

## THIRD DIVISION

[ G.R. No. 229811, April 28, 2021 ]

**OFFICE OF THE OMBUDSMAN, REPRESENTED BY THE HONORABLE CONCHITA CARPIO MORALES, IN HER CAPACITY AS THE OMBUDSMAN; OMB-TASK FORCE PDAF; AND OMB-PUBLIC ASSISTANCE AND CORRUPTION PREVENTION OFFICE, PETITIONERS, VS. OSCAR GONZALES MALAPITAN, RESPONDENT.**

### DECISION

**LEONEN, J.:**

The condonation doctrine was abandoned on April 12, 2016, when *Carpio Morales v. Court of Appeals*<sup>[1]</sup> attained finality. Nonetheless, despite its abandonment, the condonation doctrine can still apply to pending administrative cases<sup>[2]</sup> provided that the reelection is also before the abandonment. As for cases filed after April 12, 2016, the impleaded public official can no longer resort to the condonation doctrine.<sup>[3]</sup>

This Court resolves a Petition for Review<sup>[4]</sup> assailing the Decision<sup>[5]</sup> and Resolution<sup>[6]</sup> of the Court of Appeals, which nullified the Office of the Ombudsman Orders granting the amendment to implead Oscar Gonzales Malapitan (Malapitan), an elected public official, in an administrative complaint.

Malapitan was the Caloocan City First District Representative from 2004 to 2007. He was reelected from 2007 to 2010 and again from 2010 to 2013. In 2013, he became the Caloocan City mayor, and was reelected in 2016.<sup>[7]</sup> He is the incumbent mayor, having been reelected in 2019.<sup>[8]</sup>

On February 16, 2015, the Office of the Ombudsman's Public Assistance and Corruption Prevention Office filed a criminal complaint for violation of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act, against the following public officials:

- (1) Esperanza I. Cabral, as the Department of Social Welfare and Development Secretary in 2009;
- (2) Mateo G. Montaña, as the current DSWD Undersecretary for General Administration and Support Services Group (GASSG);
- (3) Luwalhati F. Pablo, as the former Undersecretary for GASSG;
- (4) Vilma B. Cabrera, as the present DSWD Assistant Secretary for Institutional Development Group;
- (5) Pacita D. Sarino, as the current DSWD Director III of the Program Management Bureau;
- (6) Leonila M. Hayahay, as the former DSWD Chief Accountant; and
- (7) **Oscar G. Malapitan, as the former Congressman of the**

## **1<sup>st</sup> District of Caloocan City in 2009 and the current Mayor of Caloocan City.**<sup>[9]</sup> (Emphasis in the original)

The criminal complaint arose from the allegedly anomalous use of Malapitan's Priority Development Assistance Fund (PDAF) worth P8,000,000.00. Malapitan, then a district representative, and the other charged officials had approved the PDAF to fund the programs of Kalookan Assistance Council, Inc. in 2009.<sup>[10]</sup>

The criminal complaint also contained an administrative charge for grave misconduct, gross neglect of duty, and conduct prejudicial to the best interest of service against Mateo G. Montaño, Pacita D. Sarino, and Vilma G. Cabrera, three of the charged officials. Malapitan was not impleaded in the administrative complaint.<sup>[11]</sup>

On January 22, 2016, the Public Assistance and Corruption Prevention Office filed a Motion to Admit Attached Amended Complaint,<sup>[12]</sup> asking that Malapitan be impleaded in the administrative complaint after he had been inadvertently left out as a respondent.<sup>[13]</sup> On February 22, 2016,<sup>[14]</sup> the Office of the Ombudsman's Task Force PDAF granted the motion.

Malapitan moved for reconsideration<sup>[15]</sup> of this Order, but the Task Force PDAF denied his motion.<sup>[16]</sup> This denial prompted Malapitan to file a Petition for Certiorari and Prohibition<sup>[17]</sup> before the Court of Appeals.

On August 31, 2016, the Court of Appeals granted<sup>[18]</sup> the Petition. It revisited the history of the condonation doctrine in jurisprudence<sup>[19]</sup> until it was abandoned in *Carpio Morales v. Court of Appeals*<sup>[20]</sup> on November 10, 2015.<sup>[21]</sup> The Court of Appeals pointed out that such abandonment applied prospectively.<sup>[22]</sup> It then ruled that since Malapitan's alleged misconduct was committed in 2009, the condonation doctrine applied to his case.<sup>[23]</sup>

The Court of Appeals held that under the condonation doctrine, Malapitan's election as mayor right after his term as Caloocan representative was a form of condonation from the voting public:

Also relevant to stress is that the same act subject of the administrative complaint was contracted by Malapitan as the representative of the 1<sup>st</sup> District of Caloocan City at the House of Representative[s]. However, when he was elected as the Mayor of the City of Caloocan in the 2013 elections, whatever wrongful act or misconduct, if any, committed by him during his previous term as Congressman that might give rise to an administrative liability, was impliedly remitted and disregarded by the electoral process following the condonation doctrine set forth in our jurisprudence. For this reason alone, We find no justification to sustain the continuation of the administrative proceedings against Malapitan as he could no longer be held administratively liable for the act upon which he was administratively charged. The administrative case serves no other purpose than to expose him unnecessarily to the rigors of a full-blown investigation and hearing when, in the end, he would not be held accountable for a misconduct he committed during his prior term of

public office. Indeed, it is an exercise in futility to still implead him in the administrative complaint.<sup>[24]</sup>

The Court of Appeals also chided the Office of the Ombudsman for its "flimsy excuse" of inadvertently failing to implead Malapitan in the administrative complaint.<sup>[25]</sup> It declared that the belated amendment to implead Malapitan was clearly brought about by the *Carpio Morales* ruling, with the Office of the Ombudsman mistakenly believing that there was no longer any legal hindrance to include Malapitan.<sup>[26]</sup>

The dispositive portion of the Court of Appeals Decision reads:

**FOR THESE REASONS**, We **GRANT** the instant *Petition for Certiorari and Prohibition*. The Orders dated 22 February 2016 and 18 March 2016 of the Task Force PDAF of the Office of the Ombudsman are **NULLIFIED** and the latter is enjoined from proceeding with the administrative case docketed as OMB-C-A-15-0042 as against Oscar G. Malapitan.

**SO ORDERED.**<sup>[27]</sup> (Emphasis in the original)

In its January 31, 2017 Resolution,<sup>[28]</sup> the Court of Appeals dismissed the Office of the Ombudsman's Motion for Reconsideration.

In this Petition for Review on Certiorari,<sup>[29]</sup> petitioners Office of the Ombudsman, Task Force PDAF, and the Public Assistance and Corruption Prevention Office allege that the Court of Appeals encroached on the Office of the Ombudsman's administrative disciplinary authority when it nullified the Orders of Task Force PDAF. Petitioners further claim that the proper remedy was for respondent Malapitan to file a counter-affidavit before the Task Force PDAF and not the extraordinary remedies of certiorari and prohibition before the Court of Appeals.<sup>[30]</sup>

Petitioners assert that respondent filed his Counter-Affidavit two months before he filed his Petition for Certiorari and Prohibition before the Court of Appeals, thus mooting the latter. Furthermore, they point out that since respondent actively participated in the administrative proceedings before filing his Petition for Certiorari and Prohibition, he had already submitted himself to the Office of the Ombudsman's jurisdiction.<sup>[31]</sup>

Petitioners likewise submit that since the Task Force PDAF's Orders were merely interlocutory, the Court of Appeals prematurely resolved the administrative case against respondent on the merits by relying on the condonation doctrine.<sup>[32]</sup> Nonetheless, petitioners posit that even if the Court of Appeals could rightfully rule on the merits of the administrative case, the condonation doctrine does not apply to respondent because it was abandoned in *Carpio Morales*, and should no longer apply to cases still pending with the Office of the Ombudsman.<sup>[33]</sup>

Petitioners further maintain that even if *Carpio Morales* did not abandon the condonation doctrine, it still would not apply to respondent because he committed the alleged act in 2009, when he was a representative, while the complaint was only filed when he was already a mayor, "a position different from the position he held at

the time he committed the acts of complained of."<sup>[34]</sup>

In his Comment,<sup>[35]</sup> respondent cited cases<sup>[36]</sup> where it was held that courts can review "the Office of the Ombudsman's exercise of its investigative and prosecutorial powers" when there is grave abuse of discretion.<sup>[37]</sup>

Respondent then argues that he could not be impleaded "because his acts were considered condoned by the electorate upon his re-election."<sup>[38]</sup> He maintains that the condonation doctrine's abandonment is applied prospectively.<sup>[39]</sup> He also insists that petitioners only sought the amendment to implead him because they had mistakenly thought that *Carpio Morales*, issued in November 2015, would now work against him in the administrative case originally filed in February 2015.<sup>[40]</sup>

Respondent further argues that his Petition before the Court of Appeals was not rendered moot when he filed his Counter-Affidavit and Verified Position Paper.<sup>[41]</sup> He said that he "reserved his right to question"<sup>[42]</sup> his inclusion in the administrative case when he filed his Verified Position Paper *Ad Cautelam*.<sup>[43]</sup>

In addition, respondent argues that the administrative complaint has prescribed.<sup>[44]</sup> Citing Section 20(5) of Republic Act No. 6770, or the Ombudsman Act of 1989, respondent argues that the Office of the Ombudsman may not investigate any complaint filed more than one year after the act complained of had been committed. From this, he points out that the administrative charges have prescribed because the acts imputed to him were committed in 2009, while the complaint was filed only in 2016.<sup>[45]</sup>

Respondent also cites Section 20(2), in relation to Section 21, of Republic Act No. 6770 and notes that when he committed the alleged acts in 2009, he was still a member of Congress, and thus, outside the Office of the Ombudsman's jurisdiction.<sup>[46]</sup> He then notes that the Commission on Audit has primary jurisdiction over him because the charges involve the use of his PDAF when he was still a district representative.<sup>[47]</sup>

Finally, respondent says that petitioner's late filing of the administrative complaint violates his right to due process and to the speedy disposition of cases.<sup>[48]</sup>

In their Reply,<sup>[49]</sup> petitioners counter that the filing of an amended complaint is allowed under Administrative Order No. 7 and the Rules of Court. In addition, they point out that respondent filed no responsive pleading when they moved to amend their complaint.<sup>[50]</sup>

Petitioners also maintain that respondent's active participation in the proceedings and filing of several pleadings<sup>[51]</sup> mooted his Petition for Certiorari and Prohibition where he questioned the filing of the amended Complaint.<sup>[52]</sup>

As for respondent's invocation of Section 21 of the Ombudsman Act, petitioners rebut that this is "not a permanent exception or exclusion";<sup>[53]</sup> otherwise, "there would be no means to fully account for the official's administrative liability."<sup>[54]</sup>

Petitioners claim that illegal acts may only be discovered after a public official's term of office.<sup>[55]</sup>

Further, petitioners interpret Section 20(5) of Republic Act No. 6770 differently in that it "does not refer to the prescription of the offense but to the discretion granted to the Office of the Ombudsman on whether it would investigate a particular administrative offense."<sup>[56]</sup>

Petitioners also say that the doctrine of primary jurisdiction does not apply because the Commission on Audit's investigation is different from the Office of the Ombudsman's investigation.<sup>[57]</sup>

Finally, petitioners deny that respondent's rights to due process and to the speedy disposition of cases have been violated.<sup>[58]</sup> He was allegedly given the chance to respond to the allegations against him.<sup>[59]</sup> They add that respondent himself contributed to the delay he complains of "by his filing of motions for extension of time and other dilatory and prohibited pleadings before the Office of the Ombudsman and the [Court of Appeals]."<sup>[60]</sup>

The issues for this Court's resolution are:

First, whether or not the Court of Appeals erred in ruling that the condonation doctrine is applicable to respondent Oscar Gonzales Malapitan;

Second, whether or not the Court of Appeals erred in ruling on respondent's administrative liability, considering that the issue raised before it was whether the Office of the Ombudsman gravely abused its discretion in granting the Motion to Admit Attached Amended Complaint; and

Finally, whether or not the Court of Appeals encroached on the powers of the Office of the Ombudsman when it enjoined the Office of the Ombudsman from proceeding with the administrative case against respondent Oscar Gonzales Malapitan.

The Petition is denied.

The Court of Appeals did not err in concluding that the condonation doctrine applies to respondent. Since the act constituting the administrative offense was allegedly committed in 2009, and he was reelected in 2010, the condonation doctrine would still apply.

There appears to be confusion as to when the abandonment of the condonation doctrine took effect. *Carpio Morales v. Court of Appeals*<sup>[61]</sup> was rendered on November 10, 2015. After this, on January 22, 2016, the administrative complaint was amended to include respondent, as the condonation doctrine was supposedly no longer available to him.

This confusion has long been put to rest in *Crebello v. Office of the Ombudsman*,<sup>[62]</sup> where this Court declared the exact date of the abandonment: