

## EN BANC

[ G.R. Nos. 156399-400, June 27, 2008 ]

**VICTOR JOSE TAN UY, PETITIONER, VS. OFFICE OF THE OMBUDSMAN, PEOPLE OF THE PHILIPPINES, SANDIGANBAYAN (SPECIAL DIVISION), CARLOS S. CAACBAY OF THE NATIONAL BUREAU OF INVESTIGATION, ROMEO T. CAPULONG, LEONARD DE VERA, AND DENNIS B. FUNA, RESPONDENTS.**

### DECISION

**BRION, J.:**

We resolve in this Decision the petition filed by petitioner Victor Jose Tan Uy (the "*petitioner*") under Rule 65 of the Revised Rules of Court to assail the interrelated Orders dated 13 September 2002<sup>[1]</sup> and 16 October 2002<sup>[2]</sup> of the respondent Office of the Ombudsman (the "*Ombudsman*") in **OMB-0-00-1720**<sup>[3]</sup> and **OMB-0-00-1756**<sup>[4]</sup> for grave abuse of discretion and/or lack or excess of jurisdiction.

### THE ANTECEDENTS

The Ombudsman filed on 4 April 2001 with the Sandiganbayan an Information<sup>[5]</sup> charging former President Joseph Ejercito Estrada, together with Jose "Jinggoy" Estrada, Charlie "Atong" Ang, Edward Serapio, Yolanda T. Ricaforte, Alma Alfaro, **Eleuterio Tan a.k.a. Eleuterio Ramos Tan or Mr. Uy**, Jane Doe a.k.a. Delia Rajas, John Does and Jane Does, with the crime of Plunder, defined and penalized under Republic Act (R.A.) No. 7080, as amended by Section 12 of R.A. No. 7659. The Ombudsman moved to amend the Information twice - initially, to introduce changes in the Information (including a change in the appellation of the accused *Eleuterio Tan, Eleuterio Ramos Tan or Mr. Uy* to **John Doe a.k.a. as Eleuterio Tan or Eleuterio Ramos Tan or Mr. Uy**), and thereafter, to include Jaime C. Dichaves as accused; the Sandiganbayan granted the motions.<sup>[6]</sup> The pertinent portions of the Amended Information<sup>[7]</sup> read:

That during the period from June, 1998 to January, 2001, in the Philippines, and within the jurisdiction of this Honorable Court, accused Joseph Ejercito Estrada, then a public officer, being then the president of the Republic of the Philippines, by himself and/or in connivance/conspiracy with his co-accused, who are members of his family, relatives by affinity or consanguinity, business associates, subordinates and/or other persons, by taking undue advantage of his official position, authority, relationship, connection or influence, did then and there willfully, unlawfully and criminally amass, accumulate and acquire by himself, directly or indirectly, ill-gotten wealth in the aggregate amount or total value of Four Billion Ninety-seven Million Eight Hundred Four Thousand One Hundred Seventy-three Pesos and

Seventeen Centavos [P4,097,804,173.17], more or less, thereby unjustly enriching himself or themselves at the expense and to the damage of the Pilipino people and the Republic of the Philippines, through any or a combination or a series of overt or criminal acts, or similar schemes or means, described as follows:

(a)by receiving or collecting, directly or indirectly, on several instances, money in the aggregate amount of Five Hundred Forty-five Million Pesos (P545,000,000.00), more or less, from illegal gambling in the form of gift, share, percentage, kickback or any form of pecuniary benefit, by himself and/or in connivance with co-accused Charlie `Atong' Ang, Jose `Jinggoy' Estrada, Yolanda T. Ricaforte and Edward Serapio and John Does and Jane Does, in consideration of toleration or protection of illegal gambling;

(b)by diverting, receiving, misappropriating, converting OR misusing directly, or indirectly for his or their personal gain and benefit, public funds in the amount of ONE HUNDRED THIRTY MILLION PESOS (P130,000,000.00), more or less, representing a portion of the Two Hundred Million Pesos (P200,000,000.00) tobacco excise tax share allocated for the Province of Ilocos Sur under R.A. No. 7171, **BY HIMSELF AND/OR in CONNIVANCE with co-accused Charlie `Atong' Ang, Alma Alfaro, John Doe a.k.a. Eleuterio Tan or Eleuterio Ramos Tan or Mr. Uy, and Jane Doe a.k.a. Delia Rajas AND OTHER JOHN DOES AND JANE DOES;**  
*[underscores supplied]*

(c)by directing, ordering and compelling, for his personal gain and benefit, the Government Service Insurance System (GSIS) to purchase 351,878,000 shares of stocks, more or less, and the Social Security System (SSS) 329,855,000 shares of stocks, more or less, of the Belle Corporation in the amount of more or less One Billion One Hundred Two Million Nine Hundred Sixty-five Thousand Six Hundred Seven Pesos and Fifty Centavos (P1,102,965,607.50) and more or less Seven Hundred Forty-four Million Six Hundred Twelve Thousand and Four Hundred Fifty Pesos (P744,612,450.00), respectively or a total of more or less One Billion Eight Hundred Forty-seven Million Five Hundred Seventy-eight Thousand Fifty-seven Pesos and Fifty Centavos (P1,847,578,057.50); and by collecting or receiving, directly or indirectly, by himself and/or in connivance with Jaime Dichaves, John Does and Jane Does, commissions or percentages by reason of said purchases of shares of stock in the amount of One Hundred Eighty-nine Million Seven Hundred Thousand Pesos (P189,700,000.00) more or less, from the Belle Corporation which became part of the deposit in the Equitable-PCI Bank under the account name "Jose Velarde";

(d)by unjustly enriching himself from commissions, gifts, shares, percentages, kickbacks, or any form of pecuniary benefits, in connivance with Jaime C. Dichaves, John Does and Jane Does in the amount of more or less, Three Billion Two Hundred Thirty-three Million One Hundred Four Thousand One Hundred Seventy-three Pesos and Seventeen Centavos (P3,233,104,173.17) and depositing the same under his account name "Jose Velarde" at the Equitable-PCI Bank.

CONTRARY TO LAW.

The case, which originated from **OMB-0-00-1720** (entitled *National Bureau of Investigation v. Luis Singson, et. al.*) and **OMB-0-00-1756** (entitled *Romeo T. Capulong, et. al., v. Joseph Ejercito Estrada, et. al.*), was docketed in the Sandiganbayan as Criminal (Crim.) Case No. 26558.

In the course of the proceedings, the Ombudsman filed before the Sandiganbayan an **Omnibus Motion dated 8 January 2002**<sup>[8]</sup> seeking, among others, the issuance of a warrant of arrest against Victor Jose Tan Uy alias *Eleuterio Tan, Eleuterio Ramos Tan or Mr. Uy*. The Ombudsman alleged that no warrant of arrest had been issued against the accused John Doe who was designated in the Information as *Eleuterio Tan, Eleuterio Ramos Tan or Mr. Uy*; and that, in order not to frustrate the ends of justice, a warrant of arrest should issue against him after he had been identified to be also using the name Victor Jose Tan Uy with address at 2041 M. J. Cuenco Avenue, Cebu City. Allegedly, a positive identification had been made through photographs, as early as *the Senate Impeachment Trial against former President Joseph Ejercito Estrada, that John Doe a.k.a. Eleuterio Tan, Eleuterio Ramos Tan or Mr. Uy and VICTOR JOSE TAN UY are one and the same person.*

To support this motion, the Ombudsman attached: (1) copies of the photographs identified at the Senate Impeachment Trial; and (2) the Sworn Statement of Ma. Caridad Manahan-Rodenas (the "*Rodenas Sworn Statement*") dated 26 June 2001 executed before Atty. Maria Oliva Elena A. Roxas of the Fact Finding and Intelligence Bureau of the Office of the Ombudsman ("*FFIB*"), [For purposes of this Decision, these are collectively referred to as the "*identification documents.*"]

The Ombudsman further filed a **Manifestation and Motion dated 5 March 2002**<sup>[9]</sup> asking for the manual insertion in the Amended Information of the name VICTOR JOSE TAN UY; it relied on Section 7, Article 110 of the Revised Rules of Criminal Procedure, which provides:

**SEC. 7. Name of the accused.** - The complaint or information must state the name and surname of the accused or any appellation or nickname by which he has been or is known. If his name cannot be ascertained, he must be described under a fictitious name with a statement that his true name is unknown.

If the true name of the accused is thereafter disclosed by him or appears in some other manner to the court, such true name shall be inserted in the complaint or information and record.

The petitioner's response was a **Petition to Conduct Preliminary Investigation**<sup>[10]</sup> filed with the **Ombudsman**. The petitioner argued that: (1) he was not subjected to a preliminary investigation or to any previous inquiry to determine the existence of probable cause against him for the crime of plunder or any other offense, as: (a) he was not included as respondent in either of the two Ombudsman cases - bases of the criminal proceeding; (b) neither his name nor his address at No. 2041 M.J. Cuenco Avenue, Cebu City was mentioned at any stage of the preliminary investigation conducted in the criminal cases; (c) the preliminary investigation in the cases that led to the filing of Crim. Case No. 26558 was conducted without notice to him and without his participation; (d) he was not served any subpoena, whether at his address at No. 2041 M.J. Cuenco Avenue, Cebu City or at any other address, for the purpose of informing him of any complaint against him for plunder or any other offense and for the purpose of directing him to file his counter-affidavit; and (2) dictates of basic fairness and due process of law require that petitioner be given the opportunity to avail himself of the right to a preliminary investigation since the offense involved is non-bailable in character.

The petitioner additionally alleged that he filed a complaint with the Regional Trial Court of Cebu City docketed as CEB-25990 against a certain Eleuterio Tan for maligning him by using his picture, address, and other personal circumstances without his consent or authority, which acts led to his alleged involvement in the tobacco excise tax scandal.<sup>[11]</sup> He also claimed that he personally visited then Senate President Aquilino Pimentel at the height of the impeachment trial to dispute his identification as Eleuterio Tan; he then expressed his willingness to testify before the Impeachment Court and subsequently wrote Senator Pimentel a letter about these concerns.<sup>[12]</sup> He claimed further that he submitted the signatures appearing on the signature cards supposedly signed by Eleuterio Tan and the two (2) company identification cards supposedly presented by the person who opened the Land Bank account for examination by a handwriting expert; the result of the handwriting examination disclosed that the signatures were not his.<sup>[13]</sup>

In a parallel **Manifestation and Motion**<sup>[14]</sup> dated 11 April 2002 filed with the **Sandiganbayan**, the petitioner asked for the suspension of the criminal proceedings insofar as he is concerned; he likewise moved for a preliminary investigation.

The Ombudsman opposed<sup>[15]</sup> the petitioner's Manifestation and Motion with a refutation of the petitioner's various claims. Among others, it claimed that it served, in the preliminary investigation it conducted, the subpoena at the purported address of Eleuterio Tan, Eleuterio Ramos Tan or Mr. Uy at Bagbaguin, Valenzuela City as indicated in the complaint-affidavits. It posited that it was the petitioner's fault that his true name was not ascertained, the petitioner having made clever moves to make it difficult to identify him with his nefarious deeds. It also argued that the petitioner could not ask for any affirmative relief from the Sandiganbayan which had not acquired jurisdiction over the petitioner's person.

The petitioner reiterated in his **Reply to Opposition**<sup>[16]</sup> (filed with the Sandiganbayan) the points he raised before the Ombudsman. He additionally stressed that: (1) the fundamental issue is whether or not a preliminary

investigation was conducted with respect to him; as the records show, he was never subjected to any preliminary investigation; (2) he was never given by the prosecution the opportunity to prove in any preliminary investigation that he is not Eleuterio Tan; had he been given such opportunity, petitioner would have shown that he wasted no time and took immediate steps to establish his innocence shortly after the illegal use and submission of his photo and usurpation of his identity surfaced at the impeachment proceedings; (3) he timely invoked his right to a preliminary investigation, as motions or petitions for the conduct of preliminary investigation may be entertained by the Sandiganbayan even before the movant or petitioner is brought under its jurisdiction under the rule that any objection to a warrant of arrest or procedure in the acquisition by the court of jurisdiction over the person of the accused must be made before plea; (4) while the invalidity of the preliminary investigation does not affect the jurisdiction of the Sandiganbayan, it should however suspend the proceedings and remand the case for the holding of a proper preliminary investigation; and (5) a preliminary investigation is imperative because the offense involved is non-bailable.

The **Ombudsman** denied in an **Order dated 10 May 2002**<sup>[17]</sup> the petition for the conduct of a preliminary investigation. It rejected the petitioner's claims, reasoning out that the petitioner's requested preliminary investigation had long been terminated and the resulting case had already been filed with the Sandiganbayan in accordance with the Rules of Criminal Procedure; hence, the petitioner's remedy is to ventilate the issues with the Sandiganbayan.

The **Sandiganbayan**, on the other hand, granted in a **Resolution dated 19 June 2002**<sup>[18]</sup> the petitioner's motion and directed the Ombudsman to conduct a preliminary investigation with respect to the petitioner. It also held in abeyance - until after the conclusion of this preliminary investigation - action on the Ombudsman's motion to amend the Information to insert the petitioner's name and to issue a warrant for his arrest.

In compliance with the Sandiganbayan Resolution, the Ombudsman issued an **Order**<sup>[19]</sup> requiring the petitioner to file his counter-affidavit, the affidavits of his witnesses, and other supporting documents. **Attached to the Ombudsman's Order were the Complaint-Affidavit in OMB-0-00-1756 and the NBI Report in OMB-0-00-1720.** The petitioner filed his counter-affidavit,<sup>[20]</sup> pertinent portions of which read:

2. With respect to the Complaint-Affidavit in **OMB-0001720**, it may be noted that the same was originally filed with the Department of Justice as **I.S. No. 2000-1829**, with the National Bureau of Investigation as complainant and the following as respondents, namely: (1) Luis `Chavit' Singson, (2) Deogracias Victor B. Savellano, (3) Carolyn M. Pilar, (4) Antonio A. Gundran, (5) Dr. Ernie A. Mendoza II, Ph. D., (6) Leonila Tadena, (7) Estrella Mercurio, (8) Dionisia Pizarro, (9) Cornelio Almazan, (10) Erlita Q. Arce, (11) Maricar Paz, (12) Marina Atendido, (13) Nuccio Saverio, (14) Alma Aligato Alfaro, (15) Eleuterio Tan or Eleuterio Ramos Tan, and (16) Delia Rajas. (**I.S. No. 2000-1829** was thereafter referred to the Office of the Ombudsman as per the 1<sup>st</sup> indorsement of Secretary Artemio G. Tuquero dated 14 December 2000).