



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 29 June 2020 which reads as follows:

“G.R. No. 229694 (*Raffy Saluper Mag-aso v. Office of the Ombudsman, Field Investigation Unit, Office of the Ombudsman-Mindanao represented by Dexter B. Dumuknat and June Sanchez-Obenza*).—Before the Court is a Petition for *Certiorari*¹ under Rule 65 of the Rules of Court assailing the Resolution² dated March 18, 2016 and Consolidated Order³ dated December 23, 2016 of the Office of the Ombudsman (OMB) in OMB-M-C-14-0114. In the assailed issuances, the OMB directed the filing of criminal Informations against herein petitioner Raffy Saluper Mag-aso (petitioner Mag-aso), Department of Social Welfare and Development (DSWD) Administrative Officer III and other DSWD officials for falsification of public documents.

The antecedents of the present case are as follows:

On December 4, 2012, typhoon Pablo hit the Mindanao region, particularly the provinces of Compostela Valley and Davao Oriental. In response, the DSWD, Region XI, Field Office (DSWD-FO) spearheaded the construction of 23 bunkhouses in selected *barangays* within the affected provinces to address the needs of disaster-stricken families (the Project) through Kapit-Bisig Laban sa Kahirapan: Comprehensive Integrated Delivery of Social Services (KALAHI-CIDSS)—a government poverty alleviation program under the DSWD.

¹ *Rollo*, pp. 5-51.

² *Id.* at 68-76; issued by Rosemil R. Bañaga, Graft and Investigation and Prosecution Officer I, Field Investigation Unit (FIU), Office of the Ombudsman – Mindanao, reviewed by Maria Iluminada S. Lapid-Viva, Director, Evaluation and Investigation Bureau, as approved by Ombudsman Conchita Carpio-Morales on May 13, 2016.

³ *Id.* at 59-67; approved by Ombudsman Conchita Carpio-Morales on December 29, 2016.

Based on the Proposal⁴ prepared by KALAHI-CIDSS, through its Regional Training Officer, Clarence T. Yog, Regional Financial Analyst, Ma. Annabelle S. Jabla (Jabla), and Regional Comm Infra Specialist, Santos M. Eusebio, Jr. (Eusebio), the Project had an estimated budget of ₱12.5 million.⁵ The Proposal was later on approved by Regional Project Director, Priscilla N. Razon (Razon), KALAHI-CIDSS upon Regional Project Coordinator, Ma. Elena S. Labrador's (Labrador) recommendation.

Subsequently, an Affidavit-Complaint⁶ filed by June Sanchez-Obenza (Sanchez-Obenza) prompted the OMB-Field Investigation Unit, Mindanao (OMB-FIU) to investigate the utilization of the Project's ₱12.5 million budget/fund. The investigation yielded the following findings: (1) Documents supporting the liquidation of cash advances in the aggregate amount of ₱1,770,000.00 appeared to have been falsified; and (2) KALAHI-CIDSS' purchase of materials from a supplier appeared to have been made for "ghost" bunkhouses.

Falsified Documents

The OMB-FIU found that DSWD-FO issued checks payable to Labrador and Razon, amounting to ₱1,000,000.00 and ₱770,000.00, respectively, purportedly for the payment of labor and mobilization needed for the Project. These disbursements⁷ were recorded as "Advances to Officers/Employees" and drawn directly against DSWD-FO's "Cash – National Treasury" Account.

Subsequently, Labrador and Razon liquidated their cash advances. They appended the following documents to the liquidation reports: (a) Labor Agreements,⁸ (b) Job Orders (JOs)⁹ and (c) Time and Book Payrolls (Time Sheets).¹⁰ These documents were prepared with the DSWD-FO's heading. The names of various individuals supposedly hired by the agency to meet the Project's labor requirements, stipulating each laborer's designation and daily rate, among others, were enumerated therein. The Labor Agreements, in particular, bore the signature of herein petitioner Mag-aso, as well as those of Eusebio, and

⁴ *Id.* at 117-120.

⁵ *Id.* at 70.

⁶ *Id.* at 108-115.

⁷ *Id.* at 121, 123.

⁸ *Id.* at 127-130, 137-141.

⁹ *Id.* at 131-133, 142-144.

¹⁰ *Id.* at 134-137, 145-148.

Assistant Regional Director for Administration, Mila T. Segovia (ARD Segovia), as approving officials of DSWD-FO/KALAHI-CIDSS.

However, the persons named as laborers in the above-mentioned documents executed sworn statements¹¹ and revealed irregularities in the execution/preparation thereof.¹² The OMB-FIU's findings, as summarized by the OMB, are as follows:

x x x the Labor Agreements, [JOs], and [Time Sheets] attached to the liquidation reports for the cash advances contained **falsified dates, amounts, and names and signatures of persons**, who were made to appear that they (1) signed an agreement with the [DSWD-FO]; (2) rendered labor services for 12 straight days; and (3) were paid daily rates ranging from PhP200.00 to PhP600.00, which were all untrue. The supposed job order workers were not hired and paid by the KALAHI-CIDSS directly but were employed by subcontractors at a lower rate and for much lesser number of days; and there were also other persons made to appear to have worked on the project but in truth, have never participated at all.¹³ (Emphasis supplied)

"Ghost" Bunkhouses

Further investigation revealed that DSWD-FO also issued two checks¹⁴ payable to Thearis Builders & Supply in the aggregate amount of ₱8,272,397.94 as payment for the purchase of construction materials.¹⁵ OMB-FIU found as follows:

x x x upon ocular inspection x x x it was discovered that the bunkhouses at Barangays San Rafael, Mainit, and Alegria, all of Cateel, Davao Oriental, no longer needed concrete slabs as they were erected on a cemented basketball court and multi-purpose pavements. [And further] the *Punong Barangay* of Alegria certified that no bunkhouse was

¹¹ *Id.* at 347-445.

¹² *Id.* at 100-101.

¹³ *Id.* at 70-71.

¹⁴ *Id.* at 447, 449; first and second checks amounted to ₱2,307,478.10 and ₱5,964,919.84, respectively.

¹⁵ DSWD-FO issued two Disbursement Vouchers.

constructed in her barangay.¹⁶

Based on the results of its investigation, OMB-FIU, represented by Dexter Dumuknat, filed an Affidavit-Complaint¹⁷ before the OMB, praying for the institution of criminal cases for malversation of public funds, falsification of public documents, and violation of Section 3(e) of Republic Act No. (RA) 3019 against the DSWD-FO/KALAHI-CIDSS officials involved in the above-discussed transactions. Herein petitioner Mag-aso, in particular, was charged with the falsification of the Labor Agreements, as an approving signatory therein.

The Ruling of the OMB

In the Resolution dated March 18, 2016, the OMB directed the filing of criminal Informations against DSWD-FO/KALAHI-CIDSS officials, including petitioner Mag-aso, for falsification of public documents in relation to the liquidation of cash advances amounting to ₱1,770,000.00, but dropped the charges for misappropriation of public funds and violation of Section 3(e) of RA 3019, viz.:

WHEREFORE, there being probable cause for the crime of Falsification of Public Documents, let the corresponding Informations be filed before the appropriate court against respondents Santos Montejo Eusebio, Jr.—twenty four counts; **Raffy Saluper Mag-aso—twenty four counts** x x x The charges for misappropriation of public funds and violation of Section 3 (e), R.A. No. 3019, against all the respondents are hereby dismissed without prejudice, pending the submission of the [Commission on Audit] report.¹⁸ (Emphasis supplied)

The OMB opined that there is no sufficient evidence supporting the allegations of “ghost” bunkhouses. The responsible DSWD-FO/KALAHI-CIDSS officials amply explained the absence of concrete slabs in the bunkhouses in San Rafael, Mainit, and Alegria and verified the existence of all 23 bunkhouses as indicated in the Project Proposal.¹⁹

¹⁶ *Id.* at 71.

¹⁷ *Id.* at 98-107.

¹⁸ *Id.* at 75-76.

¹⁹ *Id.* at 73.

On the other hand, the OMB confirmed the OMB-FIU's findings on falsification against DSWD-FO/KALAHICIDSS officials involved in the preparation and approval of the Labor Agreements, JOs, and Time Sheets. Its finding of probable cause against petitioner Eusebio, Jr., Magaso, ARD Segovia, Abad, Tan, Pormento, Adlawan, and Bandigan was based on sworn statements of 51 witnesses denying having signed the documents. It explained: "The offense is committed when (a) the offender causes it to appear in a document that a person or persons participated in an act or proceeding; and (b) such person or persons did not in fact so participate in the act or proceeding."²⁰

Petitioner Magaso and the other DSWD-FO/KALAHICIDSS officials moved to reconsider the OMB's Resolution. However, the OMB denied these motions "there being no new and material evidence presented nor grave errors or irregularities successfully raised."²¹

Hence, petitioner Magaso filed the present petition²².

Petitioner Magaso averred that the OMB committed grave abuse in finding of probable cause. Its finding "is not absolute" when it is merely "based on surmises, conjectures, and generalization[s]" and "not supported by facts and applicable law."²³

He mainly insisted that he did not participate in preparing the documents, much less had knowledge of any falsification and forgery thereof.²⁴ *First*, it was Eusebio of the KALAHICIDSS who prepared the Labor Agreements. By the time these were submitted to DSWD-FO, the documents already contained the names and rates of the laborers and were signed by them.²⁵ For his part, he signed the documents in good faith²⁶ "merely to indicate that the same passed through him prior to the approval of [ARD Segovia]."²⁷ *Second*, as an Administrative Officer of DSWD-FO, he was not duty-bound to "verify x x x the truthfulness of the [documents'] contents as to the name and signatures of the labors which [he] could not have x x x determined [from] the face of the documents themselves."²⁸ *Third*, private complainant Sanchez-Obenza's

²⁰ *Id.* at 74.

²¹ *Id.* at 64.

²² *Id.* at 5-51.

²³ *Id.* at 21.

²⁴ *Id.* at 27.

²⁵ *Id.*

²⁶ *Id.* at 40.

²⁷ *Id.* at 27, 29.

²⁸ *Id.* at 40.

statement that “the forgery of the documents had been committed regularly at the regional level of the KALAHI-CIDSS, by x x x Jabla and Eusebio” shows that the subject documents were prepared and submitted for purposes of liquidation without his participation. *Fourth*, none of the witnesses’ sworn statements specifically identified him as a perpetrator.²⁹ Thus, he could not have knowingly falsified the subject documents.

In the meantime, by virtue of a Resolution dated March 13, 2017,³⁰ the Court issued a temporary restraining order enjoining the OMB from implementing its assailed issuance in OMB-M-C-14-0114.

Our Ruling

The petition has no merit.

Verily, when the OMB’s determination of probable cause in criminal cases is attended by grave abuse of discretion, the aggrieved party may question the same before the Court through *certiorari* proceedings.³¹ However, the remedy’s propriety must yield to the basic rule that the Court will generally not interfere with the OMB’s investigatory and prosecutorial powers.³² This non-interference rule is grounded upon the constitutional mandate that the prosecution of offenses committed by public officers is vested primarily in the OMB.³³

This authority allows the Ombudsman ample discretion “to determine whether a criminal case, given its facts and circumstances, should be filed or not. It is basically his[/her] call.”³⁴ When the Ombudsman finds probable cause, the general rule is that the Court cannot review such finding of fact.³⁵

²⁹ *Id.* at 25, 30.

³⁰ *Id.* at 545-546.

³¹ *Duyon, et al. v. The Former Special Fourth Division of the Court of Appeals, et al.*, 748 Phil. 375, 380 (2014).

³² *Agdeppa v. Office of the Ombudsman*, 734 Phil. 1 (2014). Also see *Borlongan v. Ombudsman*, G.R. 159754, July 25, 2005 (*Minute Resolution*).

³³ *Racho v. Hon. Miro, et al.*, 588 Phil. 515, 524 (2008). Also see *Cabrera, et al. v. Hon. Marcelo*, 487 Phil. 427, 438 (2004).

³⁴ *Kalalo v. Office of the Ombudsman, et al.*, 633 Phil. 160, 169 (2010), citing *Presidential Ad-Hoc Fact Finding Committee on Behest Loans v. Aniano Disierto*, 418 Phil. 715, 721 (2001), citing *Espinosa v. Office of the Ombudsman*, 397 Phil. 829, 836 (2000); see also *Blanco v. Sandiganbayan*, 399 Phil. 674, 685 (2000).

³⁵ *Racho v. Miro, supra* note 33.

Accordingly, the OMB's findings of probable cause, or lack thereof, are entitled great respect.³⁶ Only acts constituting grave abuse of discretion on the part of the OMB shall be reviewable by the Court. There is grave abuse of discretion when the OMB acts in an arbitrary and despotic manner because of passion or personal hostility³⁷ or fails to take essential facts into consideration in the determination of probable cause,³⁸ among others.

The party assailing the OMB's determination of probable cause has the burden of clearly showing that the OMB acted with grave abuse of discretion so patent and gross that it amounts to an evasion of positive duty, or to a virtual refusal to perform a duty enjoined by law.³⁹ Absent sufficient proof of grave abuse of discretion, the party seeking relief is not entitled to the extraordinary writ of *certiorari*⁴⁰ and the Court has no reason to disturb the OMB's findings.

In the present petition, petitioner Mag-aso imputes grave abuse on the part of the OMB because its finding of probable cause is not supported by facts and law but merely based on surmises, conjectures, and generalizations.⁴¹ In particular, other than his initials on the Labor Agreements, which he merely signed as a matter of procedure, he insists that there is no evidence showing that he knowingly participated in falsifying the subject documents.⁴²

The question whether the OMB "correctly ruled that there was enough evidence to support a finding of probable cause" is a mere error of judgment.⁴³ The basic rule is that not all mistakes committed during the course of the proceedings shall amount to grave abuse. The extraordinary remedy of *certiorari* has limited application and cannot be used to cure errors of judgment by a tribunal, board, or officer. As long as the act falls within the tribunal, board, or officers jurisdiction, his ruling, although erroneous, cannot be reviewed by the Court *via* a Rule 65 petition.⁴⁴

³⁶ *Borlongan v. Ombudsman*, *supra* note 32.

³⁷ *Angeles v. Hon. Secretary of Justice*, 503 Phil. 100 (2005)

³⁸ *Cabrera et.al. vs. Ombudsman*, *supra* note 33.

³⁹ *Angeles v. Secretary of Justice*, *supra* note 37.

⁴⁰ *Angeles v. Secretary of Justice*, *supra* note 37.

⁴¹ *Rollo*, p. 21.

⁴² *Id.* at 29.

⁴³ *Lazatin v. OMB*, 606 Phil. 271 (2009)

⁴⁴ *Information Technology Foundation of the Philippines et.al. v. Commission on Elections* 810 Phil. 400 (2017) and *Lazatin v. OMB*, *supra*.

Furthermore, the presence or absence of the elements of a crime constitutes evidentiary matters. These can be best passed upon after a trial on the merits⁴⁵ before the Sandiganbayan and not during a preliminary investigation before the OMB.

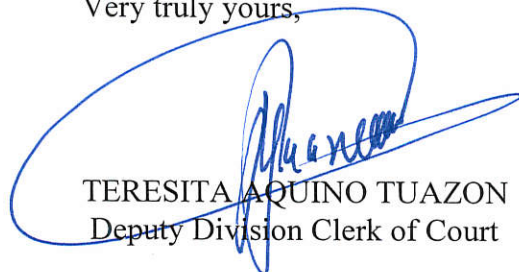
In other words, petitioner Mag-aso's cries of insufficient evidence in the OMB's finding of probable cause against him, without proof that the OMB acted in an arbitrary and despotic manner, do not justify or warrant the issuance of a writ of *certiorari*. A mere legal error in the OMB's assailed issuances falls short of an act tainted with grave abuse as contemplated under the law.

WHEREFORE, the petition is **DISMISSED** for lack of merit. The finding of probable cause against petitioner Raffy Saluper Mag-aso in the Resolution dated March 18, 2016 and Consolidated Order dated December 23, 2016 of the Office of the Ombudsman in OMB-M-C-14-0114 are **AFFIRMED**.

The Temporary Restraining Order issued by the Court in its Resolution dated March 13, 2017 is **LIFTED** and **SET ASIDE**.

SO ORDERED." (GAERLAN, J., designated as additional member, per Special Order No. 2780 dated May 11, 2020).

Very truly yours,



TERESITA AQUINO TUAZON
Deputy Division Clerk of Court

⁴⁵ *Tilendo v. OMB*, 559 Phil. 739 (2007).

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