REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **27 November 2019** which reads as follows:

“G.R. Nos. 238224-27 (*Esmeralda H. Frincillo, Lesarbo L. Mengote, Raul R. Tapia, Renato M. Abayare, Roel A. Pazon and Alan A. Babon vs. Sandiganbayan (Sixth Division) and People of the Philippines*); and G.R. Nos. 239155-58 (*Alejandro N. Abarratigue vs. Sandiganbayan (Sixth Division) and People of the Philippines*). – These are consolidated petitions for *certiorari* brought under Rule 65 of the Rules of Court, which assail the Sandiganbayan’s denial of the petitioners’ separate motions for the dismissal of the criminal charges filed against them, on the alleged ground of the violation of their constitutional right to speedy disposition of cases. For Esmeralda H. Frincillo (Esmeralda), Lesarbo L. Mengote, Raul R. Tapia, Renato M. Abayare, Roel A. Pazon (Roel) and Alan A. Babon (Alan), the petitioners in G.R. No. 238224-27, they challenge the Resolution¹ dated March 1, 2018 and Order² dated March 8, 2018 of the Sandiganbayan. Alejandro N. Abarratigue (Alejandro), the petitioner in G.R. No. 239155-58, assails the Resolutions dated March 12, 2018,³ and April 17, 2018.⁴ All of the challenged issuances of the Sandiganbayan were rendered in relation to the criminal cases docketed as SB-17-CRM-2402 to 2405.

This case arose from the procurement of medicines for the Municipality of Hinabangan, Samar, which occurred on four (4) separate occasions, particularly, on March 13, 2010, on August 9, 2010, on November 25, 2010, and on October 10, 2011. The Approved Budget for Contract (ABC) varied for each procurement, particularly: (a) ₱2,000,000.00 for the first procurement; (b) ₱1,800,000.00 for the second procurement; (c) ₱1,200,000.00 for the third procurement; and (d) ₱2,500,000.00 for the fourth procurement.⁵

¹ Rollo (G.R. No. 238224-27), pp. 26-37.

² Id. at 36-37.

³ Rollo (G.R. No. 239155-58), pp. 26-38.

⁴ Id. at 39-51.

⁵ Id. at 103; *rollo* (G.R. No. 238224-27), p. 86.

On March 23, 2012, the Bids and Awards Committee (BAC) Chairperson of the Municipality of Hinabangan, Samar was required to submit the relevant documents in relation to said procurement activities.⁶ The documents were submitted to the Ombudsman on June 6, 2012.⁷

Subsequently, or on October 7, 2013, the Ombudsman initiated a fact-finding investigation. In an Affidavit dated March 26, 2014, the Public Assistance and Corruption Prevention Office of the Ombudsman stated that the fact-finding case should be upgraded to formal criminal and administrative cases against the petitioners. This affidavit was filed on October 9, 2014 with the Ombudsman.⁸

On December 18, 2014, the petitioners were directed to file their counter-affidavits in response to the complaint. The petitioners all complied on April 8, 2015, except for petitioner Alan. On May 6, 2015, the petitioners were asked to submit their respective verified position papers. None of the parties complied.⁹

In a Joint Resolution dated January 10, 2017, the Ombudsman found probable cause to charge the petitioners with four (4) counts of violation of Section 3(e) of Republic Act (R.A.) No. 3019.¹⁰ The Ombudsman promptly approved this Resolution on January 24, 2017.¹¹

After the petitioners filed a motion for reconsideration, the Ombudsman issued a Joint Order dated May 25, 2017 modifying its earlier resolution. Insofar as petitioners Esmeralda and Roel were concerned, the OMB revised its recommendation to indict them both for only two (2) counts of violation of Section 3(e) of R.A. No. 3019, instead of four. The corresponding Informations were filed with the Sandiganbayan on December 1, 2017.¹²

In their Omnibus Motion dated December 11, 2017, the petitioners in G.R. No. 238224-27 sought to quash the Informations or to dismiss the case on the basis of the supposed violation of their right to speedy disposition of cases. According to them, it took the Ombudsman five years from the original complaint to resolve the case and file the corresponding

⁶ *Rollo* (G.R. No. 238224-27), pp. 51-52; *rollo* (G.R. No. 239155-58), pp. 61-62.

⁷ *Rollo* (G.R. No. 238224-27), p. 28.

⁸ *Id.* at 32.

⁹ *Id.*

¹⁰ This provision reads: "Section 3. *Corrupt practices of public officers.* x x x (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions."

¹¹ *Rollo* (G.R. No. 238224-27), p. 32.

¹² *Id.*

Informations. Citing the case of *Tatad v. Sandiganbayan*,¹³ the petitioners argue that this delay was unjustified.¹⁴ The prosecution opposed this Omnibus Motion.¹⁵

Meanwhile, Alejandro filed his own Motion to Quash dated January 4, 2018, and also a Manifestation with Supplemental Motion to Quash dated February 9, 2018.¹⁶ In his earlier motion, Alejandro argued that the Information failed to allege undue injury to the government or to any party that resulted in the controversial procurement activities.¹⁷ Alejandro's second motion manifested his intention to adopt the Omnibus Motion of the petitioners in G.R. No. 238224-27, particularly with respect to the violation of their right to the speedy disposition of cases.¹⁸ The prosecution likewise opposed the motions of Alejandro.¹⁹

In a Resolution²⁰ dated March 1, 2018, the Sandiganbayan denied the Omnibus Motion for lack of merit. The Sandiganbayan found that there was no evidence showing that the investigation against the petitioners was made for purposes of harassing them. Furthermore, the Sandiganbayan ruled that even if there was a delay, this was not inordinate. Neither was there a showing that it was vexatious, capricious, and oppressive. Thus, the dispositive portion of the assailed resolution reads:

WHEREFORE, the Omnibus Motion of accused [Esmeralda], [Lesarbo L. Mengote], [Raul R. Tapia], [Renato M. Abayare], [Roel] and [Alan] is hereby DENIED for lack of merit.

SO ORDERED.²¹

On March 8, 2018, the petitioners entered a plea of not guilty to all the charges against them.²² Soon after, the Sandiganbayan issued its Resolution²³ dated March 12, 2018, which resolved Alejandro's pending motions:

WHEREFORE, the Motion to Quash and Supplemental Motion to Quash of accused [Alejandro] are hereby DENIED for lack of merit.

SO ORDERED.²⁴

¹³ 242 Phil. 563, 568-569 (1988).
¹⁴ *Rollo* (G.R. No. 238224-27), pp. 42-49.
¹⁵ *Id.* at 27-30.
¹⁶ *Rollo* (G.R. No. 239155-58), p. 26, 49-50.
¹⁷ *Id.* at 26-27.
¹⁸ *Id.* at 28-29.
¹⁹ *Id.* at 27-29.
²⁰ *Rollo* (G.R. No. 238224-27), pp. 26-35.
²¹ *Id.* at 35.
²² *Id.* at 36-37.
²³ *Rollo* (G.R. No. 239155-58), pp. 26-38.
²⁴ *Id.* at 37.

As to the Motion to Quash, the Sandiganbayan held that undue injury to a party is not the only mode by which Section 3(e) of R.A. No. 3019 is violated. It could also be through giving any private party any unwarranted benefit, advantage, or preference, which was the case for Alejandro.²⁵ With respect to the claim of violation of the right to speedy disposition of cases, the Sandiganbayan adopted its earlier Resolution dated March 1, 2018, denying the similar motion of the petitioners in G.R. No. 238224-27.²⁶

Aggrieved, Alejandro moved for the reconsideration²⁷ of these resolutions. However, this motion was denied in the Resolution²⁸ dated April 17, 2018. This constrained the petitioners to eventually file their respective petitions for *certiorari*, assailing the denial of their separate motions to dismiss the criminal charges on the ground of violation of the right to speedy disposition of cases.

The petitioners in G.R. No. 238224-27 allege that the Sandiganbayan gravely abused its discretion amounting to lack or excess of jurisdiction when it ruled that there was no violation of their right to speedy disposition of cases. According to them, the issuance of the subpoena to the BAC Chairman on March 23, 2012 is the point from which the fact-finding investigation began. As such, the length of delay should be reckoned from this time instead of October 7, 2013, when the Ombudsman formally began the fact-finding investigation. The petitioners thus argue that from this period until the filing of the corresponding Informations with the Sandiganbayan on December 1, 2017, more than five years has lapsed. This, they assert, is a violation of their right to speedy disposition of cases.²⁹ Alejandro, in his separate petition for *certiorari*, presents the same arguments as the petitioners in G.R. No. 238224-27.³⁰

Essentially, the Court must resolve whether the Sandiganbayan gravely abused its discretion, amounting to lack or excess of jurisdiction in finding that the petitioners' right to speedy disposition of cases was not violated.

Ruling of the Court

The Court finds that the delay in the resolution of the preliminary investigation was justified under the circumstances of this case. For this reason, the present petitions are unmeritorious.

²⁵ Id. at 32-33.

²⁶ Id. at 33-37.

²⁷ Id. at 52-57.

²⁸ Id. at 39-48.

²⁹ *Rollo* (G.R. No. 238224-27), pp. 7-15.

³⁰ *Rollo* (G.R. No. 239155-58), pp. 7-15.

The 1987 Constitution guarantees the right to the speedy disposition of cases.³¹ Unlike the right to speedy trial, which covers only criminal proceedings, the right to speedy disposition of cases extends to all cases, whether civil or administrative, judicial or quasi-judicial.³² In both instances, however, the right may be invoked when the proceedings are attended by vexatious, capricious, and oppressive delays. This includes unjustified postponements of the trial, or when a long period of time is allowed to lapse without the party having his or her case tried.³³

The concept of speedy disposition, while constitutionally guaranteed, is not a rigid concept. It is relative and flexible, and highly depends on the factual circumstances surrounding each case. In examining the delay, the Court must find the postponements unjustified, arbitrary, and without reasonable cause.³⁴ **Needless to state, mere mathematical computation of the period is not the sole criterion in determining whether the due process rights of the accused were violated. The factual circumstances of each case must be examined on a case-to-case basis.**³⁵

In order to aid the Court in its decisions on what constitutes a violation of the right to speedy disposition of cases, the “*balancing test*” is often employed. This test identifies four (4) factors in the determination of whether the right to speedy disposition was violated, namely: (1) the length of the delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.³⁶

The Court’s more recent ruling in *Cesar Matas Cagang v. Sandiganbayan, Fifth Division, Quezon City; Office of the Ombudsman; and People of the Philippines*³⁷ clarified the parameters for determining whether the right to speedy disposition of cases or the right to speedy trial is violated. Thus, when the accused invokes the right within the period for disposition prescribed by the Court, the defense bears the burden of proving that: (1) the case is motivated by malice, or it is politically motivated and attended by utter lack of evidence; and (2) the defense did not contribute to the delay. But if the prosecution has exceeded the prescribed period and the accused invokes the right, the burden of proof shifts to the prosecution, who must prove that: (1) it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; (2) the complexity of the issues and the volume of evidence made the delay inevitable; and (3) there was no prejudice caused on the part of the accused as a result of the delay.

³¹ 1987 CONSTITUTION, Article III, Section 16.

³² *People v. Sandiganbayan 5th Div., et al.*, 791 Phil. 37, 63 (2016).

³³ *Coscolluela v. Sandiganbayan, et al.*, 714 Phil. 55, 61 (2013).

³⁴ *The Ombudsman v. Jurado*, 583 Phil. 132, 149 (2008).

³⁵ *People v. Sandiganbayan 5th Div., et al.*, supra, at 59.

³⁶ *The Ombudsman v. Jurado*, supra, at 147, citing *Perez v. People, et al.*, 568 Phil. 491, 513 (2008), and *Dela Peña v. Sandiganbayan*, 412 Phil. 921, 929 (2001).

³⁷ G.R. Nos. 206438 and 206458, 210141-42, July 31, 2018.

In all cases, however, the determination of the length of delay must be considered within the context of the entire case—it is never mechanical.³⁸ The lapse of time for the resolution of the preliminary investigation is not judged by simply comparing it with the length of delay in cases previously decided by this Court.

Here, the petitioners all dispute the determination of the length of delay. In particular, they assail the Sandiganbayan's decision to compute the delay from October 7, 2013, when the Ombudsman formally started the fact-finding investigation. According to them, it should be counted from the issuance of the subpoena on March 23, 2012 because this was the actual moment when the investigation started.³⁹

The petitioners' argument is untenable.

The proper reckoning point, for purposes of computing delay, should start only when adverse proceedings are initiated against the accused.⁴⁰ The Court, in *Elpidio Tagaan Magante v. Sandiganbayan (Third Division) and People of the Philippines*,⁴¹ clarified the distinction between fact-finding investigations before and after the filing of a formal complaint, which is necessary for determining when to start computing for delay, thus:

We must distinguish between fact-finding investigations conducted before and after the filing of a formal complaint. When a formal criminal complaint had been initiated by a private complainant, the burden is upon such complainant to substantiate his allegations by appending all the necessary evidence for establishing probable cause. The fact-finding investigation conducted by the Ombudsman after the complaint is filed should then necessarily be included in computing the aggregate period of the preliminary investigation.

On the other hand, if the fact-finding investigation precedes the filing of a complaint as in incidents investigated *motu proprio* by the Ombudsman, such investigation should be excluded from the computation. **The period utilized for case build-up will not be counted in determining the attendance of inordinate delay.**⁴² (Emphasis ours)

This was reiterated in *Cagang*, and later, in *Leonardo Revuelta v. People of the Philippines*.⁴³ Clearly, proceedings preparatory to the filing of a formal complaint does not factor in the length of delay. It is only when the proceedings had become adversarial that the investigation will be counted in

³⁸ Id.

³⁹ Supra notes 29 and 30.

⁴⁰ *Leonardo Revuelta v. People of the Philippines*, G.R. No. 237039, June 10, 2019.

⁴¹ G.R. Nos. 230950-51, July 23, 2018.

⁴² Id.

⁴³ G.R. No. 237039, June 10, 2019.

the determination of whether there is a violation of the right to speedy disposition of cases.

In this regard, the Sandiganbayan did not gravely abuse its discretion, amounting to lack or excess of jurisdiction, when it did not start counting the period of delay from March 23, 2012. At the time the subpoena *duces tecum* was issued to the BAC Chairman of the Municipality of Hinabangan, Samar on said date, the petitioners were not subjected to any adversarial proceeding. Neither were the petitioners required to answer any formal charge yet. The subpoena itself explicitly requires the submission only of the documents relevant to the subject procurement of medicines. Verily, the petitioners cannot invoke their right to speedy disposition of cases from this date.

Neither is the Sandiganbayan accurate when it reckoned the period of delay from the fact-finding investigation of the Ombudsman on October 7, 2013. Before the Ombudsman required the submission of the petitioners' counter-affidavits, it should be clear that there were no adversarial proceedings against the petitioners. Thus, the proper reckoning point for computing inordinate delay is on December 18, 2014—when the petitioners were asked to file their respective counter-affidavits. Prior to this date, the petitioners were not yet included in the preliminary investigation, and as such, cannot invoke the right to speedy disposition yet, as they were not subjected to any adverse proceeding.

From the time the petitioners were required to answer the charges against them, until the time the corresponding Informations were filed in court, a period of two (2) years and eleven (11) months has lapsed. This amount of time can hardly be considered vexatious and capricious on the part of the Ombudsman.

This holds especially true in this case, which involves seven accused individuals, charged with irregularities in **four procurement activities from 2010 to 2011**. The extent of each of the petitioners' participation in these separate procurement activities, as well as the corresponding evidence that the Ombudsman had to assess and examine contributed to the delay in the proceedings.

The Court has also recognized in several cases that the institutional limitations of the Ombudsman make it difficult for them to judiciously resolve the complaints filed before it, within a reasonable period of time. The Ombudsman's scope of work, as well as its constitutional mandate to act on both formal and informal complaints against government officials, almost always results in some form of delay. As held in *Mendoza-Ong v. Sandiganbayan*:⁴⁴

⁴⁴ 483 Phil. 451 (2004).

“Speedy disposition of cases” is consistent with reasonable delays. **The Court takes judicial notice of the fact that the nature of the Office of the Ombudsman encourages individuals who clamor for efficient government service to lodge freely their complaints against alleged wrongdoing of government personnel. A steady stream of cases reaching the Ombudsman inevitably results.** Naturally, disposition of those cases would take some time. Moreover, petitioner herself had contributed to the alleged delay when she asked for extension of time to file her counter-affidavit.⁴⁵ (Emphasis ours)

The Sandiganbayan thus did not gravely abuse its discretion amounting to lack or excess of jurisdiction in ruling that the delay is reasonable and justified. Moreover, the right to speedy disposition of cases and the right to speedy trial must be timely raised. Upon the lapse of the prescribed period, the accused or the respondent must invoke this right through an appropriate motion. Otherwise, the accused or the respondent is deemed to have waived these rights.⁴⁶

In this case, the petitioners filed their motions only after the Informations were filed with the Sandiganbayan. They neither invoked this right nor showed signs that they asserted this right during the proceedings before the Ombudsman. It was only after the adverse finding of probable cause that the petitioners cited their right to the speedy disposition of cases. Evidently, the petitioners’ failure to assert this right at the earliest opportunity should be interpreted as a waiver of such right.⁴⁷

Finally, it is unclear how the petitioners were prejudiced by the length of time it took the Ombudsman to resolve the preliminary investigation. During this period, all seven of the petitioners were also provided ample opportunity to file their responsive pleadings and motions for the reconsideration of the finding of probable cause. Esmeralda and Roel’s motion for reconsideration was even partially granted, and the Ombudsman modified its earlier recommendation by charging them with only two counts of violation of Section 3(e) of R.A. No. 3019.

Taking all of these into consideration, the Court finds sufficient justification for the length of time taken by the Ombudsman to resolve the preliminary investigation against the petitioners. Mere delay, when not oppressive and justified by the exigencies of service, does not violate the right to speedy disposition of cases.⁴⁸ Balanced against the interest of the State to prosecute criminal offenses and the constitutional principle that

⁴⁵ Id. at 454-455. See also *Gonzales III v. Office of the President of the Philippines, et al.*, 725 Phil. 380 (2014).

⁴⁶ *Cesar Matas Cagang v. Sandiganbayan, Fifth Division, Quezon City; Office of the Ombudsman; and People of the Philippines*, supra note 37, citing *Alvizo v. Sandiganbayan*, 292-A Phil. 144 (1993), and *Dela Peña v. Sandiganbayan*, 412 Phil. 921 (2001).

⁴⁷ *Guerrero v. CA*, 327 Phil. 496, 509 (1996).

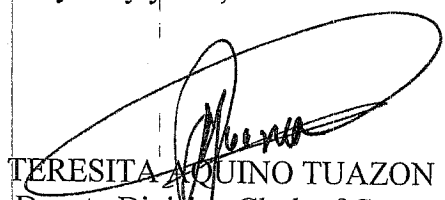
⁴⁸ See *People v. Tampal*, 314 Phil. 35, 43 (1995).

public office is a public trust, the Court finds the delay reasonable and necessary for a complete disposition of the charges against the petitioners.

WHEREFORE, premises considered, the consolidated petitions for *certiorari* in G.R. Nos. 238224-27 and 239155-58 are **DISMISSED** for utter lack of merit. Costs against the petitioners.

SO ORDERED.” (Zalameda, J., designated additional Member per Special Order No. 2727 dated October 25, 2019.)

Very truly yours,


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *12/20 Uttr*
26 DEC 2019

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