

SECOND DIVISION

[G.R. NO. 165975, September 13, 2007]

**PAYAKAN G. TILENDO, PETITIONER, VS. OMBUDSMAN AND
SANDIGANBAYAN, RESPONDENTS.**

D E C I S I O N

CARPIO, J.:

The Case

This petition for certiorari^[1] with prayer for the issuance of a temporary restraining order assails the 13 January 2004 Resolution^[2] and the 14 October 2004 Order^[3] of the Office of the Ombudsman (Ombudsman) in Case No. OMB-M-C-02-0632-K. The Ombudsman found probable cause against Payakan G. Tilendo (Tilendo) for malversation under Article 217 of the Revised Penal Code (RPC) and violation of Section 3(e) of Republic Act No. 3019 (RA 3019) or the Anti- Graft and Corrupt Practices Act.

The Facts

In 1993, Tilendo was appointed as President of the Cotabato City State Polytechnic College (CCSPC).

In 1996, the CCSPC had an appropriation of P6 million for the construction of its Agriculture Building and Science Academic Building.^[4] The Department of Budget and Management Regional Office in Cotabato City released P5.7 million to the CCSPC, after deducting the 5% reserve. Out of this amount, P3,496,797 was allocated for the construction of the Agriculture Building. The release of this amount to CCSPC was evidenced by the following Notices of Cash Allocation (NCA): (a) P237,500 per NCA dated 23 January 1996; (b) P702,640 per NCA dated 3 June 1996; (c) P763,477 per NCA dated 19 September 1996; and (d) P1,793,180 per NCA dated 4 October 1996.

In December 1998, the "Concerned Faculty Members" of the CCSPC filed before the Ombudsman a letter-complaint against Tilendo for violation of RA 3019.

The complaint basically alleged that Tilendo enriched himself and his family while he was President of the CCSPC, using government funds for personal purposes. The complaint likewise accused Tilendo of diverting and misusing the funds allocated for the construction of the CCSPC Agriculture Building. The complaint pertinently reads:

3. Sometime in the late part of 1995, the decades-old academic main building was demolished on instruction of Dr. Tilendo. Coincidentally, an allotment of P6,000,000.00 was released by the Department of Budget

and Management for the construction of an agricultural building in the college satellite campus at Rebuken, Sultan Kudarat, Maguindanao. x x x There are no engineering designs, plans and bill of materials. The contractor, Mr. Mohammad Oliver Uka, who is his nephew was so obedient to Dr. Tilendo that he blindly obeyed his instructions.

Instead of utilizing the allotment for putting-up the agricultural building, he only instructed Mr. Uka to buy steel bars, cement, sand and gravel and hollow blocks. Other materials like lumber, G.I. sheets were taken from the scrap materials of the demolished academic school building. x x x This illegal act was in connivance with his nephew-contractor MR. MOHAMMAD OLIVER "BOY" UKA who is subservient to all the wishes and decisions of his uncle Dr. Tilendo. We believe that only an actual inspection of the building can prove the truth. He and his Budget Officer MR. PASTOR T. TAGURA has (sic) many ways to conceal facts and justify their actions. Any document that will show an implementation of the project is a mere fabrication in cahoots with other government officials to cover-up his anomalous activities and enrich himself while in office.

The conversion of [Tilendo's] 2-door apartment into a 3-storey building took place while the agricultural building is being constructed. Truckloads of construction materials were delivered from the Pigcawayan Hardware in the Poblacion Pigcawayan, Cotabato and other hardware in Cotabato City to two (2) destinations — his house in Pigcawayan and the house of his 3rd wife, MS. SAMSIA IBRAHIM.^[5]

On 2 February 1999, the Office of the Deputy Ombudsman for Mindanao (Deputy Ombudsman-Mindanao) forwarded the anonymous complaint, docketed as CPL-MIN-99-003, to the then Ministry of Education, Culture and Sports (Ministry of Education) for the conduct of a fact-finding investigation.

The Ministry of Education transmitted the complaint to the Chairman of the Board of Trustees of the CCSPC to decide on who should conduct the investigation.

In a letter dated 19 March 1999, Commission on Higher Education (CHED) Chairman Angel C. Alcala instructed CHED Region XII Director, Dr. Carmen V. Dormitorio (Dormitorio), to form and head a committee, together with two other members, which would investigate on the complaints against Tilendo, among others.

On 28 June 1999, the two investigating members of Dormitorio's committee reported that it was the Commission on Audit (COA) which could determine whether the government funds were properly used or misused. The CHED alleged that it had neither the authority to examine the CCSPC's records nor the technical knowledge of government accounting and auditing procedures.

The Deputy Ombudsman-Mindanao also endorsed the anonymous complaint to the National Bureau of Investigation (NBI), Region XII for the conduct of a fact-finding investigation.

Subsequently, the NBI subpoenaed Tilendo several times and informed him of the complaints against him.^[6] Tilendo, through counsel, requested for several extensions of time to submit his counter-affidavit. It was only on 22 October 1999

that he filed his counter- affidavit.[7]

On 10 March 2000, the NBI filed a Report on the investigation confirming that, despite the P10,080,000 three-year allocation for the construction of the Agriculture Building, only P300,000 was actually used for this construction project. Further, only scrap materials from the old Administrative Building were used. The pertinent portions of the report read:

Investigation conducted disclosed that the construction of Agricultural Building a[t] Rebuken, Sultan Kudarat, Maguindanao has an appropriation of P10,800,000.00 in three years broken down as follows, i.e., in 1996 GAA P6,000,000.00, in 1997 GAA P1,080,000.00 and in 1998 GAA P3,000,000.00. Witnesses alleged that the project was constructed without the necessary Engineering Designs, Plans and Programs of Work. Most of the materials used were scrap materials of the demolished Old Administrative Building at CCSPC Campus, Cotabato City and the estimated amount spent for the said project did not exceed P300,000.00. The said allegations were corroborated by the COA Special Audit finding conducted on September 1996. The same COA report further states that the balance was used in the construction of the Science Building and the Makeshift Building at Main Campus. However, the realignment of such funds do not have the AUTHORITY from the DBM. Inspection conducted by the NBI Investigators disclosed that the project at Rebuken, Sultan Kudarat, Maguindanao was not completed and some of the materials used were indeed scrap.[8]

x x x x

COMMENTS AND OBSERVATIONS:

x x x

The alleged Program of Works prepared by ENGR. HASANADDIN S. MAMA, designated Project Engineer of CCSPC in 1996 per directive of [Tilendo] did not jibe or correspond to the P6 million appropriation of the said project without mentioning the additional budget of the project in 1997 and 1998, as what was prepared was only P1.05 million budget only.

The Counter-Affidavit of President Payakan G. Tilendo did not fully explain the P6 million budget of the Construction of Agricultural Building at Rebuken Sultan, Kudarat, Maguindanao which is the subject of this investigation, rather it pertains to the Construction of Extension (4th Floor) of Academic Building in the amount of P1,865,000.00. x x x

The admission of [Tilendo] in his Counter-Affidavit that the project had been completed in accordance with the funds duly allocated thereto, and in consonance with the government bidding procedures, Accounting and Auditing regulations and all other legal documents are devoid of merit considering that the documents submitted showed that it did not respond to the questioned project.

The attached publication of the Invitation to Bid dated February 27 to March 1, 1997 which is published one year after the project or the Construction of the Agricultural Building at Rebuken, Sultan Kudarat, Maguindanao was started sometime in April 1996. The alleged publication seems to be that of the Construction of the Extension of Academic Building. In the instant case, NO AUTHORITY FOR THE REALIGNMENT OF FUNDS FROM DBM was given to the CCSPC Management.^[9]

On 26 April 2002, the Deputy Ombudsman-Mindanao received the NBI report charging Tilendo, Samaon A. Ebrahim, Wilhelmina B. Monte de Ramos, and Abdulla Oliver Uka with violation of Section 3(e) of RA 3019, and Articles 217, 218, and 219 of the RPC.

In January 2003, Tilendo filed his counter-affidavit,^[10] alleging, among others, that the "dragging of the case for more than three years in preliminary investigation stage without his fault is violative of his right to speedy disposition of cases." Tilendo also denied the allegations against him, insisting that the complaint was aimed purely at harassing him. Tilendo claimed that the construction of the CCSPC Agriculture Building was completed using the funds allocated for it, and following government bidding procedures and auditing regulations.

In its Resolution dated 13 January 2004, the Deputy Ombudsman-Mindanao disposed of the complaint, as follows:

WHEREFORE, PREMISES CONSIDERED, this Office finds probable cause to believe that the crime of Malversation and Violation of Section 3(e) of RA 3019 were committed and that respondent DR. PAYAKAN G. TILENDO is probably guilty thereof. Consequently, let the herein attached Informations be filed with the proper court.

Further, the charges against respondents SAMAON A. EBRAHIM, WILHELMINA B. MONTE DE RAMOS, ABDULLA OLIVER UKA, and NESTOR VILLARIN are hereby DISMISSED for insufficiency of evidence.

Lastly, the National Bureau of Investigation is hereby directed to forward to the Office of the Special Prosecutor the original copy of their report, subject matter of the instant case, together with its annexes.

SO RESOLVED.^[11]

Tilendo moved for reconsideration which the Ombudsman denied in its Order dated 14 October 2004.

Hence, this petition.

The Ruling of the Ombudsman

The Ombudsman found probable cause against Tilendo for malversation under Article 217 of the RPC and violation of Section 3(e) of RA 3019.

The Ombudsman found that since Tilendo received the P3,496,797 appropriated and

released to the CCSPC for the construction of the Agriculture Building, Tilendo, as head of the CCSPC, is accountable for this amount. Tilendo, however, failed to account for the fund.

The Ombudsman found several lapses in the disbursement of the funds making it impossible for Tilendo to liquidate the amount. First, the construction of the Agriculture Building was haphazardly done. Second, there was no bidding for the construction project as required by law. Third, scrap materials were used in the construction. Fourth, there was no showing when the construction was completed and whether the construction was according to the alleged plans. Finally, the funds for the construction of the Agriculture Building were used for another building within the CCSPC main campus. However, Tilendo failed to show the actual amount used for the construction of this other building.

The Ombudsman also found that Tilendo's acts caused undue injury to the government through bad faith. The amount released for the construction of the Agriculture Building could not be liquidated and was presumed to have been lost due to Tilendo's misappropriation. The use of scrap materials for the construction of a supposedly new building, while it might bring savings to the government, was actually hazardous to the lives of those who would use the building.

The Issues

Tilendo seeks the reversal of the assailed resolutions on the following grounds:

1. The Ombudsman acted with grave abuse of discretion amounting to lack or excess of jurisdiction in disregarding his constitutional right to speedy disposition of cases.
2. The Ombudsman acted with grave abuse of discretion in finding probable cause against him for malversation under Article 217 of the RPC and for violation of Section 3(e) of RA 3019, as amended.^[12]

The Ruling of this Court

The petition has no merit.

On Tilendo's right to speedy disposition of cases

Tilendo contends that the cases against him dragged for more than three years in preliminary investigation phase without his fault. The anonymous letters addressed to the Ombudsman were dated 4 and 28 December 1998. The Ombudsman referred the matter to the NBI which required Tilendo to file his counter-affidavit, which he did only on 22 October 1999. Nothing was heard from the NBI or the Ombudsman until January 2003 when the Ombudsman directed Tilendo to submit his counter-affidavit to the various criminal charges against him. According to Tilendo, the inordinate delay in the termination of the preliminary investigation violates his right to speedy disposition of cases.

The right to "a speedy disposition of cases" is enshrined in the Constitution. Section 16 of Article III of the Constitution provides: "All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative