

## SECOND DIVISION

[ G.R. No. 206425, December 05, 2016 ]

**VILMA N. CLAVE, PETITIONER, V. OFFICE OF THE OMBUDSMAN [VISAYAS], CEBU CITY, HON. NELSON BARTOLOME, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 67, GUIMBAL, ILOILO, COMMISSION ON AUDIT (COA), REGIONAL OFFICE NO. VI, ILOILO CITY, RESPONDENTS.**

### DECISION

**BRION, J.:**

We resolve the petition for *certiorari*<sup>[1]</sup> filed under Rule 65 of the Rules of Court by petitioner Vilma N. Clave, assailing the Resolution dated December 30, 2010<sup>[2]</sup> and the Order dated December 13, 2012<sup>[3]</sup> of the Office of the Ombudsman-Visayas (*Ombudsman*) in OMB-V-C-09-0415-L. The assailed rulings found probable cause to formally charge Clave for the crime of malversation of public funds through the falsification of a public document.<sup>[4]</sup>

### THE FACTUAL ANTECEDENTS

Clave was the General Manager of the Miagao Water District (MWD) in Iloilo from November 4, 2003, until she resigned on November 3, 2006. At first, Clave hesitated to accept the position as she had been employed with the San Jose Del Monte City Water District in Bulacan for almost six (6) years, and her family had permanently settled there. She nevertheless accepted the offer on the assurance from the municipal mayor and the MWD's management that she would be given financial assistance in relocating her family.

At that time, the MWD could not immediately shoulder the relocation because of its financial condition, so its management advised Clave to secure a loan from the Rural Bank of Miagao, Iloilo. With the assurance from the board of directors that the MWD would shoulder the payment of the loan, Clave secured a loan from the bank.

The MWD board of directors used their *per diems* and amounts supposedly allocated for seminar expenses to initially pay the loan, Clave also used her personal money for this purpose. Thereafter, the MWD, through its board, allegedly requested the local government for financial assistance to recover the amounts "advanced" by Clave and the MWD directors.<sup>[5]</sup>

On August 3, 2005, the Municipality of Miagao, Iloilo, issued to MWD a PNB Check for Fifty Thousand Pesos (P50,000.00).<sup>[6]</sup> According to Clave, the MWD directors directly instructed her to issue Official Receipt No. 716 (*OR No. 716*) indicating that the MWD received the total amount of the check,<sup>[7]</sup> but the duplicate copy of the receipt would only indicate the partial payment of one of the members of the board

amounting to Three Hundred Pesos (P300.00).<sup>[8]</sup> This transaction was entered in the MWD's records as reflected in the duplicate copy of OR No. 716.<sup>[9]</sup>

A few weeks after Clave resigned from the MWD, the audit team tasked by the Commission on Audit (COA) issued Audit Observation Memorandum No. 2006-01 (2005) dated November 21, 2006 expressing the observation that OR No. 716 had been falsified and that the financial assistance of P50,000.00 could have been misappropriated.<sup>[10]</sup> The incumbent general manager then forwarded the findings of the audit team to Clave. In turn, she explained that she was merely acting under the direct instructions of the MWD board of directors, and that they eventually explained to the municipal mayor - through her letter of July 5, 2006 - how the financial assistance was spent.<sup>[11]</sup>

On **September 23, 2009**, the COA filed a criminal complaint against Clave for falsification of public document and misappropriation of public funds.

Without any explanation from Clave but after sending her two notices to file her counter-affidavit, the Ombudsman issued the first assailed resolution finding probable cause that Clave is guilty of malversation through the falsification of OR No. 716. It held that she committed falsification when she knowingly issued a different duplicate copy of an acknowledgment receipt worth P300.00 when the original receipt was actually for the amount of P50,000.00. These discrepancies led the Ombudsman to assume that she misappropriated the difference. It accordingly filed an information with the appropriate court.

On Clave's motion,<sup>[12]</sup> the Regional Trial Court, Branch 61 of Guimbal, Iloilo (RTC), ordered the Ombudsman to conduct a reinvestigation, this time with Clave's participation in the preliminary investigation.<sup>[13]</sup>

After the reinvestigation and after considering Clave's explanation and the settlement of the P50,000.00, the Ombudsman maintained its finding of probable cause. To the Ombudsman, Clave failed to present any corroborating evidence to prove that indeed she had merely been acting under the instructions of the MWD's directors.

Moreover, the municipal mayor's alleged knowledge of the deviation of the municipality's financial assistance, as well as the alleged "honest mistake" of not recording the transaction in the MWD books placed Clave in a more dubious position. To the Ombudsman, her return of the P50,000.00, would only be a mitigating circumstance if appreciated at all during trial.

Upon submission of the Ombudsman's findings, the RTC ordered the revival of the information initially filed against Clave, and issued the corresponding warrant for her arrest.<sup>[14]</sup> This warrant, however, was never implemented since Clave, after her resignation, has been outside Philippine jurisdiction, working as an Overseas Filipino Worker in Dubai, UAE.

### **THE PETITION**

In her present petition, Clave cites the following grounds as errors:

(1) The Ombudsman failed to appreciate that there had already been a settlement of the P50,000.00 even before the complaint-affidavit was filed by the COA.

(2) The Ombudsman did not consider: the letter addressed to the municipal mayor, which had the *concurrence* of all the members of the MWD board of directors, and Clave's other documentary evidence, all of them submitted to prove that the financial assistance from the municipality was duly accounted for and was not used for her personal use, gain or benefits.

(3) The Ombudsman erred in not dismissing the criminal complaint against Clave for absence or lack of probable cause.

On the *first* assignment of error, Clave claims that the Notice of Charge/s sent by the COA gave her the opportunity to settle the amount she was accountable for.<sup>[15]</sup> On **June 23, 2008**, evidenced by an official receipt issued by the MWD, Clave paid the amount of P50,000.00 to the MWD to cover the amount supposedly misappropriated.<sup>[16]</sup> She posits that had the MWD informed the COA of this final settlement, the latter would not have filed any criminal complaint in the first place.

On the *second* assignment of error, Clave narrates that the municipal mayor called for a meeting to discuss where exactly the P50,000.00 financial assistance went. At this meeting, the letter (duly signed by Clave and all of the MWD's directors) was submitted, which letter explained where the municipal payment went. The submission satisfied the municipal mayor who considered the issue over the financial discrepancy already settled. Again, this letter and the meeting with the municipal mayor would have already settled the issue had the MWD disclosed these circumstances to the COA.

Clave further suggests that the MWD management probably concealed these matters because they could be used as evidence that would place the directors in a controversial situation similar to hers.

On the *third* assignment of error, Clave faults the Ombudsman for not giving appropriate consideration to the letter which should serve as sufficient corroborating evidence to prove that she had acted in good faith as she was merely acting under the direct instruction of the MWD directors.

In addition, Clave argues that in issuing the original and the duplicate copies of OR No. 716, there was no simulation of facts. Both receipts reveal real and true facts as to the stated amounts and as to the name of the payees. The original copy reflects the true amount of P50,000.00 received from the Municipality of Miagao, Iloilo. On the other hand, the duplicate copy reflects the true amount of P300.00 as the amount actually received as partial payment of one of the directors for her water bill.

Lastly, Clave points out that there was no intent to hide the actual use of the money the MWD received from the municipality. There was transparency as to how and where the amount was spent. Likewise, no cash shortage was reported by the COA; the government had not suffered any damage or prejudice.

### **THE OMBUDSMAN'S COMMENT**

The Ombudsman, represented by the Office of the Solicitor General (OSG), counters by saying that the assailed resolution and order were based on evidence; hence, *no grave abuse of discretion* can be attributed in arriving at its ruling.

The OSG submits that the Ombudsman did not err in its finding of probable cause for the crime of malversation of public funds through the falsification of a public document because all the elements of the charged crime were duly backed up by *prima facie* evidence on record.

At any rate, the OSG suggests that the matters that Clave raised pose factual issues that would necessarily require the consideration of evidentiary matters at a full blown trial. In this manner, the parties would be given the opportunity to adduce their respective evidence.

As to Clave's defense of good faith, the OSG submits that the "instruction" of the board of directors to write different entries in the original and duplicate copies of OR No. 716, assuming this to be true, can by no means be considered lawful. As an accountable officer, Clave ought to have known that the "order" emanating from the MWD directors was wrong and highly irregular.

With respect to the explanation on where the money was spent and the subsequent settlement of the P50,000.00, the OSG posits that neither would exonerate Clave from criminal liability. The restitution of the amount misappropriated, if at all, would only affect the civil aspect of the crime. The letter to the municipal mayor, on the other hand, was a mere afterthought and a belated attempt to make it appear that there were actual and lawful expenditures using the money that had been misappropriated. The OSG points out that a cursory examination of the letter would readily show that not all the items it reflected were authorized expenses and were backed up by the required official receipts.

### **OUR RULING**

We find the present petition unmeritorious.

#### ***Preliminary Considerations***

In reviewing the Ombudsman's exercise of its constitutionally mandated powers, we bear in mind that *certiorari* is an extraordinary prerogative writ that is not demandable as a matter of right.<sup>[17]</sup> For us to even consider a petition for *certiorari* questioning the Ombudsman's findings of probable cause, the petition must clearly and convincingly show that the Ombudsman gravely abused its discretion, thus warranting the exercise of our jurisdiction under the Constitution and the Rules of Court.<sup>[18]</sup> In this exercise, the justiciable issue to be resolved is only the presence or absence of grave abuse of discretion.

The limited recourse to this Court is fundamentally based on the laws creating the Ombudsman,<sup>[19]</sup> and the absence of any other instrumentality of the government exercising the same function insofar as criminal cases before the Sandiganbayan are concerned. Simply put, there is no other government body that determines probable cause against respondents who are to be indicted before the Sandiganbayan.<sup>[20]</sup> Neither does the Court exercise this function when the matter is elevated *via* a petition for *certiorari*.

In the light of these considerations, we have developed a policy of not interfering with the Ombudsman's findings of probable cause, save in the cases when the Ombudsman's grave abuse in the exercise of its discretion is clear. The general rule