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EN BANC

[A.M. No. 10-1-13-SC, March 02, 2010]

RE: SUBPOENA DUCES TECUM DATED JANUARY 11, 2010 OF ACTING DIRECTOR ALEU A. AMANTE, PIAB-C, OFFICE OF THE OMBUDSMAN

R E S O L U T I O N

PER CURIAM:

Before us for consideration are the interrelated matters listed below.

a. **The *subpoena duces tecum* (dated January 11, 2010 and received by this Court on January 18, 2010), issued by the Office of the Ombudsman on the "Chief, Office of the Administrative Services or AUTHORIZED REPRESENTATIVE, Supreme Court, Manila," for the submission to the Office of the Ombudsman of the latest Personal Data Sheets and last known forwarding address of former Chief Justice Hilario G. Davide, Jr. and former Associate Justice Ma. Alicia Austria-Martinez.** The *subpoena duces tecum* was issued in relation to a criminal complaint under (b) below, pursuant to Section 13, Article XI of the Constitution and Section 15 of Republic Act No. 6770. The Office of the Administrative Services (*OAS*) referred the matter to us on January 21, 2010 with a request for clearance to release the specified documents and information.

b. **Copy of the criminal complaint entitled *Oliver O. Lozano and Evangeline Lozano-Endriano v. Hilario G. Davide, Jr., et al.,*** OMB-C-C-09-0527-J, cited by the Ombudsman as basis for the the *subpoena duces tecum* it issued. We secured a copy of this criminal complaint from the Ombudsman to determine the legality and propriety of the *subpoena duces tecum* sought.

c. **Order dated February 4, 2010 (which the Court received on February 9, 2010), signed by Acting Director Maribeth Taytaon-Padios of the Office of the Ombudsman (with the approval of Ombudsman Ma. Merceditas Navarro-Gutierrez), dismissing the Lozano complaint and referring it to the Supreme Court for appropriate action.** The order was premised on the Memorandum[1] issued on July 31, 2003 by Ombudsman Simeon Marcelo who directed that all complaints against judges and other members of the Judiciary be immediately dismissed and referred to the Supreme Court for appropriate action.

OUR RULING

I. The *Subpoena Duces Tecum*

In light of the Ombudsman's dismissal order of February 4, 2010, any question relating to the legality and propriety of the *subpoena duces tecum* the Ombudsman issued has been rendered moot and academic. The *subpoena duces tecum* merely

drew its life and continued viability from the underlying criminal complaint, and the complaint's dismissal - belated though it may be - cannot but have the effect of rendering the need for the *subpoena duces tecum* academic.

As guide in the issuance of compulsory processes to Members of this Court, past and present, in relation to complaints touching on the exercise of our judicial functions, we deem it appropriate to discuss for the record the extent of the Ombudsman's authority in these types of complaints.

In the appropriate case, the Office of the Ombudsman has full authority to issue subpoenas, including *subpoena duces tecum,* for compulsory attendance of witnesses and the production of documents and information relating to matters under its investigation.[2] The grant of this authority, however, is not unlimited, as the Ombudsman must necessarily observe and abide by the terms of the Constitution and our laws, the Rules of Court and the applicable jurisprudence on the issuance, service, validity and efficacy of subpoenas. Under the Rules of Court, the issuance of subpoenas, including a *subpoena duces tecum*, operates under the requirements of reasonableness and relevance.[3] For the production of documents to be reasonable and for the documents themselves to be relevant, the matter under inquiry should, in the first place, be one that the Ombudsman can legitimately entertain, investigate and rule upon.

In the present case, the "matter" that gave rise to the issuance of a *subpoena duces tecum* was a criminal complaint filed by the complainants Lozano for the alleged violation by retired Supreme Court Chief Justice Hilario Davide, Jr. and retired Associate Justice Ma. Alicia Austria-Martinez of Section 3(e) of R.A. 3019, as amended (the Anti-Graft and Corrupt Practices Act).

A first step in considering whether a criminal complaint (and its attendant compulsory processes) is within the authority of the Ombudsman to entertain (and to issue), is to consider the nature of the powers of the Supreme Court. This Court, by constitutional design, is supreme in its task of adjudication; judicial power is vested solely in the Supreme Court and in such lower courts as may be established by law. Judicial power includes the duty of the courts, not only to settle actual controversies, but also to determine whether grave abuse of discretion amounting to lack or excess of jurisdiction has been committed in any branch or instrumentality of government.[4] As a rule, all decisions and determinations in the exercise of judicial power ultimately go to and stop at the Supreme Court whose judgment is final. ***This constitutional scheme cannot be thwarted or subverted through a criminal complaint that, under the guise of imputing a misdeed to the Court and its Members, seeks to revive and re-litigate matters that have long been laid to rest by the Court***. Effectively, such criminal complaint is a collateral attack on a judgment of this Court that, by constitutional mandate, is final and already beyond question.

A simple jurisprudential research would easily reveal that this Court has had the occasion to rule on the liability of Justices of the Supreme Court for violation of Section 3(e) of R.A. 3019--the very same provision that the complainants Lozano invoke in this case.

In *In re Wenceslao Laureta,*[5] the client of Atty. Laureta filed a complaint with the

Tanodbayan charging Members of the Supreme Court with violation of Section 3(e) of Republic Act No. 3019 for having knowingly, deliberately and with bad faith rendered an unjust resolution in a land dispute. The Court unequivocally ruled that insofar as this Court and its Divisions are concerned, a charge of violation of the Anti-Graft and Corrupt Practices Act on the ground that such collective decision is "unjust" should **not** prosper; the parties cannot "relitigate in another forum the final judgment of the Court," as to do so is to subordinate the Court, in the exercise of its judicial functions, to another body.[6]

In re Joaquin T. Borromeo[7] reiterates the *Laureta* ruling, particularly that (1) judgments of the Supreme Court are not reviewable; (2) administrative, civil and criminal complaints against a judge should not be turned into substitutes for appeal; (3) only courts may declare a judgment unjust; and (4) a situation where the Ombudsman is made to determine whether or not a judgment of the Court is unjust is an absurdity. The Court further discussed the requisites for the prosecution of judges, as follows:

> That is not to say that it is not possible at all to prosecute judges for this impropriety, of rendering an unjust judgment or interlocutory order; but, taking account of all the foregoing considerations, the indispensable requisites are that there be a final declaration by a competent court in some appropriate proceeding of the manifestly unjust character of the challenged judgment or order, and there be also evidence of malice and bad faith, ignorance or inexcusable negligence on the part of the judge in rendering said judgment or order.

Thus, consistent with the nature of the power of this Court under our constitutional scheme, only this Court - not the Ombudsman - can declare a Supreme Court judgment to be unjust.

In *Alzua v. Arnalot*,[8] the Court ruled that "judges of superior and general jurisdiction are not liable to respond in civil action for damages, and provided this rationale for this ruling: Liability to answer to everyone who might feel himself aggrieved by the action of the judge would be inconsistent with the possession of this freedom and would destroy that independence without which no judiciary can be either respectable or useful." The same rationale applies to the indiscriminate attribution of criminal liability to judicial officials.

Plainly, under these rulings, a criminal complaint for violation of Section 3(e) of RA 3019, *based on the legal correctness of the official acts of Justices of the Supreme Court*, cannot prosper and should not be entertained. This is not to say that Members of the Court are absolutely immune from suit during their term, for they are not. The Constitution provides that the appropriate recourse against them is to seek their removal from office if they are guilty of culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust.[9] Only after removal can they be criminally proceeded against for their transgressions. While in office and thereafter, and for their official acts that do not constitute impeachable offenses, recourses against them and their liabilities therefor are as defined in the above rulings.

Section 22 of Republic Act No. 6770, in fact, specifically grants the Ombudsman the authority to investigate impeachable officers, but only when such investigation is **warranted**:

> Section 22. *Investigatory Power*. The Office of the Ombudsman shall have the power to investigate any serious misconduct in office allegedly committed by officials removable by impeachment, for the purpose of filing a verified complaint for impeachment, if warranted.

Conversely, if a complaint against an impeachable officer is unwarranted for lack of legal basis and for clear misapplication of law and jurisprudence, the Ombudsman should spare these officers from the harassment of an unjustified investigation. The present criminal complaint against the retired Justices is one such case where an investigation is not warranted, *based as it is on the legal correctness of their official acts*, and the Ombudsman should have immediately recognized the criminal complaint for what it is, instead of initially proceeding with its investigation and issuing a *subpoena duces tecum*.

II. ***The Ombudsman's Dismissal of the Criminal Complant***

As the Ombudsman's dismissal of the criminal complaint (*Oliver O. Lozano and Evangeline Lozano-Endriano v. Hilario G. Davide, Jr., et al.*, OMB-C-C-09-0527-J) clearly implied, no complete dismissal took place as the matter was simply *"referred to the Supreme Court for appropriate action.*"

Although it was belatedly made, we cannot fault this Ombudsman action for the reasons we have already discussed above. While both accused are now retired from the service, the complaint against them still qualifies for exclusive consideration by this Court as the acts complained of spring from their judicial actions while they were with the Court. From this perspective, we therefore pass upon the *prima facie* merits of the complainants Lozano's criminal complaint.

a. Grounds for the Dismissal of the Complaint

By its express terms, the criminal complaint stemmed from the participation of the accused in the Resolution the First Division of this Court issued in *Heirs of Antonio Pael v. Court of Appeals*, docketed as G.R. Nos. 133547 and 133843. The retired Chief Justice and retired Associate Justice allegedly committed the following unlawful acts:

> 1) Overturning the findings of fact of the CA;
>
> 2) Stating in the Resolution that the "Chin-Mallari property overlaps the UP property," when the DENR Survey Report stated that the "UP title/property overlaps the Chin-Mallari property;"
>
> 3) Issuing a Resolution, for which three Justices voted, to set aside a Decision for which five Justices voted.

By these acts, the retired Members of this Court are being held criminally accountable *on the theory that they violated the Constitution and the law in their ruling in the cited cases, thereby causing "undue injury" to the parties to these cases*.

After due consideration, we dismiss the criminal complaint against retired Chief Justice Hilario G. Davide, Jr. and retired Associate Justice Ma. Alicia Austria-Martinez under Section 3(e) of RA 3019. We fully expound on the reasons for this conclusion in the discussions below.

a. Contrary to the complainants' position, the Supreme Court has the power to review the lower courts' findings of fact.

The Supreme Court is the highest court of the land with the power to review, revise, reverse, modify, or affirm on appeal or *certiorari*, *as the law or the Rules of Court may provide*, final judgments and orders of the lower courts.[10] It has the authority to promulgate rules on practice, pleadings and admission to the bar, and suspend the operation of these rules in the interest of justice.[11] Jurisprudence holds, too, that the Supreme Court may exercise these powers over the factual findings of the lower courts, among other prerogatives, in the following instances: (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd of impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misappreciation of facts; (5) when the findings of fact are conflicting; (6) when, in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[12] Thus, contrary to the complainants Lozano' assertions in their complaint, the Supreme Court, in the proper cases, **can and does rule on factual submissions before it,** and even reverses the lower court's factual findings when the circumstances call for this action.

b. Constitutional Provisions were misused.

The complainants Lozano appear to us to have brazenly misquoted and misused applicable constitutional provisions to justify their case against the retired Justices. We refer particularly to their use (or strictly, *misuse*) of **Article X, Section 2(3) of the *1973* Constitution** which they claim to be the governing rule that the retired Justices should have followed in acting on *Pael*. This constitutional provision states:

> Cases heard by a division shall be decided with the concurrence of at least five Members, but if such required number is not obtained the case shall be decided en banc; Provided, that no doctrine or principle of law laid down by the Court in a decision rendered en banc or in division may be modified or reversed except by the Court sitting en banc.[13]