



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 24, 2021** which reads as follows:*

“G.R. No. 195134 – (OFFICE OF THE OMBUDSMAN, petitioner v. RENE A. CERNA, respondent). – Subject to review under Rule 45 of the Rules of Court at the instance of petitioner Office of the Ombudsman (Ombudsman) is the Resolution¹ promulgated on December 15, 2010 in CA-G.R. CEB-SP No. 01339, whereby the Court of Appeals (CA) denied the Ombudsman’s Motion for Intervention.

The Antecedents

The instant case originated from the administrative cases for Grave Misconduct, Dishonesty and Conduct Prejudicial to the Best Interest of the Service filed by Leandro Ruiz (Ruiz) against Engr. Rene A. Cerna (Cerna), Ramon S. Belleza, Jr. (Belleza), Engr. Ferlyndo M. Imbang (Imbang), Paulino S. Caberte (Caberte) and Ms. Juanita J. Morada (Morada), for violation of Republic Act No. 3019, otherwise known as “*the Anti-Graft and Corrupt Practices Act.*” The case was docketed as OMB-V-C-04-0420-H and OMB-V-C-04-0421-H. Ruiz, in the said administrative complaints, alleged that therein respondents conspired with each other in rigging the public bidding, assuring favored contractors and suppliers to get several infrastructure projects in Bacolod City.²

After due hearing, the Ombudsman (Visayas), on May 3, 2005, issued a Consolidated Decision³ finding therein defendants (except

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¹ *Rollo*, pp. 37-40; penned by Associate Justice Edgardo L. Delos Santos (now a Member of this Court), with Associate Justices Agnes Reyes-Carpio and Eduardo B. Peralta, Jr., concurring.

² *Id.* at 43.

³ *Id.* at 132-143.

Caberte) guilty of Conduct Prejudicial to the Best Interest of the Service, and meted the penalty of six (6)-month suspension without pay. They, however, were exonerated from the charges for Dishonesty and Grave Misconduct.⁴

In arriving at such conclusion, the Ombudsman (Visayas) explained that the: (i) failure of the Bids and Awards Committee (BAC) members to conduct the bidding processes without a presence of observers from the Commission on Audit (COA); (ii) failure to require the winning bidders to submit warranty securities; and (iii) allowing the winning bidders to belatedly file their performance bond, are tantamount to Conduct Prejudicial to the Best Interest of the Service.⁵

Undaunted, Cerna, by himself, filed a petition before the CA assailing the Ombudsman's May 3, 2005 Decision. The petition was entitled "*Rene A. Cerna v. Leandro Ruiz*".⁶ The Ombudsman was not made a party to the case.

In a Decision⁷ dated April 30, 2009, the CA granted Cerna's petition and exonerated him from the administrative charges lodged against him. The CA ruled that Cerna was appointed as a provisional member of the BAC for the procurement of the materials needed for a specific project because of his technical expertise thereto;⁸ it is, thus, offensive to elementary norms of justice and fair play to hold Cerna liable with the rest of the regular BAC members for the latter's lapses in conducting the bidding processes without a presence of observers from the COA, and for its failure to require the winning bidders to submit warranty securities.⁹

It is at this point that the Ombudsman, on May 28, 2009, filed an Omnibus Motion to Intervene and Motion for Reconsideration (Filed with Plea for Leave of Court).¹⁰ The Ombudsman raised as issue its right to intervene. It insisted that it would be greatly and adversely affected should the CA exonerate Cerna.¹¹ It explained further that such would "result in restraining the x x x Ombudsman from exercising its right under the law as having full [d]isciplinary

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⁴ Id. at 143.

⁵ Id. at 142.

⁶ Id. at 85-116.

⁷ Id. at 42-59.

⁸ Id. at 54-55.

⁹ Id. at 56.

¹⁰ Id. at 60-66.

¹¹ Id. at 60-61.

authority over all elective and appointive officials of the government and its subdivisions, instrumentalities and agencies x x x.”¹² The Ombudsman likewise claimed that its motion for intervention is appropriate and allowed by the Rules of Court under Section 2 of Rule 19.¹³

Meanwhile, in the attached Motion for Reconsideration,¹⁴ the Ombudsman contended that based on the pieces of evidence presented and the admissions of the respondents in OMB-V-A-04-0399-H and OMB-V-A-04-0400-H, it properly determined the presence of some irregularities in the conduct of the public bidding where Cerna was part of, being a member of the BAC;¹⁵ and the project, of which Cerna contended that he was a provisional member, was one of the projects subject of the public bidding where the irregularities took place.¹⁶

The CA Ruling

On December 15, 2010, the CA issued the assailed resolution denying the Ombudsman’s Motion for Intervention for lack of merit.¹⁷ It ratiocinated that although it was the Ombudsman’s Decision that was appealed to the CA, it does not *ipso facto* vest the Ombudsman with legal interest to intervene; and in case of reversal of the Decision of the Ombudsman on appeal, it is the parties who bear the consequences thereof.¹⁸ The CA likewise ruled that the Ombudsman only filed the Motion for Intervention after it has rendered judgment in the case despite being served with notices; this was a direct violation of Section 2, Rule 19 of the Rules of Court which provides that motions for intervention may only be filed at anytime before the rendition of judgment.¹⁹ Accordingly, the CA disposed of the motion in this wise:

WHEREFORE, the Motion for Intervention is DENIED.

SO ORDERED.²⁰

Hence, the instant petition for review interposing a lone error:

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¹² Id. at 61.

¹³ Id. at 65.

¹⁴ Id. at 69-83.

¹⁵ Id. at 72.

¹⁶ Id. at 77.

¹⁷ Id. at 37-40.

¹⁸ Id. at 38.

¹⁹ Id. at 39-40.

²⁰ Id. at 40.

Issue

WHETHER THE HONORABLE [CA] GRAVELY ERRED IN DENYING [THE OMBUDSMAN]'S RIGHT TO INTERVENE IN THE PROCEEDINGS CONSIDERING THAT –

THE DECISION RENDERED BY THE HONORABLE [CA] EXONERATING [CERNA] FROM ADMINISTRATIVE LIABILITY ADVERSELY AFFECTED THE OFFICE OF THE OMBUDSMAN AND THE PUBLIC, THUS, IT IS NECESSARY TO INTERVENE FOR THE PROTECTION OF THE PUBLIC'S INTEREST.²¹

This Court's Ruling

The petition is bereft of merit.

At the very outset, the issue raised in the instant petition is no longer novel. In fact, recent jurisprudence has settled, once and for all, the issue of whether or not the Ombudsman may intervene in a case where its decision is subject of review or appeal.

Intervention is a remedy by which a third party, who is not originally impleaded in a proceeding, becomes a litigant for purposes of protecting his or her right or interest that may be affected by the proceedings. Intervention is not an absolute right but may be granted by the court when the movant shows facts which satisfy the requirements of the statute authorizing intervention. The allowance or disallowance of a motion to intervene is within the sound discretion of the court.²²

Section 1, Rule 19 of the Rules of Court provides that a court may allow intervention (a) if the movant has legal interest or is otherwise qualified, and (b) if the intervention will not unduly delay or prejudice the adjudication of right of the original parties and the intervenor's rights may not be protected in a separate proceeding.²³ Both requirements must concur.²⁴

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²¹ Id. at 21.

²² *Neptune Metal Scrap Recycling, Inc. v. MERALCO*, 789 Phil. 30, 37, (2016).

²³ Sec. 1. *Who may intervene.* - A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

²⁴ *Neptune Metal Scrap Recycling, Inc. v. MERALCO*, supra.

In the case of *Office of the Ombudsman v. Gutierrez (Gutierrez)*,²⁵ it has been settled that the Ombudsman has legal standing to intervene on appeal in administrative cases that it has resolved. Therein, this Court has cemented the rule that part of the Ombudsman's broad powers is to defend its decisions on appeal with the CA.²⁶ The Court reasoned, citing *Office of the Ombudsman v. Quimbo (Quimbo)*.²⁷

The issue of whether or not the Ombudsman possesses the requisite legal interest to intervene in the proceedings where its decision is at risk of being inappropriately impaired has been laid to rest in *Ombudsman v. De Chavez*. In the said case, the Court conclusively ruled that **even if the Ombudsman was not impleaded as a party in the proceedings, part of its broad powers include defending its decisions before the CA. And pursuant to Section 1 of Rule 19 of the Rules of Court, the Ombudsman may validly intervene in the said proceedings as its legal interest on the matter is beyond cavil.** x x x²⁸ (Emphasis supplied, citations omitted)

In so doing, this Court abandoned Its earlier ruling in the cases of *Office of the Ombudsman v. Magno (Magno)*,²⁹ *Office of the Ombudsman v. Sison (Sison)*,³⁰ and *Office of the Ombudsman v. Liggayu (Liggayu)*.³¹ In these cases, intervention by the Ombudsman was denied on the ground that it has no legal interest to intervene. It is worth noting that in *Liggayu*, this Court, in denying the Ombudsman's motion for intervention, explained:

x x x [T]he government party that can appeal is not the disciplining authority or tribunal which previously heard the case and imposed the penalty of demotion or dismissal from the service. The government party appealing must be the one that is prosecuting the administrative case against the respondent. Otherwise, an anomalous situation will result where the disciplining authority or tribunal hearing the case, instead of being impartial and detached, becomes an active participant in prosecuting the respondent. x x x³² (Emphasis omitted.)

As it stands, therefore, the Ombudsman's legal standing to intervene in appeals from its rulings in administrative cases has been settled and is the prevailing rule.

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²⁵ 811 Phil. 389 (2017).

²⁶ Id. at 406-407.

²⁷ 755 Phil. 41 (2015).

²⁸ Id. at 52.

²⁹ 529 Phil. 636 (2008).

³⁰ 626 Phil. 598 (2010).

³¹ 688 Phil. 443 (2012).

³² Id. at 453.

Likewise, in *Gutierrez*,³³ this Court further clarified that despite the legal standing of the Ombudsman to intervene, the motion to intervene and the pleading-in-intervention must be filed prior to the rendition of a judgment, pursuant to Section 2, Rule 19 of the Rules of Court,³⁴ lest its motion be denied.³⁵

In that case, this Court in affirming the denial of the motion for intervention by the CA due to the belated filing of the motion for intervention, which was filed after rendition of judgment, ratiocinated:

It should be noted that the Office of the Ombudsman was aware of the appeal filed by Sison. The Rules of Court provides that the appeal shall be taken by filing a verified petition for review with the CA, with proof of service of a copy on the court or agency *a quo*. Clearly, the Office of the Ombudsman had sufficient time within which to file a motion to intervene. As such, its failure to do so should not now be countenanced. The Office of the Ombudsman is expected to be an “activist watchman,” not merely a passive onlooker.³⁶ (Emphasis and citations omitted)

As things are, the case of *Office of the Ombudsman v. Bongais (Bongais)*³⁷ clarified further that although Section 2, Rule 19 of the Rules of Court requires the intervention prior to the rendition of judgment, such rule is not inflexible.³⁸ Therein, this Court explained that jurisprudence is replete with instances where intervention was allowed even beyond the period prescribed in the Rules of Court when demanded by the higher interest of justice; to afford indispensable parties, who have not been impleaded, the right to be heard; to avoid grave injustice and injury and to settle once and for all the substantive issues raised by the parties; or, because of the grave legal issues raised. Stated otherwise, the rule may be relaxed and intervention may be allowed subject to the court’s discretion after consideration of the appropriate circumstances.³⁹ After all, Rule 19 of the Rules of Court is a rule of procedure whose object is to make the powers of the court fully and completely available for justice; its purpose is not to hinder or delay, but to facilitate and promote the administration of justice.⁴⁰

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³³ *Office of the Ombudsman v. Gutierrez*, supra note 25.

³⁴ Sec. 2. *Time to intervene*. — The motion to intervene may be filed at any time before rendition of judgment by the trial court. A copy of the pleading-in-intervention shall be attached to the motion and served on the original parties.

³⁵ *Office of the Ombudsman v. Gutierrez*, supra note 25 at 408.

³⁶ *Office of the Ombudsman v. Sison*, supra note 30 at 613.

³⁷ G.R. No. 226405, July 23, 2018, 873 SCRA 276.

³⁸ *Id.* at 292.

³⁹ *Id.* at 292-293.

⁴⁰ *Id.* at 292 citing *Quinto v. Commission on Elections*, 627 Phil. 193, 218-219 (2010), *Lim v. Pacquing*, 310 Phil. 722, 771 (1995). See also *Tahanan Development Corporation v. CA*, 203 Phil. 652 (1982); *Director of Lands v. CA*, 190 Phil. 311 (1981); and *Mago v. CA*, 363 Phil. 225 (1999). See also *Quinto v. Commission on Elections*, 627 Phil. 193, 219 (2010), citing *Heirs of Restrivera v. De Guzman*, 478 Phil. 592, 602 (2004).

This Court deems it necessary to cite in verbatim the enumeration made by this Court in the *Bongais Case* of the instances where a belated filing by the Ombudsman of a motion to intervene was allowed, viz.:

Concrete examples of the exception to the period rule in intervention are the cases of *Quimbo* and *Macabulos*, cited by the Ombudsman, where the Court allowed the Ombudsman to intervene despite the fact that the CA had already rendered its decision. Other examples are *Ombudsman v. Santos (Santos)* and *Ombudsman v. Beltran (Beltran)*. Notably, the Court's action allowing the Ombudsman's belated intervention in these cases present a contrary argument to the conclusion reached in *Gutierrez* as regards *Sison*, *Magno*, and *Liggayu's* deviation from *Samaniego*, as discussed above.

In *Quimbo* and *Macabulos*, as well as *Santos* and *Beltran*, it may be observed **that apart from the sufficiency of the Ombudsman's findings of administrative liability, the validity or constitutionality of the Ombudsman's powers and mandate was put in issue.** For example, the issue of whether or not the Ombudsman has the power to directly impose sanctions on the public official or employee it found to be at fault was raised and addressed by the Court in *Quimbo*, *Santos*, and *Beltran*. For this reason, the Court considered the Ombudsman as the real party-in-interest, considering the "essence of the Ombudsman's constitutionally and statutorily conferred powers establishing its clear legal interest in ensuring that its directive be implemented." *Macabulos*, **on the other hand, presented the questions of whether or not the Ombudsman is barred by prescription from investigating a complaint filed more than one (1) year from the occurrence of the act complained of, and whether or not the penalty of dismissal pending appeal is immediately executory.** The Court, in *Macabulos*, allowed the intervention, as it declared that "x x x the appellate court not only reversed the order of the Ombudsman but also delved into the investigatory power of the Ombudsman. Since the Ombudsman was not impleaded as a party when the case was appealed to the [CA] in accordance with Section 6, Rule 43 of the Rules of Court, the Ombudsman had no other recourse but to move for intervention and reconsideration of the decision in order to prevent the undue restriction of its constitutionally mandated investigatory power." **Thus, it would appear that the Court allowed the Ombudsman's belated intervention in *Quimbo*, *Macabulos*, *Santos*, and *Beltran* because of the grave legal issues raised that affected the Ombudsman's mandate and power, which, as mentioned, may be considered as an exception to the general rule reinforced in *Gutierrez* that the intervention must be timely made by the Ombudsman before rendition of judgment.**⁴¹ (Emphasis supplied, citations omitted)

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⁴¹ Id. at 293-294.

Measured against this yardstick, this Court is inclined to affirm the denial of the Ombudsman's motion for intervention, not only due to its belated filing but more so because it failed to raise grave legal issues affecting the Ombudsman's mandate and power. Further, the sought intervention is neither demanded by the higher interest of justice nor is it to avoid grave injury and justice.

To recall, in the Omnibus Motion to Intervene and Motion for Reconsideration, the only issue raised was the sufficiency of the Ombudsman's findings of administrative liability against Cerna. The Ombudsman insisted that it properly determined the presence of irregularities in the conduct of public bidding were Cerna was part of, and nothing more.⁴² The power of the Ombudsman and its mandate was never questioned. Accordingly, the Court finds that none of the excepting circumstances as above-enumerated obtain in this case.

Furthermore, records reveal that, although it was not made party to the case before the CA, the Ombudsman was furnished copies of the pleadings, resolutions and decisions of the CA.⁴³ Notwithstanding, the Ombudsman did not take any action until the CA had rendered its decision exonerating Cerna of any administrative liability. Worse, no justifiable explanation was offered for its belated attempt to intervene. In choosing not to timely act, the Ombudsman had clearly waived its legal standing to intervene.

From the foregoing, this Court holds and so rules that the general rule provided under Section 2, Rule 19 of the Rules of Court applies. Needless to state, the instant petition must be denied. Corollarily, this Court need not belabor on the merits of the substantive arguments raised by the Ombudsman on Cerna's administrative liability.

All told, settled now is the doctrine that the Ombudsman has a legal standing to intervene in appeals from its rulings in administrative cases. A motion for intervention must, however, be filed prior to rendition of judgment. Otherwise, it will be dismissed for having been belatedly filed, unless warranted by certain excepting circumstances. Unfortunately for the Office of the Ombudsman, not only did it file a motion for intervention after the CA has rendered a decision, its case does not fall within the ambit of the excepting circumstances, as above discussed.

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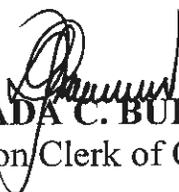
⁴² *Rollo*, pp. 72-77.

⁴³ *Id.* at 40.

WHEREFORE, the petition is **DENIED** for lack of merit. The assailed Resolution promulgated on December 15, 2010 of the Court of Appeals in CA-G.R. CEB-SP No. 01339 is hereby **AFFIRMED**.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *3/24/21*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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N/A