

# FIRST DIVISION

[ G.R. No. 228509, October 14, 2019 ]

**CAPT. JOMAR B. DAQUIOAG, PETITIONER, V. OFFICE OF THE  
OMBUDSMAN AND HADJI SALAM M. ALABAIN, RESPONDENTS.**

## DECISION

**CARANDANG, J.:**

Before this Court is an Amended Petition or Review on *Certiorari*<sup>[1]</sup> filed by petitioner Captain Jomar B. Daquioag (Capt. Daquioag) assailing the Decision<sup>[2]</sup> dated August 10, 2015 and Resolution<sup>[3]</sup> dated November 22, 2016 Of the Court of Appeals (CA) in CA-G.R. SP No. 119051. The CA affirmed the Decision<sup>[4]</sup> dated November 27, 2009 and Order<sup>[5]</sup> dated December 1, 2010 of the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices (OMB-MOLEO) in OMB-P-A-09-0099-B, finding Capt. Daquioag guilty of grave misconduct and imposing upon him the penalty of dismissal from service.

### The Antecedents

On August 10, 2008, Hadja Nihma Alabain (Hadja Alabain), her grandson Qamar Mujanil<sup>[6]</sup> (Mujanil), nephew Munajin Alabain (Alabain), and farm workers Julito Maghilum (Maghilum), Ronald Francisco (Francisco), his nephew Robert Alviar (Alviar), and Francisco's son Jaivin Palces (Palces) were on their way home from the farm of Hadja Alabain's husband, Hadji Salam Alabain (Hadji Alabain), in Baas, Lamitan, Basilan, when they saw patrolling Philippine Marine soldiers led by Capt. Daquioag.<sup>[7]</sup> Francisco threw away the shotgun he was holding, raised his hands, and shouted "civilian" but the soldiers still fired upon them.<sup>[8]</sup> As a result, Alviar died<sup>[9]</sup> while Palces sustained a minor injury. Hadja Alabain and Mujanil were subjected to one hour of interrogation. They were allowed to go home afterwards but their shotgun and farm implements were confiscated. Two days after the incident, the carabao that Alviar was riding died.<sup>[10]</sup>

On August 20, 2008, Hadji Alabain and Hadja Alabain together with Spouses Diosdado and Evelyn Alviar (Spouses Alviar) filed a complaint against Capt. Daquioag, among others, before the Commission on Human Rights (CHR). Hadji Alabain and Hadja Alabain, Francisco, Maghilum, Palces, Mujanil, Alabain, and Spouses Alviar executed affidavits in support thereof.<sup>[11]</sup>

On December 11, 2008, the CHR issued a Resolution<sup>[12]</sup> recommending that the case be forwarded to the OMB-MOLEO for the filing of appropriate criminal and administrative charges against Capt. Daquioag and his co-respondents. The CHR held that Capt. Daquioag and his co-respondents failed to verify that their target is a military objective. The attack upon Alviar and his companions was unjustified because they were civilians and non-combatants.<sup>[13]</sup>

## **Ruling of the OMB-MOLEO**

In its Decision<sup>[14]</sup> dated November 27, 2009, the OMB-MOLEO found Capt. Daquioag guilty of grave misconduct and imposed upon him the penalty of dismissal from the service. The OMB-MOLEO directed the Secretary of the Department of National Defense (DND Secretary) and the Commanding General or Commandant of the Philippine Marine Corps (PMC Commandant) to implement the decision.<sup>[15]</sup>

The OMB-MOLEO ruled that there was substantial evidence against Capt. Daquioag.<sup>[16]</sup> He was positively identified by Hadja Alabain as the leader of the group who shot them and it was not shown that Hadja Alabain had ill-motive or bad faith against him. Even though Master Sergeant Urbanito G. Tomas, Technical Sergeant (TSgt.) Edwin Z. Victa, TSgt. Warlito V. Abalos, and Private First Class Bernie S. Baloca signed as witnesses in Capt. Daquioag's affidavit to affirm his claim that he was at their camp when the incident took place, the OMB-MOLEO was not convinced that it was physically impossible for him to be at the place of the incident since the camp is also in Lamitan. In addition, members of the operating troops did not corroborate his claim that they were not with him when the incident took place. The OMB-MOLEO was likewise not persuaded that Capt. Daquioag's group encountered armed members of the Moro Islamic Liberation Front (MILF). Two of the members of Alviar's group were minors and only Alviar carried a shotgun. Hadja Alabain even sought financial assistance from their office to transfer Alviar's remains and to recover the shotgun. As such, Alviar and his companions were not members of the MILF and were not a threat to the soldiers.<sup>[17]</sup>

Capt. Daquioag's failure to perform his duties and skills with the highest degree of excellence, professionalism, intelligence, and skill resulted in the death of Alviar and sowed fear in minors Mujanil and Palces. His failure to prevent the assault was found inexcusable.<sup>[18]</sup> Cap. Daquioag filed a motion for reconsideration but it was denied<sup>[19]</sup> so he filed petition for review with the CA.

## **Ruling of the CA**

On August 10, 2015, the CA rendered its Decision<sup>[20]</sup> denying respondent's petition and affirming the OMB-MOLEO.<sup>[21]</sup> *First*, the CA held that the OMB-MOLEO was authorized to penalize Capt. Daquioag and to order the DND Secretary and the PMC Commandant to implement his dismissal under Republic Act No. (R.A.) 6770,<sup>[22]</sup> otherwise known as the Ombudsman Act of 1989.<sup>[23]</sup> *Second*, there was substantial evidence to prove that Capt. Daquioag was the leader of the group that fired upon Alviar. Hadja Alabain positively identified him while he failed to prove that he was not present when the incident took place, which was more or less five kilometers away from the south of the camp. The CA agreed with the OMB-MOLEO that the assault led by Capt. Daquioag on Alviar and his group constitutes grave misconduct.<sup>[24]</sup> Despite Hadji and Hadja Alabain, Maghylum, Alabain, Mujanil, Francisco, and Palces executing a joint affidavit of desistance before the Officer-In-Charge-City Prosecutor of Lamitan City on August 2011, the CA still upheld the penalty of dismissal. This is in accordance with Our ruling in *Ombudsman v. Medrano*<sup>[25]</sup> that the execution of affidavits of desistance which resulted in the dismissal of criminal cases will not alter the finding on the administrative liability of the respondent.<sup>[26]</sup>

Capt. Daquioag filed a motion for reconsideration but it was denied by the CA. Accordingly, he filed a petition before this Court to assail the ruling of the CA. He explained that he was then the Civil Military Officer (CMO) of Marine Battalion Landing Team 7 (MBLT-7). As CMO, he was tasked to foster a good relationship between the military and the public and was prohibited from engaging in armed combat.<sup>[27]</sup> Lieutenant Colonel Leonard Vincent D. Teodoro (LtCol. Teodoro), commanding officer of the MBLT-7, and 2<sup>nd</sup> Lieutenant Rod Bryan S. Eribal (2Lt. Eribal), commanding officer of the 27<sup>th</sup> Marine Company of the MBLT-7, executed their respective Affidavits<sup>[28]</sup> to attest that Capt. Daquioag was not involved in the firefight on August 10, 2008. He only accompanied LtCol. Teodoro to the scene at 6 p.m. to collect the body of one enemy who was killed in action, who turned out to be Alviar, and to take it to the City Hall for proper disposition. The Special Operations Platoon-7 commanded by 2Lt. Eribal and the 37<sup>th</sup> Marine Company commanded by First Lieutenant Reyson O. Talingdan (1Lt. Talingdan) were the ones involved in the encounter with the MILF.<sup>[29]</sup> Capt. Daquioag further argues that the CA erred in disregarding the joint affidavit of desistance.<sup>[30]</sup>

The OMB filed its Comment<sup>[31]</sup> wherein it argued that the petition raises questions of fact which are not covered by a petition for review under Rule 45 of the Rules of Court.<sup>[32]</sup> In any event, the OMB-MOLEO was correct in holding Capt. Daquioag liable for grave misconduct. He was positively identified by Hadja Alabain as the leader of the group who shot Alviar. Capt. Daquioag did not submit sufficient evidence to dispute this.<sup>[33]</sup> With respect to the joint affidavit executed in the criminal case, it was a mere afterthought. It has no effect on Capt. Daquioag's administrative liability which is different and distinct from his criminal liability.<sup>[34]</sup> The OMB also pointed out that Hadja Alabain did not inspect Capt. Daquioag's exhibits which was the basis for the affiants' declaration that he was not the one who led the attack against them. Therefore, the joint affidavit is unreliable.<sup>[35]</sup>

### **Issue**

Whether the CA erred in upholding the finding of grave misconduct against Capt. Daquioag and ordering his dismissal from the service.

### **Ruling of the Court**

The petition is meritorious.

Section 27 of R.A. 6770 provides that "[f]indings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive." As such, this Court generally accords great respect and even finality to the findings of the Office of the Ombudsman.<sup>[36]</sup>

Petitions for review on *certiorari* should be limited to questions of law. However, there are exceptions to this well-established rule wherein this Court may rule on questions of fact, some of which are: (1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is a grave abuse of discretion; and (4) the judgment is based on a misapprehension of facts.<sup>[37]</sup>

In this case, the CA and the OMB-MOLEO relied on the statement of Hadja Alabain that Capt. Daquioag was the leader of the group that fired upon her and her companions. According to the CA and the OMB-MOLEO, substantial evidence or relevant evidence, which is reasonable mind might accept as adequate to support a conclusion,<sup>[38]</sup> was satisfactorily presented in this case. We disagree.

Our perusal of Hadja Alabain's affidavit reveals that she did not state when she saw Capt. Daquioag or how she was able to identify him. She said that more or less 100 armed men located around 20 feet away fired upon them. She did not aver that Capt. Daquioag was one of these men. In fact, Hadja Alabain mentioned him in her affidavit only once stating "That I executed this affidavit to attest to the truthfulness of the foregoing statements and to file appropriate charges against the Marine personnel led by Capt. Jomar Daquioag, PN (M)."<sup>[39]</sup> None of her companions corroborated her statement that Capt. Daquioag commanded the soldiers who attacked them.<sup>[40]</sup> Hadji Alabain, who was not present when the incident occurred, was the only one who said in his affidavit that Capt. Daquioag led the soldiers during the incident.<sup>[41]</sup> Considering this, the CA and the OMB-MOLEO unduly gave weight to Hadja Alabain's identification of Capt. Daquioag.

Capt. Daquioag's explanation that as the CMO of the MBLT-7 he was prohibited from engaging in armed combat and, as such, he did not participate in the armed conflict on August 10, 2008, was more credible. LtCol. Tedoro not only affirmed Capt. Daquioag's statement but also identified 1Lt. Talingdan and 2Lt. Eribal as the ones who were truly in charge of the troops involved [in] an armed encounter with the MILF.<sup>[42]</sup> 2Lt. Eribal himself confirmed this in his affidavit, stating that Capt. Daquioag "was not directly involved on the said operation. The said officer was the ACO, HSC/CMO officer of the unit at the time and only accompanied the former CO Battalion during the visit near the scene to coordinate and inquire about the recent incident."<sup>[43]</sup> The CA and the OMB-MOLEO should have appreciated the detailed statements of LtCol. Teodoro and 2Lt. Eribal which established that Capt. Daquioag did not commit the act subject of the charge against him.

In addition, Hadja Alabain executed a joint affidavit with Hadji Alabain, Maghilum, Alabain, Mujanil, Francisco, and Palces dated August 2011, which states:

x x x x

3. That when we filed the case before the office of the Commission on Human Rights in Zamboanga City, we thought it was the accused Capt. Jomar B. Daquioag who led the marine soldiers, but we were mistaken. On two (2) occasions, during arraignment and pre-trial, Hadji Salam A. Alabain and her [*sic*] daughter Jasmin A. Mujamil was able to confer with the accused and when the latter introduced his documentary exhibits during pre-trial, we were able to secure two of which, the affidavit of Lt. Col. Leonard Vincent D. Teodoro and that of 2<sup>nd</sup> Lt. Rod Bryan S. Eribal; that in both affidavit[s], affiants admitted that the former was the then Battalion Commander and the latter together with 1Lt. Reyson O. Talingdan commanded the group of marine soldiers who shot us and killed Robert Alviar;

4. That we now know 2<sup>nd</sup> Lt. Eribal and 1<sup>st</sup> Lt. Talingdan were the ones who led the marine soldiers and not the herein accused Capt. Jomar B.