

FIRST DIVISION

[G.R. Nos. 156547-51, February 04, 2008]

MARIANO UN OCAMPO III, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

[G.R. NOS. 156384-85]

ANDRES S. FLORES, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

AZCUNA, J.:

These are consolidated petitions for review on *certiorari*^[1] of the Sandiganbayan's Decision promulgated on March 8, 2002 and its Resolution promulgated on January 6, 2003. The Decision and Resolution of the Sandiganbayan held petitioners Mariano Un Ocampo III and Andres S. Flores guilty of malversation of public funds in Crim. Case Nos. 16794 and 16795. The facts are as follows: During the incumbency of President Corazon C. Aquino, Tarlac Province was chosen as one of the four provinces that would serve as a test case on decentralization of local government administration. For this purpose, the Department of Budget and Management (DBM) released National Aid for Local Government Units (NALGU) funds in the total amount of P100 million to the Province of Tarlac. The NALGU is a fund set aside in the General Appropriations Act to assist local governments in their various projects and services. The distribution of this fund is entirely vested with the Secretary of the DBM. Petitioner Ocampo, provincial governor of Tarlac from February 22, 1988 up to June 30, 1992, loaned out P56.6 million of the P100 million to the Lingkod Tarlac Foundation, Inc. (LTFI) for the implementation of various livelihood projects. The loan was made pursuant to a Memorandum of Agreement (MOA) entered into by the Province of Tarlac, represented by petitioner Ocampo, and LTFI, represented by petitioner Flores, on August 8, 1988. LTFI is a private non-stock corporation with petitioner Ocampo as its first chairperson and petitioner Andres S. Flores as its executive director. The Sandiganbayan, in its Resolution dated January 6, 2000, admitted the annexes^[2] submitted by petitioner Ocampo, which annexes proved that petitioner Ocampo resigned as chairperson and trustee of the LTFI prior to August 8, 1988, the date when petitioner Ocampo and LTFI entered into the MOA. How the P56.6 million released to LTFI was utilized became the subject matter of 25 criminal cases. In a Resolution in G.R. Nos. 103754-78 dated October 22, 1992,^[3] this Court quashed 19 of the 25 Informations filed against petitioner Ocampo. The Fifth Division of the Sandiganbayan dismissed one case^[4] on demurrer to evidence. In its Decision promulgated on March 8, 2002, the Fifth Division of the Sandiganbayan dismissed two^[5] of five criminal cases for malversation of public funds against petitioners. On motion for reconsideration, the Sandiganbayan dismissed one^[6] more case in a Resolution promulgated on January

6, 2003. The two remaining cases are the subject matters in the instant consolidated petitions. The Informations of the remaining two cases filed on May 28, 1991 state:

Crim. Case No. 16794 That on or about the periods between November 2, 1988 to February 27, 1989, or sometime subsequent thereto, in the Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, accused Mariano Un Ocampo III, then the Governor of the province of Tarlac and at the same time President-Chairman of the Board of Trustees of the Lingkod Tarlac Foundation, Inc. (LTFI), a private entity, having received by reason of his position, public funds amounting to more than Fifty Two Million Pesos (P52,000,000) x x x from the National Aid for Local Government Unit (NALGU) funds, which he is accountable by reason of his official duties, did then and there with intent to defraud the government aforesaid release out of the aforesaid funds thru the said LTFI, the amount of EIGHT MILLION EIGHT HUNDRED SIXTY THOUSAND PESOS (P8,860,000) x x x for the payment of the importation of Juki Embroidery Machines which actually cost SEVEN MILLION SIX HUNDRED SEVENTY NINE THOUSAND FIVE HUNDRED THIRTY PESOS AND FIFTY TWO CENTAVOS (P7,679,530.52) x x x thereby leaving a balance of P1,180,463.48 which ought to have been returned, but far from returning the said amount, accused Mariano Un Ocampo III, in connivance with his co-accused, Andres S. Flores and William Uy wilfully, unlawfully and feloniously misapply, misappropriate and convert for their own personal use and benefit the said amount resulting to the damage and prejudice of the government in the aforesaid sum of One Million One Hundred Eighty Thousand Four Hundred Sixty Three Pesos and Forty Eight Centavos (P1,180,463.48). CONTRARY TO LAW. Crim. Case No. 16795 That on or about the periods between November 2, 1988 to February 27, 1989, or sometime subsequent thereto, in the Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, accused Mariano Un Ocampo III, then the Governor of the province of Tarlac, and at the same time President-Chairman of the Board of Trustees of the Lingkod Tarlac Foundation, Inc. (LTFI), a private entity, having received by reason of his position, public funds amounting to more than Fifty Two Million Pesos (P52,000,000.00) x x x from the National Aid for Local Government Unit (NALGU) Funds, which he is accountable by reason of his official duties, caused the withdrawal by co-accused Andres S. Flores on April 28, 1989, then Executive Officer, LTFI, from the PHILIPPINE NATIONAL BANK LTFI account the sum of FIFTY EIGHT THOUSAND PESOS (P58,000.00), portion of the said NALGU funds deposited by LTFI under Account No. 490-555744, both accused conniving and confederating with one another, with intent to gain and to defraud the government, did then and there, wilfully, unlawfully and feloniously misappropriate, misapply and convert the same to their own personal use and benefit to the damage and prejudice of the government in the aforesaid amount of P58,000.00, Philippine Currency. CONTRARY TO LAW. [7]

The Prosecution relied mainly on an audit conducted by the Commission on Audit on LTFI from February 12, 1990 up to April 2, 1990. The audit covered the period from July 1, 1988 to December 31, 1989 and was confined to the examination of the loans granted by the Provincial Government of Tarlac for the implementation of its

Rural Industrialization Can Happen Program. The result of the audit was embodied in Special Audit Report No. 90-91, offered as Exhibit "B" by the prosecution. According to the Sandiganbayan, the money trail with respect to the two cases, as proven by the prosecution, is as follows:

- (1) Accused Ocampo released P11.5 Million to LTFI, **P7,023,836.00** of which was intended for the purchase of 400 embroidery machines;
- (2) The total amount released was deposited by LTFI to the Rural Bank of Tarlac, Inc.;
- (3) Within two (2) months from the deposit, a total of **P5,465,000.00** was withdrawn and given to William Uy (LTFI's broker for the importation of the machines);
- (4) This amount (P5,465,000) was thereafter deposited to the personal account of "William Uy and/or Andres Flores" under S/A No. 26127;
- (5) Another account (PNB S/A No. 490-555744-6) was opened by "LTFI by Andres Flores," this time with PNB, intended solely for the purchase of the machines;
- (6) A check in the amount of **P3,395,000.00** dated February 27, 1989, was remitted for the payment of the machines;
- (7) This amount, together with the **P5,465,000.00** placed on the personal account of William Uy and/or Andres Flores, made up the cost of the machines or a total of **P8,860,000.00** as recorded in the books of LTFI;
- (8) To the PNB account was added a total of **P4,332,261.00** deposited on different dates from March 6 to April 17, 1989 which funds came from S/A No. 26127;
- (9) Thus, the total amount on deposit with PNB was **P7,727,261.00** plus interest;
- (10) Of this amount, **P7,679,530.52** was used for the opening of the LC (for the payment of the machines) leaving a balance of **P47,730,48.00** plus interest;
- (11) Between the amount listed in the books of the corporation (**P8,860,000**) and the amount of the LC (**P7,679,530**), a discrepancy of **P1,180,496.48** existed.
- (12) Between the total amount deposited in PNB S/A No. 490-555744-6 (**P7,727,261.00**) and the total amount withdrawn from the account for the payment of the machines (**P7,679,530.52**), a balance of **P47,730.48** remained. This balance (plus interest), in the amount of **P58,000.00**,

was later withdrawn upon authorization of accused Flores.^[8];

Petitioner Ocampo did not testify regarding the subject cases on the ground that he was not competent to testify on the disbursements made by LTFI but only as to the receipt of the NALGU funds from the government. The Sandiganbayan declared that petitioner Ocampo as governor of Tarlac, who personally received the NALGU funds from the DBM and thereafter released some of them to the LTFI, was duty bound to put up regular and effective measures for the monitoring of the projects approved by him. According to the Sandiganbayan, Sec. 203(t) of the Local Government Code obligated provincial governors to "adopt measures to safeguard all the lands, buildings, records, monies, credits and other property rights of the province." However, petitioner Ocampo, as governor of Tarlac, neglected to set up safeguards for the proper handling of the NALGU funds in the hands of LTFI which resulted in the disappearance of P1,132,739 and P58,000 of the said funds. The Sandiganbayan held:

For such gross and inexcusable negligence, accused is liable for malversation. In so ruling, we are guided by the oft-repeated principle that malversation may be committed through a positive act of misappropriation of public funds or passively through negligence by allowing another to commit such misappropriation (*Cabello vs. Sandiganbayan*, 197 SCRA 94 [1991]). Although accused was charged with willful malversation, he can validly be convicted of malversation through negligence where the evidence sustains the latter mode of committing the offense (*Cabello, supra*).^[9]

Further, the Sandiganbayan stated that under Sec. 203(f) of the Local Government Code of 1983,^[10] the provincial governor, as chief executive of the provincial government, has the power to "represent the province in all its business transactions and sign on its behalf all bonds, contracts and obligations and other official documents made in accordance with law or ordinance." Sec. 2 (c) of Rule XI^[11] of the Rules and Regulations Implementing the Local Government Code of 1983 provides that the local chief executive of a local government unit shall "[r]epresent the respective local units in all their business transactions and sign on its behalf all bonds, contracts and obligations and other official documents made in accordance with law or ordinance." Sec. 2 of Rule VI^[12] states that "[t]he power to sue, to acquire and convey real or personal property, and to enter into contracts shall be exercised by the local chief executive upon authority of the *Sanggunian* concerned." Thus, the Sandiganbayan declared that since the required authority from the *Sangguniang Panlalawigan* was not shown to have been obtained by petitioner Ocampo, the MOA is ineffective as far as the Province of Tarlac is concerned. Petitioner Flores, as executive director of LTFI, was charged with malversation of public funds in connivance with a public officer. However, the Sandiganbayan found that there was no conspiracy between the petitioners, and held petitioner Flores guilty of malversation through his independent acts under Art. 222 of the Revised Penal Code,^[13] since the purpose of Art. 222 is to extend the provisions of the Penal Code on malversation to private individuals. According to the Sandiganbayan, petitioner Flores bound himself, as a signatory of the MOA representing LTFI, to receive NALGU funds from the province of Tarlac. In such capacity, he had charge of these funds. In Crim. Case No. 16794, petitioner Flores was found to have charge of missing NALGU funds deposited in his personal account

in the amount of P1,132,739, which formed part of the discrepancy of the actual cost of the embroidery machines and the NALGU funds released for payment of the said machines. In defense, petitioner Flores claimed that the broker for the importation of the machines made an initial payment to the supplier of the machines, which initial payment would explain the discrepancy between the reported cost as stated in the books of the corporation and the letter of credit. However, the Sandiganbayan stated that the explanation was hearsay as the broker was not presented in court, and there was no proof of the initial payment. In Crim. Case No. 16795, the Sandiganbayan held that petitioner Flores' failure to explain the purpose of the withdrawal on April 28, 1989 of P58,000 upon his authorization, considering that he was in charge of the PNB savings account, made him liable for malversation of public funds. Petitioners presented five documents to show that LTFI's obligations to the Province of Tarlac, in the amount of P56.6 million, have been extinguished. The documents are as follows:

- 1) The Tripartite Memorandum of Agreement (TMOA) dated May 23, 1990 executed by the Province of Tarlac, LTFI and the Barangay Unity for Industrial and Leadership Development (BUILD) Foundation whereby the liability of LTFI in favor of the Province of Tarlac was transferred and assumed by BUILD in the total amount of P40 million.
- 2) Resolution No. 76 of the *Sangguniang Panlalawigan* of Tarlac dated April 5, 1990 showing that the authority of petitioner Ocampo in entering into the TMOA was with prior approval of the *Sangguniang Panlalawigan*.
- 3) A Deed of Assignment between Tarlac and LTFI whereby the latter assigned its loan portfolios (including interests and certificates of time deposit), the Juki embroidery machines and other assignable documents to the Province of Tarlac in the total amount of P16,618,403.
- 4) Resolution No. 199 of the *Sangguniang Panlalawigan* of Tarlac dated October 18, 1990 authorizing petitioner Ocampo to enter into the Deed of Assignment with LTFI
- 5) A certified photocopy of a document dated June 16, 1992 issued by the OIC provincial treasurer of Tarlac whereby the treasurer affirmed the existence of the above documents.

The Sandiganbayan declared that the documents showing the extinguishment of LTFI's obligations to the Province of Tarlac do not mitigate the liability of petitioners since the crime is consummated as of asportation, akin to the taking of another's property in theft. It held that the return of the amount malversed is neither an exempting circumstance nor a ground for extinguishing the criminal liability of petitioners. On March 8, 2002, the Fifth Division of the Sandiganbayan rendered a Decision acquitting petitioners of the crime of malversation of public funds in Crim. Case Nos. 16796 and 16802, but finding them guilty of the crime in Crim. Case Nos. 16787, 16794 and 16795. The dispositive portion of the Decision reads: