

FIRST DIVISION

[G.R. No. 232325, April 10, 2019]

**DOMINGO CREBELLO, PETITIONER, V. OFFICE OF THE
OMBUDSMAN AND TIMOTEO T. CAPOQUIAN, JR., RESPONDENTS.**

DECISION

BERSAMIN, C.J.:

A decision absolving a respondent elective public official rendered in an administrative case by the Office of the Ombudsman (OMB), being final and unappealable pursuant to the rules of the OMB, may still be assailed by petition for *certiorari* in the Court of Appeals (CA).

The abandonment of the doctrine of condonation took effect on April 12, 2016, when the Supreme Court denied with finality the OMB's motion for reconsideration in *Morales v. Court of Appeals*.^[1] However, the application by the OMB of the doctrine of condonation prior to its abandonment without the respondent elective public official invoking the same as a defense was whimsical, and amounted to grave abuse of discretion. Condonation, being a matter of defense, must be specifically invoked by the respondent elective public official.

The Case

The petitioner appeals the resolution promulgated on January 16, 2017 by the CA in CA-G.R. SP No. 148977 that dismissed the administrative complaint for nepotism in violation of Section 59, in relation to Section 67, of Presidential Decree No. 807 (*Administrative Code of 1987*), and Section 49, in relation to Section 55, of Executive Order No. 292 (*Civil Service Law*) initiated by the petitioner in the OMB against respondent Timoteo T. Capoquian, Jr. as the Mayor of the Municipality of Gamay, Province of Northern Samar.^[2]

Antecedents

The factual and procedural antecedents, as culled from the decision of the OMB,^[3] are as follows:

This is an administrative complaint for Nepotism filed by the Public Assistance and Corruption Prevention Office (PACPO) of the Office of the Ombudsman-Visayas against Mayor Timoteo T. Capoquian, Jr. and Vice Mayor Enrique C. Gomba, both of the Municipality of Gamay, Province of Northern Samar, and docketed on April 3, 2014.

This case stems from a letter-complaint of Domingo Crebello filed on September 10, 2009 for the alleged nepotism in the appointment of Raquel Capoquian (Raquel), sister of respondent Capoquian, Jr. and Clarita Gomba (Clarita), wife of respondent Gomba, to the Board of

Directors of Gamay Water District. A fact-finding investigation, docketed as CPL-V-09-1076, was then conducted.

By the duly approved Final Evaluation Report of December 10, 2012, it was recommended that said CPL case be upgraded for preliminary investigation and administrative adjudication. The dispositive portion reads:

WHEREFORE, this Office finds merit to UPGRADE the case into two (2) counts of Criminal and Administrative cases for NEPOTISM (Sec. 59 in relation to Sec. 67 of PD 807 - Administrative Code of 1987 and Sec. 49 in relation to Sec. 55 of Executive Order No. 292 - Civil Service Law) against Mayor Timoteo Capoquian and Vice Mayor Enrique Gomba, Municipality of Gamay, Northern Samar.

Complainant PACPO alleged that the Sangguniang Bayan (SB) of the Municipality of Gamay passed and approved Resolution No. 10, Series of 2008, creating the Gamay Water District and empowering respondent Capoquian, Jr. to appoint members of its Board of Directors; that among those appointed by Capoquian, Jr. are Raquel, his sister and Clarita, wife of respondent Gomba; that in applying the rules of nepotism, the appointment of Raquel on March 5, 2008 is nepotistic as she is related to respondent Capoquian, Jr. within the prohibited third degree of consanguinity; and that the appointment of Clarita was also nepotistic for she was recommended by her husband, respondent Gomba as Vice Mayor/Presiding Officer of the SB.

By Order of June 9, 2014, the Office directed respondents to file their Counter-Affidavits. Complainant was likewise given the chance to file its reply thereto.

By Order of January 13, 2015, the Office directed the parties to file their respective verified position papers.

Respondents, however, failed to heed both directives. Such failure is taken as a waiver on their part to controvert the charges. Nevertheless, the mere failure of respondents to submit their Counter-Affidavits does not automatically warrant a finding of probable cause. There is still a need to examine the evidence presented by the complainants to determine if the same is sufficient to indict them of the crimes charged. The case will thus be resolved on the basis of the evidence on record.^[4]

In its decision, the Office of the Ombudsman held that by reason of the re-election of respondent Capoquian, Jr. as Mayor during the 2010 elections, the administrative case against him should be dismissed by virtue of the doctrine of condonation of administrative offenses committed during a prior term following the Court's ruling in *Aguinaldo v. Santos*.^[5]

The dispositive portion of the decision of the OMB reads thusly:

WHEREFORE, respondent ENRIQUE C. GOMBA is hereby found GUILTY of NEPOTISM and meted the penalty of DISMISSAL FROM SERVICE. The

penalty of Dismissal shall carry with it cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and bar from taking the civil service examinations.

The charge against respondent TIMOTEO T. CAPOQUIAN, JR., who was re-elected as the Mayor of Camay, Northern Samar, is hereby dismissed for being moot.

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SO DECIDED.^[6]

The petitioner moved for partial reconsideration, arguing that the doctrine of condonation had already been abandoned on November 10, 2015 through the ruling promulgated in *Morales v. Court of Appeals*; hence, the doctrine could no longer be made to apply in favor of respondent Capoquian, Jr. if the decision thereon had been approved by the Ombudsman on March 31, 2016.

The OMB denied the motion for partial reconsideration, and held that the ruling in *Morales v. Court of Appeals* became final only on April 12, 2016, the date of the promulgation of the minute resolution denying with finality its motion for clarification/motion for reconsideration.

Following the denial by the Supreme Court of the motion for clarification/motion for reconsideration in *Morales v. Court of Appeals*, the OMB issued Circular No. 17 on May 11, 2016 to set the cut-off date on the condonation doctrine, and to state that the OMB would no longer implement the condonation doctrine from April 12, 2016 onwards.

Aggrieved, the petitioner assailed the resolution of the OMB in the CA by petition for *certiorari*, alleging that the OMB thereby committed grave abuse of discretion amounting to lack or excess of jurisdiction.

However, the CA promulgated the assailed resolution of January 16, 2017 dismissing the petition for *certiorari* for being the wrong legal remedy on the basis of the pronouncement made in *Fabian v. Desierto*^[7] to the effect that appeals from the decisions of the OMB in administrative disciplinary cases should be brought to the CA by petition for review under Rule 43.^[8]

The CA denied the petitioner's motion for reconsideration on June 14, 2017.

Issues

In this appeal, two issues are presented for consideration and resolution, namely: (1) whether or not the CA erred in holding that the petition for *certiorari* was the wrong remedy to assail the decision of the OMB absolving respondent Capoquian, Jr. from the administrative charge of nepotism; and (2) whether or not the OMB committed grave abuse of discretion in applying the condonation doctrine in favor of respondent Capoquian, Jr.

Ruling of the Court

The appeal has merit.

We have ruled in *Fabian v. Desierto*^[9] that, indeed, appeals from the decisions of the OMB rendered in administrative disciplinary cases should be taken to the CA via petition for review under Rule 43 of the *Rules of Court*. We have reiterated this ruling subsequently.^[10]

Nonetheless, the CA's reliance on *Fabian v Desierto* was misplaced. The CA obviously did not take into account that the OMB had absolved respondent Capoquian, Jr. from liability based on its application of the doctrine of condonation arising from his re-election to the same position. Such absolution was final, executory and unappealable under Section 7, Rule III, of Administrative Order No. 07, issued by the OMB to implement Section 27 of Republic Act No. 6770, which reads:

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, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the motion for Reconsideration.

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer.

With the absolution of respondent Capoquian, Jr. being already final and no longer appealable, Rule 43, which defines a mode of appeal, obviously did not apply. Therein lay the reversible error of the CA.

We go further. The petitioner was not bereft of a recourse or legal remedy against, the absolution of respondent Capoquian, Jr. The final and unappealable decision of the OMB could still be the subject of judicial review through the petition for *certiorari* upon allegation and proof of grave abuse of discretion on the part of the OMB. We so enunciated in *Republic v. Francisco*,^[11] to wit:

Since the decision of the Ombudsman suspending respondents for one (1) month is final and unappealable, it follows that the CA had no appellate jurisdiction to review, rectify or reverse the same. The Ombudsman was not estopped from asserting in this Court that the CA had no appellate jurisdiction to review and reverse the decision of the Ombudsman via petition for review under Rule 43 of the Rules of Court.