *Purisima v. Carpio-Morales*, 814 Phil. 872 (2017) [Per J. Perlas-Bernabe, First Division]; *Kara-An v. Ombudsman*, 476 Phil. 536 (2004) [Per J. Carpio, First Division]; *Pimentel v. Gachitorena*, 284 Phil. 233 (1992) [Per J. Griño-Aquino, *En Banc*]; CONST. art. XI, sec. 1; *In Re To Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH*, 529 Phil. 619 (2006) [Per J. Ynares-Santiago, First Division]; and *Ombudsman v. Valencerina*, 739 Phil. 11 (2014) [Per J. Perlas-Bernabe, Second Division].

⁹⁸ *Rollo* (G.R. No. 198201), p. 53.

⁹⁹ *Id.* at 227.

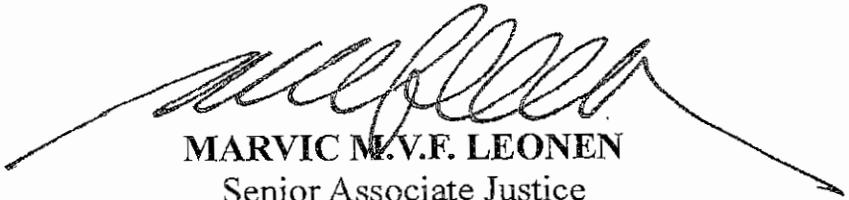
¹⁰⁰ *Id.* at 233–234.

reelection may not be preventively suspended before the election. It would even be more dignified for the public official to quietly serve the suspension with grace and to later on be vindicated by an absolatory decision on appeal, rather than for the courts to issue a patently erroneous writ in a bid to maintain visibility before voting begins.

Respondents have not been prejudiced by the pendency of this case, considering that they have since gone on to even higher positions. Dissolving the writ and insisting on the execution of the preventive suspension at this point would only be an exercise in futility. This incident, therefore, should serve as a reminder to the courts to maintain its neutrality even in the face of opposing political forces, no matter how powerful. No matter how slow or arduous the process, the law will always find a way to right itself.

ACCORDINGLY, the Petitions are **DENIED**. The Decision of the Court of Appeals in CA-G.R. SP No. 113919 is **AFFIRMED**.

SO ORDERED.

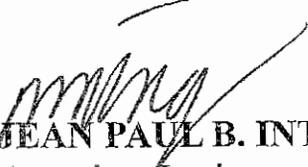


MARVIC M.V.F. LEONEN
Senior Associate Justice

WE CONCUR:



AMY C. LAZARO-JAVIER
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice



JHOSEP V. LOPEZ
Associate Justice



ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

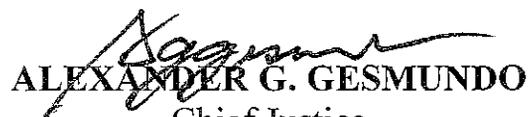
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M. V. LEONEN
Senior Associate Justice
Chairperson

CERTIFICATION

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



ALEXANDER G. GESMUNDO
Chief Justice

