

## SECOND DIVISION

[ G.R. No. 229288, August 01, 2018 ]

**SHERWIN T. GATCHALIAN, PETITIONER, V. OFFICE OF THE OMBUDSMAN AND FIELD INVESTIGATION OFFICE OF THE OFFICE OF THE OMBUDSMAN, RESPONDENTS.**

### DECISION

**CAGUIOA, J:**

Before the Court is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 assailing the Resolutions dated September 13, 2016<sup>[2]</sup> and January 13, 2017<sup>[3]</sup> issued by the Special Thirteenth Division of the Court of Appeals (CA) in CA-G.R. SP No. 145852.

#### The Facts

Six different criminal complaints were filed by the Field Investigation Office (FIO) of the Office of the Ombudsman (Ombudsman),<sup>[4]</sup> Cesar V. Purisima,<sup>[5]</sup> and Rustico Tuto<sup>[6]</sup> against several individuals, including petitioner Sherwin T. Gatchalian (Gatchalian). Specifically, Gatchalian was one of the respondents in OMB-C-C-13-0212, a complaint accusing the respondents therein of (a) violation of Section 3(e) and (g) of Republic Act No. 3019 (R.A. 3019); (b) Malversation under Article 217 of the Revised Penal Code (RPC); and (c) violation of Section X126.2 (c) (1), (2) and (3) of the Manual of Regulations for Banks (MORB) in relation to Sections 36 and 37 of Republic Act No. 7653 (R.A. 7653). The said complaint arose from the sale of shares in Express Savings Bank, Inc. (ESBI), in which Gatchalian was a stockholder, in 2009, to Local Water Utilities Administration (LWUA), a government-owned and controlled corporation (GOCC).<sup>[7]</sup>

In a Joint Resolution dated March 16, 2015 (Joint Resolution),<sup>[8]</sup> the Ombudsman found probable cause to indict Gatchalian of the following: (a) one count of violation of Section 3(e) of R.A. 3019, (b) one count of malversation of public funds, and (c) one count of violation of Section X126.2(C) (1) and (2) of MORB in relation to Sections 36 and 37 of R.A. 7653. While it was the other respondents – members of the Board of Trustees of LWUA (LWUA Board) – who were directly responsible for the damage caused to the government by the acquisition by LWUA of ESBI's shares, the Ombudsman found that the latter's stockholders who sold their shares, including Gatchalian, profited from the transaction. The Ombudsman held that in view of ESBI's precarious financial standing at the time of the transaction, the windfall received by Gatchalian and the other stockholders must be deemed an unwarranted benefit, advantage, or preference within the ambit of R.A. 3019.

The Ombudsman also found that there was conspiracy among the officers of LWUA and ESBI, and the stockholders of ESBI, for the latter authorized the former to push through with the transaction. The Ombudsman found that the officers and the stockholders acted in concert towards attaining a common goal, and that is to

ensure that LWUA acquires 60% stake in ESBI in clear contravention of requirements and procedures prescribed by then existing banking laws and regulations.<sup>[9]</sup> With regard to the violation of Section X126.2(C) (1) and (2) of MORB in relation to Sections 36 and 37 of R.A. 7653, the Ombudsman held that the stockholders of ESBI were likewise liable because the MORB specifically requires both the transferors and the transferees to secure the prior approval of the Monetary Board before consummating the sale.

The respondents in the Ombudsman cases, including Gatchalian, filed separate motions for reconsideration of the Joint Resolution. However, on April 4, 2016, the Ombudsman issued a Joint Order<sup>[10]</sup> denying the motions for reconsideration.

Aggrieved, Gatchalian filed with the CA a Petition for *Certiorari*<sup>[11]</sup> under Rule 65 of the Rules of Court, and sought to annul the Joint Resolution and the Joint Order of the Ombudsman for having been issued with grave abuse of discretion. He argued that the Ombudsman made a general conclusion without specifying a "series of acts" done by him that would "clearly manifest a concurrence of wills, a common intent or design to commit a crime."<sup>[12]</sup> Furthermore, he argued that he was neither a director nor an officer of ESBI, such that he never negotiated nor was he personally involved with the transaction in question. Ultimately, Gatchalian claimed that there was no probable cause to indict him of the crimes charged. Procedurally, he explained that he filed the Petition for *Certiorari* with the CA,<sup>[13]</sup> and not with this Court, because of the ruling in *Morales v. Court of Appeals*.<sup>[14]</sup>

On September 19, 2016, the Ombudsman, through the Office of the Solicitor General (OSG), filed a Comment<sup>[15]</sup> on the Petition for *Certiorari*. The OSG argued that the CA had no jurisdiction to take cognizance of the case, as the decisions of the Ombudsman in criminal cases were unappealable and may thus be assailed only through a petition for *certiorari* under Rule 65 filed with the Supreme Court. On the merits, it maintained that the Joint Resolution and the Joint Order were based on evidence, and were thus issued without grave abuse of discretion.

Before the filing of the OSG's Comment, however, the CA had already issued a Resolution<sup>[16]</sup> dated September 13, 2016 wherein it held that it had no jurisdiction over the case. The CA opined that the *Morales* ruling should be understood in its proper context, *i.e.*, that what was assailed therein was the preventive suspension order arising from an **administrative case** filed against a public official.<sup>[17]</sup>

On October 7, 2016, Gatchalian sought reconsideration of the CA's Resolution dismissing the Petition for *Certiorari*.<sup>[18]</sup> He reiterated his arguments in the petition, and maintained that the CA has jurisdiction over the case by virtue of the ruling in *Morales*. The OSG filed its Comment on Gatchalian's motion for reconsideration and argued that there was no cogent reason for the CA to reconsider its decision. On December 7, 2016, Gatchalian filed a Reply.<sup>[19]</sup>

On January 13, 2017, the CA issued another Resolution<sup>[20]</sup> where it upheld its earlier Resolution. It held that the points raised in Gatchalian's motion for reconsideration were a mere rehash of the arguments which had already been passed upon by the CA in the earlier decision.

Gatchalian thus appealed to this Court.<sup>[21]</sup> He maintains that the import of the decision in *Morales* is that the remedy for parties aggrieved by decisions of the Ombudsman is to file with the CA a petition for review under Rule 43 for administrative cases, and a petition for *certiorari* under Rule 65 for criminal cases.

On December 19, 2017, the OSG filed its Comment.<sup>[22]</sup> According to the OSG, jurisprudence is well-settled that the CA has no jurisdiction to review the decisions of the Ombudsman in criminal cases. It reiterated that the *Morales* decision should be understood to apply only in administrative cases. Gatchalian thereafter filed a Reply on April 4, 2018.<sup>[23]</sup>

### **Issue**

The sole issue to be resolved in this case is whether the CA erred in dismissing Gatchalian's Petition for *Certiorari* under Rule 65 for its alleged lack of jurisdiction over the said case.

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

The petition is unmeritorious.

The first case on the matter was the 1998 case of *Fabian vs. Desierto*,<sup>[24]</sup> where the Court held that Section 27 of Republic Act No. 6770 (R.A. 6770), which provides that all "orders, directives, or decisions (in administrative cases) of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for *certiorari* within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court," was unconstitutional for it increased the appellate jurisdiction of the Supreme Court without its advice and concurrence. The Court thus held that "appeals from decisions of the Office of the Ombudsman in **administrative disciplinary cases** should be taken to the Court of Appeals under the provisions of Rule 43."<sup>[25]</sup>

Subsequently, in *Kuizon v. Desierto*,<sup>[26]</sup> the Court stressed that the ruling in *Fabian* was limited only to administrative cases, and added that it is the Supreme Court which has jurisdiction when the assailed decision, resolution, or order was an incident of a criminal action. Thus:

In dismissing petitioners' petition for lack of jurisdiction, the Court of Appeals cited the case of *Fabian vs. Desierto*. **The appellate court correctly ruled that its jurisdiction extends only to decisions of the Office of the Ombudsman in administrative cases.** In the *Fabian* case, we ruled that appeals from decisions of the Office of the Ombudsman in *administrative disciplinary cases* should be taken to the Court of Appeals under Rule 43 of the 1997 Rules of Civil Procedure. It bears stressing that when we declared Section 27 of Republic Act No. 6770 as unconstitutional, we categorically stated that said provision is involved only whenever an appeal by *certiorari* under Rule 45 is taken from a decision in an administrative disciplinary action. **It cannot be taken into account where an original action for *certiorari* under Rule 65 is resorted to as a remedy for judicial review, such as from an incident in a criminal action. In fine, we hold that the**

**present petition should have been filed with this Court.**<sup>[27]</sup>  
(Emphasis supplied)

In *Golangco vs. Fung*,<sup>[28]</sup> the Court voided a decision of the CA which directed the Ombudsman to withdraw an Information already filed by it with a Regional Trial Court (RTC). The Court in *Golangco* reasoned that "[t]he Court of Appeals has jurisdiction over orders, directives and decisions of the Office of the Ombudsman in administrative disciplinary cases only. **It cannot, therefore, review the orders, directives or decisions of the Office of the Ombudsman in criminal or non-administrative cases.**"<sup>[29]</sup>

With regard to orders, directives, or decisions of the Ombudsman in criminal or non-administrative cases, the Court, in *Tirol, Jr. v. Del Rosario*,<sup>[30]</sup> held that the remedy for the same is to file a petition for *certiorari* under Rule 65 of the Rules of Court. The Court explained:

True, the law is silent on the remedy of an aggrieved party in case the Ombudsman found sufficient cause to indict him in criminal or non-administrative cases. We cannot supply such deficiency if none has been provided in the law. We have held that the right to appeal is a mere statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of law. Hence, there must be a law expressly granting such privilege. The Ombudsman Act specifically deals with the remedy of an aggrieved party from orders, directives and decisions of the Ombudsman in administrative disciplinary cases. As we ruled in *Fabian*, the aggrieved party is given the right to appeal to the Court of Appeals. Such right of appeal is not granted to parties aggrieved by orders and decisions of the Ombudsman in criminal cases, like finding probable cause to indict accused persons.

**However, an aggrieved party is not without recourse where the finding of the Ombudsman as to the existence of probable cause is tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction. An aggrieved party may file a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure.**<sup>[31]</sup>  
(Emphasis supplied)

The Court in *Tirol, Jr.*, however, was unable to specify the court -- whether it be the RTC, the CA, or the Supreme Court -- to which the petition for *certiorari* under Rule 65 should be filed given the concurrent jurisdictions of the aforementioned courts over petitions for *certiorari*.

Five years after, the Court clarified in *Estrada v. Desierto*<sup>[32]</sup> that a petition for *certiorari* under Rule 65 of the Rules of Court questioning the finding of the existence of probable cause --- or the lack thereof ---- by the Ombudsman should be filed with the Supreme Court. The Court elucidated:

*But in which court should this special civil action be filed?*

**Petitioner contends that certiorari under Rule 65 should first be filed with the Court of Appeals as the doctrine of hierarchy of courts precludes the immediate invocation of this Court's jurisdiction.** Unfortunately for petitioner, he is flogging a dead horse as

*this argument has already been shot down in Kuizon v. Ombudsman where we decreed —*

In dismissing petitioners' petition for lack of jurisdiction, the Court of Appeals cited the case of *Fabian vs. Desierto*. The appellate court correctly ruled that its jurisdiction extends only to decisions of the Office of the Ombudsman in administrative cases. In the *Fabian* case, we ruled that appeals from decisions of the Office of the Ombudsman in *administrative disciplinary* cases should be taken to the Court of Appeals under Rule 43 of the 1997 Rules of Civil Procedure. It bears stressing that when we declared Section 27 of Republic Act No. 6770 as unconstitutional, we categorically stated that said provision is involved only whenever an appeal by *certiorari* under Rule 45 is taken from a decision in an administrative disciplinary action. It cannot be taken into account where an original action for *certiorari* under Rule 65 is resorted to as a remedy for judicial review, such as from an incident in a criminal action. In fine, we hold that the present petition should have been filed with this Court.

**Kuizon and the subsequent case of *Mendoza-Arce v. Office of the Ombudsman (Visayas)* drove home the point that the remedy of aggrieved parties from resolutions of the Office of the Ombudsman finding probable cause in criminal cases or non-administrative cases, when tainted with grave abuse of discretion, is to file an original action for *certiorari* with this Court and not with the Court of Appeals.** In cases when the aggrieved party is questioning the Office of the Ombudsman's finding of lack of probable cause, as in this case, there is likewise the remedy of *certiorari* under Rule 65 to be filed with this Court and not with the Court of Appeals following our ruling in *Perez v. Office of the Ombudsman*.<sup>[33]</sup> (Emphasis supplied)

In the 2009 case of *Ombudsman v. Heirs of Margarita Vda. De Ventura*,<sup>[34]</sup> the Court reiterated *Kuizon*, *Golangco*, and *Estrada*, and ruled that the CA did not have jurisdiction over orders and decisions of the Ombudsman in non-administrative cases, and that the remedy of aggrieved parties was to file a petition for *certiorari* under Rule 65 with this Court. The foregoing principles were repeatedly upheld in other cases, such as in *Soriano v. Cabais*<sup>[35]</sup> and *Duyon v. Court of Appeals*.<sup>[36]</sup>

In this petition, Gatchalian argues that the decision of the Court *En Banc* in *Morales v. Court of Appeals*<sup>[37]</sup> abandoned the principles enunciated in the aforementioned line of cases.

The Court disagrees.

In the *Morales* case, what was involved was the preventive suspension order issued by the Ombudsman against Jejomar Binay, Jr. (Binay) in an **administrative case** filed against the latter. The preventive suspension order was questioned by Binay in the CA via a petition for *certiorari* under Rule 65 with a prayer for the issuance of a temporary restraining order (TRO). The CA then granted Binay's prayer for a TRO,