Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

MARGARITO B. TEVES,
Petitioner,

-versus-

OFFICE OF THE OMBUDSMAN and FIELD INVESTIGATION OFFICE, represented by DAVID A. LUCERO,
Respondents.

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G.R. No. 237558

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CYRIL C. DEL CALLAR, ALBERT C. BALINGIT, GEORGE J. REGALADO, and ROBERTO S. VERGARA,
Petitioners,

-versus-

OFFICE OF THE OMBUDSMAN and FIELD INVESTIGATION OFFICE, represented by DAVID A. LUCERO,
Respondents.

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G.R. No. 238133

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GILDA E. PICO and CAREL D. HALOG,
Petitioners,

-versus-

G.R. No. 238138

Present:

LEONEN, *J., Chairperson,*
LAZARO-JAVIER,

LOPEZ, M.,
LOPEZ, J., and
KHO, JR., *JJ.*

OFFICE OF THE OMBUDSMAN and FIELD INVESTIGATION OFFICE, represented by DAVID A. LUCERO,
Respondents.

Promulgated:
APR 2 6 2023

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DECISION

LEONEN, *J.*:

Mere disadvantage to the government is not sufficient to establish probable cause for violation of Section 3(g) of Republic Act No. 3019. The Court will not substitute its discretion when sound business judgment was employed in the negotiation of a government contract that is not manifestly and grossly disadvantageous to its interest.

This Court resolves the consolidated Petitions for *Certiorari*[1] filed by Margarito B. Teves (Teves), then secretary of finance and ex-officio chairperson of Land Bank of the Philippines (Land Bank),[2] and its board of directors, namely Gilda E. Pico (Pico), Cyril C. Del Callar (Del Callar), Albert C. Balingit (Balingit), and George J. Regalado (Regalado), Land Bank Vice President Carel D. Halog (Halog), and First Vice President Roberto S. Vergara (Vergara), assailing the Ombudsman Resolution and Omnibus Order[3] finding probable cause for violation of Section 3(g) of Republic Act No. 3019.

On March 2, 2007, the Privatization Management Office of the Department of Finance offered Land Bank to participate in its block sale of Meralco shareholdings of government entities amounting to 29% of its outstanding shares. The proposed block sale is to enhance the value for the shares where the Privatization Management Office will act as the disposition entity.[4] On March 13, 2007, Vergara sought the approval of the Board to join the block sale.[5] The Board agreed to join on March 16, 2007.[6]

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1 *Rollo* (G.R. No. 237558), pp. 3–93; *Rollo* (G.R. No. 238138), pp. 3–59; *Rollo* (G.R. No. 238133), pp. 3–55.

2 "Landbank" in some parts of the *rollo*.

3 *Rollo* (G.R. No. 237558), pp. 94–124-A; *Rollo* (G.R. No. 238133), pp. 56–82. The October 21, 2015 Resolution and February 24, 2017Omnibus Order of the Ombudsman was signed by Blesilda T. Ouano, Lorenzo G. Vergara, and Joaquin F. Salazar, and approved by Ombudsman Conchita Carpio Morales.

4 *Rollo* (G.R. No. 237558), p. 191.

5 *Id.* at 192.

6 *Id.* at 193.

However, the sale did not proceed as the Government Service Insurance System, the government entity with the largest Meralco shareholdings, had already sold its shares to San Miguel Corporation.[7]

On November 7, 2008, Halog and Vergara proposed the sale of Land Bank's 4% interest in Meralco via a block sale at PHP 90.00 per share. The proposed sale included all 46.597 million common shares and would yield a nominal income of PHP 61.22 per share[8] for a total consideration of PHP 4.193 billion, excluding the interest to be earned over the installment period.[9]

On November 10, 2008, the board of directors approved the proposal and authorized Land Bank President and Chief Executive Officer Pico to negotiate and execute the contract on its behalf.[10]

Subsequently, Pico entered into a Share Purchase Agreement on December 2, 2008 with Global 5000 Investment, Inc. (Global 5000).[11]

However, the transfer did not push through because on November 28, 2008, Land Bank's Meralco shares were levied upon to satisfy a 2001 Decision of the Department of Agrarian Reform awarding PHP 157 million to Federico Suntay (Suntay) as just compensation for his property in San Jose, Occidental Mindoro. Meralco cancelled the shares in Land Bank's name and issued new stock certificates in the name of Suntay's assignee.[12]

On December 14, 2011, this Court in *Land Bank of the Philippines v. Suntay*[13] restored Land Bank's ownership of the Meralco shares and directed Meralco to reflect this in its stock and transfer book.[14]

On July 3, 2014, Global 5000 filed a complaint for specific performance against Land Bank to compel it to comply with its obligations under the Share Purchase Agreement. The case was docketed as Civil Case No. MC14-9177 and was raffled to the Branch 212, Regional Trial Court, Mandaluyong City.[15]

On November 6, 2014, the Field Investigation Office of the Office of the Ombudsman filed a Complaint[16] against several Land Bank officers, including Teves (collectively, Teves et al.), and Global 5000's board of

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7 *Rollo* (G.R. No. 238138), p. 266.
8 *Rollo* (G.R. No. 237558), pp. 95–96.
9 *Id.* at 9.
10 *Id.* at 96. *See also* p. 195.
11 *Id.* at 196–203.
12 *Id.* at 10–11.
13 678 Phil. 879 (2011) [Per J. Bersamin, First Division].
14 *Rollo* (G.R. No. 237558), p. 146.
15 *Id.* at 377.
16 *Id.* at 204–222.

directors for violation of Section 3(e) and (g) of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act.

The Field Investigation Office alleged that Teves et al. gave unwarranted benefits to Global 5000 in executing the Share Purchase Agreement without undergoing public bidding. It added that they engaged in an unsecured transaction of more than PHP 4.193 billion government assets without conducting due diligence on the identity of the buyer and its capacity to pay for such a transaction. The Field Investigation Office alleged that Global 5000's capitalization of PHP 62.5 million is only 17.67% of the total obligation and thus, it does not have sufficient capitalization to even secure the 20% down payment, nor does it have a track record, having only been in existence for 10 months. The Field Investigation Office asserted that Teves et. al gave Global 5000 excessive benefits by "extending the period within which it may tender its 20% down payment from 15 to 30 days, and gave it rights to receive all dividends and to vote upon tender of down payment."[17]

In an October 21, 2015 Resolution, the Office of the Ombudsman found probable cause[18] for violation of Section 3(g) of Republic Act No. 3019 but dismissed the charge for violation of Section 3(e). The Ombudsman directed that an information be filed against Teves et al. and the Global 5000 board of directors.

The dispositive portion of the Resolution reads:

> **WHEREFORE,** finding probable cause, it is respectfully recommended that respondents **GILDA E. PICO, ROBERTO S. VERGARA, CAREL D. HALOG, MARGARITO B. TEVES, MARIANITO D. ROQUE, MA. PATRICIA RUALO-BELLO, EDUARDO N. NOLASCO, ALBERT C. BALINGIT, GEORGE J. REGALADO** and **CYRIL C. DEL CALLAR** be indicted for violation of Section 3(g) of Republic Act No. 3019. Let the corresponding Information against them be filed with the appropriate court.
>
> It is respectfully recommended that the charge for violation of Section 3(e) of R.A. No. 3019 against **GILDA E. PICO, ROBERTO S. VERGARA, CAREL D. HALOG, MARGARITO B. TEVES, MARIANITO D. ROQUE, MA. PATRICIA RUALO-BELLO, EDUARDO N. NOLASCO, ALBERT C. BALINGIT, GEORGE J. REGALADO, CYRIL C. DEL CALLAR, IÑIGO M. ZOBEL, ROBERTO V. ONGPIN, JOSELITO CAMPOS, JR., CARMELO EDEN P. LAGAO** and **RHOGEL S. GANDINGAN** be dismissed for lack of probable cause.
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> The complaint against respondent **OMBRE S. HAMSIRANI** is **dismissed** on account of his death.

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17 *Id.* at 97.

18 *Id.* at 94–124.

SO ORDERED.[19] (Emphasis in the original)

The Office of the Ombudsman ruled that the specific performance case is not a prejudicial question because its resolution is immaterial in its finding of probable cause.[20] It dismissed the charge for violation of Section 3(e) of Republic Act No. 3019 because it was not shown that the Land Bank officers caused undue injury or gave unwarranted benefits, advantage, or privilege since the Share Purchase Agreement was not consummated and the Meralco shares remained with Land Bank, thus, no actual damage to Land Bank was proven.[21] There was also no evidence that the Meralco shares are included in the scope of COA Circular No. 89-296 which requires public bidding. Thus, it presumed the sale to be regular.[22]

However, the Office of the Ombudsman found that all the elements of violation of Section 3(g) of Republic Act No. 3019 are present.[23] The non-implementation of the Share Purchase Agreement is immaterial because the law states that entering into a manifestly and grossly disadvantageous contract is punishable. It is the commission of the act, and not its effect, which is material.[24]

The Office of the Ombudsman pointed out that the Land Bank officers failed to observe the highest degree of diligence when it entered into a PHP 4.193 billion transaction with Global 5000, which was then only 10 months old, without a track record and with only PHP 62.5 million paid up capital. It did not appreciate that Global 5000 is a wholly owned subsidiary of San Miguel Corporation.[25]

The Office of the Ombudsman also drew attention to a provision in the Share Purchase Agreement giving Global 5000 the right to Meralco dividends upon tender of 20% down payment. Furthermore, under the Share Purchase Agreement, all cash dividends declared by Meralco prior to full payment of the third installment shall be applied as partial payment to the outstanding balance. During the installment period, Land Bank lost the opportunity to reinvest the income from its dividend earnings.[26] It did not find the fixed term interest on installment as sufficient to protect Land Bank's interest because it is much lower than the dividend earnings of the shares.[27] Aside from these, they also gave their voting rights which failed to protect the interests of Land Bank in electing a qualified member of the board of directors of Meralco.[28]

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19 *Id.* at 122–123.
20 *Id.* at 103–105.
21 *Id.* at 106–107.
22 *Id.* at 107.
23 *Id.* at 107–108.
24 *Id.* at 109.
25 *Id.* at 111–112.
26 *Id.* at 113–114.
27 *Id.* at 115–116.
28 *Id.* at 119.

Moreover, the Office of the Ombudsman noted that the grace period given to Global 5000 for its installment payments and the consequences of default stipulated in the Share Purchase Agreement are disadvantageous to Land Bank's interest. The first and second installment payments have a 12-month extended payment date, while the third installment has a 30-day grace period, both subject to a 9% interest. The Office of the Ombudsman found this provision to be disadvantageous because it allows Global 5000 to apply the dividend earnings as installment payments instead of Land Bank reinvesting the same. In case of default, only the voting rights are reverted to Land Bank and there was no mention of cash dividends earned during such period.[29]

In addition, the Office of the Ombudsman found the existence of conspiracy from the concerted and indispensable participation of the members of the board in authorizing Pico and in executing the grossly and manifestly disadvantageous contract with Global 5000.[30]

It also ruled that the defense of good faith in *Arias v. Sandiganbayan*[31] does not apply because the Land Bank officers had foreknowledge of the anomaly. Pico signed the contract when it should have been the Committee on Investments recommending the divestment of securities. The anomalous provisions in the contract on the extended payment period was not approved by the board. Their failure to object to the anomalous provisions before it was executed shows their complicity in the grossly and manifestly disadvantageous transaction.[32]

Teves and the other Land Bank officials[33] filed a Joint Motion for Partial Reconsideration[34] which was denied by the Office of the Ombudsman in its February 24, 2017 Omnibus Order.[35]

The dispositive portion of the Omnibus Order reads:

> **WHEREFORE**, the [(1)]Motion for Reconsideration dated 18 April 2016 filed by the Field Investigation Office, represented by David A. Lucero; [(2)] Joint Motion for Partial Reconsideration with Petition and/or Alternative Prayer for the Suspension of the Instant Criminal Proceedings in view of the Existence of a Prejudicial Question dated 15 April 2016 filed by respondents Gilda E. Pico, Carel D. Halog, Roberto S. Vergara, Margarito B. Teves, Marianito D. Roque, Albert C. Balingit, George J.

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29 *Id.* at 117–119.
30 *Id.* at 120.
31 259 Phil. 794 (1989) [Per J. Gutierrez, Jr., *En Banc*].
32 *Rollo* (G.R. No. 237558), p. 122.
33 Namely Gilda Pico, Carel Halog, Roberto Vergara, Marianito Roque, Albert Balingit, George Regalado, and Cyril Del Callar; *id.* at 125.
34 *Id.* at 125–150.
35 *Id.* at. 164–187.

> Regalado and Cyril C. Del Callar; (3) Motion for Partial Reconsideration dated 4 May 2016 filed by respondent Eduardo C. Nolasco; (4) Supplemental Motion for Reconsideration dated 13 May 2016 filed by respondent Marianito D. Roque; (5) Supplemental Motion for Partial Reconsideration dated 22 June 2016 filed by respondents Roberto S. Vergara, Albert C. Balingit, George J. Regalado and Cyril C. Del Callar; (6) Supplemental Motion for Reconsideration dated 4 July 2016 filed by respondents Gilda E. Pico and Carel D. Halog; (7) *Supplemental Motion for Partial Reconsideration* dated 10 January 2017 filed by respondents Vergara, Balingit, Regalado and Del Callar; (8) *Manifestation* dated 6 January 2017 of respondents Pico and Halog are all hereby ***denied*** for lack of merit. The Resolution dated 21 October 2015 ***stands.***
>
> **SO ORDERED.**[36] (Emphasis in the original)

Hence, on March 12, 2018, Teves filed a Petition for *Certiorari* with Prayer for Writ of Preliminary Prohibitory Injunction and Temporary Restraining Order[37] before this Court, docketed as G.R. No. 237558.

On April 10, 2018, Del Callar, Balingit, Regalado, and Vergara (Del Callar et al.) also filed a Petition for *Certiorari* with Application for a Temporary Restraining Order and/or Writ of Preliminary Injunction,[38] docketed as G.R. No. 238133.

On the same date, Pico and Halog filed a Petition for *Certiorari* with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction before this Court,[39] docketed as G.R. No. 238138.

On June 4, 2018, the Petitions were consolidated and public respondents were required to file their comment.[40]

On September 17, 2018, this Court noted public respondents' consolidated Comment and required petitioners to file their reply.[41]

On February 6, 2019, this Court noted petitioner Del Callar et al.'s Reply.[42]

On February 10, 2021, this Court imposed a fine on the counsel of petitioner Teves and ordered them to show cause for their failure to file a reply.[43]

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36 *Id.* at 186–187.
37 *Id.* at 3–92.
38 *Rollo* (G.R. No. 238133), pp. 3–50.
39 *Rollo* (G.R. No. 238138), pp. 3–59.
40 *Rollo* (G.R. No. 237558), pp. 335–336.
41 *Id.* at 422–423.
42 *Id.* at 445–446.
43 *Id.* at 516.

On May 17, 2021, petitioner Teves filed a Compliance,[44] attaching his Reply.[45]

In G.R. No. 237558, petitioner Teves claims that he was not the one who contracted with Global 5000. He further claims that as the *ex officio* chairperson of Land Bank in his capacity as finance secretary, he relied in good faith on the recommendations and representations of the Land Bank management and officers when they requested for authority to negotiate and enter into a contract for the sale of the Meralco shares.[46]

Petitioner Teves also asserts that the Share Purchase Agreement was not proven to be grossly and manifestly disadvantageous to the government, and that the Office of the Ombudsman merely presented speculations and vague platitudes to support its claim.[47]

He cites DOJ Opinion No. 86, series of 2012 to prove that contrary to the Office of the Ombudsman's position, the Share Purchase Agreement was not grossly disadvantageous to the government. Part of the Opinion reads:

> It must be remembered that the contract was entered into in December 2008 where the prevailing market price of the shares of stock is valued at P57.00 per share. The SPA provided for a purchase price of P90.00 per share which is considerably much higher than the prevailing market price of P57.00 per share. Had the transaction been pursued as scheduled, it cannot be denied that the government would certainly be earning P33.00 per share from the proceeds of the sale. Also, it must be borne in mind that the implementation of the SPA was deferred due to acts and incidents not attributable to the contracting parties.
>
> The foregoing clearly shows that, when the contract was perfected, the supposed cause or consideration (which is actual trading price at that time plus premium of P33.00) of the SPA provides benefits to the government in terms of income, thus, it cannot be said that the terms of the government is manifestly and grossly disadvantageous to the government.[48]

Petitioner Teves emphasizes that the sale of Meralco shares to Global 5000 was never consummated and that the shares remained with Land Bank.[49] He contends that the *Arias* doctrine applies to him as he merely relied in good faith on the recommendations of the Land Bank management and its officers. They were in charge of the operation of the bank and are the experts therein,

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44 *Id.* at 512–524.
45 *Id.* at 525–544.
46 *Rollo* (G.R. No. 237558), p. 75.
47 *Id. at* 76–77.
48 *Id. at* 77.
49 *Id. at* 78.

and thus, he had no reason to believe that they were unreliable or incompetent.[50]

He maintains that the proceedings before the Office of the Ombudsman should have been held in abeyance on the ground of prejudicial question while Global 5000's complaint for specific performance against Land Bank was still being heard. The issue of whether the Share Purchase Agreement was grossly disadvantageous to the government is one of the grounds being invoked to nullify the contract. Thus, its resolution is relevant in the Ombudsman proceedings.[51]

Meanwhile, in G.R. No. 238138, petitioners Pico and Halog assert that they faithfully complied with the high degree of diligence required of them as bank officials and public officers.[52]

They point to the automatic rescission and forfeiture clause in the Share Purchase Agreement as proof that Land Bank's interest was always adequately protected.[53] They contend that it validly exercised its management prerogative in negotiating the terms of the contract as the pricing of the shares of stocks is a highly specialized field that is best left with Land Bank's management. They claim that the Office of the Ombudsman has no expertise on these matters and it gravely abused its discretion in substituting its own judgment.[54]

Petitioners Pico and Halog also argue that the Ombudsman misappreciated the facts because it should compare the fixed interest rate with the prevailing rate at the time of the sale with a 58% premium on the sale of the shares of stock. Moreover, the 7% fixed interest rate accounts for the time value of the money based on the Philippine Dealing System Treasury Reference Rates of the Bangko Sentral ng Pilipinas. Since they did not demand a lower interest rate than what is mandated, the board of directors of Land Bank exercised good judgment.[55] They contend that the payment of dividends on Land Bank's share is contingent on the existence of unrestricted retained earnings of Meralco and is not always assured. However, the 7% fixed term interest is a definite obligation which Global 5000 must give to Land Bank, thus, it is not manifestly unfavorable to the government.[56]

Petitioners Pico and Halog assert that they exercised due diligence and conducted a comprehensive study of market trends. They constantly monitored the market price movements of Meralco shares. In support of the

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50 *Id.* at 80–82.
51 *Id.* at 85–87.
52 *Rollo* (G.R. No. 238138), pp. 15–29.
53 *Id.* at 16–19.
54 *Id.* at 19.
55 *Id.* at 21.
56 *Id.* at 20–23.

planned disposition, they have formulated a trade plan and a risk management report, with a memorandum on stop loss which states that Land Bank has an open trading position of 1,503,300 shares bought at PHP 59.48 per share. They contend that selling the shares at PHP 90.00 yielded a 58% premium than its PHP 57.00 then market price. Based on the study, the Land Bank Treasury Group recommended the sale of Meralco shares.[57]

They assert that to establish probable cause, the Office of the Ombudsman should have compared the other share purchase agreements for the sale of Meralco stocks executed by other government-owned and controlled corporations and government financial institutions to set a standard in its evaluation instead of its arbitrary finding of probable cause.[58]

Petitioners Pico and Halog also state that Global 5000's capitalization and track record are irrelevant to determine whether it could meet its obligation to the government.[59] It can source funds by way of loans, fresh investments, and other means to finance its obligations. The Office of the Ombudsman should have considered its total resources and assets until 2011 which amounted to PHP 39.199 billion since the obligation is payable in stages. Moreover, it paid in full its obligation to the Government Service Insurance System, Social Security System, and Development Bank of the Philippines in relation to its purchase of their respective Meralco shareholdings. Its capitalization at the time of the execution of the Share Purchase Agreement would only be relevant if the transaction is contract of loan where adequate security is needed. However, what is involved is a contract to sell, where undercapitalization is immaterial.[60]

They likewise assert that the manner of payment indicated in the Share Purchase Agreement was not grossly and manifestly unfavorable to the government. Petitioner Pico was granted authority by the board to negotiate the final terms of the Share Purchase Agreement. She acted within her discretion and authority as president and chief executive officer of Land Bank to grant additional extension periods to Global 5000 in exchange for a higher interest rate of 9%. Thus, it is grave injustice to hold her liable when the board of directors did not question or repudiate such terms in the Share Purchase Agreement.[61]

Petitioners Pico and Halog argue that the Office of the Ombudsman gravely abused its discretion when it ruled that the *Arias* doctrine was not applicable to them. They relied on the collective study, assessment, and wisdom of the various offices involved in the sale. There was nothing that indicates any anomaly or irregularity in the transaction. The extraordinary

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57 *Id.* at 24–25.
58 *Id.* at 31–32.
59 *Id.* at 32–34.
60 *Id.*
61 *Id.* at 37–40.

diligence standard does not apply because its trading activities do not involve deposit-taking activities as a bank.[62]

They argue that the Office of the Ombudsman should not have disregarded the factual findings of the Court of Appeals in its May 27, 2018 Decision in CA-GR SP No. 145215. They assert that the Court of Appeals Decision granted their Petition for Review, which assailed the same Ombudsman Resolution and Omnibus Order subject of their present Petition and absolved them of the administrative charges.[63]

Meanwhile, in G.R. No. 238133, petitioners Del Callar et al. argue that the Office of the Ombudsman conceded that Land Bank has the authority to divest its Meralco shareholdings. This included its admission that the sale had a logical relation and in furtherance of its corporate interest. They assert the judicial policy of non-interference when it comes to the business judgment of the board of directors because courts are not engaged in business. They claim that the Ombudsman has no authority to review *intra vires* actions of its board of directors especially since the capital gain of Land Bank from the transaction is substantial, as confirmed in DOJ Opinion No. 86, series of 2012.[64]

They contend that there was no basis for the Office of the Ombudsman to declare that the Share Purchase Agreement was manifestly and grossly disadvantageous to the government, reiterating petitioners Pico and Halog's defenses. In exchange for its right to receive dividends and voting rights, Land Bank received a higher premium which should have been appreciated instead of the fixed interest rate. This is because the latter accounts for the time value of money. Its ruling that the interest on the unpaid balance should not be lower than 12% legal interest is misplaced because the parties stipulated a fixed rate in the contract.[65] Moreover, the actual dividend earnings for 2009 to 2011 are incompetent evidence because what is relevant is the actual price at the time of transaction.[66]

In addition, they conducted due diligence through comprehensive study of market trends prior to the execution of the Share Purchase Agreement, which is replete with provisions safeguarding Land Bank's interest. Until full payment, Land Bank retained ownership of the stocks, and upon default, it has a right to rescind the Share Purchase Agreement with automatic forfeiture of payments already made, including dividends.[67]

Nevertheless, they contend that the Share Purchase Agreement is void because at the time it was executed, the object of the contract was inexistent.

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62 *Id.* at 40–43.
63 *Id.* at 43–50.
64 *Rollo* (G.R. No. 238133), pp. 33–37.
65 *Id* at 39.
66 *Id.* at 38–40.
67 *Id.* at 40–41.

At that time, Land Bank's shares were levied on execution and were transferred to a third person. The subsequent restoration of its ownership with Land Bank did not cure the void contract.[68]

Petitioners Del Callar et al. point out the inconsistency in respondent Field Investigation Office's failure to implead private respondents Global 5000 in the Complaint, claiming that this was proof that the present charges were meant to persecute and harass petitioners.[69]

Finally, they claim that the pending case for specific performance between Global 5000 and the Land Bank officers before the Muntinlupa Regional Trial Court poses a prejudicial question which requires that the present case must be suspended pending resolution of the prejudicial question.[70]

All petitioners prayed for the issuance an injunction, which they claim to be necessary considering the baseless accusations against them and to spare them from threats of incarceration and damage to their reputation.[71]

On August 22, 2018, the Office of Legal Affairs of the Ombudsman and its Field Investigation Office filed its Consolidated Comment and Opposition.[72] Public respondents argue that the consolidated Petitions became moot due to the Sandiganbayan's finding of probable cause after it issued warrants for the arrest of petitioners. It is the Sandiganbayan who has full control and discretion over the criminal case. [73]

Public respondents contend that there was no grave abuse of discretion in its finding of probable cause which only requires reasonable belief that the act complained of constituted the offense charged. Here, the Land Bank board of directors failed to act with the highest degree of diligence and in entering in the Share Purchase Agreement with manifestly prejudicial terms and conditions, they prejudiced public interest since public funds are involved. The defenses raised by petitioners are matters of evidence which should be threshed out during a full-blown hearing.[74]

They affirm that the *Arias* doctrine does not apply to insulate petitioners from liability because there were manifest irregularities prior to the execution of the Share Purchase Agreement. There was no due diligence because there was no comprehensive study to determine the real value of Meralco shares for

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68 *Id.* at 42–43.
69 *Id.* at 43–44.
70 *Id.* at 44–47.
71 *Rollo* (G.R. No. 238138), pp. 51–54; *Rollo* (G.R. No. 238133), pp. 47–48; *Rollo* (G.R. No. 237558), pp. 87–89.
72 *Rollo* (G.R. No. 237558) pp. 371–410.
73 *Id.* at 387–391.
74 *Id.* at 399–401.

Land Bank to have demanded higher fixed interest rates, since its payment is in installments. It should have been wary about Global 5000's aggressive stance to acquire Meralco shares of government financial institutions. It does not have sufficient capitalization that could have answered for one installment payment.[75]

Finally, they contend that there is no prejudicial question in the specific performance case. While the nullity of the Share Purchase Agreement was alleged, it is not material in the criminal case because it is the entering in a grossly and manifestly disadvantageous contract and not its legal effect which is penalized under Section 3(g) of Republic Act No. 3019.[76] Moreover, the dismissal of the administrative complaint against petitioners in CA G.R. SP No. 145215 is independent from its determination of probable cause. Their absolution from the administrative charges is not a bar to their criminal prosecution.[77]

Petitioners Pico and Halog filed their Reply[78] on September 9, 2019. They argue that where the Office of the Ombudsman's finding of probable cause impaired their substantial rights without basis, the Court need not apply the rule that once the case has been filed before the Sandiganbayan, it retains exclusive jurisdiction as to what happens to said case. The Court may resolve the existence of probable cause by only looking at the records. Here, the Office of the Ombudsman did not even explain how the evidence supported its findings of probable cause.[79] They claim that there is prejudicial question because a finding of nullity of the Share Purchase Agreement means that there was no contract ever executed, and thus there could have been no finding of probable cause for violation of Section 3(g) of Republic Act No. 3019.[80] Finally, the Office of the Ombudsman should not have disregarded the findings of the Court of Appeals that there was no prejudicial or disadvantage to the government. Citing *Nicolas v. Sandiganbayan Third Division*,[81] these two cases will be prosecuted using the same facts and evidence, and requiring them to present evidence would have been useless.[82] Since the administrative case was dismissed for lack of substantial evidence, guilt beyond reasonable doubt could not have been established in the criminal case.[83]

On October 12, 2018, petitioners Del Callar et al. filed their Reply[84] contending that the Court is not precluded from setting aside a finding of probable cause with grave abuse of discretion, and especially when it is used

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75 *Id.* at 405.
76 *Id.* at 405–407.
77 *Id.* at 407–409.
78 *Id.* at 450–470.
79 *Id.* at 452–457.
80 *Id.* at 460–461.
81 568 Phil. 297 (2008) [Per J. Carpio Morales, Second Division].
82 *Rollo* (G.R. No. 237558) pp. 462.
83 *Id.* at 463.
84 *Id.* at 424–435.

for persecution.[85] Relying on *People v. Sandiganbayan First Division*,[86] they argue that the nullity of a memorandum of agreement in a civil case is a prejudicial question to the criminal case. Until the nullity of the Share Purchase Agreement is resolved, the criminal case cannot proceed since the contract would have been nonexistent. They also raise that the dismissal of the administrative case should have also triggered the dismissal of the criminal case since both cases are founded on the same facts and evidence.[87]

Petitioner Teves filed his Reply,[88] reiterating the allegations of his co-petitioners. He alleged that the Share Purchase Agreement is a contract to sell which does not give Global 5000 the absolute right over the Meralco shares without full payment. This is shown in the automatic rescission and forfeiture of payments already made in the event of default, which includes the cash dividends applied to the balance. The Share Purchase Agreement is not disadvantageous and has protected the interests of Land Bank.[89]

The issues raised in the consolidated Petitions are as follows:

first, whether the Office of the Ombudsman gravely abused its discretion in finding probable cause for violation of Section 3(g) of Republic Act No. 3019; and

second, whether the Land Bank officers executed and negotiated the Share Purchase Agreement terms and conditions that are grossly and manifestly prejudicial to Land Bank.

We grant the Petitions.

Ordinarily, this Court defers to the Ombudsman as regards its finding of probable cause pursuant to its constitutional powers of investigation and prosecution.[90] Only when there is a clear showing of grave abuse of discretion can the Court set aside the Ombudsman's determination of probable cause.[91]

In *Casing v. Ombudsman*,[92] this Court held that there is grave abuse of discretion when the exercise of power was done "in arbitrary or despotic manner—which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all

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85 *Id.* at 426–429.
86 520 Phil. 346 (2006) [Per J. Carpio Morales, Third Division].
87 *Rollo* (G.R. No. 237558), pp. 430–433.
88 *Rollo* (G.R. No. 238138), pp. 741–760.
89 *Id.* at 746–747.
90 *Presidential Ad Hoc Committee on Behest Loans v. Tabasondra*, 579 Phil. 312, 324 (2008) [Per J. Chico-Nazario, Third Division].
91 *Republic v. Ombudsman*, 855 Phil. 30, 32 (2019) [Per J. Leonen, Third Division].
92 687 Phil. 468 (2012) [Per J. Brion, Second Division].

in contemplation of law[.]"[93] There is no grave abuse of discretion when the findings of probable cause of the Ombudsman is supported by substantial evidence:

> In line with the constitutionally-guaranteed independence of the Office of the Ombudsman and coupled with the inherent limitations in a *certiorari* proceeding in reviewing the Ombudsman's discretion, we have consistently held that *so long as substantial evidence supports the Ombudsman's ruling, his decision should stand.* In a criminal proceeding before the Ombudsman, the Ombudsman merely determines whether probable cause exists, *i.e.,whether there is a sufficient ground to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof.* Probable cause is a reasonable ground of presumption that a matter is, or may be, well founded on such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so. *As the term itself implies, probable cause is concerned merely with probability and not absolute or even moral certainty*; it is merely based on *opinion and reasonable belief.* On this score, *Galario v. Office of the Ombudsman (Mindanao)* is instructive[:]
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> > [A] finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt. A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt. [. . . .]
>
> A finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.[94] (Emphasis supplied, citations omitted)

The dismissal of the administrative case against petitioners in CA G.R. SP No. 145215 is immaterial in the determination of probable cause for violation of Section 3(g) of Republic Act No. 3019.

In *Paredes v. Court of Appeals*,[95] this Court held that the dismissal of an administrative case does not lead to the dismissal of a criminal case because these cases are separate and distinct from each other, with different quantum of evidence required, rules of procedure, and sanctions to be imposed. A single act can violate several provisions of law which can be prosecuted simultaneously as long as double jeopardy does not arise.[96]

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93 *Id.* at 476.
94 *Id.* at 476–478.
95 555 Phil. 538 (2007) [Per J. Chico-Nazario, Third Division].
96 *Id.* at 550.

Section 3(g) of Republic Act No. 3019 states:

> Section 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> . . . .
>
> (g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

The elements to sustain probable cause under the provision are: "(1) that the accused is a public officer; (2) that he entered into a contract or transaction on behalf of the Government; and (3) that such contract or transaction is grossly and manifestly disadvantageous to the Government."[97]

Crucillo v. Office of the Ombudsman[98] defines manifest and gross acts in the context of Section 3(g):

> Given PAFICO's eventual failed venture, the subject loan grant may well be considered, in hindsight, as an unsound business proposition. Yet, the respondent OOMB has not pointed out to circumstances indicating that either of the herein petitioners, in whatever role they played in the transaction in question, perverted their respective offices or deviated from pre-set DBP's lending policy, practice or rules for some consideration less than honest. What at bottom the bank had agreed to does not appear to be a scandalously one-sided loan accommodation in favor of PAFICO or grossly and manifestly disadvantageous to the DBP. *The term "manifest" in the context of Section 3 (g) of R.A. No. 3019 penalizing the act of entering, in behalf of the government, into any contract or transaction manifestly and grossly disadvantageous to the same, denotes something evident to the senses, obvious, or notorious, while "gross" means glaring, reprehensible, flagrant or shocking.* A collateralized loan transaction payable in 7 to 12 years, in semi-annual amortization basis, and bearing the usual interest with provisions for penalty in case of default cannot be categorized as grossly and manifestly disadvantageous to DBP.
>
> PAFICO's inability to pay its loan obligation in the regular course of business, if that be the case, was a risk that the DBP had to contend with. Indeed, it would be regrettable if every government bank officer is put in a state of indecision for fear he would be called to task every time the bank's client defaults in the payment of his loan obligations. To be sure, neither Atty. Salvador's "Sworn Statement" nor respondent OOMB's impugned Order/Resolution mentioned about misuse of the loan proceeds as the cause for PAFICO's failure to pay.[99] (Emphasis supplied, citation omitted)

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97 *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, 603 Phil. 18, 34 (2009) [Per J. Carpio Morales, Second Division].

98 552 Phil. 699 (2007) [Per J. Garcia, First Division].

99 *Id.* at 724–725.

Meanwhile, the requirements to sustain a violation under Section 3(g) of Republic Act No. 3019 is summarized in *Bawasanta v. People*:[100]

> "Gross and manifest disadvantage" as used in the statute is an inherently relative concept which has two components. The first and essential component is the existence of a disadvantage to the government, *i.e.*, the contract must result in "*loss or damage especially to the reputation, credit, or finances*" of the government; or place the government at "*an unfavorable, inferior, or prejudicial condition.*" Thus, when the government is amply protected in the contract or transaction, as when the accused himself stood as guarantor in case of a finding of overpricing, there is no disadvantage to the government to speak of and the accused is entitled to an acquittal.
>
> However, mere proof of disadvantage to the government is not enough, for the statute further requires that the disadvantage be **gross and manifest**. The disadvantage is gross when it is glaringly and flagrantly noticeable because of its inexcusable objectionableness, and is manifest when such disadvantage is readily and easily evident, perceivable, recognizable or understandable to the trial judge. The modifier "*gross and manifest,*" like its modified term "*disadvantage*," is also a relative concept which requires a standard by which it may be measured against.[101] (Emphasis in the original, citations omitted)

In *Bawasanta*, this Court clarified that the applicable standards in determining whether a contract is grossly and manifestly disadvantageous to the government depends on the facts of each case. This Court ruled that there is no gross and manifest disadvantage to the local government of Oriental Mindoro when an incidental benefit of a credit agreement was given to a private common carrier for repairs in his vessel. To finance the agreement, the province had to secure a loan from Land Bank due to the depletion of funds from the typhoons that ravaged the region. This Court held that the agreement was extended for a public purpose, which was to introduce a third operator to balance the market against the monopoly of shipping industry in the province.[102]

Here, there is no dispute that the first two elements of violation of Section 3(g) of Republic Act No. 3019 are present. Petitioners are public officers as board members of the Land Bank who contracted with Global 5000 to dispose of the former's shareholdings in Meralco. However, there is no substantial evidence supporting the existence of the third element.

The Office of the Ombudsman found probable cause for violation of Section 3(g) of Republic Act No. 3019 based on the supposed lack of diligence of petitioners who are engaged in the banking industry. Supposedly, there was no comprehensive study done to determine the real value of the Meralco shareholdings.

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100 G.R. No. 219300, November 17, 2021 [Per J. Gaerlan, Second Division].
101 *Id.*
102 *Id.*

Contrary to the findings of the Office of the Ombudsman, records show that petitioners conducted their own due diligence before proceeding with the transaction. The Treasury Group constantly monitored the movement of the Meralco shareholdings. It has a Trade Plan where they studied several factors including Meralco's Price Earnings Ratio, cash dividend yield, and other technical indicators showing the movement of stock prices.[103] Reputable stockbrokers'[104] recommendations as to Meralco shareholdings were also considered. Based on these indicators, they came up with a strategy to buy Meralco shares with prices between PHP 55.00 and PHP 57.00 and sell when the prices reach PHP 60.00 to PHP 63.00.[105]

Two risk management reports were issued in 2008 stating that "[i]n a 30[-]day period (31 May to June 30), Meralco prices decreased by 37.4 percent or ₱23.00 from ₱61.50/share to ₱38.50/share."[106] Its investment in stocks decreased by 38.64%.[107]

A stop loss order is in place to limit the exposure of Land Bank to the movement of prices of Meralco stocks in the market. A November 21, 2008 memorandum was issued seeking the approval to extend the holding period of the Meralco shares, notwithstanding that its losses of PHP 13.88 million exceeded the limit of PHP 12 million to trigger the stop loss order. A request was made to include its held for trading Meralco shares in the negotiated block sale at PHP 90.00 a share.[108]

Petitioners explained that these documents, while belatedly submitted in their Joint Motion for Partial Reconsideration, was due to the lack of allegation in the complaint.[109] Thus, the documents were only presented in their Joint Motion for Reconsideration. The Ombudsman committed a grave error in disregarding these crucial documents.

In *Canlas v. Bongolan*,[110] this Court held that violation of Section 3(g) of Republic Act No. 3019 requires gross or manifest disadvantage to the government, or at least a showing that it was entered into with malice. There is no violation when due diligence and sound business judgment were exercised and without violating any internal regulations and other legal requirements:

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103 *Rollo* (G.R. No. 237558), pp. 155–156.
104 *Id.* at 156. The following brokers gave their recommendation: Credit Suisse, JP Morgan, CLSA Asia Pacific, UBS, Deutsche Bank, Macquarie, and ATR-Kim Eng.
105 *Id.* at 155–156.
106 *Id.* at 159.
107 *Id.* at 160.
108 *Id.* at 162–163.
109 *Rollo* (G.R. No. 238138), p. 435.
110 832 Phil. 293 (2018) [Per J. Leonen, Third Division].

> In the case at bar, respondents held a public bidding twice before it agreed to the bid price of Wong. The price falls within the amount that it is authorized to sell. They also sought the clearance of the Office of the Government Corporate Counsel before pushing through with the sale. Their acts show that they exercised due diligence and sound business judgment before executing the sale. There is likewise no showing that they violated any rule or process in granting the sale of the properties to Wong. And although it is not an element to the offense, the sale does not seem to be tainted with any partiality, bad faith, or negligence.
>
> The law requires that the contract must be grossly and manifestly disadvantageous to the government or that it be entered into with malice. It does not find guilt on the mere entering of a contract by mistake.[111]

In *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*,[112] there must be convincing proof demonstrating how contracts were grossly disadvantageous to the government. In this case, the Court did not find the Development Bank of the Philippines officers liable for violation of Section 3(g) of Republic Act No. 3019 because the records show that they studied and evaluated the request for loan before granting the same. There was also no showing that they failed to exercise sound business judgment nor was there proof that the conditions were imposed specifically to favor the applicant.

Here, there was no showing that there was malice involved in the execution of the Share Purchase Agreement. Other than the provisions in the contract, there was no extraneous evidence showing that the terms and conditions in the Share Purchase Agreement were adopted to favor Global 5000.

The Office of the Ombudsman claimed that it found several provisions in the Share Purchase Agreement which are grossly and manifestly disadvantageous for the government. Specifically, Global 5000 was given the beneficial ownership of stocks, having the right to all the dividends and exercise voting powers upon payment of only 20% downpayment. Moreover, all the cash dividends prior to the full payment shall be automatically applied as partial payment of the balance of Global 5000. The Office of the Ombudsman held that the lack of sufficient capitalization and track record of Global 5000 were also suspect.[113]

However, we do not agree that these provisions are grossly and manifestly prejudicial to the government. The Office of the Ombudsman ignored the negotiation aspect of a contract where prospective parties come to the table and calibrate their respective interests based on what can be reasonably compromised and accommodated. This process involves give and take relationship between the parties. The government as a contracting party

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[111] *Id.* at 345.
[112] 603 Phil. 18 (2009) [Per J. Carpio Morales, Second Division].
[113] *Rollo* (G.R. No. 237558), pp. 113–119.

cannot assume that it can take all the beneficial provisions without giving acceptable concessions to the other party. Mere disadvantage or inconvenience to the government is not sufficient to find probable cause for violation of Section 3(g) of Republic Act No. 3019. The disadvantage must be glaring, reprehensible, flagrant or shocking.[114] We agree with petitioners that the interest of Land Bank is protected with the automatic forfeiture clause of payments already made, including any cash dividends that have been applied as payment of Global 5000's balance under the Share Purchase Agreement.

Global 5000 could not be expected to have bought Land Bank's shareholding for a premium of PHP 90.00 per share without an equivalent exchange, especially since the market price was significantly lower at PHP 57.00 per share. There are conditions for which the higher premium is given, which, in this case, are the enjoyment of the beneficial ownership of the stock, i.e., the right to earn dividends and the right to vote. Agreeing to these terms is not manifestly and grossly prejudicial to the government since these are considerations for a higher premium.

The Office of the Ombudsman's issue with the transaction is that Global 5000 can already exercise these rights with only a 20% down payment. It contends that the board could have prorated the right based on the installments already made. In failing to do so, it lost the chance to reinvest prorated dividend earnings.[115]

We do not agree.

The right to earn dividends is an inchoate right. The Revised Corporation Code provides that the board of directors may choose to declare dividends from its unrestricted retained earnings.[116] There is no guaranty in the declaration of dividends as it is contingent on the existence of surplus profit and the discretion of the board of directors.[117]

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[114] *Bawasanta v. People*, G.R. No. 219300, November 17, 2021 [Per J. Gaerlan, Second Division].

[115] *Rollo* (G.R. No. 237558), p. 114.

[116] SECTION 42. Power to Declare Dividends. – *The board of directors of a stock corporation may declare dividends out of the unrestricted retained earnings* which shall be payable in cash, property, or in stock to all stockholders on the basis of outstanding stock held by them: Provided, That any cash dividends due on delinquent stock shall first be applied to the unpaid balance on the subscription plus costs and expenses, while stock dividends shall be withheld from the delinquent stockholders until their unpaid subscription is fully paid: Provided, further, That no stock dividend shall be issued without the approval of stockholders representing at least two-thirds (2/3) of the outstanding capital stock at a regular or special meeting duly called for the purpose.
Stock corporations are prohibited from retaining surplus profits in excess of one hundred percent (100%) of their paid-in capital stock, except: (a) when justified by definite corporate expansion projects or programs approved by the board of directors; or (b) when the corporation is prohibited under any loan agreement with financial institutions or creditors, whether local or foreign, from declaring dividends without their consent, and such consent has not yet been secured; or (c) when it can be clearly shown that such retention is necessary under special circumstances obtaining in the corporation, such as when there is need for special reserve for probable contingencies. (Emphasis supplied)

[117] *Republic Planters Bank v. Agana, Sr.*, 336 Phil. 1, 9–10 (1997) [Per J. Hermosisima, Jr., First Division].

Aside from the premium of PHP 90.00 per share, Land Bank also enjoys a fixed term interest rate amounting to PHP 553,847,140.06.[118] The Ombudsman gravely erred in relying on actual dividend declarations during the three-year installment period.[119] The fact that the dividend earnings that could have been earned is greater than the amount of the fixed interest earnings does not prove that the contract is grossly and manifestly prejudicial to the government. We agree with petitioners that this represents the foregone value of money given that the sale is on installment basis. In essence, the fixed interest rate is to ensure that Land Bank will receive the same amount of money had it been given in lump sum when the contract was executed than in three years on installment basis.

In *Presidential Commission on Good Government v. Office of the Ombudsman*,[120] we held that sufficient leeway should be given to government financial institutions to take reasonable risks in its business:

> Section 3, paragraphs (e) and (g) of Republic Act No. 3019 should not be interpreted in such a way that they will prevent Development Bank, through its managers, to take *reasonable risks in relation to its business*. Profit, which will redound to the benefit of the public interests owning Development Bank, will not be realized if our laws are read constraining the exercise of sound business discretion.
>
> Thus, Section 3 (e) requires "manifest partiality, evident bad faith or gross inexcusable negligence" and the element of arbitrariness and malice in taking risks must be palpable. Likewise, there must be a showing of "undue injury" to the government. Section 3(g), on the other hand, requires a showing of a "contract or transaction manifestly and grossly disadvantageous to the [government]."
>
> Definitely, this means that it must not only be proven that Development Bank suffered business losses but that these losses, in the ordinary course of business and with the exercise of sound judgment, were inevitably unavoidable. Public respondent's findings did not transgress these requirements. Thus, there is no reason to issue the discretionary writ of *certiorari*.[121] (Emphasis supplied)

It is evident that petitioners exercised due diligence. They negotiated the terms of the Share Purchase Agreement in the exercise of sound business judgment and for the benefit of Land Bank. Absent a showing that the contract was manifestly and grossly disadvantageous to the government, we cannot substitute our own determination over these matters. Thus, we dismiss the complaint against petitioners. Having dismissed the criminal case, there is no need to resolve the other issues raised in the Petition.

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[118] *Rollo* (G.R. No. 237558), p. 197.
[119] *Id.* at 115–116.
[120] 844 Phil. 1 (2018) [Per J. Leonen, Third Division].
[121] *Id.* at 28.

ACCORDINGLY, the Petitions in G.R. Nos. 237558, 238133, and 238138 are **GRANTED**. The assailed October 21, 2015 Resolution and the February 24, 2017 Omnibus Order of the Ombudsman are hereby **REVERSED** and **SET ASIDE**. There being no probable cause, the complaint for violation of Section 3(g) of Republic Act No. 3019 against petitioners Margarito B. Teves, Cyril C. Del Callar, Albert C. Balingit, George J. Regalado, Roberto S. Vergara, Gilda E. Pico, and Carel D. Halog, is hereby **DISMISSED**.

SO ORDERED.

MARVIC M.V.F. LEONEN
Senior Associate Justice

WE CONCUR:

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

JHOSEP Y. 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 cases were assigned to the writer of the opinion of the Court's Division.

MARVIC M.V.F. 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 cases were assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice