



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

AURORA O. ARAGON- G.R. No. 257723
MABANG,*

Petitioner, Present:

CAGUIOA, J., Chairperson,
INTING,
GAERLAN,
DIMAAMPAO, and
SINGH, JJ.

- versus -

Promulgated:

OFFICE OF THE OMBUDSMAN,
Respondent.

April 1, 2024

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D E C I S I O N

INTING, J.:

Before the Court is a Petition for Review on *Certiorari*¹ filed by Aurora O. Aragon-Mabang (Mabang) assailing the Decision² dated November 20, 2020, and Resolution³ dated July 6, 2021, of the Court of Appeals (CA) in CA-G.R. SP Nos. 149883, 151135, 151186, and 151187. The CA affirmed the Decision⁴ dated December 16, 2016, and Order⁵ dated March 30, 2017, of the Office of the Ombudsman (OMB) in OMB-C-A-15-0277 finding Mabang, among others, guilty of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service and meting out

* Also uses the name "Aurora A. Mabang."

¹ *Rollo*, p. 12-29.

² *Id.* at 31-51. Penned by Associate Justice Carlito B. Calpatura and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Maria Elisa Sempio Diy.

³ *Id.* at 52-55.

⁴ CA *rollo* (CA-G.R. SP No. 151187), pp. 43-59. Penned by Graft Investigation and Prosecution Officer III Gil Felix A. Hidalgo, Member, and Graft Investigation and Prosecution Officer IV M.A. Christian O. Uy, Executive Officer. Approved by Ombudsman Conchita Carpio Morales.

⁵ *Id.* at 28-42.

on them the penalty of dismissal from the service, together with its accessory penalties.

The Antecedents

On May 9, 2012, the Department of Budget and Management issued Special Allotment Release Order No. BMB-G-12-T-000002360 and Advice of NCA Issued (Fund 101) covering PHP 3,800,000.00 to the National Commission on Muslim Filipinos (NCMF) as the implementing agency for the livelihood project of Congressman Simeon A. Datumanong (Cong. Datumanong) of the 2nd District of Maguindanao in the Municipalities of Ampatuan, Datu Abdullah Sanki, and Mamasapano. The amount shall be sourced from the Priority Development Assistance Fund (PDAF) of Cong. Datumanong for the fiscal year of 2012.⁶

In a Letter⁷ dated July 16, 2012, Cong. Datumanong requested Mehol K. Sadain (Sadain), then Secretary/Commissioner and Chief Executive Officer of the NCMF, to implement the Sustainable Livelihood Projects - Soapmaking, Candle Making, and Fish Processing (project), through the non-government organization (NGO) Maharlikang Lipi Foundation, Inc. (MLFI). He authorized Sadain to release the fund from his PDAF to MLFI.⁸

Accordingly, the NCMF initially released the amount of PHP 3,420,000.00 to MLFI on July 31, 2012 and retained ten percent of the allocated PDAF, which pertained to three percent (3%) or PHP 114,000.00 as monitoring expenses, and seven percent (7%) or PHP 266,000.00 as retention fee or final tranche. This was through an unnumbered and undated disbursement voucher⁹ (1st DV) signed by Mabang, Fedelina D. Aldanese (Aldanese), and Sadain.

Mabang, as the Acting Chief of the Management Audit Division (MAD) under the Finance Management Services of the NCMF, certified that the expenses/advances were necessary, lawful, and incurred under her direct supervision. Aldanese, as the Acting Chief Accountant of the NCMF, certified that the supporting documents were complete, proper, and attached, as well as that the cash was available. Sadain approved the payment. Check No. 446187¹⁰ dated July 31, 2012 was issued in favor of

⁶ *Rollo*, p. 33.

⁷ *Id.* at 61.

⁸ *Id.*

⁹ *CA rollo* (CA-G.R. SP No. 149883), p. 115.

¹⁰ *CA rollo* (CA-G.R. SP No. 151187), p. 68.

MLFI, who in turn, issued a receipt¹¹ dated August 8, 2012 to the NCMF.¹²

On August 10, 2012, the NCMF, represented by Sadain; the Office of Cong. Datumanong, represented by Cong. Datumanong; and MLFI, represented by its President, Gracita Cecilia Mascenon, entered into a Memorandum of Agreement¹³ (MOA) in connection with the project pursuant to NCMF Resolution No. 48,¹⁴ series of 2012 dated July 25, 2012.¹⁵

Subsequently, Mabang, NCMF Director III Galay M. Makalinggan (Makalinggan), Aldanese, and Sadain, signed an unnumbered DV¹⁶ dated February 13, 2013 (2nd DV) in the same capacities as that of the 1st DV, except that Mabang and Makalinggan both certified that the expenses/advances were necessary, lawful, and incurred under their direct supervision. Queenie E. Rodriguez likewise signed the 2nd DV to certify that she received the payment from the NCMF. Check No. 84530¹⁷ dated February 14, 2013, covering the retention fee of PHP 266,000.00 was issued to MLFI, who then issued a receipt¹⁸ to the NCMF on the same day.¹⁹

The OMB-Field Investigation Office (FIO) filed a Complaint²⁰ dated June 30, 2015 for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service against Sadain, Makalinggan, Aldanese, Mabang, and NCMF Cashier Olga S. Galido (collectively, public respondents).²¹

The OMB-FIO alleged in its complaint that: (1) the NCMF violated Government Procurement Policy Board (GPPB) Resolution No. 12-2007 dated June 29, 2007, in awarding the project to MLFI without conducting a public bidding or negotiated procurement; (2) the NCMF likewise violated Commission on Audit (COA) Circular No. 2007-001 dated October 25, 2007 because it did not properly undertake the process in selecting the NGO as it was Cong. Datumanong who personally chose

¹¹ *Id.*

¹² *Rollo*, p. 34.

¹³ *Id.* at 68–72.

¹⁴ *Id.* at 66–67. Approved and signed by Mehol K. Sadain and Commissioners Bai Omera D. Dianalan-Lucman, Edilwasif T. Baddiri, Solaiman C. Mutia, Salem C. Demuna, Alladin I. Ampatuan, Raidah B. Maglangit, Mirkarl T. Allian, and Esmael W. Ebrahim.

¹⁵ *Id.* at 34.

¹⁶ *CA rollo* (CA-G.R. SP No. 149883), p. 117.

¹⁷ *CA rollo* (CA-G.R. SP No. 151187), p. 73.

¹⁸ *Id.* at 74.

¹⁹ *Rollo*, pp. 34–35.

²⁰ *CA rollo* (CA-G.R. SP No. 151187), pp. 437–442.

²¹ *Rollo*, p. 32.

MLFI; (3) the NCMF released the fund to MLFI even before the execution of the MOA; and (4) public respondents conspired with one another when they processed the DVs, executed the MOA, and released the check payments to MLFI.²²

Mabang denied conspiring with her co-public respondents. She stressed that: (1) she did not have any contact with Cong. Datumanong or anybody from his office; (2) she was not the principal signatory to the DVs and only signed them after all the supporting documents were attached; and (3) she merely performed her duties, which are procedural, mechanical, and non-discretionary, in good faith.²³

The Ruling of the OMB

The OMB found public respondents guilty of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service in its Decision²⁴ dated December 16, 2016, the dispositive portion of which read:

WHEREFORE, respondents Mehol K. Sadain, Galay M. Makalinggan, Fedelina D. Aldanese, Aurora O. Aragon-Mabang, and Olga S. Galido are found guilty of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service and are meted the penalty of Dismissal from the service, together with its accessory penalties.

In the event that the penalty of Dismissal can no longer be enforced due to respondents' separation from the service, the same shall be converted into Fine in the amount equivalent to their respective salaries for one (1) year, payable to the Office of the Ombudsman, and may be deductible from the retirement benefits, accrued leave credits or any receivable by respondents from their office. It shall be understood the accessory penalties attached to the principal penalty of Dismissal shall continue to be imposed.

SO ORDERED.²⁵

The OMB held that there was substantial evidence that Mabang and her co-public respondents are liable for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service. In particular, Mabang signed the DVs that caused the release of the funds for the project to MLFI.²⁶

According to the OMB, Mabang and her co-public respondents had

²² *Id.* at 35.

²³ *Id.* at 36.

²⁴ *CA rollo* (CA-G.R. SP No. 151187), pp. 43–59.

²⁵ *Id.* at 58.

²⁶ *Id.* at 51–52.



control over the funds, as shown by the necessity of their signatures in the documents and thus, they are accountable together with Cong. Datumanong who chose or authorized MLFI to implement his PDAF project.²⁷

The OMB ruled that public respondents were manifestly partial to MLFI because it was chosen without the benefit of the required public bidding. It further ruled that the “General Appropriations Act of 2012” (2012 GAA), or Republic Act No. (RA) 10155,²⁸ did not authorize the direct release of funds to an NGO or to directly contract an NGO to implement government projects.²⁹

Even assuming that NGOs are allowed to implement PDAF-funded projects under the 2012 GAA, the OMB opined that public bidding is still required under GPPB Resolution No. 12-2007.³⁰ The OMB further clarified that COA Circular No. 2007-001 did not supplant RA 9184, or the “Government Procurement Reform Act.” The OMB likewise noted that there was no proof that the NCMF undertook a rigid evaluation of MLFI. For the OMB, these circumstances show public respondents’ manifest partiality to MLFI and gave it unwarranted benefit.³¹

Sadain, Makalinggan, Mabang, and Aldanese filed their respective motions for reconsideration which the OMB denied in its March 30, 2017 Order.³²

Unsatisfied, they filed their respective petitions for review under Rule 43 of the Rules of Court with the CA.

The Ruling of the CA

The CA dismissed the petitions in its Decision³³ dated November 20, 2020; thus:

WHEREFORE, premises considered, the consolidated petitions for review are DISMISSED for lack of merit. Accordingly, the assailed Decision dated December 16, 2016 of the Office of the Ombudsman in OMB-C-A-15-0277 is AFFIRMED.

²⁷ *Id.* at 52.

²⁸ Approved on December 15, 2011.

²⁹ *CA rollo* (CA-G.R. SP No. 151187), pp. 52–53.

³⁰ *Id.* at 53.

³¹ *Id.* at 56.

³² *Id.* at 28–42.

³³ *Rollo*, pp. 31–51.

SO ORDERED.³⁴

The CA upheld the OMB based on the following findings: (1) MLFI was chosen without a public bidding or a negotiated procurement, in violation of GPPB Resolution No. 12-2007; (2) the 2012 GAA did not authorize the direct contracting of or the direct release of funds to an NGO; (3) MLFI was not selected by the NCMF; and (4) the fund was released to MLFI even before the execution of the MOA, contrary to COA Circular No. 2007-001.³⁵

The CA ruled that Mabang was liable together with her co-conspirators because she facilitated and forced the release of funds to MLFI even when it is not entitled to the funds and failed to offer exculpatory evidence in her favor. To the CA's mind, Mabang's contributory acts constitute grave misconduct. The CA likewise found Mabang guilty of Conduct Prejudicial to the Best Interest of the Service based on its finding that her acts tainted the image and integrity of her position.³⁶

Aldanese, Sadain, and Mabang filed their respective motions for reconsideration which the CA denied in the Resolution³⁷ dated July 6, 2021.³⁸

Aggrieved, Mabang filed the present Petition³⁹ before the Court.

The Proceedings before the Court

Notably, Sadain and Aldanese filed their own Petitions for Review on *Certiorari* before the Court. These were respectively docketed as G.R. Nos. 257724 and 261349 (formerly UDK 17114).⁴⁰ In the Resolution⁴¹ dated June 15, 2022, the First Division of the Court denied their petitions for failure to show that the CA committed reversible error in the challenged decision as to warrant the exercise of the Court's jurisdiction.⁴²

³⁴ *Id.* at 50.

³⁵ *Id.* at 41–47, 50.

³⁶ *Id.*

³⁷ *Id.* at 53–55.

³⁸ *Id.* at 54.

³⁹ *Id.* at 12–29.

⁴⁰ *Id.* at 107–108.

⁴¹ *Id.* at 173–174.

⁴² *Id.*

The Arguments of Mabang

Mabang contends that: (1) there is nothing in the records that would support the CA's findings that she is a conspirator; (2) as the former Acting Chief of the MAD, she did not have custody or control of the funds by nature of her office; (3) her duties and responsibilities in the processing of DVs are merely ministerial once all the required supporting documents were attached to the DVs and approved by the Bureau Director concerned; (4) there is no evidence that she was involved in the decision not to conduct a public bidding or undergo negotiated procurement; (5) she did not participate in the execution of the MOA; and (6) the project was implemented and there were no reports of missing funds or improper liquidation.⁴³

She highlights that Sadain was able to show that the NCMF returned the balance of the PDAF administration and retention amounting to PHP 21,794,508.59 to the Bureau of Treasury.⁴⁴ Hence, Mabang concluded that there is no basis to find her liable for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service.⁴⁵

The Arguments of the OMB

The OMB, through the Office of the Solicitor General, raised the following arguments in its Comment: (1) the petition is barred by *res judicata* by virtue of the Court's Resolution dated June 15, 2022 in G.R. Nos. 257724 and 261349; (2) Mabang's act of affixing her signature on the DVs, which caused the release of the funds, shows that she exercised control over the funds together with her co-public respondents; (3) she was not precluded from questioning the regularity or necessity of the project; (4) there was manifest partiality towards MLFI; and (5) the factual findings of the CA and the OMB must be given full credit and respect.⁴⁶

The Issues

I. Whether the petition is barred by *res judicata*; and

⁴³ *Id.* at 23–25.

⁴⁴ *Id.* at 25, 96–97.

⁴⁵ *Id.* at 25–27.

⁴⁶ *Id.* at 134–142.



- II. Whether the CA erred in affirming that Mabang is liable for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service.

The Court's Ruling

The Court modifies the ruling of the CA.

The petition is not barred by res judicata.

While the June 15, 2022, Resolution of the Court in G.R. Nos. 257724 and 261349 is a minute resolution, it is considered a full disposition of the case and operates as *res judicata* with respect to the same issues and subject matter involving the same parties. However, it is not binding precedent as to the other parties who held different positions and discharged different functions.⁴⁷

To recall, Sadain was the Secretary/Commissioner and Chief Executive Officer of the NCMF while Aldanese was the Acting Chief Accountant of the NCMF. In contrast, Mabang was the Acting Chief of the MAD. Evidently, they discharged different functions.

Verily, the Resolution dated June 15, 2022, of the First Division of the Court in G.R. Nos. 257724 and 261349 cannot prevent the Court from considering the merits of Mabang's petition.

Mabang is guilty of Simple Misconduct only.

When the CA affirms the factual findings of the OMB, the general rule is that the Court shall respect these findings and shall no longer disturb it. One of the recognized exceptions to this rule is when there is a misapprehension of facts.⁴⁸ This exception exists in the present case.

Misconduct is the "transgression of some established and definite rule of action, more particularly, unlawful behavior or gross neglect of duty by a public officer." To be considered grave, there must be corruption,

⁴⁷ *Field Investigation Office, Office of the Ombudsman v. Yuzon*, G.R. Nos. 215985, 216001 & 216135, November 11, 2021, citing *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*, 616 Phil. 387, 420–421 (2009).

⁴⁸ *Sadain v. Office of the Ombudsman*, G.R. No. 253688, February 8, 2023.

willful intent to violate the law, or to disregard established rules.⁴⁹

Here, the CA affirmed the finding of the OMB that Mabang is liable for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service because she signed the DVs which enabled the release of the funds to MLFI, an NGO that was chosen by Cong. Datumanong without a public bidding or negotiated procurement.

The Court agrees in part.

Notably, Mabang signed the DVs in her capacity as the Acting Chief of the MAD. She herself admitted that it was her duty to ensure that the documents were complete before signing the DVs. It was duly observed by the CA, however, that Mabang signed the 1st DV on July 30, 2012⁵⁰ before the MOA was notarized on August 10, 2012.⁵¹

While Sadain asserted that the MOA was actually signed sometime between July 25 to 31, 2012,⁵² there is no evidence supporting this. The MOA clearly provides that “the parties have hereunto signed this instrument this day of August 10, 2012 at Quezon City.”⁵³ Evidently, Mabang signed the 1st DV, which led to the release of the check to MLFI on August 8, 2012,⁵⁴ even before the MOA was signed on August 10, 2012 in clear violation of COA Circular No. 2007-001.

Nonetheless, the Court finds the elements of corruption, willful intent to violate the law, or to disregard established rules wanting in the case.

First, the Court recently clarified in *Sadain v. Office of the Ombudsman*⁵⁵ that GPBB Resolution No. 12-2007 only applies when an appropriation law or ordinance particularly earmarks an amount for projects to be specifically contracted out to NGOs. Similar to *Sadain*, there is no provision under the 2012 GAA that specifically earmarked Cong. Datumanong’s PDAF for projects to be contracted out to NGOs. Thus, the applicable rule therefore is COA Circular No. 2007-001 only.

⁴⁹ *Ubalde v. Morales*, G.R. No. 216771, March 28, 2022, citing *Office of the Ombudsman-Mindanao v. Martel*, 806 Phil. 649, 662 (2017).

⁵⁰ CA rollo (CA-G.R. SP No. 149883), p. 115.

⁵¹ Rollo, p. 72.

⁵² CA rollo (CA-G.R. SP No. 151186), p. 24.

⁵³ Rollo, p. 71.

⁵⁴ CA rollo (CA-G.R. SP No. 151187), p. 68.

⁵⁵ *Supra* note 48.

Second, COA Circular No. 2007-001 merely requires that upon proper evaluation, the government organization (through the Bids and Awards Committee or a committee created for the purpose) shall award the project to the NGO which “meets the minimum qualification requirements and the specifications for the project and which can satisfactorily undertake the project at terms most advantageous to the beneficiaries, taking into consideration the cost effectiveness of the project.” Evidently, public bidding is not required before a project may be awarded to an NGO under COA Circular No. 2007-001.⁵⁶

Here, NCMF Resolution No. 29,⁵⁷ series of 2012 provided the guidelines for accrediting NGOs in relation to the release of PDAF. Records show that MLFI was evaluated based on these guidelines and was found to be legitimate and capable of undertaking the project based on the documents and requirements required for its accreditation per NCMF Resolution No. 48,⁵⁸ series of 2012. Therefore, the NCMF complied with COA Circular No. 2007-001 as far as the selection of MLFI is concerned.

Moreover, the project was given to MLFI before the Court declared unconstitutional in *Belgica v. Hon. Exec. Sec. Ochoa, Jr.*⁵⁹ any provision of law authorizing legislators—whether individually or collectively organized into committees—to intervene, assume or participate in any of the various post-enactment stages of the budget execution.

As explained in *Sadain*, the Court’s pronouncement in *Belgica* applies prospectively in view of the operative fact doctrine considering that lawmakers were previously allowed to intervene in the enforcement of the GAA prior thereto.⁶⁰ In any event, Mabang had no hand in the selection of MLFI as the implementing NGO.

Third, there is no showing that MLFI was not qualified to implement the project as it did, in fact, implement the project. Notably, there is no indication that the PDAF Project Implementation Narrative Monitoring Report⁶¹ prepared by the NCMF Monitoring Team and the

⁵⁶ Section 4.5.2 of COA Circular No. 2007-001 provides:
4.5.2 For each project proposal, the GO [government organization] shall accredit the NGO/PO [non-government organization/people’s organization] project partners through the Bids and Awards Committee (BAC), or a committee created for the purpose, which shall formulate the selection criteria. The Committee shall perform the selection process, including the screening of the qualification documents, ocular inspection of the NGOs/POs business site, and evaluation of the technical and financial capability of the NGO/PO.

⁵⁷ *Rollo*, pp. 81–82.

⁵⁸ *Id.* at 66–67.

⁵⁹ 721 Phil. 416 (2013).

⁶⁰ *Sadain v. Office of the Ombudsman*, *supra* note 48.

⁶¹ *Rollo*, pp. 85–88.

Monitoring Report⁶¹ prepared by the NCMF Monitoring Team and the MLFI Physical Accomplishment Report⁶² were both false. What is more, the Office of Cong. Datumanong certified that the project was completed.⁶³

Lastly, it was neither alleged nor proven that Mabang personally benefited from the project. There was likewise no proof that she conspired with her co-public respondents in committing Grave Misconduct by unduly favoring MLFI. To stress, Mabang had no participation in the selection of MLFI as the implementing NGO. In fine, Mabang's lapses as Acting Chief of the MAD are not tantamount to corruption, willful intent to violate the law, or to disregard established rules.

Considering the foregoing, the Court disagrees that Mabang is guilty of Conduct Prejudicial to the Best Interest of the Service. Given that Mabang is guilty of the lesser offense of Simple Misconduct only, and the surrounding circumstances in the case, it cannot be said that her actions tarnished the image and integrity of her public office.

All told, Mabang is only liable for Simple Misconduct, for which she shall be penalized with suspension for a period of six (6) months.

WHEREFORE, the Petition is **PARTIALLY GRANTED**.

Petitioner Aurora O. Aragon-Mabang is found **GUILTY** of Simple Misconduct and is **SUSPENDED FROM OFFICE** for six (6) months without pay reckoned from the time the Decision dated December 16, 2016, of the Office of the Ombudsman was implemented, with a warning that a repetition of the same or similar acts will be dealt with more severely.

The period within which petitioner Aurora O. Aragon-Mabang was dismissed from service pending appeal is creditable in the implementation of the penalty of six (6) months suspension herein imposed. All her rights, emoluments, benefits, and privileges removed by, and forfeited in, the assailed Decision of the Office of the Ombudsman are hereby **RESTORED**.

⁶¹ *Rollo*, pp. 85–88.

⁶² *Id.* at 89–93.

⁶³ *Id.* at 95.

SO ORDERED.



HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

*See Concurring
Opinion*



SAMUEL H. GAERLAN
Associate Justice



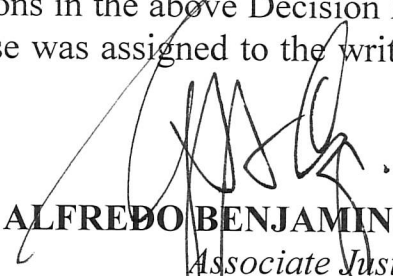
JAPAR B. DIMAAMPAO
Associate Justice



MARIA FILOMENA D. SINGH
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.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

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

