



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **03 March 2021** which reads as follows:*

“G.R. No. 215695 (Thelma T. Figueroa and Pablo E. Figueroa v. Land Bank of the Philippines, Margarito Teves as then President of LBP, Wilfredo C. Maldia as First Vice-President/Head of Mindanao Branches Group; Cresencio R. Selespara as Head Of Land Bank’s Mindanao Branches; Delia Ladao as First Vice-President/Head of Land Bank Velez Branch; Carminda G. Urot as Operations Supervisor/Cashier of Land Bank Velez Branch; Filomena Neri as Bookkeeper of Land Bank Velez Branch; Rene Gallo, First Vice-President of Land Bank Velez Branch; Lilia S. Capistrano as Head of Land Bank Velez Branch; Erna G. Maagad as Department Manager/Head of Bukidnon Lending Center; Celso Barberan as Head Officer In Charge of the Bukidnon Lending Center; Angelito Carbonilla, as Head of the Bukidnon Lending Center; Paul Cubero as Head of the Bukidnon Learning Center; Oscar Tagayuma, Accountant of the Bukidnon Lending Center; Cesar Magallanes as Head of the Bukidnon Lending Center; Hubert S. Quiblat as Department Manager III of Land Bank Malaybalay Highway Branch; Milo Justiniano as Department Manager III, Malaybalay Highway Branch; Venancio B. Reyes as First Vice-President for Region 10, and Office of the Ombudsman). — We review in this Petition for *Certiorari*¹ under Rule 65 of the Rules of Court the Office of the Ombudsman’s Resolution dated March 31, 2014 dismissing the criminal complaint for violation of the Anti-Graft and Corrupt Practices Act due to lack of probable cause.

ANTECEDENTS

On March 5, 1997, Spouses Pablo and Thelma Figueroa (Spouses Figueroa) applied for a ₱25,000,000.00 credit facility with a fixed interest rate of 16% *per annum* under the Tourism Loan Program between Land

¹ *Rollo*, pp. 3-24.

Bank of the Philippines (LBP) and the Social Security Services (SSS).² The program is a conduit arrangement between LBP and SSS where funds or credit line facility are made available to the bank which shall in turn lend to its eligible borrowers. However, Spouses Figueroa's loan application was denied.³ LBP then offered Spouses Figueroa a term loan for the same amount using its internal funds but with an interest rate of 16.5% subject to quarterly repricing. Spouses Figueroa agreed and executed Promissory Note No. 97-015⁴ and a real estate mortgage over the properties registered under Transfer Certificate of Title Nos. T-16699 and T-51226. A net amount of ₱24,212,500.00 was credited to Spouses Figueroa's savings account. Later, Spouses Figueroa also availed several "hold-out" loans from LBP.

Meanwhile, Spouses Figueroa moved to reconsider the denial of their loan application under the program. The SSS gave due course to Spouses Figueroa's application and issued to LBP a check in the amount of ₱25,000,000.00. The LBP converted the loan given to Spouses Figueroa from internal funds into relending money under the program with interest rate of 16% *per annum*. The Spouses Figueroa executed Promissory Note No. 97-562-A⁵ which cancelled Promissory Note No. 97-015. The LBP then paid Spouses Figueroa's loan under the program.

Spouses Figueroa reneged on their obligations despite repeated demands.⁶ As such, the LBP sought to foreclose the mortgaged properties. Also, the LBP debited Spouses Figueroa's dollar accounts to settle their "hold-out" loans. Aggrieved, Spouses Figueroa filed a complaint against the LBP officials before the Office of the Ombudsman for violation of Section 3(e) and (f) of the Anti-Graft and Corrupt Practices Act. Specifically, Spouses Figueroa alleged that the LBP officials acted with manifest partiality and evident bad faith. Spouses Figueroa insisted that the LBP officials should not have approved their loan application using the bank's internal funds and applied their dollar deposits to their monetary obligation. Moreover, the LBP officials were motivated by gain or benefit for themselves for the purpose of favoring an interested party. On March 31, 2014, the Ombudsman dismissed the complaint for lack of probable cause,⁷ thus:

In this case, the records are bereft of proof that the herein respondents acted with manifest partiality, evident bad faith or gross inexcusable negligence when they (1) approved the loan application of the complainants and entered into a Contract of Loan with them; (2) received the SSS check in the amount of Php25,000,000.00; (3) immediately paid the SSS loan even before its due date; (4) filed an

² *Id.* at 42-46.

³ *Id.* at 47-48.

⁴ *Id.* at 49.

⁵ *Id.* at 56.

⁶ *Id.* at 59-67.

⁷ *Id.* at 1140-1153.

Application for Extrajudicial Foreclosure before the RTC of Bukidnon; and (5) applied complainants' dollar deposit as payment for their hold-out loans.

x x x x

[R]ecords revealed that complainants knowingly and freely signed Promissory Note No. 97-015 dated 14 May 1997, which expressly provided an interest rate of 16.25%. By signing the same, complainants consented to the terms and conditions imposed by LBP and therefore they cannot now claim that respondents failed to inform them of the interest rate or any revision in the terms and condition of their Loan Agreement.

Moreover, the allegation of bad faith against respondents is further negated when upon approval of the Php25,000,000.00 loan under the KASAPI IV Program, respondents immediately cancelled PN No. 97-015 and replaced the same with PN No. 97-562-A with a stipulated interest of 16% per annum to comply with the earlier agreement of the parties to peg the interest rate at 16% per annum when the loan under the KASAPI IV Program was approved.

x x x x

The same thing can be said with respect to complainants' hold-out loans. Records revealed that in accordance with the terms and conditions of the Promissory Notes, LBP could cancel complainants CTD's and apply their dollar deposits against their outstanding loan. Since complainants never made a single payment on their hold-out loan, it was LBP's prerogative to apply complainants' dollar deposits against their outstanding loan. At any rate, the application of payments was done with the knowledge and consent of complainants, as evidenced by their signature appearing on the CTD's.

x x x x

In the case at hand, the records are bereft of evidence to indicate that respondents' actions were motivated by any gain or benefit x x x for the purpose of favoring an interested party or discriminating against another. Nor was there any proof that herein respondents acted with manifest partiality, evident bad faith or gross inexcusable negligence x x x.

x x x x

WHEREFORE, this complaint is DISMISSED.⁸

On July 30, 2014, Spouses Figueroa received the Ombudsman's Resolution dismissing their complaint. On August 14, 2014, Spouses Figueroa filed a motion for reconsideration. On September 26, 2014, the Ombudsman denied the motion for having been filed beyond the reglementary period of five days from notice and for lack of merit,⁹ to wit:

⁸ *Id.* at 1149-1153.

⁹ *Id.* at 1175-1180

At the outset, it must be stated that the present Motion for Reconsideration was filed out of time. Complainant-movants' reliance that they have 15 days from receipt of the assailed Resolution to file their Motion for Reconsideration is erroneous. **Section 27 of R.A. [6770], as amended by Section 7 par. (a), Rule II of Administrative Order No. 7 (Rules of Procedure of the Office of the Ombudsman), provides:**

“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 x x x.”

In the present case, records revealed that the assailed Resolution was received by complainant-movants on 30 July 2014. They, however, filed the present Motion for Reconsideration only on 14 August 2014 or 15 days from receipt of the said Resolution. Hence, the said Motion was filed way beyond the reglementary period allowed by this Office.

The period for filing a Motion for Reconsideration is non-extendible. Thus, the failure of the complainant-movants to file their Motion for Reconsideration within the reglementary period renders the Resolution sought to be reconsidered final and executory, thereby depriving this Office the power to alter, modify or reverse the same.

This notwithstanding, even if this Office brushes aside the procedural lapse, there appears to be no substantial arguments in the Motion for Reconsideration sufficient for this Office to depart from the pronouncements made in the assailed Resolution.

x x x x

WHEREFORE, the Motion for Reconsideration filed by Spouses THELMA FIGUEROA and PABLO FIGUEROA is DENIED.¹⁰ (Emphases supplied.)

Hence, this recourse. Spouses Figueroa argues that the Ombudsman Resolution dismissing the complaint for lack of probable cause has not yet attained finality because the ruling in *Fabian v. Hon. Desierto*¹¹ already declared Section 27 of Republic Act (RA) No. 6770¹² or The Ombudsman Act of 1989 unconstitutional.¹³ Moreover, sufficient evidence exists to charge the LBP officials with violation of the Anti-Graft and Corrupt Practices Act.

RULING

Section 13(8), Article XI of the Constitution and Section 18 of RA No. 6770 empowered the Ombudsman to promulgate its rules of procedure for the effective exercise or performance of its powers, functions, and duties. Furthermore, under Section 27 of RA No. 6770, the Ombudsman

¹⁰ *Id.* at 1177-1180.

¹¹ 356 Phil. 787 (1998).

¹² Approved on November 17, 1989.

¹³ *Supra* note 11, at 808.

has the authority to amend or modify its rules as the interest of justice may require,¹⁴ thus:

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 Office 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.

Contrary to Spouses Figueroa's stance, the *Fabian* ruling does not render void all items in Section 27 of RA No. 6770. The only provision affected is the last paragraph which provides that "*in all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court.*" This portion was rendered invalid because it violated Section 30, Article VI of the Constitution proscribing the enactment of a statute which increases the appellate jurisdiction of the Court without its advice and concurrence. In other words, the only effect of the *Fabian* ruling is the designation of the Court of Appeals as the proper forum and of Rule 43 as the proper mode of appeal from Ombudsman's decisions in administrative disciplinary cases, which are not final and unappealable.¹⁵ All other matters in Section 27 of RA No. 6770 remain binding, such as the reglementary period of five days from notice for filing a motion for reconsideration.

¹⁴ *Cobarde-Gamallo v. Escandor*, 811 Phil. 378, 388 (2017). See also *Buencamino v. CA*, 549 Phil. 511, 517 (2007).

¹⁵ *Lapid v. CA*, 390 Phil. 236, 247 (2000).

Here, the Ombudsman dismissed Spouses Figueroa's complaint on March 31, 2014 for lack of probable cause. Spouses Figueroa received the Ombudsman's Resolution on July 30, 2014 and they have five days or until August 4, 2014 to move for a reconsideration. Nonetheless, Spouses Figueroa filed the motion for reconsideration only on August 14, 2014 or 10 days beyond the five-day reglementary period. Hence, the Ombudsman has no more jurisdiction to revisit its March 31, 2014 Resolution considering that it has become final and executory absent a timely motion for reconsideration. It is settled that all the issues between the parties are deemed resolved and laid to rest once a judgment becomes final.¹⁶ No other action can be taken on the decision¹⁷ except to order its execution.¹⁸ The courts cannot modify the judgment to correct perceived errors of law or fact.¹⁹ Public policy and sound practice dictate that every litigation must come to an end at the risk of occasional errors.²⁰ This is the doctrine of immutability of a final judgment. The rule, however, is subject to well-known exceptions, namely, the correction of clerical errors, *nunc pro tunc* entries, void judgments, and supervening events.²¹ Not one of these exceptions is present in this case.

At any rate, Spouses Figueroa is questioning the correctness of the Ombudsman's appreciation of facts. On this point, it bears emphasis that the Ombudsman has the discretion to determine whether a criminal case should be filed or not. The Ombudsman may dismiss the complaint forthwith if he finds it insufficient in form or substance. In fact, the Ombudsman has the power to dismiss a complaint outright without going through a preliminary investigation.²² In this case, the Ombudsman has carefully studied the merits of the criminal complaint and found that Spouses Figueroa failed to establish probable cause against the LBP officials for violation of the Anti-Graft and Corrupt Practices Act. Verily, the function of determining what is sufficient evidence to establish probable cause is the job of the Ombudsman. The consistent policy of the Court is not to interfere with the Ombudsman's power to investigate and prosecute cases absent grave abuse of discretion.²³

FOR THESE REASONS, the petition is DISMISSED.

SO ORDERED.” (Rosario, J., on leave.)

¹⁶ *Ang v. Dr. Grageda*, 523 Phil. 830, 847 (2006).

¹⁷ See *Natalia Realty, Inc. v. Judge Rivera*, 509 Phil. 178, 186 (2005).

¹⁸ *Times Transit Credit Coop., Inc. v. National Labor Relations Commission*, 363 Phil. 386, 392 (1999), citing *Yu v. National Labor Relations Commission*, 315 Phil. 107, 120 (1995).

¹⁹ *Alba Patio de Makati v. National Labor Relations Commission*, 278 Phil. 370, 376 (1991).

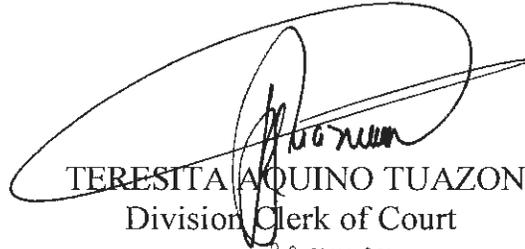
²⁰ *Paramount Insurance Corp. v. Judge Japzon*, 286 Phil. 1048, 1056 (1992).

²¹ *FGU Insurance Corp. v. RTC of Makati City, Branch 66*, 659 Phil. 117, 123 (2011). See also *Heirs of Maura So v. Oblisca*, 566 Phil. 397, 408 (2008), citing *Sacdalan v. CA*, 472 Phil. 652, 670-671 (2004).

²² *Enemecio v. Office of the Ombudsman*, 464 Phil. 102, 115 (2004).

²³ *Dr. Brito v. Office of the Deputy Ombudsman for Luzon*, 554 Phil. 112, 126-127 (2007).

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court
28 MAY 2021

LAW OFFICE OF CALANOG & ASSOCIATES (reg)
Counsel for Petitioners
Suite 1126, 11th Floor, Cityland Shaw Tower
St. Francis St. cor. Shaw Blvd.
1550 Mandaluyong City

LEGAL SERVICES GROUP (reg)
Litigation Department
Counsel for Respondent LBP
31st Floor, Land Bank Plaza
No. 1598 M.H. del Pilar cor. Dr. Quintos Sts.
Malate, 1004 Manila

OFFICE OF THE OMBUDSMAN (reg)
4th Floor, Ombudsman Building
Agham Road, Diliman, Quezon City
(OMB-C-C-13-0020)

JUDGMENT DIVISION (x)
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)
LIBRARY SERVICES (x)
[For uploading pursuant to A.M. No. 12-7-SC]

OFFICE OF THE CHIEF ATTORNEY (x)
OFFICE OF THE REPORTER (x)
PHILIPPINE JUDICIAL ACADEMY (x)
Supreme Court, Manila

COURT OF APPEALS (reg)
Mindanao Station
Cagayan de Oro City
CA-G.R. CV No. 01641-MIN

Please notify the Court of any change in your address.
GR215695. 3/03/2021B(114)URES