

# FIRST DIVISION

[ G.R. No. 233596, September 14, 2020 ]

## OFFICE OF THE OMBUDSMAN, PETITIONER, VS. VLADIMIR L. TANCO, RESPONDENT.

### DECISION

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

This Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court seeks to reverse and set aside the Decision<sup>[2]</sup> dated June 17, 2016 and the Resolution<sup>[3]</sup> dated July 13, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 142743, which reversed and set aside the Decision<sup>[4]</sup> dated June 1, 2015 of the Office of the Ombudsman (Ombudsman) in OMB-C-A-13-0138, finding Governor Victor A. Tanco, Sr. (Governor Tanco, Sr.) and respondent Vladimir L. Tanco (respondent) administratively liable for Grave Misconduct, and denied the Ombudsman's motion for partial reconsideration-in-intervention.

#### Factual Antecedents

The present case involves a complaint for Grave Misconduct filed by Leodegario A. Labao, Jr. (Labao, Jr.) against Governor Tanco, Sr. of the Province of Capiz, and his son, herein respondent, who is a Security Officer III in the Office of the Provincial Governor of Capiz.<sup>[5]</sup>

Records reveal that Labao, Jr. is a private contractor doing business under the name of Kirskat Venture. Sometime in 2011, Kirskat Venture and the Province of Capiz, represented by Governor Tanco, Sr., executed three construction contracts for the expansion of the Mambusao District Hospital, specifically its OR/DR Complex, Emergency Complex and Other Services, and Dietary Services, for the contract prices of P14,900,000.00, P15,000,000.00 and P3,000,000.00, respectively, or a total amount of P32,900,000.00.<sup>[6]</sup>

According to Labao, Jr., the Province of Capiz made an initial payment to him of P2,225,576.33 for the aforesaid projects. Labao, Jr. alleged that respondent, upon instruction of Governor Tanco, Sr., demanded from him the amount of P3,000,000.00 in exchange for the release of subsequent payments. Labao, Jr. added that respondent informed him that should he fail to pay, Kirskat Ventures would be blacklisted as a contractor from future projects in the Province of Capiz.<sup>[7]</sup>

Alleging that both Governor Tanco, Sr. and respondent are guilty of grave misconduct for the demand of P3,000,000.00 and receipt of the said amount, on April 29, 2013. Labao, Jr., filed his Affidavit-Complaint<sup>[8]</sup> before the Ombudsman.

In the said Complaint, Labao, Jr. narrated that in the morning of September .19,

2011, respondent went to his office and in the presence of his trusted foreman Ronnie B. Barrientos (Barrientos), respondent told him that Governor Tanco, Sr. wanted him to pay them P3,000,000.00 for the Mambusao District Hospital projects, otherwise, no further payments would be released to him, and he would be blacklisted as a contractor. Out of fear and against his will, Labao, Jr., promised to issue a check to Governor Tanco, Sr., but respondent insisted that the check be made payable to him. After respondent left, Labao, Jr. told Barrientos that he was forced to accede to said demand because Governor Tanco, Sr., as the power to disapprove the release of payments, and Kirskat Venture's projects with the Province of Capiz might be affected. Labao, Jr. averred that in the morning of September 21, 2011, he and Barrientos went to the residence of Governor Tanco, Sr., for the purpose of paying the amount demanded. Respondent then inquired if they have the check, and in the presence of Governor Tanco, Sr., Labao, Jr. instructed Barrientos to give the check - UCPB Check No. 007021135 dated September 21, 2011, for the sum of P3,000,000.00 - to respondent. Barrientos subsequently made respondent sign Check Voucher No. 3746, which stated "Mambusao Hospital SOP TO GOV. TANCO PAID P3,000,000.00." Labao, Jr., alleged that respondent then waved the check to his father and said it is here, while Governor Tanco, Sr. nodded and smiled. He further alleged that the check was deposited and the amount of P3,000,000.00 was credited to the account of respondent, and by reason of the issuance and deposit of the said check, subsequent payments for the Mambusao District Hospital projects were approved by Governor Tanco, Sr. and released to Kirskat Venture.<sup>[9]</sup>

In his Counter-Affidavit dated June 13, 2013, Governor Tanco, Sr., insisted that the facts presented by Labao, Jr. were fabricated, and said complaint was part of the black propaganda at the height of the 2013 midterm elections campaign. He claimed that the complaint stemmed from the events that preceded the 2013 midterm elections, wherein Labao, Jr. decided to run for mayor in Mambusao and tried to persuade the Governor to refrain from fielding a candidate against him. Governor Tanco, Sr., did not accede to said request, and as a result, Labao, Jr. was upset and organized his own political party and set out to tarnish the Governor's name. Governor Tanco, Sr. specifically denied participation in any transaction purportedly reflected in the check voucher and the check made payable to respondent, and that Labao, Jr. and his foreman did not visit him in his residence for the purpose of delivering the check in the amount of P3,000,000.00. He argued that Labao, Jr., as contractor, was aware of the grounds under the law and the procedures for blacklisting a contractor, and such was not under the whims of the Provincial Governor. He also stressed that Labao, Jr. had the copy of the check voucher and had the opportunity to alter its contents to suit his purpose. Governor Tanco, Sr. added that the words across the check voucher were handwritten while the rest of the details were typewritten which showed that the notation was added after respondent signed said check voucher. Finally, he also claimed that his proclamation as Governor after the May 2013 elections impacts the administrative aspect of the present case.<sup>[10]</sup>

For his part, respondent filed his Counter-Affidavit<sup>[11]</sup> on July 1, 2013, and denied the accusations against him. In said affidavit, respondent alleged that he had a business relationship with Labao, Jr., where he usually borrowed money from the latter in order to finance his business operations. He stated that every time he borrowed money, Labao, Jr. would issue a check in his favor and in return,

respondent would also issue him a check postdated on their agreed date of payment, and they always practice said arrangement in their loan transactions. Respondent added that the amount of P3,000,000.00 stated in UCPB Check No. 007021135 dated September 21, 2011, was for a loan similar to the ones he obtained from Labao, Jr. in the past, and as payment, he gave Labao, Jr., UCPB Check No. 0368009 which was postdated to November 30, 2011 for P3,000,000.00. Respondent also averred that Check Voucher No. 3746, which he signed for a loan, had been falsified, altered and modified because at the time he signed the same, the words "Mambusao Hospital SOP TO GOV. TANCO" did not exist, and that he would not sign a voucher describing its disbursement as "SOP" because the same connotes an irregular and immoral transaction. Respondent further averred that Labao, Jr. and Barrientos did not go to the residence of Governor Tanco, Sr. since every time he secures a loan from Labao, Jr., he goes to the latter's office. Respondent asserted that Labao, Jr., was an opposition candidate for Mayor of Mambusao, and he filed the case to create a negative issue against Governor Tanco, Sr., who campaigned hard for the Liberal Party. Respondent also asserted that if Labao, Jr. felt aggrieved in 2011, he should have acted immediately and not have waited to file the case at the height of the political campaign. As such, respondent prayed for the dismissal of the complaint.<sup>[12]</sup>

Later, or on September 9, 2013, Labao, Jr., filed a Motion to Dismiss and an Affidavit of Desistance, wherein he stated that he was no longer interested in prosecuting the case because he was very ill.<sup>[13]</sup>

On June 1, 2015, the Ombudsman issued the Decision,<sup>[14]</sup> despite the affidavit of desistance of Labao, Jr., finding both Governor Tanco, Sr. and respondent guilty of grave misconduct. The Ombudsman found that the said Governor and respondent conspired in demanding and receiving the amount of P3,000,000.00 from Labao, Jr., under threat that his collectibles would not be paid, or that his venture would be blacklisted. The Ombudsman based said finding on respondent's admission that he had accepted a check from Labao, Jr., in the amount of P3,000,000.00, and that respondent's assertion that said check represents a personal loan obtained from Labao, Jr., was not supported by evidence. It ruled that Governor Tanco, Sr. and respondent had violated Sections 7(d) and 1 l(b) of Republic Act (R.A.) No. 6713, and that the administrative infraction of grave misconduct committed by said parties had been established by substantial evidence. The Ombudsman disposed of the case as follows:

**WHEREFORE, Vladimir L. Tanco and Governor Victor A. Tanco, Sr.** are found **guilty** of **Grave Misconduct** under Section 46 (A) (3), Rule 10 of the RRACCS and are hereby meted the penalty of **DISMISSAL FROM THE SERVICE** with all its accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification from holding public office as mandated under Section 52 (A), Rule 10 of RRACCS.

In the event that the penalty of dismissal against respondents **Vladimir L. Tanco and Governor Victor A. Tanco, Sr.** can no longer be implemented due to retirement, resignation, or for any other reason, the alternative penalty of **FINE** equivalent to their salary for **ONE (1) YEAR** shall be imposed, payable to the Office of the Ombudsman, with the

same accessory penalties of dismissal from the service.

**SO ORDERED.**<sup>[15]</sup>

Aggrieved, Governor Tanco, Sr. and respondent filed a Petition for Review before the CA.<sup>[16]</sup> They alleged, among others, that the present case was politically motivated. They asserted that the Doctrine of Condonation or the Aguinaldo Doctrine, which condoned any alleged misconduct of re-elected public officers, should have been applied to Governor Tanco, Sr. They also argued that there was dearth of evidence to prove grave misconduct because the handwritten and rubber-stamped entries in Check Voucher No. 3746 were falsified, and merely added after respondent affixed his signature thereto, in order to change the nature of what was really a loan transaction into something that was irregular. They added that there were other loan transactions between Labao, Jr. and respondent. Moreover, Governor Tanco, Sr., and respondent also argued that the Ombudsman should have appreciated the Motion to Dismiss and Affidavit of Desistance filed by Labao, Jr., as added proof of his motive for filing the Affidavit-Complaint.<sup>[17]</sup>

In the assailed Decision dated June 17, 2016, the CA granted the Petition and exonerated Governor Tanco, Sr. and respondent of the charge of grave misconduct. The CA ruled that the condonation doctrine or Aguinaldo doctrine should be applied to Governor Tanco, Sr., since he was re-elected to his former position as Governor of Capiz in the 2013 elections. As such, the Ombudsman's Decision can no longer be implemented against the said Governor. Also, the CA dismissed the complaint against respondent since there was no substantial evidence to hold him administratively liable for grave misconduct. The CA found that the check voucher presented by Labao, Jr. was hardly substantive, and agreed with respondent that it was highly improbable for him to affix his signature in said voucher that would connect him to an illicit transaction. The CA also gave credence to respondent's explanation that he issued two checks in favor of Labao, Jr., as payment for his previous loans, and such facts were not refuted by Labao, Jr. The CA ruled in this wise:

**WHEREFORE**, the instant petition is **GRANTED**. The June 1, 2015 Decision of the Ombudsman in OMB-C-A-13-0138 is **REVERSED** and **SET ASIDE** and a new one issued absolving both petitioners Victor A. Tanco, Sr. and Vladimir L. Tanco of the charge for grave misconduct. Consequently, the herein respondents are permanently enjoined from implementing the assailed issuances of the Ombudsman.

**SO ORDERED.**<sup>[18]</sup>

An entry of judgment was thereafter issued by the CA on August 31, 2016.

The Ombudsman subsequently filed Urgent Motions to Recall Entry of Judgment and to Resolve Omnibus Motions for Leave to Intervene and to Admit Attached Motion for Partial Reconsideration-In-Intervention.<sup>[19]</sup> In the assailed Resolution dated July 13, 2017, the CA allowed the Ombudsman to intervene but denied its motion for partial reconsideration-in-intervention. The CA also recalled and lifted the entry of judgment it earlier issued.

Hence, the Ombudsman is before us, raising these errors:

I.

THE [CA] GRAVELY ERRED IN EXONERATING RESPONDENT FROM ANY ADMINISTRATIVE LIABILITY DESPITE ITS FINDING THAT RESPONDENT SOLICITED AND ACCEPTED MONEY FROM [LABAO, JR.], WHICH ACT IS CONTRARY TO LAW.

II.

ASSUMING *ARGUENDO* THAT THE FINDING OF THE [CA] THAT THE MONEY RECEIVED BY RESPONDENT FROM [LABAO, JR.] WERE PURPORTED LOANS AND NOT BRIBE MONEY, THE [CA] GRAVELY ERRED IN EXONERATING RESPONDENT EVEN AFTER FINDING THAT RESPONDENT BORROWED AND ACCEPTED MONEY FROM [LABAO, JR.] IN VIOLATION OF SECTION 7 (D) IN RELATION TO SECTION 11 (B) OF R.A. NO. 6713.

III.

THE [CA] GRAVELY ERRED IN GIVING CREDENCE TO [LABAO, JR.VS AFFIDAVIT OF DESISTANCE - EXECUTED IN VIEW OF [LABAO, JR.]'S ILLNESS, SINCE THE GOVERNMENT IS THE INJURED PARTY IN AN ADMINISTRATIVE CASE WHICH IS IMBUED WITH PUBLIC INTEREST.[20]

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

The Petition must be denied.

It must be stressed at the outset that in petitions filed under Rule 45 of the Rules of Court, only questions of law may be raised. This is because the Court is not a trier of facts and it is not its function to review evidence on record and assess the probative weight thereof.[21] The task of the Court is limited to the review of errors of law that the appellate court might have committed.[22] However, an exception lies in this case where the findings of the CA contradict those of the Ombudsman. Hence, the issue before Us is whether the CA correctly found that there exists no substantial evidence to hold respondent administratively liable for grave misconduct.

"In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion." [23] In cases before the Ombudsman, jurisprudence teaches that the fundamental rule in administrative proceedings is that the complainant has the burden of proving, by substantial evidence, the allegations in his complaint. [24] Indeed, Section 27 of the Ombudsman Act is absolute in that findings of fact by the Ombudsman when supported by substantial evidence are conclusive. In contrast, when the findings of fact by the Ombudsman are not adequately supported by substantial evidence, they shall not be binding upon the courts. [25]

The Ombudsman argues that there was substantial evidence to corroborate Labao, Jr.'s allegation of respondent's solicitation of bribe money, as Barrientos had stated