

SECOND DIVISION

[G.R. NO. 153578, January 28, 2005]

VICENTE C. JIMENEZ, EUGENIO BERNARDO, AND VENERANDO R. HABER, PETITIONERS, VS. EULOGIO TOLENTINO, JR., LETICIA TOLENTINO, GRAFT INVESTIGATION OFFICER II THELMA CRUZ, AND JOSE O. MONTERO, JR., OMB PROSECUTOR II, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

In this petition for review on *certiorari*, petitioners seek the reversal of the Court of Appeals Decision^[1] promulgated on 18 October 2001 dismissing petitioners' petition for *certiorari* as well as the same court's Resolution^[2] of 08 May 2002 denying petitioners' motion for reconsideration. The petition before the Court of Appeals was for the nullification of the Office of the Ombudsman's findings of probable cause for violation of Section 3(e) of Republic Act No. 3019.

The generative facts of the case, as summarized by the Court of Appeals, are as follows:^[3]

(1) Dolores Banzon, married to Eulogio Tolentino, Sr., was the registered owner of two (2) parcels of agricultural land covered by Transfer Certificates of Titles No. T-5368 and No. T-5369 with an aggregate area of 187,590 square meters more or less, situated in Brgy. Tuyo, Balanga, Bataan. Dolores Banzon died in March 1979. Ten years later, her husband died leaving two (2) compulsory heirs, private respondents herein Eulogio B. Tolentino, Jr. and Leticia B. Tolentino. Both spouses did not exercise their right of retention under Presidential Decree No. 27;^[4]

(2) On 25-26 September 1989, a subdivision survey was conducted on the parcels of land in question, initiated by petitioner Municipal Agrarian Reform Officer (MARO) Venerando Haber segregating the portions allocated to each tenants-beneficiaries;

(3) On 02 May 1990, private respondents (complainant landowners) executed a General Power of Attorney in favor of their cousin Emilio Dizon to administer their properties;

(4) On 19 June 1990, Emancipation Patents were issued to the tenants-beneficiaries, including those tenants whose qualifications were not acceptable to private respondents;

(5) On 11 September 1990, Emilio Dizon executed Deeds of Transfer in favor of the tenants-beneficiaries, including those tenants whose

qualifications were not acceptable to private respondents. On the same day, petitioner MARO Haber forwarded copies of the Deeds of Transfer to the Register of Deeds at Balanga, Bataan, for registration;

(6) On 26 January 1994, private respondents sent a letter to the Regional Director of the Department of Agrarian Reform (DAR), requesting for the cancellation of the Deeds of Transfer executed by the attorney-in-fact, Emilio Dizon;

(7) On 28 January 1994 and 07 February 1994, private respondents applied for retention of five (5) hectares each pursuant to Section 6 of Republic Act. No. 6657 (Comprehensive Agrarian Reform Law);

(8) On 26 October 1994, petitioner Director Bernardo denied herein private respondents' application for retention, upon the recommendation of petitioner Provincial Agrarian Reform Officer (PARO) Jimenez;

(9) Private respondents then filed a complaint for violation of Section 3(e) of Rep. Act No. 3019 against petitioners with the Office of the Ombudsman. After the preliminary investigation, public respondent Thelma Cruz issued a resolution which found probable cause for violation of the anti-graft law and recommended the filing of the corresponding information. Petitioners moved for a reconsideration which was denied;

(10) With the information in the Second Division of the Sandiganbayan, petitioners, prior to their arraignment, prayed for a reinvestigation of the case. It was granted and a reinvestigation ensued. On 15 October 1999, the Ombudsman approved the resolution on the reinvestigation conducted by public respondent Ombudsman Prosecutor II Montero, Jr. denying the motion for reinvestigation.

From the adverse resolution of their motion for reinvestigation, petitioners, on 20 March 2000, went up to the Court of Appeals on petition for *certiorari* essentially questioning the findings of probable cause against them. The Court of Appeals initially denied the petition for being filed out of time but it reinstated the same upon motion of petitioners.^[5] Subsequently, the Court of Appeals dismissed the petition holding that (a) the special action of *certiorari* is not the proper remedy to annul the findings of probable cause following the ruling in *Yap v. Intermediate Appellate Court*; ^[6] and (b) the petition was filed out of time. Petitioners' motion for reconsideration suffered the same fate, the Court of Appeals having held that there were no weighty reasons advanced by the petitioners that would merit the reversal of its decision.

Hence, the present petition. Petitioners remonstrate that –

THE COURT OF APPEALS HAS DECIDED THE INSTANT CASE IN A WAY THAT IS NOT IN ACCORD WITH LAW, THE ESTABLISHED RULES, AND THE APPLICABLE DECISIONS OF THE SUPREME COURT. SPECIFICALLY, THE COURT A *QUO* HAS OPTED TO:

(a) UPHOLD THE FINDING OF PROBABLE CAUSE AGAINST PETITIONERS DESPITE THE FACT THAT PETITIONERS WERE MERELY PERFORMING

THEIR SWORN DUTY BY IMPLEMENTING THE PROVISIONS OF LOI 474;

(b) DISMISS THE PETITION ON THE GROUND THAT CERTIORARI IS NOT THE PROPER REMEDY; and

(c) DISMISS THE PETITION ON THE GROUND OF LATE FILING DESPITE THE FACT THAT IT HAS ALREADY PREVIOUSLY RECONSIDERED AND REVERSED A SIMILAR RULING AND ALLOWED THE FILING OF THE INSTANT PETITION.

Private respondents countered that the Court of Appeals decision is actually null and void as it had been rendered without or in excess of jurisdiction, following Section 14 of Republic Act No. 6770 (Ombudsman Act of 1989), which provides –

Sec. 14. Restrictions. -

No court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court, on pure question of law.

Private respondents then contended that as the petition was misfiled with the Court of Appeals, necessarily, it did not toll the running of the period for filing the correct petition before this Court. On the merits of the case, private respondents averred that it can be implied from the Court of Appeals' decision that the Office of the Ombudsman did not commit reversible error in its findings of probable cause against petitioners herein.

Like private respondents, public respondents Ombudsman officers assert that the Court of Appeals was actually devoid of jurisdiction pursuant to Section 14 of Rep. Act. No. 6770 and this Court's ruling in *Kuizon v. Desierto*.^[7]

In their consolidated reply, petitioners asseverate that the issue of whether or not the Court of Appeals had jurisdiction to rule on their petition filed thereat had been rendered moot and academic by the filing of the instant case before the Supreme Court whose jurisdiction respondents have allegedly admitted. Thus, this Court should rule on the merits of their petition, *i.e.*, the resolution of the Ombudsman finding probable cause against them should be invalidated and set aside.

THE COURT'S RULING

It is now beyond cavil that the filing of the special civil action of certiorari to question the resolution of the Ombudsman finding probable cause must be made with this Court and not with the Court of Appeals such that the wrong filing thereof will not toll the running of the period to file the same with this Court.^[8] In *Kuizon v. Desierto*,^[9] we were emphatic:

It follows that the instant petition was filed late. A petition for certiorari should be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed.^[10] The present petition was filed with this Court only on November 24, 1999 which is more than sixty (60) days from the time petitioners were notified of the adverse resolutions issued by the Office of the Ombudsman. The erroneous filing

of the petition with the Court of Appeals did not toll the running of the period.

On this score alone, the instant petition already suffers a fatal flaw. The adverse resolution of the Ombudsman was received by petitioners on 08 November 1999.

[11] The petition for *certiorari* was filed in this Court only on 03 July 2002.[12]

Moreover, and even if we were to rule on the merits of the case, the instant petition will still have to be dismissed in the light of the well-entrenched principle of non-interference in the exercise of the Ombudsman's constitutionally mandated powers.

[13] As highlighted in *Perez v. Office of the Ombudsman, et al.*[14] –

We have consistently refrained from interfering with the investigatory and prosecutorial powers of the Ombudsman absent any compelling reason. This policy is based on constitutional, statutory and practical considerations. We are mindful that the Constitution and RA 6770 endowed the Office of the Ombudsman with a wide latitude of investigatory and prosecutorial powers, virtually free from legislative, executive or judicial intervention, in order to insulate it from outside pressure and improper influence.

And, in *Ocampo v. Ombudsman*[15]--

. . . The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.

It is past dispute of course that in every rule, there are always settled exceptions.

[16] Hence, the principle of non-interference does not apply when there is grave abuse of discretion on the part of the Office of the Ombudsman.[17] In *Cabahug v.*

People, [18] we expressed the rationale for the exception in this wise:

While it is the function of the Ombudsman to determine whether or not the petitioner should be subjected to the expense, rigors and embarrassment of trial, he cannot do so arbitrarily. This seemingly exclusive and unilateral authority of the Ombudsman must be tempered by the Court when powers of prosecution are in danger of being used for persecution. Dismissing the case against the accused for palpable want of probable cause not only spares her the expense, rigors and embarrassment of trial, but also prevents needless waste of the court's time and saves the precious resources of the government.

After a thorough review of the instant case, however, we find that the public respondents acted well within their discretion in finding probable cause against herein petitioners. Public respondents ratiocinated –