



Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
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FIRST DIVISION

OFFICE OF THE OMBUDSMAN,  
Petitioner,

G.R. No. 193336

Present:

LEONARDO-DE CASTRO, *CJ.*,  
Chairperson,  
BERSAMIN,  
DEL CASTILLO,  
JARDELEZA,\* and  
TIJAM, *JJ.*

- versus -

Promulgated:

ELMER M. PACURIBOT,  
Respondent.

SEP 26 2018

X-----

DECISION

LEONARDO-DE CASTRO, *CJ.*:

The Office of the Ombudsman filed this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Court of Appeals Decision<sup>1</sup> dated August 7, 2009 and Resolution<sup>2</sup> dated July 12, 2010 in CA-G.R. SP No. 02895-MIN which set aside the directive of the OMB for the immediate implementation, even before finality, of a decision it rendered in an administrative case against respondent Elmer M. Pacuribot penalizing him with nine (9) months suspension from office for Immorality or Disgraceful or Immoral Conduct.

The facts are not disputed.

Respondent, Municipal Treasurer of El Salvador, Province of Misamis Oriental, was administratively charged by his wife before the Ombudsman of Immorality and Conduct Unbecoming of Public Officer allegedly for fathering two children with another woman. The case against respondent was docketed as OMB-M-A-07-029-B.

\* On official leave.

<sup>1</sup> *Rollo*, pp. 35-42; penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Romulo V. Borja and Edgardo T. Lloren.

<sup>2</sup> *Id.* at 29-33.

After the proceedings, the Ombudsman rendered its Decision<sup>3</sup> dated July 23, 2008 against respondent, which was approved by then Acting Ombudsman Orlando C. Casimiro on November 27, 2008, disposing of the case as follows:

**WHEREFORE, foregoing premises considered, this Office finds substantial evidence to hold ELMER PACURIBOT y MAGANA guilty of Immorality or Disgraceful and Immoral Conduct. In the absence of mitigating and aggravating circumstances, he is thus meted the penalty of NINE (9) MONTHS SUSPENSION pursuant to Sec. 52.A.15, Rule IV of CSC Resolution No. 991936, otherwise known as the Uniform Rules on Administrative Cases in the Civil Service, in relation to Sec. 54.b, Sec. 56.d, and Sec. 58.d, Rule IV thereof. On the other hand, the charge for Conduct Unbecoming of a Public Officer is hereby DISMISSED. Let a copy of this Decision be entered in respondent's 201 (Personal) File.**

Section 7, Rule III (Procedure in Administrative Cases) of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 17, provides:

X X X X

**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 an officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be ground for disciplinary action against said officer.

Moreover, Memorandum Circular No. 61, Series of 2006 dated 11 April 2006 of the Ombudsman reads:

X X X X

**The filing of a motion for reconsideration or a petition for review before the Office of the Ombudsman does not operate to stay the immediate implementation of the foregoing Ombudsman decisions, orders or resolutions.**

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<sup>3</sup> Id. at 61-69.

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Only a Temporary Restraining Order (TRO) or a Writ of Preliminary Injunction, duly issued by a court of competent jurisdiction, stays the immediate implementation of the said Ombudsman decisions, orders or resolutions.

**Accordingly, the Regional Director of the Bureau of Local Government Finance, Regional Office No. X is hereby directed to IMMEDIATELY implement the penalty imposed against ELMER PACURIBOT y MAGANA and promptly submit to this Office, within ten (10) days from receipt hereof, a Compliance Report, indicating the subject OMB case number.**

Compliance is respectfully enjoined consistent with Sec. 3(e) of R.A. No. 3019 (Anti-Graft and Corrupt Practices Act) and Sec. 15(3) of R.A. No. 6770 (Ombudsman Act of 1989).<sup>4</sup>

On April 21, 2009, respondent filed his Motion for Partial Reconsideration of the July 23, 2008 Decision of the Ombudsman seeking for the reversal of the judgment finding him administratively liable for Immorality or Disgraceful and Immoral Conduct and for the dismissal of the case against him. Respondent, in the same motion, asked that the directive of the Ombudsman for the immediate implementation of the said decision be recalled pending resolution of the said motion, or his appeal in case he files one.<sup>5</sup>

However, on April 23, 2009, in compliance to the directive of the Ombudsman, the Bureau of Local Government Finance, Region X, through Regional Director Carmelane G. Tugas, issued Regional Office Special Personnel Order No. 015-2009 ordering the suspension of respondent from his office for a period of nine months.<sup>6</sup>

On May 5, 2009, respondent filed before the Court of Appeals a Petition for *Certiorari* under Rule 65 of the Rules of Court, with a prayer for a temporary restraining order, assailing and seeking for the setting aside of the Ombudsman's directive for the immediate implementation of its July 23, 2008 Decision against respondent even before said decision attained finality.<sup>7</sup>

In his Petition before the Court of Appeals, respondent underscored the Court's pronouncement in *Office of the Ombudsman v. Samaniego*<sup>8</sup> that the Ombudsman Act expressly gives the parties the right to appeal from an order, directive or decision of the Ombudsman in disciplinary cases where the penalty imposed is other than public censure, reprimand, or suspension of not more than one month or a fine not equivalent to one month salary, which right generally carry with it the stay of execution of the appealed

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<sup>4</sup> Id. at 66-68.

<sup>5</sup> Id. at 75-84.

<sup>6</sup> Id. at 74.

<sup>7</sup> Id. at 43-60.

<sup>8</sup> 586 Phil. 497 (2008).

order, directive, or decision pending its final disposition. Respondent claimed that the principle decreed in *Samaniego* as to the stay of execution of an appealed decision of the Ombudsman applies at the instance a motion for reconsideration of a decision of the Ombudsman has been filed since the filing of such motion is preparatory to the filing of an appeal should such motion be subsequently denied.

Respondent pointed out that the July 23, 2008 Decision of the Ombudsman was not yet final and executory as he still had a right to appeal said decision given that the penalty imposed upon him was nine (9) months suspension from office. He also claimed that he filed his April 21, 2009 Motion for Partial Reconsideration as a prerequisite to the filing of an appeal. He asserted that his suspension from office can only be then implemented after the denial of his motion for reconsideration of and upon the lapse of the period to appeal the said Ombudsman decision or, in case he perfected an appeal, only after its denial. Thus, according to respondent, the Ombudsman seriously erred in ordering the immediate execution of its subject decision.

The Court of Appeals issued a Resolution dated June 24, 2009 denying respondent's application for the issuance of a TRO, ruling that an injunctive writ will not lie where the acts sought to be enjoined have already been consummated and/or the issuance thereof would prejudice the disposition of the main petition.<sup>9</sup>

On August 7, 2009, the Court of Appeals promulgated its assailed Decision finding respondent's petition meritorious and, thus, setting aside the Ombudsman's directive for the immediate implementation of respondent's suspension. The appellate court agreed with respondent that the prevailing jurisprudence then as to the stay of execution of the Ombudsman's administrative order, directive, or decision where the penalty imposed is other than public censure, reprimand, or suspension of not more than one month, or a fine not equivalent to one month salary, was the ruling as pronounced in *Samaniego* on 2008 – that said order, directive, or decision becomes final and executory only after the lapse of the period to appeal if no appeal is perfected, or upon the denial of the appeal. The appellate court disposed as follows:

WHEREFORE, premises considered, the petition is GRANTED. The directive for the immediate implementation of the nine (9) month suspension imposed against [respondent] Elmer M. Pacuribot, as embodied in public respondent's July 23, 2008 Decision, is SET ASIDE.

The Regional Director, Bureau of Local Government Finance, Department of Finance, Region X, Cagayan de Oro City, is hereby directed to recall Regional Office Special Personnel Order No. 015-2009 dated April 23, 2009, implementing the immediate suspension of petitioner, and to reinstate petitioner to his present position as Municipal

<sup>9</sup> *Rollo*, pp. 108-110.

Treasurer of El Salvador, Misamis Oriental, pending resolution of petitioner's motion for a partial consideration of public respondent's July 23, 2008 Decision finding petitioner guilty of Immorality or Disgraceful and Immoral Conduct.<sup>10</sup>

The Court of Appeals likewise denied the Ombudsman's motion for reconsideration of the above decision in its Resolution dated July 12, 2010.

The Ombudsman, hence, interposed the present Petition, through the Office of the Solicitor General, alleging the following ground and arguments in support thereof:

V.

GROUND FOR THE ALLOWANCE  
OF THE PETITION

THE TWENTY-FIRST DIVISION OF THE COURT OF APPEALS, CAGAYAN DE ORO STATION, GRAVELY ERRED IN FINDING THAT PETITIONER COMMITTED GRAVE ABUSE OF DISCRETION AND IN SETTING ASIDE THE IMMEDIATE IMPLEMENTATION OF PETITIONER'S DECISION IN OMB CASE NO. OMB-M-A-07-029-B.

VI.

DISCUSSION

- I. The subject decision of the Office of the Ombudsman is immediately executory pursuant to Section 7, Rule III of Administrative Order No. 07, as amended by Administrative Order No. 17[; and]
- II. With all due respect, the Honorable Court's ruling in the *Samaniego* case did not effectively divest the Office of the Ombudsman of its disciplinary and rule making powers.<sup>11</sup>

In his Comment<sup>12</sup> filed on July 1, 2011, respondent asserts that the suspension imposed upon him by the Ombudsman should not be made immediately executory pending finality of his appeal pursuant to the Court's pronouncement in *Samaniego* on 2008. However, respondent also acknowledges that the Court already modified its ruling in *Samaniego* on 2010 whereby the Court overturned and corrected its earlier ruling that the Ombudsman's decision rendered in an administrative case is immediately executory pending appeal and may not be stayed by the filing of the appeal or the issuance of an injunctive writ. He also conceded that the issue before the Court may be deemed moot and academic as he had already served in full his nine months suspension from office and since then he was unable to report to work because his health condition deteriorated fast and became bedridden. Respondent urges the Court, nonetheless, to resolve the present

<sup>10</sup> Id. at 41.

<sup>11</sup> Id. at 8-9 and 15.

<sup>12</sup> Id. at 133137.

petition in his favor, as well as for the benefit of those similarly situated, by reverting to and applying the ruling which the Court adopted in *Samaniego* on 2008 which he claims as more humane and in keeping with due process.

The Ombudsman filed their Reply<sup>13</sup> on November 9, 2011.

In a Minute Resolution<sup>14</sup> dated July 23, 2014, the Court ordered the parties to submit their respective memoranda. The Ombudsman submitted their Memorandum<sup>15</sup> on October 23, 2014. Respondent, on the other hand, failed to comply with the directive, thus, the Court issued Minute Resolution<sup>16</sup> dated February 11, 2015 requiring respondent's counsel to comply and to show cause why he should not be disciplinary dealt with or held in contempt for his failure to comply. However, respondent and/or his counsel still failed to comply even after the lapse of the period to do so.

On February 10, 2017, counsel for respondent, Atty. Jerry M. Pacuribot, filed a Manifestation<sup>17</sup> informing the Court that respondent already died way back in October 3, 2011, attaching therewith a certified true copy from the National Statistics Authority of the Certificate of Death of respondent issued by the Office of the Civil Registrar General. In the same Manifestation, counsel for respondent apologized for the delay in giving information regarding respondent's death, explaining that he almost forgot about this case as he was then grieving so much about the death of respondent who happened to be his brother.

In a Minute Resolution<sup>18</sup> dated March 27, 2017, the Court noted the Manifestation of Atty. Pacuribot regarding his brother's death and granted the prayer that the same be given due consideration in the final resolution of the case.

The Court grants the Petition.

At the outset, the death of respondent during the pendency of the instant case has not rendered moot and academic the issue under consideration, which is whether or not there was grave abuse of discretion on the part of the Ombudsman when it ordered the immediate execution of its July 23, 2008 Decision in OMB-M-A-07-029-B, suspending respondent for nine months for Immorality or Disgraceful and Immoral Conduct even before finality of said decision.

Even assuming that respondent died pending his reconsideration or appeal of the Ombudsman's July 23, 2008 Decision in OMB-M-A-07-029-B, his death does not necessarily preclude the disposition of his

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<sup>13</sup> Id. at 149-154.

<sup>14</sup> Id. at 157-158.

<sup>15</sup> Id. at 159-176.

<sup>16</sup> Id. at 178.

<sup>17</sup> Id. at 198-200.

<sup>18</sup> Id. at 212-213.

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reconsideration or appeal with finality. Jurisdiction over an administrative case is not lost by the fact that the respondent public official had ceased to be in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications.<sup>19</sup> In *Hermosa v. Paraiso*,<sup>20</sup> the Court proceeded to resolve respondent public official's administrative case notwithstanding that death has already separated him from the service to the end that respondent's heirs may not be deprived of any retirement gratuity and other accrued benefits that they may be entitled to receive as a result of respondent's death in office, as against a possible forfeiture thereof should his guilt have been duly established at the investigation.

As to the merits of the present Petition, jurisprudence has long settled with finality that the penalty imposed by the Ombudsman in an administrative case is immediately executory and that the filing or pendency of an appeal from such decision shall not stay its execution.

No less than respondent himself pointed out that the Court has set aside and corrected its pronouncement in its 2008 Decision in *Samaniego* relating to the issue at bar. In an *En Banc* Resolution promulgated on October 5, 2010 in *Samaniego*, the Court upheld Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 17 dated September 15, 2003, and ruled that a decision of the Ombudsman in an administrative case is immediately executory and that an appeal shall not stop such decision from being executed as a matter of course.<sup>21</sup> The Court expounded as follows:

Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 17 dated September 15, 2003, provides:

SEC. 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**

<sup>19</sup> *Perez v. Abiera*, 159-A Phil. 575, 580 (1975).

<sup>20</sup> 159 Phil. 417, 419 (1975).

<sup>21</sup> 646 Phil. 445, 449 (2010).

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**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 such officer. x x x.

The Ombudsman's decision imposing the penalty of suspension for one year is *immediately executory pending appeal*. It cannot be stayed by the mere filing of an appeal to the CA. This rule is similar to that provided under Section 47 of the Uniform Rules on Administrative Cases in the Civil Service.

In the case of *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of the DPWH*, we held:

The Rules of Procedure of the Office of the Ombudsman are clearly procedural and no vested right of the petitioner is violated as he is considered preventively suspended while his case is on appeal. Moreover, in the event he wins on appeal, he shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal. Besides, there is no such thing as a vested interest in an office, or even an absolute right to hold office. Excepting constitutional offices which provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office.

Following the ruling in the above cited case, this Court, in *Buencamino v. Court of Appeals*, upheld the resolution of the [Court of Appeals] denying Buencamino's application for preliminary injunction against the immediate implementation of the suspension order against him. The Court stated therein that the [Court of Appeals] did not commit grave abuse of discretion in denying petitioner's application for injunctive relief because Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman was amended by Administrative Order No. 17 dated September 15, 2003.

Respondent cannot successfully rely on Section 12, Rule 43 of the Rules of Court which provides:

SEC. 12. *Effect of appeal*. — The appeal shall not stay the award, judgment, final order or resolution sought to be reviewed unless the Court of Appeals shall direct otherwise upon such terms as it may deem just.

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In the first place, the Rules of Court may apply to cases in the Office of the Ombudsman suppletorily only when the procedural matter is not governed by any specific provision in the Rules of Procedure of the Office of the Ombudsman. Here, Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended, is categorical, an appeal shall not stop the decision from being executory.

Moreover, Section 13(8), Article XI of the Constitution authorizes the Office of the Ombudsman to promulgate its own rules of procedure. In this connection, Sections 18 and 27 of the Ombudsman Act of 1989 also provide that the Office of the Ombudsman has the power to “promulgate its rules of procedure for the effective exercise or performance of its powers, functions and duties” and to amend or modify its rules as the interest of justice may require. For the CA to issue a preliminary injunction that will stay the penalty imposed by the Ombudsman in an administrative case would be to encroach on the rule-making powers of the Office of the Ombudsman under the Constitution and RA 6770 as the injunctive writ will render nugatory the provisions of Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman.

Clearly, Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman supersedes the discretion given to the CA in Section 12, Rule 43 of the Rules of Court when a decision of the Ombudsman in an administrative case is appealed to the CA. The provision in the Rules of Procedure of the Office of the Ombudsman that a decision is immediately executory is a special rule that prevails over the provisions of the Rules of Court. *Specialis derogat generali*. When two rules apply to a particular case that which was specially designed for the said case must prevail over the other.

WHEREFORE, the second motion for partial reconsideration is hereby GRANTED. Our decision dated September 11, 2008 is MODIFIED insofar as it declared that the imposition of the penalty is stayed by the filing and pendency of CA-G.R. SP No. 89999. **The decision of the Ombudsman is immediately executory pending appeal and may not be stayed by the filing of the appeal or the issuance of an injunctive writ.**<sup>22</sup> (Emphasis supplied, citations omitted.)

Since then, the Court has consistently applied the above-quoted ruling in a string of cases.<sup>23</sup>

Thus, in the present Petition, the Ombudsman correctly asserted that its July 23, 2008 Decision in OMB-M-A-07-029-B is immediately executory even pending reconsideration or appeal and finality of said decision, pursuant to Section 7 of Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 17 dated September 15, 2003.

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<sup>22</sup> Id. at 448-451.

<sup>23</sup> *Ombudsman-Mindanao v. Ibrahim*, 786 Phil. 221 (2016); *Department of the Interior and Local Government v. Gatuz*, 771 Phil. 153 (2015); *Office of the Ombudsman v. Valencerina*, 739 Phil. 11 (2014); *Office of the Ombudsman v. De Leon*, 705 Phil. 26 (2013); *Office of the Ombudsman v. Court of Appeals*, 655 Phil. 541 (2011).

**WHEREFORE**, in view of the foregoing, the Petition is hereby **GRANTED**. The Decision dated August 7, 2009 of the Court of Appeals in CA-G.R. SP No. 02895-MIN which directed the immediate implementation of respondent's suspension and his reinstatement to his position as Municipal Treasurer of El Salvador, Misamis Oriental, is **REVERSED** and **SET ASIDE**. Considering, however, the death of respondent, this case is considered **CLOSED** and **TERMINATED**.

**SO ORDERED.**

*Teresita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
 Chief Justice  
 Chairperson

WE CONCUR:

*Lucas P. Bersamin*  
**LUCAS P. BERSAMIN**  
 Associate Justice

*Mariano C. Del Castillo*  
**MARIANO C. DEL CASTILLO**  
 Associate Justice

On official leave  
**FRANCIS H. JARDELEZA**  
 Associate Justice

*Noel Gimenez Tijam*  
**NOEL GIMENEZ TIJAM**  
 Associate Justice

**CERTIFICATION**

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

*Teresita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
 Chief Justice