

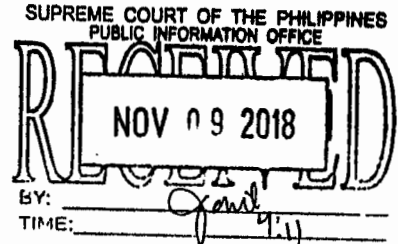


Republic of the Philippines
Supreme Court

Manila

EN BANC

NOTICE



Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated **NOVEMBER 6, 2018**, which reads as follows:

“G.R. Nos. 213534-35 (RONALD JOHN LIM, petitioner, v. CONCHITA CARPIO MORALES in her official capacity as OMBUDSMAN, PEOPLE OF THE PHILIPPINES, and SANDIGANBAYAN, respondents.)

X ----- X

G.R. Nos. 213534-35 is a petition¹ filed by Ronald John Lim (Lim) assailing the Joint Resolution² dated 28 March 2014 and Joint Order³ dated 4 June 2014 of the Office of the Ombudsman (OMB) in OMB-C-C-13-0318 entitled “*National Bureau of Investigation (NBI) v. Juan Ponce Enrile, et al.*” and OMB-C-C-13-0396 entitled “*Field Investigation Office (FIO) – Office of the Ombudsman v. Juan Ponce Enrile, et al.*,” for having been issued without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.

The widespread misuse of the Priority Development Assistance Fund (PDAF) gave rise to the filing of the NBI and FIO complaints. The FIO complaint for Plunder and violation of Section 3(e) of Republic Act (RA) No. 3019, as amended, charged Lim as a private respondent.⁴ The modus operandi in the misuse of the PDAF is described in *Cambe v. Office of the Ombudsman*⁵ (*Cambe*) as follows:

As alleged, the PDAF scheme commences with Napoles meeting with a legislator - in this case, Sen. Revilla - with the former giving an offer to “acquire” his PDAF allocation in exchange for a “commission” or “kickback” amounting to a certain percentage of the PDAF. Upon their agreement on the conditions of the PDAF acquisition, including the project for which the PDAF will be utilized, the corresponding [Implementing Agency (IA)] tasked to implement the same, and the legislator’s “commission” or “kickback” ranging from 40-60% of either the project cost or the amount stated in the SARO, the legislator would

¹ Under Rule 65 of the 1997 Rules of Civil Procedure.
² *Rollo*, pp. 36-178.
³ *Id.* at 352-417.
⁴ *Id.* at 43.
⁵ 802 Phil. 190, 201-203 (2016).

then write a letter addressed to the Senate President for the immediate release of his PDAF, who in turn, will endorse such request to the DBM for the release of the SARO. By this time, the initial advance portion of the "commission" would be remitted by Napoles to the legislator. Upon release of the SARO, Napoles would then direct her staff - including whistleblowers Benhur Luy (Luy), Marina Sula (Sula), and Merlina Suñas (Suñas) to prepare PDAF documents containing, *inter alia*, the preferred Janet Lim Napoles (JLN) -controlled [Non-Government Organization (NGO)] that will be used as a "conduit" for the implementation of the project, the project proposals of the identified NGO, and the endorsement letters to be signed by the legislator and/or his staff, all for the approval of the legislator; and would remit the remaining portion or balance of the "commission" of the legislator, which is usually delivered by her staff, Lim and De Asis. Once the documents are approved, the same would be transmitted to the IA which would handle the preparation of the Memorandum of Agreement (MOA) to be executed by the legislator's office, the IA, and the chosen NGO. Thereafter, the DBM would release the [Notice of Cash Allocation (NCA)] to the IA concerned, the head/official of which, in turn, would expedite the transaction and release of the corresponding check representing the PDAF disbursement, in exchange for a ten percent (10%) share in the project cost. Among those tasked by Napoles to pick up the checks and deposit them to the bank accounts of the NGO concerned were Luy, Suñas, and De Asis. Once the funds are in the account of the JLN-controlled NGO, Napoles would then call the bank to facilitate the withdrawal thereof. Upon withdrawal of the said funds by Napoles's staff, the latter would bring the proceeds to the office of JLN Corporation for accounting. Napoles would then decide how much will be left in the office and how much will be brought to her residence in Taguig City. De Asis, Lim, Luy, and Suñas were the ones instructed to deliver the money to Napoles's residence. Finally, to liquidate the disbursements, Napoles and her staff would manufacture fictitious lists of beneficiaries, liquidation reports, inspection reports, project activity reports, and similar documents that would make it appear that the PDAF-funded projects were implemented when, in fact, they were not since they were actually inexistent or, in other words, "ghost" projects. (Citations omitted)

The OMB, in Orders dated 19 and 29 November 2013, directed the respondents, including Lim, to file their counter-affidavits. **However, Lim was among those who failed to file any counter-affidavit, which prompted the OMB to consider them having waived their right to file the same.**⁶

The Joint Resolution gave due course to the FIO's complaint dated 18 November 2013 and to the NBI's complaint dated 16 September 2013. The Joint Resolution recommended the filing of an Information against Lim and several others for Plunder and violation of Section 3(e) of RA No. 3019, as amended. The Joint Resolution found probable cause to indict Lim for the following:

1. One count of plunder (Section 2 in relation to Section 1(d)[1], [2] and [6] of RA No. 7080, as amended), in relation to Juan Ponce Enrile's (Enrile) ill-gotten wealth in the aggregate

⁶ Rollo, p. 65.

sum of ₱172,834,500.00 representing kickbacks or commissions received by Enrile from Janet Lim Napoles (Napoles) in connection with PDAF-funded government projects and by reason of his office or position;

2. Fifteen counts of violation of Section 3(e) of RA No. 3019:

a. In relation to fund releases amounting to ₱20 million drawn from Enrile's PDAF and coursed through the Technology Resource Center (TRC) and Countrywide Agri and Rural Economic and Development Foundation, Inc. (CARED), as reflected in Disbursement Voucher (DV) Nos. 01-2007-040669, 01-2007-040670, 01-2007-040671, and 01-2007-040672.

b. In relation to fund releases amounting to ₱22.5 million drawn from Enrile's PDAF and coursed through the TRC and Agricultura Para sa Magbubukid Foundation, Inc. (APMFI), as reflected in DV Nos. 01-2009-040929 and 01-2009-051300.

c. In relation to fund releases amounting to ₱24.25 million drawn from Enrile's PDAF and coursed through the National Agribusiness Corporation (NABCOR) and People's Organization for Progress and Development Foundation, Inc. (POPDI), as reflected in DV Nos. 08-04-01201 and 08-07-02312.

d. In relation to fund releases amounting to ₱19.4 million drawn from Enrile's PDAF and coursed through the NABCOR and Masaganang Ani Para sa Magsasaka Foundation, Inc. (MAMFI), as reflected in DV Nos. 08-09-3575 and 09-04-1622.

e. In relation to fund releases amounting to ₱29.1 million drawn from Enrile's PDAF and coursed through the NABCOR and Social Development Program for Farmers Foundation, Inc. (SDPFFI), as reflected in DV Nos. 08-09-3572 and 09-05-1751.

f. In relation to fund releases amounting to ₱24.25 million drawn from Enrile's PDAF and coursed through the NABCOR and MAMFI, as reflected in DV Nos. 09-05-1773 and 09-06-2025.

g. In relation to fund releases amounting to ₱24.25 million drawn from Enrile's PDAF and coursed through the NABCOR and SDPFFI, as reflected in DV Nos. 09-05-1774 and 09-06-2022.

- h. In relation to fund releases amounting to ₱14.55 million drawn from Enrile's PDAF and coursed through the NABCOR and MAMFI, as reflected in DV Nos. 09-05-1767 and 09-06-2028.
- i. In relation to fund releases amounting to ₱9.7 million drawn from Enrile's PDAF and coursed through the NABCOR and SDPFFI, as reflected in DV Nos. 09-06-1825 and 09-06-2027.
- j. In relation to fund releases amounting to ₱8 million drawn from Enrile's PDAF and coursed through the National Livelihood Development Corporation (NLDC) and CARED, as reflected in DV No. 09-10-1530.
- k. In relation to fund releases amounting to ₱20 million drawn from Enrile's PDAF and coursed through the NLDC and MAMFI, as reflected in DV Nos. 09-09-1355, 09-10-1443, AMD 09-10-1534.
- l. In relation to fund releases amounting to ₱44 million drawn from Enrile's PDAF and coursed through the NLDC and CARED, as reflected in DV Nos. 09-12-1834, 10-01-0004, 10-01-0118 and 10-05-0747.
- m. In relation to fund releases amounting to ₱25 million drawn from Enrile's PDAF and coursed through the NLDC and Agri and Economic Program for Farmers Foundation, Inc. (AEPFFI), as reflected in DV Nos. 09-091353, 09-10-1444, and 09-10-1540.
- n. In relation to fund releases amounting to ₱25 million drawn from Enrile's PDAF and coursed through the NLDC and APMFI, as reflected in DV Nos. 09-09-1358, 09-10-1449, and 09-10-1535.
- o. In relation to fund releases amounting to ₱32 million drawn from Enrile's PDAF and coursed through the NLDC and CARED, as reflected in DV Nos. 09-09-1354 and 09-10-1447.

Lim received the Joint Resolution on 1 April 2014. Lim filed a Motion for Reconsideration on 7 April 2014.

The Joint Order amended certain portions of the Joint Resolution and denied Lim's Motion for Reconsideration dated 7 April 2014. Lim received the Joint Order on 5 June 2014, and filed the present Petition on 4 August 2014.

As correctly pointed out by the Ombudsman, whistleblowers Luy and Suñas narrated that over the course of the perpetuation of the PDAF scam, they, along with the other staff of Napoles – which includes Lim – would prepare, and thereafter deliver, the kickbacks intended for Sen. Revilla. The preparation and delivery of kickbacks to the legislator and/or his trusted staff are indeed overt acts that relate to his involvement in the PDAF scheme. To note, even if it is assumed that Lim only prepared the money and did not deliver the same as he claims, the act of preparation is still connected to the common objective of the conspiracy. Accordingly, this establishes the existence of probable cause against him for the crime charged. Hence, his petition in **G.R. Nos. 213532-33** is likewise dismissed. (Citations omitted. Boldfacing in the original)

Cambe concluded thus:

Case law states that “the Ombudsman’s finding of probable cause does not touch on the issue of guilt or innocence of the accused. It is not the function of the Office of the Ombudsman to rule on such issue. All that the Office of the Ombudsman did was to weigh the evidence presented together with the counter-allegations of the accused and determine if there was enough reason to believe that a crime has been committed and that the accused are probably guilty thereof.” In the review of the Ombudsman’s determination of probable cause, we are guided by this Court’s pronouncement in *Vergara v. Ombudsman*, where it was ruled that:

[C]ourts do not interfere in the Ombudsman’s exercise of discretion in determining probable cause unless there are compelling reasons. The Ombudsman’s finding of probable cause, or lack of it, is entitled to great respect absent a showing of grave abuse of discretion. Besides, to justify the issuance of the writ of *certiorari* on the ground of abuse of discretion, the abuse must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.¹² (Citations omitted.)

We are inclined to do no less in the present case. We recognize that the acts in *Cambe*, which relate to the illegal pillaging of public funds sourced from the PDAF of then Senator Ramon Revilla, Jr., occurred within the same timeline as the acts in the present case.

Lim imputes grave abuse of discretion on the part of the OMB. However, grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. Thus, to constitute grave abuse of discretion, the OMB’s exercise of power to determine probable cause must have been done in an 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 in contemplation of law.¹³ Lim, however, miserably failed to show this. {

¹²802 Phil. 190, 239 (2016).

¹³*Disini v. Sandiganbayan*, 637 Phil. 351, 376 (2010); *Cambe v. Office of the Ombudsman*, supra, at 214.

Lim raises the following issues before this Court:

1. Whether or not the Office of the Ombudsman gravely abused its discretion amounting to lack or excess of jurisdiction when it found probable cause to indict petitioner Lim for violation of the Plunder law?

1. Whether or not the Office of the Ombudsman gravely abused its discretion amounting to lack or excess of jurisdiction when it found probable cause to indict petitioner Lim for violation of Section 3(e) of RA 3019?⁷

First, we point out that Lim failed to file a counter-affidavit before the Ombudsman. Thus, it is proper for the Ombudsman to consider his non-filing as a waiver of his right to file the same. As to the Ombudsman, the allegations in the complaint regarding Lim remain uncontroverted.

Second, Lim attempts to subvert the hierarchy of courts and filed a petition before this Court to use its power of *certiorari* under Rule 65 to dismiss a case which is presently being heard in the Sandiganbayan. It is settled that once a complaint or information is filed in court, any disposition of the case as to its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the court.⁸ Lim's resort to the extraordinary remedy of *certiorari* is premature as there are remedies before the Sandiganbayan that are still available to Lim at this point.

Finally, Lim argues that "the finding of probable cause [was] based on NBI and FIO complaints which were insufficient in form and in substance as it failed to allege the specific action of Lim that constitutes a violation of Plunder."⁹ Lim also states that "there is no other allegation or evidence to support the claim that [he] is part of any conspiracy to establish probable cause to charge [him] with Plunder or even Graft and Corruption."¹⁰

This Court has already addressed this argument in *Cambe*:¹¹

In **G.R. Nos. 213532-33**, Lim argues that the Ombudsman gravely abused its discretion in finding probable cause against him for Plunder. According to him, the criminal complaints do not allege a specific action he committed that would demonstrate his involvement for the crime charged.

Lim's contention is without merit.

⁷ Id. at 11.

⁸ *Crespo v. Judge Mogul*, 235 Phil 465 (1987).

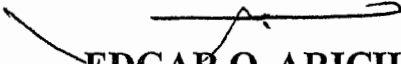
⁹ *Rollo*, p. 13.

¹⁰ Id. at 21.

¹¹ 802 Phil. 190, 236-237 (2016).

WHEREFORE, the petition is **DISMISSED.**" Del Castillo, Gesmundo and Reyes; J., Jr., JJ., on official leave. (adv117)

Very truly yours,


EDGAR O. ARICHETA
Clerk of Court

Our

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