

EN BANC

[G.R. No. 223972, November 03, 2020]

**ALMA CAMORO PAHKIAT, MAHALITO BUNAYOG LAPINID AND FE
MANAYAGA LOPEZ, PETITIONERS, VS. OFFICE OF THE
OMBUDSMAN-MINDANAO AND COMMISSION ON AUDIT - XII,
RESPONDENTS.**

DECISION

CAGUIOA, J:

Before the Court is a Petition for *Certiorari*^[2] under Rule 65 of the Rules of Court, with prayer for the issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction (WPI), filed by Fe Lopez (Lopez), Alma Pahkiat (Pahkiat), and Mahalito Lapinid (Lapinid), seeking to annul the Resolution^[3] dated February 28, 2011 (assailed Resolution) and Order^[4] dated November 6, 2015 (assailed Order) of the Office of the Ombudsman-Mindanao.

In the assailed Resolution, the Office of the Ombudsman-Mindanao found probable cause to indict petitioners, who each held the position of Administrative Aide I with Salary Grade (SG) 1 at the City Accounting Office (CAO) of Kidapawan, for 107 counts of Malversation of Public Funds through Falsification of Public and Commercial Documents under the Revised Penal Code (RPC), and for one count of violation of Section 3(e)^[5] of Republic Act (R.A.) No. 3019,^[6] as amended. Petitioners were indicted with 12 other persons, namely: Virginia Tamayo (Tamayo), City Accountant (SG-25); Joseph Biongan (Biongan), Barangay Chairman (SG-14); Susan Joguilon (Joguilon), Barangay Treasurer; Jane Isla (Isla), Senior Bookkeeper (SG-9); Lily Sambuang (Sambuang), Administrative Aide VI (SG-6); Adelaida Abracia (Abracia), Owner-Operator of Imiljic Marketing; John Doe, Proprietor of FBP Marketing; John Doe, Proprietor of Zaide Mini Trading; and John Doe, Proprietor of Chyrre Enterprises.^[7]

In the assailed Order, on the other hand, the Office of the Ombudsman-Mindanao summarily denied the motion for reconsideration of the assailed Resolution filed by petitioners for being filed out of time.

The Office of the Ombudsman-Mindanao found probable cause on the ground that petitioners and their co-accused did not faithfully comply with Commission on Audit (COA) Circular No. 93-396, also known as the Barangay Accounting Manual (BAM), particularly with regard to Section 06.02^[8] thereof on the disbursement procedure.

Facts

On May 4, 2006, Kidapawan City State Auditor IV and Audit Team Leader, Marlene B. Aspilla issued CAO Office Order No. 2006-07 to constitute a team to conduct a

10-day audit on the cash, accounts and financial transactions of Barangay Poblacion after receiving information on the alleged falsification of disbursement vouchers (DV), missing DVs, unrecorded check issuances and other irregularities in the financial transactions of Barangay Poblacion.^[9]

On May 9, 2006, the team proceeded to the Office of the Barangay Treasurer, but Joguilon failed to appear and was later reported missing to the police.^[10] Nevertheless, the team proceeded with the audit and submitted its 14-page Special Audit Report^[11] for the period of January 1, 2005 to May 10, 2006 to the COA Cluster Director, Cluster V-LGS-Mindanao on May 29, 2006. Excerpts of the Special Audit Report read:

PART II-OBSERVATIONS AND RECOMMENDATIONS

Alarmed by the disappearance of Susan R. Joguilon, Barangay Treasurer, Barangay Poblacion, Kidapawan City, the audit team proceeded with the audit and review of the cash and accounts of Barangay Poblacion, Kidapawan City, more particularly the verification of the bank reconciliation statements prepared and submitted by the city accountant as of the periods ending January 2005 to April, 2006 and as of May 10, 2006. x x x

1. Disbursements were not recorded in the Journal of Barangay Transactions (JBT). This was deliberately done to conceal unauthorized disbursements and tampered records and checks in violation of law, rules and regulations.

The JBT is the official book of accounts (book of final entry) for Barangays. The Bank Reconciliation Statement is an accounting report showing the results of the process of bringing into agreement the cash balance per JBT and cashbook balance per bank statement of the bank. The Audit team matched the entries of the cash in bank account in the JBT against the bank statement, and finally in the bank reconciliation statement to establish all checks issued but were not recorded in the JBT.

As a rule, claims against government funds shall be supported by complete documentation. Disbursements or all money claims of the government shall be covered by Disbursement Voucher (DVs) (Section 37a,a Vol. 1, Sec. 32 Vol. II, NGAS)

x x x x

As a matter of emphasis, eighty[-]six (86) checks with amounts that aggregated P2,387,648.87 were not recorded in the [JBT] nor reported in the financial statements of Barangay Poblacion as of certain periods from January 1, 2005 to May 8, 2006. x x x

Of these Disbursement Vouchers (DVs), if any, purportedly for disbursements amounting to P1,891,383.13, involving 72 checks which were actually negotiated and cleared with the local depository bank of Barangay Poblacion, Kidapawan City, were missing, not presented in audit or were actually inexistent. In her statement in writing, the city

accountant declared there were really no disbursement vouchers that support the checks issued and paid by the local depository bank. These disbursement vouchers, x x x were not recorded in the JBT.

Still, of the 86 checks mentioned above, 14 checks with amounts that aggregated P496,265.74 were issued based on tampered disbursement vouchers (DVs) as alleged by Ms. Virginia E. Tamayo, City Accountant, City of Kidapawan. These falsified transactions were not recorded in the JBT. x x x

x x x x

2. Disbursements Vouchers were apparently altered to conceal unauthorized disbursements in violation of law, rules and regulations. These tampered DVs were recorded in the JBT.

As a matter of accounting procedure, the Accounting Office of the City Government of Kidapawan keeps certain accounting records. A budget and appropriation logbook is a record used to ensure that the disbursements of barangays is (*sic*) in pursuance of an appropriation law. Likewise, a logbook of duly approved DVs is used for physical control of perfected DVs.

The audit team was not able to verify availability of budget and appropriation of the barangay disbursements in view of the fact that the budget and appropriation control logbook of Barangay Poblacion is gone including the control logbook of barangay approved DVs. Ms. Jane C. Isla, Senior Bookkeeper and charged with the keeping of barangay accounts immediately tendered her resignation from office and cannot be reached for comment on the disappearance of the two logbooks.

The audit team took particular note of the alterations in the approved disbursement vouchers using white correction fluid.

Affected DVs numbering to fifteen (15) aggregated P951,096.93 which were allegedly tampered though recorded in the JBT.

These DVs and checks issued therefor, brings the total irregular disbursement transactions of Barangay Poblacion to 111 checks with a total amount of P3,338,745.80.

DV forms used and eventually tampered were all first copy of computer generated forms. Approved and paid vouchers were not marked "PAID" by Susan Joguilon. In her statement, the City Accountant said that as approved, it was different payee, particular and amount (*sic*). In the falsified/altered DVs, the computation for the applicable withholding tax covered with correction fluid came out legibly which proved the original approved base amount.

3. False statements and false claims occurred following the tampering of records through the conspiracy of some third parties who provided set of blank forms used as supporting

documents in the disbursement scheme in violation of law, rules and regulations.

Of the total number and amount of checks subject of falsification, two or more suppliers provided official receipts (O[R]s), charge invoices, and delivery receipts. x x x

x x x x

Some checks paid to Zaide Mini Trading were encashed and some were deposited to DBP Bank Account No. 5-20846-930-5. Checks paid to FBP Marketing & Gen. Merchandise were deposited to DBP Bank Account No. 12388-925-1 with few encashed checks. Confirmation requests were sent to DBP Kidapawan Branch and other local banks on the identity of endorsers of the checks. Our initial inquiry with the DBP Kidapawan Branch revealed that Account No. 5-12388-925-1 x x x was reported "CLOSED" on May 5, 2006, a day after the special audit team was constituted x x x. Furthermore, we gathered that deposits made in both DBP Bank Accounts 5-20846-930-5 and 5-12388-925-1 were accompanied by withdrawal slips which indicated the name of Susan R. Joguilon, as authorized representative. These facts are indicators that the said bank accounts were but "ARRANGED ACCOUNTS". The withdrawals done simultaneous with deposits prompted the audit team to reach a certain conclusion on the presence of a scheme to defraud the government.

Of the tampered DVs, the supporting documents such as ORs, Charge Invoices and Delivery Receipts attached to the DVs occurred in chronological order which created unusual patters (*sic*) of these documents coming from one or two booklets allegedly entrusted to Ms. Jane C. Isla, Senior Bookkeeper and charged with ensuring that supporting documents are complete, as follows:

x x x x

Some of the falsified checks were made to appear as deposited in a certain bank account as can be gleaned from the bank rubber stamps or markings at the back of the check. However, verification with the bank concerned disclosed that such check did not enter the said bank account as in the case of check no. x x x.

- 4. Government resources was (*sic*) not adequately safeguarded against loss. The presence of sixteen (16) pre-signed checks made every opportunity open to misuse of barangay funds which (*sic*) tantamount to consenting the barangay treasurer to take funds in her custody.**

Sixteen (16) blank checks pre-signed/pre-approved by Joseph Q. Biongan, Barangay Chairman, Barangay Poblacion, Kidapawan City were forwarded to the audit team by Mr. Joseph Biongan x x x. These checks were reportedly found by Mr. Joseph Biongan in the steel filing cabinet of Susan R. Joguilon.

The Barangay Chairman, Mr. Joseph Q. Biongan, who exercises authority over the financial affairs, transactions and operations of the Barangay Poblacion, Kidapawan City and ensure the proper management and utilization of government resources in accordance with law and regulations and that said resources are safeguarded against loss or wastage, caused the pre-signed checks. x x x

x x x x

x x x This indicated that the barangay buys and holds more and several booklets that gave the barangay treasurer opportunity to draw checks from different booklets and in no chronological order according to the control/serial number of the checks.

5. Fifty-four (54) checks ought to be in the possession of the barangay treasurer were missing. This is circumstantial to the alleged irregularities committed in the financial transactions of Barangay Poblacion, Kidapawan City.

x x x x

6. High incidence of cancellation of checks indicated improper handling of government funds in the possession of the Barangay Treasurer as custodian.

Fourteen (14) cancelled checks were noted from the files of checks issued, paid, returned by bank and basis of the bank reconciliation statement issued by the City accounting office. Of these, six ([6]) checks were made payable to Zaide Mini Trading. Of the six ([6]) checks payable to Zaide Mini Trading, two (2) checks were presented to the bank and subsequently dishonored by the bank due to "SPURIOUS CHECK" before they were cancelled and filed in the records by the Barangay Treasurer. These two checks were as follows:

x x x x

The prevalence of cancelled checks is an indicator of irregularities or mishandling of funds by the Barangay Treasurer. x x x

7. Checks issued, cleared and paid by the bank which were similar to those reported as altered or falsified raised the misappropriated amount by P1,490,426.77.

Forty-five (45) checks were similar to those reported as altered or falsified. These checks were payable to same suppliers mentioned in this report. x x x Fact such as perfected DV No. 200509290 in the amount of P24,802.05 was established that it was originally made "to payment of traveling expenses" of Joseph Q. Biongan but later altered "to payment of various supplies" to FBP Marketing as among the forty[-]five (45) checks which were not included in the initial list of altered or falsified checks. Of the 45 checks only 18 have DVs, 27 checks have none. x x x

8. The fact of blatant disregard of the rules and standards of RA 9184 was committed by the barangay Bids and Awards