

SECOND DIVISION

[G.R. No. 198583, June 28, 2017]

ARLYN ALMARIO-TEMPLONUEVO, PETITIONER, VS. OFFICE OF THE OMBUDSMAN, THE HONORABLE SECRETARY, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT AND CHITO M. OYARDO, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

This petition for review on *certiorari* under Rule 45 of the Rules of Court seeks the review of the February 17, 2011^[1] and the September 8, 2011^[2] Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 116229. The CA issuances dismissed the petition for *certiorari* and prohibition filed by petitioner Arlyn Almario-Templonuevo (*Templonuevo*), thus, affirming the January 6, 2010 Decision^[3] of Office of the Deputy Ombudsman for Luzon (*Ombudsman*) in OMB-L-A-08-0097-B, finding her administratively liable for simple misconduct. The complaint against her was filed by respondent Chito M. Oyardo (*Oyardo*).

Factual Antecedents

Templonuevo was elected as Sangguniang Bayan Member of the Municipality of Caramoan, Province of Catanduanes, during the May 2007 elections. She served from July 1, 2007 to June 30, 2010. In the elections of May 2010, she was elected as Municipal Vice Mayor of the same municipality.

In a complaint, docketed as OMB-L-A-08-0097-B, Oyardo administratively charged Templonuevo before the Ombudsman for violation of Sec. 2, par. 1 of Republic Act No. 9287.

In its January 6, 2010 Decision, the Deputy Ombudsman for Luzon found petitioner guilty of simple misconduct and imposed upon her the penalty of one month suspension without pay. The dispositive portion of said decision reads:

WHEREFORE, premises considered, it is hereby respectfully recommended that **ARLYN ALMARIO-TEMPLONUEVO** be adjudged guilty of violation of simple misconduct and is hereby imposed a penalty of one (1) month suspension from office without pay pursuant to Section 7 Rule III of the Administrative Order No. 07 as amended by Administrative Order No. 17 in relation to Republic Act No. 6770.

The Honorable Secretary Ronaldo V. Puno, Department of Interior and Local Government, is hereby directed to implement this DECISION immediately upon receipt thereof pursuant to Section 7, Rule III of Administrative Order No. 07, as amended by Administrative Order No. 17 (Ombudsman Rules of Procedure) in relation to Memorandum Circular No. 1, Series of 2006 dated 11 April 2006 and to promptly inform this office of the action taken hereon.

SO DECIDED.^[4]

At the time Templonuevo received her copy of the January 6, 2010 Decision on September 27, 2010, her term as Sangguniang Bayan Member had expired. She, however, was elected as Vice Mayor of the same municipality.

Without filing a motion for reconsideration, Templonuevo directly filed before the CA an original petition for *certiorari* and prohibition under Rule 65 of the Rules of Court. She claimed that the Ombudsman acted with grave abuse of discretion in ordering her suspension at a time when her term of office as Sangguniang Bayan Member had already expired and she had been elected as Vice Mayor in the May 2010 elections.

In its February 17, 2011 Resolution,^[5] the CA dismissed outright the petition on the ground of Templonuevo's failure to file a motion for reconsideration. According to the CA, the remedy of *certiorari* will not lie if other plain and speedy remedies in the ordinary course of law such as a motion for reconsideration are available, which, in this case, was not sought after by Templonuevo.

Templonuevo moved for reconsideration, but her motion was denied by the CA in its September 8, 2011 Resolution.

Aggrieved, Templonuevo elevated the case to this Court via Rule 45 of the Rules of Court.

Hence, this petition.

Templonuevo asserts that the CA decided questions of substance contrary to law and the applicable decisions of this Court when her petition was dismissed outright on the ground of failure to file a motion for reconsideration. She claims that there was no need to file for reconsideration considering that the Ombudsman's decision has become final, executory and unappealable. She cites, as support, Section 7, Rule III of Administrative Order No. 07, otherwise known as the Rules of Procedure of the Ombudsman, as amended by A.O. No. 17, which provides:

Section 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 in 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 the 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 ground for disciplinary action against said officer.

To Templonuevo, said AO makes a motion for reconsideration unavailable in cases where a respondent is absolved of the charge or in cases of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine of equivalent to one month salary. Considering that she was given the penalty of one-month suspension only, her only remedy then was to file a petition for *certiorari* under Rule 65 of the Rules of Court.

In furtherance of her position, Templonuevo cites *Office of the Ombudsman v. Alano*,^[6] wherein the Court ruled that a resolution or order of the Ombudsman becomes final and unappealable in the instances mentioned by her. The effect of such finality, in her view, is simple - that the motion for reconsideration is not required before resorting to the extraordinary remedy of *certiorari*. This was, according to her, the same conclusion reached by the Court in *Reyes, Jr. v. Belisario*.^[7] There, it was held that the complainant therein was not entitled to any corrective recourse, whether by motion for reconsideration, or by appeal to the courts, to effect a reversal of the exoneration. The Court further held that despite such a fact, courts are still empowered by the Constitution to determine whether there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

Templonuevo, thus, believes that because the decision of the Ombudsman in her case was immediately final, executory and unappealable, the same could no longer be reviewed by the said office and as such a motion for reconsideration would be an exercise in futility. The CA should have taken note of that fact and such a failure amounts to an error, says petitioner.

Templonuevo likewise calls the Court's attention to the fact that the misconduct for which she was penalized was committed when she was still a Sangguniang Bayan Member. As she was elected Vice Mayor of the same municipality in 2010, she claims that such election resulted in the condonation of her administrative liability on acts committed during her previous post. She cites the case of *Pascual v. Hon. Provincial Board of Nueva Ecija*,^[8] where this Court held that the re-election to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefrom. Consequently, the decision of the Ombudsman is in her view a patent nullity.

On November 16, 2011, the Court resolved to require the respondents to comment on the petition and also issued a Temporary Restraining Order enjoining the respondents from implementing the Decision of the Office of the Ombudsman.^[9]

On December 2, 2011, the Office of the Solicitor General (OSG) filed a Manifestation and Motion (in Lieu of Comment),^[10] stating that the arguments raised by it in its Manifestation and Motion (in Lieu of Comment), dated April 26, 2011 and filed on April 28, 2011 with the CA, was exhaustive enough to serve as its comment on the present petition. The OSG in the pleadings it filed with the CA took the side of Templonuevo. It, thus, asserts that by virtue of AO No. 7, as amended, a decision of Ombudsman imposing a penalty of not more than one (1) month is final, executory and unappealable and, as such, a motion for reconsideration or appeal is not an available remedy. It also claimed that the subsequent reelection of Templonuevo precludes the imposition and execution of the penalty by virtue of the long standing doctrine of condonation.

In its Comment on the Petition For Review on *Certiorari* with Leave of Court (With Motion to Recall the Temporary Restraining Order with Opposition to the Issuance of a Writ of Preliminary Injunction),^[11] the Ombudsman submits that Section 7, Rule III, Administrative Order No. 07, as amended, allows the filing of motions for reconsideration on its decisions that impose one month suspension; that a plethora of jurisprudence reveals that the Condonation Doctrine was applied by the Supreme Court only in cases where there was re-election to the same position; and that, the issuance of a temporary restraining order was erroneous and the error should not be extended with the issuance of a writ of preliminary injunction which the law proscribes.

In the meantime, Templonuevo filed a Manifestation in Lieu of Compliance^[12] with the January 25, 2012 Resolution which ordered her to furnish this Court with the current address of Oyardo. She stated therein that she did not know the present address of Oyardo, who was not a permanent resident of Caramoan, and that no forwarding address was left behind.

In its July 18, 2012 Resolution,^[13] the Court noted the manifestation and required the Ombudsman to furnish the address of Oyardo. This was complied with.^[14]

Oyardo still failed to file his Comment on the petition. As such, in the Court's September 14, 2015 Resolution,^[15] Oyardo's right to file his comment was deemed waived. In the same Resolution, the Court required Templonuevo to file her Reply to the manifestation and motion of the OSG, dated December 1, 2011, and to the Comment on the Petition for Review on *Certiorari* with Leave of Court filed by the Ombudsman.

Until now, no reply has been filed by Templonuevo. She is deemed to have waived her right to file it.

Issues

A reading of the pleadings filed by the parties reveals that the issues are as follows:

1. Whether the CA committed an error in dismissing outright the petition filed by Templonuevo on the ground of failure to file a motion for reconsideration from the decision of the Ombudsman finding her administratively liable and imposing upon her a penalty of one month suspension.
2. Whether the CA committed an error in not treating the election of Templonuevo as Vice Mayor of the same municipality as an event that precludes the imposition of the one month suspension penalty following the doctrine of condonation.