

# FIRST DIVISION

[ G.R. No. 233234, September 14, 2020 ]

**NAPOLEON C. TOLOSA, JR., PETITIONER, VS. OFFICE OF THE OMBUDSMAN AND ELIZABETH B. TATEL, RESPONDENTS.**

## DECISION

**REYES, J. JR., J.:**

This Petition for Review on *Certiorari*<sup>[1]</sup> seeks to reverse and set aside the Decision<sup>[2]</sup> dated April 7, 2017 and Resolution<sup>[3]</sup> dated July 31, 2017 of the Court of Appeals - Cagayan de Oro City (CA) in CA-G.R. SP No. 06172-MIN, which affirmed the Joint-Resolution<sup>[4]</sup> dated November 20, 2013 and Joint-Order<sup>[5]</sup> dated February 24, 2014 of the Office of the Ombudsman -Mindanao (Ombudsman) in OMB-P-C-10-0432-C and OMB-P-A-10-0471-C, dismissing the criminal and administrative complaints against respondent Elizabeth B. Tatal (respondent).

### Factual Antecedents

Petitioner Napoleon C. Tolosa, Jr. (petitioner) filed his Affidavit-Complaint<sup>[6]</sup> dated March 22, 2010 before the Ombudsman, charging the respondent for violation of Republic Act (R.A.) No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, docketed as OMB-P-C-10-0432-C, and the offense of grave misconduct, docketed as OMB-P-A-10-0471-C.

In the said Affidavit-Complaint, petitioner averred that respondent is the Chief Administrative Officer for Finance of the Department of Education (DepEd), Regional Office (RO) IX in Zamboanga City, who controls and supervises the sub-offices of the Regional Budget and Finance Division of DepEd IX, including the Regional Payroll Services Unit. Petitioner added that respondent is also the Team Leader of the Automatic Payroll Deduction System (APDS) Task Force, and that said task force monitors and conducts spot checking of the operations of all private lending institutions which are duly accredited with the DepEd's APDS. Petitioner alleged that respondent, in blatant disregard of existing DepEd Rules, obtained a monetary loan in the amount of P150,000.00 from One Network Bank (ONB), Zamboanga City on October 23, 2008. He claimed that ONB is among the accredited lending institutions involved in lending activities with the teachers of DepEd RO IX. Petitioner further alleged that in an attempt to hide the illegal loan, respondent coursed her loan payments through ONB's branch in Davao City instead of the usual salary deduction. Furthermore, according to petitioner, respondent created a conflict of interest when she availed of the said loan, and had compromised her position as the team leader of the APDS Task Force when she solicited and accepted a loan from said bank.<sup>[7]</sup> As such, petitioner prayed that preliminary investigation be conducted against the respondent for violation of Section 7(d) of R.A. No. 6713, and that formal administrative investigation be also conducted on the same person as she had

violated DepEd Order No. 49, series of 2006.<sup>[8]</sup>

In her Counter-Affidavit<sup>[9]</sup> dated July 6, 2010, respondent admitted that she obtained the loan but maintained that she did not violate any law, rule or regulation in incurring the same. Respondent stated that as team leader of the APDS Task Force, her function, and that of the members, was to monitor and conduct spot checking on the operations of all accredited private lending institutions. She added that said task force does not recommend or decide the private lending institutions that are to be included in the APDS, as this is being provided in the memorandum of agreement between the DepEd and the private lending institutions concerned. Respondent averred that the task force does not determine the amount to be deducted from the salary of the borrower, as this is stipulated between a borrower and the lending institution in an Authority to Deduct executed by the borrower at the time the loan is incurred. As such, said task force's monitoring and checking consists of seeing to it that the lending institutions satisfy the requirements contained in a memorandum of agreement, such as whether it has a business permit, office facilities, and other required forms.<sup>[10]</sup>

Respondent asserted that there is no conflict of interest because she does not own a single share of stock in ONB nor is she an officer of the said bank. Respondent also asserted that she did not violate R.A. No. 6713, as she obtained the loan in her personal capacity and not in the course of her official duty. Respondent added that she has not taken advantage of her position or used her position as team leader of the APDS Task Force to secure better terms than those enjoyed by other borrowers. Also, she stated that availing the loan was encouraged under DepEd Memorandum No. 570, series of 2008, and when the regional task force was created, the members were not disqualified from availing the said loans. Furthermore, respondent contended that she did not violate DepEd Order No. 49, and claimed that the APDS Task Force does not have any business relations with ONB. She explained that the monthly collection received by the DepEd is denominated as a service fee and not a form of profit, and that said task force does not realize any income for facilitating the payment. In addition, respondent averred that the complaints filed against her are part of the continuing acts of retaliation and harassment perpetrated by the petitioner, his wife and other DepEd officials, after she wrote to the DepEd Secretary in 2008, disclosing anomalous transactions in the DepEd that involved petitioner's wife and several officials. Respondent further averred that she had been subjected to various baseless complaints by the petitioner and his wife before several government agencies.<sup>[11]</sup> Lastly, she countered that petitioner be charged for violation of R.A. No. 1405. Thus, respondent prayed that the complaints filed against her be dismissed.<sup>[12]</sup>

The Ombudsman then directed the parties to submit their respective verified position papers, as regards the administrative case.<sup>[13]</sup>

Thereafter, in his position paper dated February 19, 2011, petitioner raised the matter of the alleged discrepancy in respondent's Statement of Assets, Liabilities and Net Worth (SALN) dated April 29, 2009, particularly her failure to disclose the salary loan in the amount of P150,000.00 from ONB. Petitioner maintained that said loan was solicited and received by respondent, and that her loan bypassed the usual process applied to ordinary DepEd personnel.<sup>[14]</sup>

On November 20, 2013, the Ombudsman issued the Joint-Resolution dismissing the criminal and administrative complaints against respondent. The Ombudsman found that there is no apparent prohibition for respondent to obtain a loan from ONB, and held that there is no evidence to support petitioner's allegation that the respondent solicited the loan obtained from said bank. The Ombudsman ruled that the evidence presented by petitioner does not sustain a finding of probable cause for violation of Section 7(d) of R.A. No. 6713, and that no substantial evidence was presented to prove the allegation that respondent committed dishonesty for failure to include in her SALN in 2010 the loan she had obtained. As to the counter-charge against petitioner, the Ombudsman stated that respondent should file a separate affidavit-complaint for such matter. The Ombudsman disposed of the case as follows:

**WHEREFORE, ON THE FOREGOING**, for want of evidence sufficient to engender a finding of probable cause for the criminal charge, the criminal case is **DISMISSED**. For want of substantial evidence to warrant the conduct of further proceedings, the administrative case is likewise **DISMISSED**.

SO RESOLVED.<sup>[15]</sup>

Petitioner thereafter filed a motion for reconsideration, but the same was denied by the Ombudsman.

Undaunted, petitioner filed a Petition for Review under Rule 43 of the Rules of Court before the CA to assail the Ombudsman's Joint-Resolution and Joint-Order.<sup>[16]</sup>

In the assailed Decision dated April 7, 2017, the CA denied the petition. The CA found that petitioner availed of the wrong remedy when he filed the petition for review under Rule 43 of the Rules of Court. It ruled that the proper remedy to assail the Ombudsman's Joint-Resolution is to file a petition for *certiorari* under Rule 65 of the same Rules with the Supreme Court since the respondent has been exonerated of the administrative charge, which is final and unappealable, and that the criminal complaint against her was dismissed. The CA then stated that while the petition should have been dismissed outright, a review of the substantial merits still yielded the same conclusion with that of the Ombudsman, that there was no probable cause to indict the respondent for violation of R.A. No. 6713, and no substantial evidence was presented to establish the administrative charges. The CA also held that the Ombudsman did not act with grave abuse of discretion when it rendered its decision, and ruled in this wise:

**WHEREFORE**, foregoing premises considered, the petition is **DENIED**.  
The Joint-Order dated February 24, 2014 and Joint-Resolution

dated November 20, 2013 of the Office of the Ombudsman in OMB-P-C-10-0432-C and OMB-P-A-10-0471-C are **AFFIRMED in toto**.

SO ORDERED.<sup>[17]</sup>

Petitioner moved for reconsideration,<sup>[18]</sup> but was denied by the CA, in the assailed Resolution dated July 31, 2017.

Hence, petitioner comes to this Court raising the following assignment of errors:

I.

WHETHER THE HONORABLE [CA] COMMITTED REVERSIBLE ERROR WHEN IT RULED THAT THE DECISION OF THE OMBUDSMAN IS FINAL AND UNAPPEALABLE AND THE PROPER REMEDY SHOULD BE A PETITION FOR *CERTIORARI* UNDER RULE 65.

II.

WHETHER THE HONORABLE [CA] COMMITTED REVERSIBLE ERROR IN FINDING NO PROBABLE CAUSE TO INDICT RESPONDENT OF VIOLATING SECTION[S] 7 (D) AND 8 (A) OF R.A. NO. 6713.

III.

WHETHER THE HONORABLE [CA] ERRED IN FINDING NO SUBSTANTIAL EVIDENCE TO HOLD RESPONDENT ADMINISTRATIVELY LIABLE FOR GRAVE MISCONDUCT AND DISHONESTY.<sup>[19]</sup>

### **The Court's Ruling**

The Petition must be denied for lack of merit.

We address the first error raised by petitioner. Petitioner contends that he availed of the proper remedy in assailing the Joint-Resolution and Joint-Order of the Ombudsman when he filed his Petition of Review under Rule 43 of the Rules of Court before the CA. He insists that a different remedy is provided for in joint administrative and criminal cases, and anchors such assertion citing the case of *Cortes v. Ombudsman*,<sup>[20]</sup> wherein he is given the option to either file a petition for review under Rule 43 of the Rules of Court with the CA or directly file a *certiorari* petition under Rule 65 of the same Rules before the Court. As such, the petitioner asserts that the CA erred in ruling that he availed of a wrong remedy and that his petition should have been dismissed outright.<sup>[21]</sup>

Petitioner's contention is wrong.

We emphasize that while the criminal and administrative cases filed against respondent were jointly decided by the Ombudsman, in its Joint-Resolution dated November 20, 2013 and Joint-Order dated February 24, 2014, the fact remains that these two cases are separate, and the law provides different remedies or has proper modes of appeal for each case.

It is settled that the proper remedy in cases in which it is alleged that the Ombudsman has acted with grave abuse of discretion amounting to lack or excess of jurisdiction in its adjudication of criminal cases is a petition for *certiorari* under Rule 65 before the Court.<sup>[22]</sup>

As regards administrative cases, it is likewise settled that appeals from decisions of the Ombudsman in administrative disciplinary cases should be elevated to the CA

under Rule 43 of the Rules of Court.<sup>[23]</sup> However, we must stress that a decision of the Ombudsman absolving the respondent of the administrative charge is final and unappealable.<sup>[24]</sup> As stated under Section 7, Rule III of the Ombudsman Rules, viz.:<sup>[25]</sup>

SEC. 7. *Finality and execution of decision.* - Where the respondent is **absolved** of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be **final and unappealable**. In all other cases, the decision shall become final after the expiration often (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for *certiorari* shall have been filed by him as prescribed in Section 27 of RA 6770. (Emphasis Supplied)

The basis for the said rule of procedure is Section 27 of R.A. No. 6770<sup>[26]</sup> or the Ombudsman Act:

Section 27. Effectivity and Finality of Decisions - (1) All provisional orders of the Office of the Ombudsman are immediately effective and executory.

x x x x

Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable.

Based on the aforementioned rule and statute, it is clearly implied that a decision of the Ombudsman absolving the respondent of the administrative charge is final and is not subject to appeal. In *Reyes, Jr. v. Belisario*,<sup>[27]</sup> this Court elucidated such legal principle, to wit:

Notably, exoneration is not mentioned in Section 27 as final and unappealable. However, its inclusion is implicit for, as we held in *Barata v. Ahalos*, if a sentence of censure, reprimand and a one-month suspension is considered final and unappealable, so should exoneration.

The clear import of Section 7, Rule III of the Ombudsman Rules is to deny the complainant in an administrative complaint the right to appeal where the Ombudsman has exonerated the respondent of the administrative charge, as in this case. The complainant, therefore, is not entitled to any corrective recourse, whether by motion for reconsideration in the Office of the Ombudsman, or by appeal to the courts, to effect the reversal of the exoneration. Only the respondent is granted the right to appeal but only in case he is found liable and the penalty imposed is higher than public censure, reprimand, one-month suspension of a fine equivalent to one month salary.

The absence of any statutory right to appeal the exoneration of the respondent in an administrative case does not mean, however, that the