

THIRD DIVISION

[G.R. No. 169982, November 23, 2007]

**SALVADOR A. PLEYTO, PETITIONER, VS. PHILIPPINE NATIONAL
POLICE CRIMINAL INVESTIGATION AND DETECTION GROUP (PNP-
CIDG), RESPONDENT.**

DECISION

CHICO-NAZARIO, J.:

Before this Court is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court, assailing the dismissal from service of petitioner Salvador A. Pleyto after being found guilty of grave misconduct and dishonesty by the Office of the Ombudsman in its Decision,^[2] dated 27 May 2004, in OMB-C-A-03-0347-I, affirmed by the Court of Appeals in its Decision,^[3] dated 20 July 2005, in CA-G.R. SP No. 87086.

The present Petition stems from a Complaint,^[4] dated 28 July 2003, filed by respondent Philippine National Police-Criminal Investigation and Detection Group (PNP-CIDG), through its Director, Eduardo S. Matillano, with the Office of the Ombudsman, which charges petitioner and the rest of his family as follows:

The undersigned Director of the PNP Criminal Investigation and Detection Group is hereby filing complaints for ***Violation of RA 1379 (An Act Declaring Forfeiture in favor of the State any property found to have been unlawfully acquired by any public officer)*** in relation to ***Section 8, RA 3019 (Anti-Graft and Corrupt Practices Act, as amended, Section 8(a) of RA 6713, (Code of Ethical Standard for Public official and employee)*** and ***Section 7 of RA 3019 (Statement of Assets and Liabilities)*** and for violation of ***Article 171 para 4, RPC (Perjury/Falsification of Public Official Documents)*** against the following:

1. USEC SALVADOR A. PLEYTO- # 1 May Street, Congressional Village, Quezon City;
2. MIGUELA PLEYTO (Wife)- # 1 May Street, Congressional Village, Quezon City;
3. SALVADOR G. PLEYTO, JR.,- # 1 May Street, Congressional Village, Quezon City;
4. MARY GRACE PLEYTO- # 1 May Street, Congressional Village, Quezon City;
and
5. RUSSEL PLEYTO- 64 P. Santiago Street, Sta. Maria, Bulacan.^[5]

The said Complaint was based on the investigation/inquiry on the alleged lavish lifestyle and nefarious activities of certain personnel of the Department of Public Works and Highways (DPWH) conducted by a team, composed of Atty. Virgilio T. Pablico (Atty. Pablico) and Crime Investigator II Dominador D. Ellazar, Jr. (Investigator Ellazar, Jr.) of the PNP-CIDG, together with investigating officers from other government agencies. Petitioner, then serving as a DPWH Undersecretary, was one of the subjects of the investigating team since he reportedly

amassed unexplained wealth. Investigating officers, Atty. Pablico and Investigator Ellazar, Jr., executed a Joint Affidavit,^[6] essentially stating that: (1) petitioner and the rest of his family accumulated numerous real properties in Bulacan, other than their newly renovated residence in Quezon City; (2) petitioner did not honestly fill out his Statements of Assets and Liabilities and Networth (SALNs) for the years 2001 and 2002 for he failed to declare therein all of his and his wife's real and personal properties, the true value thereof, and their business interests; (3) petitioner and his family also took frequent foreign trips from 1993 to 2002; and (4) the properties and foreign trips of petitioner and his family are grossly disproportionate to petitioner's income.

The Investigating Panel from the Preliminary Investigation and Administrative Adjudication Bureau A (PIAB-A) of the Office of the Ombudsman, tasked to evaluate the Complaint against petitioner and his family, issued a Report on 9 September 2003, recommending that the said Complaint be docketed as separate administrative and criminal cases. Pursuant thereto, the administrative complaint was docketed as **OMB-C-A-03-0347-1**, while the criminal complaint was docketed as **OMB-C-C-03-05130-1**. It is the administrative complaint, OMB-C-A-03-0347-1, for grave misconduct and dishonesty, which presently concerns this Court.^[7]

In its initial evaluation of the "numerous pieces of evidence" which were attached to the Complaint, the Office of the Ombudsman, in its Order, dated 25 September 2003,^[8] found that the evidence warranted the preventive suspension of petitioner for six months without pay pending the conduct of the administrative proceedings against him. The said Preventive Suspension Order shall be deemed immediately effective and executory. The petitioner filed with the Court of Appeals CA-G.R. SP No. 79516, a Petition for *Certiorari* under Rule 65 of the Rules of Court, praying for the nullification of the Preventive Suspension Order issued by the Office of the Ombudsman. However, the said Preventive Suspension Order had already lapsed even before the Court of Appeals could resolve the Petition in CA-G.R. SP No. 79516, thus, rendering the same moot and academic.

In the meantime, petitioner, his wife, and his children filed their respective Counter-Affidavits and Supplemental Affidavits before the Office of the Ombudsman, presenting the following defenses: (1) petitioner admits ownership of the real properties identified in the Complaint but alleges that they were acquired by way of foreclosure or *dacion en pago* in the course of his wife's lending business in Sta. Maria, Bulacan; (2) petitioner is not solely dependent on his salary since his wife has been operating several businesses in Bulacan, including lending, piggery, and pawnshop, for the last 25 years; (3) his children are not financially dependent on petitioner and his wife, but are full-fledged entrepreneurs and professionals; and (4) the computation of their travel expenses is exaggerated and inaccurate since most of petitioner's trips were sponsored by foreign and local organizations, his wife's trips were promotional travel packages to Asian destinations, and his children's trips were at their own expense.

On 28 June 2004, the Office of the Ombudsman promulgated its Decision^[9] in OMB-C-A-03-0347-I, dismissing petitioner from service. The dispositive portion of said Decision reads –

WHEREFORE, premises considered, respondent **SALVADOR A. PLEYTO**, is hereby found guilty of GRAVE MISCONDUCT and DISHONESTY and is meted the penalty of **DISMISSAL FROM THE SERVICE** with cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service.

The Honorable Secretary, Department of Public Works and Highways, Port Area, Manila, is hereby directed to implement this Order immediately upon receipt hereof and to promptly inform this Office of compliance therewith.^[10]

Petitioner's Motion for Reconsideration was denied by the Office of the Ombudsman in an Order^[11] dated 12 October 2004.

Petitioner then assailed before the Court of Appeals the Decision, dated 28 June 2004, and Order, dated 12 October 2004, of the Office of the Ombudsman in OMB-C-A-03-0347-I by filing a Petition for Review under Rule 43 of the Rules of Court with Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction, docketed as CA-G.R. SP No. 87086. Petitioner prayed to the appellate court that:

1. Upon filing of the petition, a **Temporary Restraining Order and/or Writ of Preliminary Injunction be immediately issued** directing the Office of the Ombudsman, its officials and agents, or persons acting for and on it [*sic*] behalf, including the Secretary of the Department of Public Works and Highways from implementing the assailed Decision of the Ombudsman dated 28 June 2004 and its Order dated 12 October 2004.
2. After hearing on the merits, that judgment be rendered nullifying the assailed Decision of the Ombudsman dated June 28, 2004 and Order dated October 12, 2004 in OMB-C-A-03-0347-I.

Other relief and remedies just and equitable under the premises are likewise prayed for.^[12]

On 5 November 2004, the Court of Appeals issued a Temporary Restraining Order against the implementation of the assailed Decision of the Office of the Ombudsman dismissing petitioner from service and directed the PNP-CIDG, the named respondent in petitioner's Petition for Review, to file its Comment thereto.

The Office of the Solicitor General (OSG), on behalf of the PNP-CIDG, requested an extension of 30 days, or until 28 December 2004, within which to file its Comment on the Petition.

However, even before the OSG could file its Comment, the Office of the Ombudsman filed its own Comment (with Motions to Intervene; Admit Comment; and Recall Temporary Restraining Order) on 29 December 2004. It sought leave from the Court of Appeals to adduce pertinent facts and arguments to show that it acted with due process and impartiality, and relied only on the evidence on record in adjudging petitioner guilty of grave misconduct and dishonesty. The Office of the Ombudsman insisted that it has been shown by overwhelming evidence, as well as by petitioner's own admissions in his counter-affidavit and other pleadings before the Office of the Ombudsman and his Petition before the Court of Appeals, that petitioner committed gross dishonesty for amassing wealth grossly disproportionate to his known lawful income, and refusing to fully declare many of his other properties. Hence, the Office of the Ombudsman submits that the administrative penalty of dismissal from the service imposed on petitioner stands on solid legal and factual grounds, which should be accorded weight and respect, if not finality, by the appellate court.

Petitioner promptly filed a Reply *Ad Cautelam* (To Ombudsman's Comment) with Supplemental Plea. In addition to opposing the intervention of the Office of the Ombudsman in CA-G.R. SP No. 87086, petitioner also addressed the arguments presented by the Office of the Ombudsman in its Comment on the propriety of his dismissal from service. He avers that he has adequately controverted by clear and convincing evidence the unsubstantiated charges against him. Petitioner thus pleads anew for the immediate and urgent grant of his prayer for a writ of preliminary injunction to enjoin the execution of the order of dismissal of the Office of the Ombudsman.

On 26 January 2005, the Court of Appeals issued a Resolution admitting the Comment of the Office of the Ombudsman, again directing the OSG to file its Comment on the Petition on behalf of PNP-CIDG, and submitting for resolution petitioner's application for the issuance of a writ of preliminary injunction. The OSG, representing the PNP-CIDG, eventually filed its Comment on 31 January 2005.

Finding that the execution of the judgment of dismissal from service of petitioner pending his appeal thereof would possibly work injustice to petitioner, or tend to render the judgment on his appeal ineffectual, the Court of Appeals issued a Resolution^[13] on 1 March 2005 granting the writ of preliminary injunction, thus, ordering the Office of the Ombudsman and all persons action on its behalf from implementing its assailed Decision, dated 28 June 2004, and Order, dated 12 October 2004, pending final determination of CA-G.R. SP No. 87086. The appellate court further directed the parties to submit their memoranda.

Petitioner and the Office of the Ombudsman filed their respective Memoranda, while the OSG manifested that it was adopting its Comment and the Comment of the Office of the Ombudsman on the Petition as its Memorandum.

On 20 July 2005, the Court of Appeals promulgated its Decision in CA-G.R. SP No. 87086, dismissing the Petition and affirming the dismissal from the service of petitioner as adjudged by the Office of the Ombudsman. It summed up its findings thus:

To repeat, the administrative liabilities of the petitioner proven by substantial evidence is his failure to file a truthful and accurate SALN and possession of assets manifestly out of proportion of (*sic*) his legitimate income. Either one is legal basis for dismissal or removal from office. As a final recourse, the petitioner asks for the chance to correct his SALN before he should be held administratively liable. The Ombudsman ripostes that this would be a mockery of the law, saying that the SALN is not a *misdeclare-first-and correct-if-caught* instrument, but a full and solemn recording under oath of al (*sic*) the items required to be reported. *Ipse dixit*.

IN VIEW OF THE FOREGOING, the decision appealed from is AFFIRMED, and the petition DISMISSED. The writ of preliminary injunction is LIFTED.^[14]

The Court of Appeals, in a Resolution,^[15] dated 4 October 2005, found that the arguments raised in petitioner's Motion for Reconsideration had already been discussed and passed upon in its Decision, dated 20 July 2005, and there was no cogent reason to warrant reconsideration, much less, a reversal of the appellate court's original findings. Hence, petitioner's Motion for Reconsideration was denied.

Petitioner now comes before this Court *via* a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision, dated 20 July 2005, and Resolution, dated 4 October 2005, of the Court of Appeals, based on the following grounds:

- a. The Court of Appeals committed grave error in law in allowing the active intervention of the Ombudsman in the review proceedings and invoking its arguments raised on appeal in the resolution of the case.^[16]
- b. The Court of Appeals gravely erred in adopting in *toto* the appealed judgment of the Ombudsman, the finding being inconsistent with the evidence on record and the burden of proof required by law being higher than mere substantial evidence as the penalty involves dismissal from service.^[17]
- c. The Court of Appeals committed grave error in law in declaring that petitioner's resort to the Compliance and Review Procedure under Sec. 10 of R.A. 6713 is completely unavailing.^[18]

Pursuant to a Resolution issued by this Court on 26 June 2006, a temporary restraining order was issued in the following tenor:

NOW, THEREFORE, you (the Court of Appeals, the Office of the Ombudsman and the Secretary of the Department of Public Works and Highways), your officers, agents, representatives, and/or persons acting upon your orders or, in your place or stead, are hereby **ENJOINED, ORDERED, COMMANDED** and **DIRECTED** to desist from implementing the assailed decision and order dated June 28, 2004 and October 12, 2004, respectively, of the Office of the Ombudsman in OMB-C-A-03-0347-I entitled "Philippine National Police-Criminal Investigation and Detection Group vs. Salvador A. Pleyto" dismissing herein petitioner from the service, as affirmed in the decision and resolution dated July 20, 2005 and October 4, 2005, respectively, of the Court of Appeals in CA-G.R. SP No. 87086 entitled "Salvador A. Pleyto vs. Philippine National Police-Criminal Investigation and Detection Group."^[19]

Having established the facts leading to the Petition at bar, this Court shall now proceed to review petitioner's assigned errors one at a time.

I.

Petitioner raises before this Court his continued objection to the intervention of the Office of the Ombudsman in the proceedings before the Court of Appeals. It should be recalled that the Office of the Ombudsman, although not named as a respondent in CA-G.R. SP No. 87086, filed its Comment and Memorandum therein, which were admitted by the Court of Appeals.

The Office of the Ombudsman moved to intervene in the Court of Appeals proceedings in representation of the State's interests. As a competent disciplining body, it asserts its rights to defend its own findings of fact and law relative to the imposition of its decisions and ensure that its judgments in administrative disciplinary cases be upheld by the appellate court, consistent with the doctrine laid down by this Court in *Civil Service Commission v. Dacoycoy*^[20] and *Philippine National Bank v. Garcia*.^[21] As the agency which rendered the assailed Decision, it is best equipped with the knowledge of the facts, laws and circumstances that led to the finding of guilt against petitioner.

Petitioner opposed from the very beginning the intervention of the Office of the Ombudsman in the appellate court proceedings. He pointed out to the Court of Appeals that only the PNP-CIDG was named as a respondent in his Petition for Review, and the Office of the Ombudsman was not impleaded because Section 6, Rule 43 of the Rules of Court expressly mandates that the court or agency which rendered the assailed decision should not be impleaded in the petition. He argued that the non-inclusion of the court or tribunal as respondent in cases elevated on appeal is founded on the doctrine that the court is not a combatant in the appeal proceedings. He called attention to previous rulings of this Court admonishing judges to maintain a posture of detachment in cases where their decisions are elevated on appeal or review.

Petitioner, in the instant Petition, presents the same arguments in support of his first assignment of error. It is noted that the OSG, representing the PNP-CIDG, in its Comment and Memorandum before this Court, did not address the issue on the intervention of the Office of the Ombudsman in CA-G.R. SP No. 87086, focusing solely on the issue on the propriety of the dismissal from service of petitioner.

After a review of both positions on the matter of the intervention of the Office of the Ombudsman in the proceedings before the Court of Appeals, this Court rules in favor of petitioner. The Court of Appeals indeed committed an error in admitting the Comment and Memorandum of the Office of the Ombudsman in CA-G.R. SP No. 87086.

Fabian v. Hon. Desierto^[22] already settled that appeals in administrative disciplinary cases