

THIRD DIVISION

[G.R. No. 160933, November 24, 2010]

**NICEAS M. BELONGILOT, PETITIONER, VS. ROLANDO S. CUA,
ROEL ERIC C. GARCIA, LORENZO R. REYES, AUGUSTO P.
QUIJANO, IANELA G. JUSI-BARRANTES AND SALVADOR P.
RAMOS, RESPONDENTS.**

D E C I S I O N

BRION, J.:

Before this Court is the Petition for Review on *Certiorari*^[1] assailing the Office of the Ombudsman's (*Ombudsman's*) Resolution^[2] and Order^[3] dated June 10, 2003 and October 20, 2003, respectively, in OMB-C-C-03-0045-B. The assailed Resolution dismissed the complaint filed by petitioner Niceas M. Belongilot against respondents Salvador P. Ramos, Rolando S. Cua, Roel Eric C. Garcia, Lorenzo R. Reyes, Augusto P. Quijano and Ianela G. Jusi-Barrantes, for violation of Section 3(e) of Republic Act (*R.A.*) No. 3019 (the Anti-Graft and Corrupt Practices Act), as amended. The challenged Order denied the petitioner's motion for reconsideration.

ANTECEDENT FACTS

The petitioner's wife, Leonarda Belongilot, was the owner of several parcels of land in Bulacan, covered by Original Certificate of Title (*OCT*) No. 0-359. Sometime in 1979, Juanito Constantino forcibly entered and took possession of Lot Nos. 1, 2 and 3 (the *subject lots*) covered by OCT No. 0-359, and converted them into a fishpond. Leonarda filed an ejectment complaint against Constantino before the Provincial Agrarian Reform Adjudicator Board (*PARAB*), docketed as R-03-02-8138'98.^[4]

Provincial Agrarian Reform Adjudicator (*PARAD*) Gregorio B. Sapora, in his Decision of **May 21, 2001**, directed Constantino and all persons claiming rights under him to vacate the subject lots. Constantino moved to reconsider this decision, but PARAD Sapora denied his motion.

Constantino filed, on October 8, 2001, a notice of appeal before the PARAB, but PARAD Toribio F. Ilao, in his Order of **April 16, 2002**,^[5] dismissed this notice of appeal for having been filed out of time. On May 22, 2002, PARAD Ilao issued a writ of execution^[6] in favor of Leonarda.

Constantino, through Atty. Restituto David, filed, on May 21, 2002, a petition for injunction with application for a temporary restraining order (*TRO*)^[7] before the Department of Agrarian Reform Adjudication Board (*DARAB*), without asking for the reconsideration of the dismissal of his notice of appeal. He prayed that the implementation of PARAD Sapora's May 21, 2001 Decision be restrained and that his notice of appeal, dated October 8, 2001, be given due course.

In the meantime, the DARAB sheriff^[8] enforced the writ of execution on **May 31, 2002**, and evicted Constantino from the subject lots. Consequently, the possession of the subject lots was turned over to the petitioner in his capacity as general administrator of Leonarda's properties. The petitioner, thereafter, raised thousands of "*bangus*" and "*sugpo*" fingerlings in the fishpond.

On **November 15, 2002**, or more than five (5) months after the filing of the petition for injunction, the DARAB issued a TRO in Constantino's favor, in an Order that partly reads:

After taking into account the petitioner's allegations and arguments set forth in the pleadings filed as well as other supporting documents, it appears that grave and irreparable damage or injury would result to the petitioner before a hearing on the preliminary injunction can be held and to preserve the status quo of the parties pending the resolution of the instant case, **the Motion is hereby GRANTED restraining the public respondents and/or any other persons acting under his authority from issuing a writ of execution, or from implementing the same, if one had already been issued.**

This restraining order is effective for a period of twenty (20) days.

In the meantime, respondents are directed to submit their Answer/Comment to the instant Motion within a period of ten (10) days from receipt of this Order.

Let the hearing on the application for the issuance of a Writ of Injunction be set on December 4, 2002, 2:00 P.M. at the DAR Adjudication Board Hearing Room, Elliptical Road, Diliman, Quezon City.

No Motion for Postponement shall be entertained.

SO ORDERED.^[9]

Leonarda filed, on November 21, 2002, a motion to dismiss the petition for injunction, alleging that the DARAB has no jurisdiction over the petition because of Constantino's failure to file a motion for reconsideration of the April 16, 2002 Order of PARAD Ilao. She further argues that the decision sought to be restrained had already been implemented.^[10]

On November 23, 2002, the caretaker of the subject lots reported that Constantino harvested the "*bangus*" and "*sugpo*" fingerlings from the fishpond and sold them. As a result, the petitioner filed a complaint for qualified theft before the Philippine National Police of Hagonoy, Bulacan against Constantino. **Meanwhile, the DARAB, in its Resolution^[11] of December 27, 2002, granted Constantino's application for a writ of injunction, and "enjoined" the implementation of the writ of execution.** The DARAB also ordered that the records of the case be elevated to it within 15 days from receipt of its resolution.

On January 20, 2003, the petitioner filed with the Ombudsman an amended **criminal complaint**,^[12] for violation of Section 3(e) of R.A. No. 3019,^[13] against the respondents in their capacity as officers^[14] and members^[15] of the Department of Agrarian Reform and the DARAB, respectively. This case was docketed as OMB-C-C-03-0045-B.

In its Resolution of June 10, 2003, the Ombudsman dismissed the complaint in this wise:

It is, therefore, apparent that the vital issue to be resolved is whether or not public respondents have jurisdiction to act on the petition filed by Juanito Constantino and subsequently issue the restraining order despite the finality of the PARAD Decision due to the belated filing of the Notice of Appeal, non-payment of appeal fee and non-filing of a Motion for Reconsideration of the Order dismissing his appeal - all pursuant to the DARAB Rules of Procedure.

Assuming *arguendo* that the public respondents' issuance of the restraining order suffers from procedural infirmities, the same is better addressed to the Court which has administrative and supervisory powers over administrative agencies performing quasi-judicial functions.

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This Office, therefore, cannot forestall the power of the Courts to take cognizance of matters which squarely fall under their jurisdiction.

In sum, private complainant is not left without any recourse in the light of all the allegations and issues broached out before us. Nonetheless, complainant must ventilate its cause of action in the proper forum.

Prescinding from above, the charge against the public respondents must necessarily fail.

FOREGOING CONSIDERED, it is respectfully recommended that the instant complaint be dismissed, as it is hereby **DISMISSED**.

SO RESOLVED.^[16]

The petitioner moved to reconsider this resolution, but the Ombudsman denied his motion in its Order dated October 20, 2003. The Ombudsman ruled that Constantino's non-filing of a motion for reconsideration, assailing the adjudicator's order before filing a petition for injunction with the DARAB, was not fatal to his case since "procedural due process is not based solely on a mechanic (*sic*) and literal application of a rule."^[17] The Ombudsman further held that the respondents, in the absence of proof to the contrary, should be afforded the presumption of regularity in the performance of their official duties and functions; and added that the conspiracy theory advanced by the petitioner had no basis. Finally, it concluded that the respondents cannot be convicted for violation of Section 3(e) of R.A. No. 3019 in the

absence of showing that they acted with manifest partiality, evident bad faith or gross inexcusable negligence.

In the present petition, the petitioner essentially claims that the Ombudsman erred in dismissing the complaint against the respondents for violation of Section 3(e) of R.A. No. 3019.

The Ombudsman, through the Office of the Solicitor General (OSG), avers that the petition must be dismissed outright because the petitioner availed of the wrong remedy. It further argues that the Ombudsman has the discretion to determine the existence of probable cause, that is, whether a criminal case should be filed or not.

THE COURT'S RULING

After due consideration, we find the petition meritorious.

I. Procedural Issue

We note at the outset that the petitioner, in seeking to annul the Ombudsman's Resolution and Order dated June 10, 2003 and October 20, 2003,^[18] respectively, filed with this Court a **petition for review on certiorari** under Rule 45 of the Rules of Court.

In *Soriano v. Cabais*,^[19] this Court had the occasion to discuss the appropriate recourse to take from decisions or resolutions of the Ombudsman, and said:

In *Fabian*, we ruled that appeals from the decisions of the Office of the Ombudsman in **administrative disciplinary cases** should be taken to the Court of Appeals by way of a petition for review under Rule 43 of the 1997 Rules of Civil Procedure, as amended. This ruling has been repeatedly reiterated in subsequent cases and continues to be the controlling doctrine.

Here, **petitioner's complaint is criminal in nature**. In *Estrada v. Desierto*, we held 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**, 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. This rule was subsequently restated in *Acuña v. Deputy Ombudsman for Luzon* where we held that the remedy of an aggrieved party in **criminal** complaints before the Ombudsman is to file with this Court a petition for certiorari under Rule 65.

The petitioner's complaint before the Ombudsman, charging the respondents with violation of Section 3(e) of R.A. No. 3019, as amended, is undoubtedly criminal in nature. The petitioner's recourse to this Court should have, therefore, been through

a petition for *certiorari* under Rule 65, instead of a petition for review on *certiorari* under Rule 45. Thus, from a procedural perspective, the OSG's claim that the petitioner availed of the wrong remedy appears to be correct.

We would have readily agreed with the OSG's conclusion had the petitioner simply dwelt on errors of law in his petition. Our reading of the petition, however, and as our discussions below will show, readily reveals that the petition, while entitled and presented as a petition for review on *certiorari*, in fact, outlines and charges acts that collectively constitute grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Ombudsman.^[20] In other words, while the petitioner followed the Rule 45 procedures, the substance of the petition handily satisfies the requirements of a Rule 65 petition for *certiorari*. Thus viewed, the issue before us is whether the procedure and its form or substance should have primacy.

Our choice when faced with this kind of conflict, particularly one that involves grave abuse of discretion amounting to lack or excess of jurisdiction, is clear. No less than the Constitution under Section 1, Article VIII expressly directs the Judiciary, as a matter of power and duty, not only "to settle actual controversies involving rights which are legally demandable and enforceable" but, "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." We, thus, have the duty to take cognizance of the allegations of grave abuse of discretion; in the performance of this duty, we see no legal stumbling block if we deviate from the requirements of form and procedure that stand in the way in favor of substance.^[21]

II. The Grave Abuse of Discretion Issue

Grave abuse of discretion is the capricious and whimsical exercise of judgment on the part of the public officer concerned, which is equivalent to an excess or lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.^[22]

A careful review of the petition and an examination of the records reveal a collective pattern of action - done capriciously, whimsically and without regard to existing rules and attendant facts - that shows a clear case of grave abuse of discretion amounting to lack or excess of jurisdiction in the exercise of judgment. We discuss all these below.

a. The Ombudsman erred in refusing to act on the petitioner's criminal complaint

The Ombudsman, in its resolution of June 10, 2003, did not give a definitive ruling on whether there was probable cause to hold respondents liable for violation of Section 3(e) of R.A. No. 3019; instead, it dismissed the complaint on the ground that the issue was "better addressed to the Court which has administrative and supervisory powers over administrative agencies performing quasi-judicial functions."^[23]