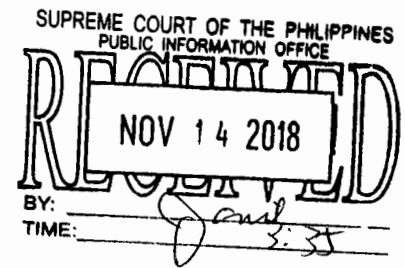




REPUBLIC OF THE PHILIPPINES
 SUPREME COURT
 Manila

SECOND DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **19 September 2018** which reads as follows:

“G.R. No. 235752 (*Melquiades I. Gaité vs. Dante O. Bismonte and Office of the Ombudsman*). – This is a petition for *certiorari*,¹ brought to this Court under Rule 65 of the Rules of Court, attributing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent Office of the Ombudsman (OMB) for issuing its Resolution² dated January 4, 2016 and Joint Order³ dated August 7, 2017 finding probable cause against petitioner Melquiades I. Gaité (Mayor Gaité) for the violation of Section 3(e) of Republic Act (R.A.) No. 3019.⁴

Mayor Gaité was the elected municipal mayor of Baao, Camarines Sur. During his term, specifically on November 7, 2012, the *Sangguniang Bayan* of Baao, Camarines Sur passed Municipal Ordinance No. 3, series of 2012 (Ordinance No. 3), or the “Revised Market Code of the Municipality of Baao,” for the rehabilitation and administration of the Baao Public Market.⁵ Under this ordinance, a *Market Awards and Regulation Committee (MARC)* was created, comprised of the Municipal Mayor as Chairman, the Market Supervisor as Vice Chairman, and four (4) members of the *Sangguniang Bayan* as its members. Representatives from the consumers and the market vendors also constitute the MARC.⁶

The MARC oversees, reviews, and evaluates all applications for stall occupancy.⁷ Once the application is approved, the stallholder is required to pay *goodwill money* of at least Php 25,000.00 for the first ten (10) square meters, and an additional Php 1,000.00 per sq m in excess thereof.⁸ The duration of the lease with the qualified stallholder was also fixed for a period

¹ *Rollo*, pp. 3-25.

² *Id.* at 29-37.

³ *Id.* at 38-41.

⁴ ANTI-GRAFT AND CORRUPT PRACTICES ACT. Approved on August 17, 1960.

⁵ *Rollo*, pp. 101-131.

⁶ *Id.* at 114.

⁷ *Id.*

⁸ *Id.* at 118.

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not exceeding five (5) years, subject to reformation during its effectivity and renewal after its expiration.⁹

The MARC was also mandated, among other things, to create the procedure in the awarding of market stalls. Accordingly, it issued the following: (a) **Resolution No. 2014-002**, laying down the guidelines for public bidding in leasing portions of the ground and second floors of the Baao Public Market;¹⁰ and (b) **Resolution No. 2014-002-A**, setting down the guidelines in the execution of the lease contract.¹¹

In particular, 'Resolution No. 2014-002-A provides the following guidelines in the execution of the contract and the awarding of the 1,704.4-sq-m portion of the Baao Public Market to the highest bidder: (a) the lease would specifically cover 204.4 sq m of the ground floor and 1,500 sq m of the second floor; (b) the rate of the monthly rental should not be less than that provided for class A and B stalls, computed as a whole on the basis of the rates prescribed in Ordinance No. 3; and (c) the duration of the lease may exceed five (5) years, taking into consideration the large amount of investment.¹²

Subsequently, on May 21, 2014, Mayor Gaité, acting in his capacity as the local chief executive of Baao, Camarines Sur, entered into a Contract of Lease¹³ with Lamver Consolidated Complex Development Corporation, Inc. (LCC). The lease covered portions of the first and second floors of the Baao Public Market, having an aggregate area of 1,704.4 sq m.¹⁴ Mayor Gaité agreed to lease these portions of the market to LCC for a period of 25 years, for the purpose of operating a "Community Mall" on the leased premises.¹⁵

On May 19, 2015, the respondent, Dante O. Bismonte (Bismonte), filed a complaint-affidavit¹⁶ against Mayor Gaité for the violation of Sections 3(e) and 3(g) of R.A. No. 3019, among others. According to Bismonte, the lease contract with LCC was beyond the authority of Mayor Gaité. Ordinance No. 3 explicitly limits the duration of the lease contract to five (5) years, whereas the lease contract of LCC was for a period of 25 years. Bismonte also asserted that LCC was given unwarranted benefits because it was not asked to provide the *goodwill money* ordinarily required for stall lessees, to the gross disadvantage of the Municipality of Baao, Camarines Sur.¹⁷

⁹ Id. at 123.
¹⁰ Id. at 87.
¹¹ Id. at 88.
¹² Id.
¹³ Id. at 134-140.
¹⁴ Id. at 134.
¹⁵ Id. at 135.
¹⁶ Id. at 96-98.
¹⁷ Id. at 90-98.

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After the submission of the parties' respective pleadings, the OMB issued its Resolution¹⁸ dated January 4, 2016, finding probable cause for the violation of Section 3(e) of R.A. No. 3019 and recommending the filing of the corresponding Information against him. Mayor Gaité moved for the reconsideration of this resolution.¹⁹ The OMB denied his motion in its Joint Order²⁰ dated August 7, 2017.

Aggrieved, Mayor Gaité filed the present petition for *certiorari* under Rule 65 of the Rules of Court, with a prayer for the issuance of a temporary restraining order (TRO) or a writ of preliminary injunction to enjoin the OMB from implementing its assailed issuances.²¹

Bismonte and OMB (respondents) were required to comment on the petition.²² Both Bismonte and the OMB filed their respective comments on March 21, 2018²³ and on June 5, 2018.²⁴

In essence, the issue in the present case is whether the OMB gravely abused its discretion, amounting to lack or excess of jurisdiction, in finding probable cause against Mayor Gaité for the violation of Section 3(e) of R.A. No. 3019.

Mayor Gaité alleges that he was authorized under Ordinance No. 3 to enter into the subject Contract of Lease with LCC.²⁵ He further argues that the five-year lease period and the payment of *goodwill money* applies only to natural persons, not to juridical entities such as LCC.²⁶ In any case, he claims that the capital expenditure of LCC in developing the leased area was sufficiently equivalent to the required *goodwill money* had LCC been required to pay said amount.²⁷ He also disclaims granting unwarranted benefit, privilege, or preference to LCC, arguing that the economic benefits of the Community Mall, in terms of revenue and local employment, would redound to the benefit of Baao, Camarines Sur.²⁸

It is well-settled that "[t]he Ombudsman has full discretionary authority in the determination of probable cause during a preliminary investigation."²⁹ Thus, the Court generally cannot substitute its own judgment for that of the OMB, except when there is a grave abuse of discretion amounting to lack or excess of jurisdiction. Mayor Gaité, as the petitioner, bears the burden of establishing the fact that the OMB exercised

¹⁸ Id. at 29-37.

¹⁹ Id. at 42-54.

²⁰ Id. at 38-41.

²¹ Id. at 3-25.

²² Id. at 238.

²³ Id. at 239-255.

²⁴ Id. at 326-341.

²⁵ Id. at 9-10.

²⁶ Id. at 14-16.

²⁷ Id. at 14.

²⁸ Id. at 21-22.

²⁹ *Busuego v. Office of the Ombudsman (Mindanao)*, 719 Phil. 367, 378 (2013).

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its discretion in such a patent and gross manner as to amount to an evasion of a positive duty or a virtual refusal to perform a statutorily enjoined duty, or to act in contemplation of law.³⁰

Preliminarily, it should be borne in mind that the evidence required to establish probable cause is *not* proof beyond reasonable doubt. Neither is probable cause based on clear and convincing evidence, or absolute certainty of guilt. The OMB's finding of probable cause may simply rely on evidence "showing that more likely than not a crime has been committed and was committed by the suspects."³¹ Under these premises, the OMB's determination on whether Mayor Gaité violated Section 3(e) of R.A. No. 3019 may rest on evidence sufficient to engender a well-founded belief that a crime has been committed, and that Mayor Gaité was guilty thereof.³²

For this purpose, it is relevant to consider the following elements of Section 3(e) of R.A. No. 3019: (a) the offender must be a public officer discharging administrative, judicial, or official functions; (b) he must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (c) his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.³³

The *first* element of the crime is concededly present. Mayor Gaité, in entering into the lease contract with LCC, acted in his official capacity as the local chief executive of Baao, Camarines Sur.

As to the *second* element, the respondents alleged that Mayor Gaité exceeded his authority in the execution of the lease contract with LCC because there was no prior authorization from the *Sangguniang Bayan*. An examination of the records of this case supports this contention.

Under the Local Government Code (LGC), the local chief executive must be authorized by the concerned *sanggunian* before entering into contracts on behalf of the local government unit.³⁴ This is further reiterated in the enumeration of powers, duties, and functions of the municipal mayor, *viz.*:

Section 444. *The Chief Executive: Powers, Duties, Functions and Compensation.* – (a) The municipal mayor, as the chief executive of the municipal government, shall exercise such powers and performs such duties and functions as provided by this Code and other laws.

³⁰ Id.; *Morales v. Ombudsman Carpio Morales*, 791 Phil. 539, 552 (2016).

³¹ *Estrada v. Office of the Ombudsman*, 751 Phil. 821, 868 (2015).

³² *People v. Borje, Jr.*, 749 Phil. 719, 728 (2014).

³³ *Garcia, Jr. v. Office of the Ombudsman*, 747 Phil. 445, 459 (2014).

³⁴ R.A. No. 7160, otherwise known as the LOCAL GOVERNMENT CODE, Section 22(c).

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall:

(1) Exercise general supervision and control over all programs, projects, services, and activities of the municipal government, and in this connection shall:

x x x x

(vi) Upon authorization by the *sangguniang bayan*, represent the municipality in all its business transactions and sign on its behalf all bonds, contracts, and obligations, and such other documents made pursuant to law or ordinance[.]

The required prior authorization is a check on the power of the local chief executive. It is also a recognition of the principle that the corporate powers of the local government unit are exercised by both the local chief executive and its council.³⁵ Notably, the LGC does not prescribe the form of authorization. As such, the concerned *sanggunian* may authorize the local chief executive through an ordinance or a resolution.³⁶

A perusal of Ordinance No. 3 reveals that the Municipal Mayor of Baa0 was authorized to enter into a contract of lease involving a period of not more than five (5) years, with a stallholder that complied with the requirements prescribed in the ordinance.³⁷ Also, among the significant requirements for the lease of market stalls is the payment of *goodwill money* to the Municipal Treasurer, for a minimum amount of Php 25,000.00 for the first 10 sq m, and an additional Php 1,000.00 per sq m in excess of 10.³⁸ These provisions read:

CHAPTER VI

ADMINISTRATION AND OPERATION OF THE MARKET

x x x x

Section 4. Assignment of Stalls to Qualified Vendor Applicant or Occupant

x x x x

4.2 Upon approval but before the award of stall shall be made, the stall applicant shall pay a "Goodwill money" to the Municipal Treasurer with the minimum amount of TWENTY-FIVE THOUSAND (P25,000.00) PESOS for the first 10 square meters and an additional of ONE

³⁵ *Quisumbing v. Garcia*, 593 Phil. 655, 670-671 (2008).

³⁶ *Id.* at 661.

³⁷ *Rollo*, pp. 118 and 123 (Ordinance No. 3, Chapter VI, Sections 4 and 12).

³⁸ *Id.* at 118.

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THOUSAND (P1,000.00) PESOS per square meter in excess of ten square meters.

4.2.1. Seventy per cent (70%) shall be considered as a trust fund of the LGU-Baao, which shall be used purely for market development, like maintenance and repair works of useful market facilities;

4.2.2. The remaining 30% thereof maybe withdrawn UPON surrender of his/her stall with due notice to the Municipal Mayor.

x x x x

4.4 Violation of the provision of the preceding section shall be a valid ground for the cancellation of the lease contract between the municipal government and the stall occupant.

x x x x

Section 12. *Duration of Contract* –

12. 1 Every contract to occupy and/or lease a market stall shall continue to be valid and effective from the time it has been signed by the parties concerned, in this case the Municipal Mayor in behalf of the LGU and the qualified stallholder, for a given period of time but not to exceed FIVE (5) YEARS, subject to reformation during its effectivity and renewal after its expiration, unless disqualified for just cause or causes as provided under this Ordinance; Provided, that in the subsequent execution of the contract, the rate of rental for the occupancy of the stall shall be subject to final negotiation between the contracting parties.³⁹

Based on the clear text of Ordinance No. 3, the authority of Mayor Gaité to execute a lease contract covering the Baao Public Market is confined to the terms and conditions expressly stated in the ordinance. It did not vest him with a blanket authority to enter into a contract of lease with any natural or juridical person, for any lease period, and under any condition that he sees fit. More importantly, there is nothing in Ordinance No. 3, which authorizes Mayor Gaité to lease the area subject of the Contract of Lease for a period of 25 years, or to forego the payment of goodwill money upon showing of a great economic benefit to the municipality.

That MARC's subsequent issuance of Resolution No. 2014-002-A does not also suffice as the required prior authorization under the LGC. Section 444 of the LGC specifically requires the concerned *sanggunian* to grant prior authorization to the local chief executive before he/she executes a contract on behalf of the local government unit.⁴⁰ While the law does not require a specific form, the authorization must originate from the concerned *sanggunian*.

³⁹ Id. at 118 and 123.

⁴⁰ R.A. No. 7160, Section 22(c).

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The MARC is a special body created under Ordinance No. 3, which is comprised of Baao's Municipal Mayor, Market Supervisor, Municipal Treasurer, four (4) members of the *sangguniang bayan*, a representative from the private sector, and a representative of the vendor's association. Thus, if MARC's Resolution No. 2014-002-A was considered as sufficient compliance with the required prior authorization, an absurd situation would result where the Municipal Mayor, as the designated Chairman of the MARC, would be one of the persons authorizing himself to execute a lease contract with LCC. In other words, the power of the Municipal Mayor to enter into a contract on behalf of the local government unit could not emanate from himself.

Mayor Gaité argues that a majority of the members of the *Sangguniang Bayan* of Baao subsequently ratified the Contract of Lease with LCC, making the exercise of his authority valid.⁴¹ Section 22(c) of the LGC, however, requires **prior** authorization —not subsequent ratification— by the *sanggunian* concerned, before the local chief executive may enter into contracts on behalf of the local government unit.⁴²

Taking these circumstances together, it is evident that the *third* element of Section 3(e) of R.A. No. 3019 is present. Mayor Gaité acted in bad faith or with gross inexcusable negligence when he executed the lease contract allowing LCC to lease a large portion of the Baao Public Market for a period of 25 years, without payment of the required goodwill money. By ignoring the parameters provided under Ordinance No. 3 in the award and operation of market stalls, LCC was obviously granted unwarranted benefits, advantage, and preference over all other stallholders.

There being sufficient evidence to engender a well-founded belief that Mayor Gaité indeed violated Section 3(e) of R.A. No. 3019, the OMB did not gravely abuse its discretion amounting to lack or excess of jurisdiction. Mayor Gaité evidently failed to establish the capricious exercise of discretion on the part of the OMB, and as such, there is no basis to nullify and set aside its findings.

WHEREFORE, premises considered, the petition for *certiorari* is **DISMISSED**, there being no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Office of the Ombudsman. The Resolution dated January 4, 2016 and Joint Order dated August 7, 2017 rendered by the Office of the Ombudsman in OMB-L-C-15-0270 are **AFFIRMED**.


⁴¹ *Rollo*, pp. 18-19.

⁴² *Vergara v. Ombudsman*, 600 Phil. 26, 46 (2009); *See also Municipality of Tiwi v. Betito*, 638 Phil. 609, 619-620 (2010).

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SO ORDERED.” (Carpio, J., on wellness leave; Perlas-Bernabe, J., designated as Acting Chairperson per Special Order No. 2592 dated September 5, 2018; J. Reyes, Jr., J., designated as Additional Member per Special Order No. 2587 dated August 28, 2018.)

Very truly yours,


MARIA LOURDES C. PERFECTO
Division Clerk of Court
13 NOV 2018

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