

## FIRST DIVISION

[ G.R. NO. 164664, July 20, 2006 ]

**CARLOS C. FUENTES, PETITIONER, VS. HON. SANDIGANBAYAN,  
SECOND DIVISION, HON. SIMEON V. MARCELO, OMBUDSMAN,  
EUSEBIO M. AVILA, JR., SPECIAL PROSECUTION OFFICER,  
OFFICE OF THE OMBUDSMAN, GERRY MORALES AND FRANCISCO  
S. JIMENEZ, JR., RESPONDENTS.**

### D E C I S I O N

**CALLEJO, SR., J.:**

This is a Petition for *Certiorari* under Rule 65 of the 1997 Rules of Civil Procedure for the nullification of the Resolution<sup>[1]</sup> of the *Sandiganbayan* (Second Division) in Criminal Case No. 27518 granting the motion of the Special Prosecutor for leave to withdraw the Information for want of probable cause to file the same, as well as the Resolution denying the motion for reconsideration filed by petitioner Carlos Fuentes.

Petitioner was the sales representative of the Davao Toyozu, Inc., a corporation with offices in Davao City, which was engaged in the importation and sale of Japanese surplus vehicles and spare parts. The Municipality of Baganga, Davao Oriental, called for a public bidding for the sale and supply of six (6) Japanese surplus mini dump trucks. The Abstract of Bids, where Davao Toyozu, Inc. appears to be the lowest bidder, was signed by the members of the Bid Committee, including Municipal Treasurer Francisco Jimenez, Jr. and then Municipal Mayor Remegio G. Nazareno.<sup>[2]</sup> On the same day, February 27, 2001, Municipal Treasurer Francisco Jimenez Jr., with the approval of the Mayor, issued Purchase Order No. 046 for P1,710,000.00 for the purchase of six mini dump trucks.<sup>[3]</sup> In May 2001, Davao Toyozu, Inc., through petitioner, delivered the six trucks which were duly accepted by the Municipality after inspection.<sup>[4]</sup> The price of four of the six units was then fully paid.

In the meantime, Gerry<sup>[5]</sup> J. Morales was elected Mayor of the Municipality and assumed office in July 2001. Municipal Budget Officer Bill Rojas, Accountant Emeritos M. Jovilla, and Municipal Treasurer Francisco Jimenez, Jr. approved a Request for Obligation of Allotment<sup>[6]</sup> for P274,377.27, the price of one of the two still unpaid mini dump trucks. Jovilla certified that unobligated allotments were available, Rojas certified to the existence of the appropriation for the expenditure, while Jimenez certified to the availability of funds. However, Morales refused to approve the request.<sup>[7]</sup> Morales also refused to approve the disbursement voucher for the expenditure which Jovilla had approved.<sup>[8]</sup>

The Municipality, through petitioner, had also entered into a contract with East Lambajon Trading for the rental of one bulldozer and the leveling of *Sitio* Dalingding, *Barangay* Kinablangan, Baganga, for P57,991.77. This transaction was approved by Engr. Fedelito Rabuya, the Baganga General Foreman, and Mayor Remegio

Nazareno.<sup>[9]</sup> The undertaking was completed and duly accepted, as evidenced by the Certificate of Completion and Acceptance<sup>[10]</sup> signed by Rabuya, *Barangay* Captain Bonifacio Ignacio and Mayor Remegio Nazareno. Rabuya, Jovilla, Rojas and Jimenez approved the Request for Obligation of Allotment for the specified amount,<sup>[11]</sup> and the Disbursement Voucher.<sup>[12]</sup> Mayor Remegio Nazareno approved the Disbursement Voucher. However, Mayor Morales refused to authorize the release of the amount.

The Municipality had also entered into a contract with East Lambajon Trading/Carlos Fuentes for a two-day quarrying (bulldozing works) at Sitio Mahug, *Barangay* Banao, Baganga for P20,358.78. The project was completed per specification and duly accepted by the Municipality, as evidenced by the Certificate of Completion and Acceptance signed by Rabuya, Ignacio and Nazareno. Jovilla, Rojas and Rabuya approved the Request for Obligation of Allotment and Disbursement Voucher for the amount, but Jimenez refused to do so.<sup>[13]</sup> Thus, Morales and Jimenez refused to allow the disbursement of the amount and its remittance to the East Lambajon Trading.

On August 8, 2001, petitioner withdrew some of the vouchers and other documents relative to the bulldozing work from the Office of the Municipal Treasurer. On August 16, 2001, he made demands<sup>[14]</sup> for Morales to allow the payment of the municipality's account, which Morales rejected. On September 10, 2001, petitioner withdrew the rest of the vouchers and other documents from the Office of the Municipal Treasurer relative to the supply of the six dump trucks.

Petitioner thereafter executed an Affidavit-Complaint<sup>[15]</sup> against Morales and Jimenez and all other responsible officers of the Municipality charging them administratively of having violated Section 3(e) of Republic Act (R.A.) No. 3019, and filed the same in the Office of the Ombudsman. In a letter dated September 12, 2001, the Office of the Ombudsman suggested to Morales that petitioner's claims be paid. The Ombudsman sent a follow-up letter dated October 16, 2001. Morales replied, alleging that he needed time to review the transactions relating to petitioner's claims.

Morales submitted his counter-affidavit in which he alleged that he assumed office as Municipal Mayor of the Municipality of Baganga last June 30, 2001. As Local Chief Executive, it was his duty to exercise prudence and care to scrutinize all documents covering all obligations incurred by the previous administration and determine if they are all in order. The main reason for the delay in processing the payment is the fact that complainant got all the vouchers and other relevant documents from the Office of the Municipal Treasurer last August 8 and September 10, 2001, as shown in the logbook of the said office; thus, the Office of the Municipal Treasurer could not process them for payment. He averred that, "as long as all documents are legal and in accordance with law and existing rules and regulations," the Municipality will honor its just and lawful obligations.<sup>[16]</sup>

In his Counter-Affidavit, Jimenez alleged that the payment for the two remaining dump trucks was expected sometime in September 2001, during which payment could not be effected because the complainant withdrew his claim from the General Services Section of the Municipal Treasurer. The complainant likewise withdrew his

claim for the payment of the bulldozing services on August 8, 2001. He added that the internal allotment share of the municipality for July 2001 was received only in August 2001, and that the claims would have been paid in the latter part of that month had they not been withdrawn. He also alleged that the new Municipal Mayor could not be blamed for the non-payment of the three because it was only in July 2001 when the new municipal assumed office, and the claims had to be reviewed by them. He also averred that there were also defects in the two claims for the bulldozing works. The Municipal Mayor should also be the signatories on both Requests for Obligation of Allotment, and the Disbursement Vouchers, as he is the administrator of the fund to which the project had been charged, not the Project Development Officer I of the Municipal Planning and Development Office. According to Jimenez corrective acts could have been executed to both claims if only the complainant had not withdrawn the same. He assured that as soon as the claims were resubmitted and duly corrected, the final payment would be forwarded to petitioner.

In reply, petitioner alleged that the defense of Morales and Jimenez was made as an afterthought. His lawyer already sent a demand letter as early as August 18, 2001, and respondent Mayor Morales merely replied that payment "will be subject to the availability of the funds of the municipality," and would be made after the municipal engineer has finished inspecting the bulldozing works. Petitioner further alleged that the new administration's duty to pay is already ministerial, in view of the completeness of the documentation and the project implementation on all claims. [17] Thus, the claim that the transaction is "subject to review" is a mere alibi.

Petitioner also pointed out that in other transactions which the Municipality had with other entities/individuals, the payments were immediately received by the "brother of the Mayor," some of which had even occurred after the conclusion of his (petitioner's) transactions with the Municipality. [18]

The respondents countered by submitting an affidavit of Bernardo Y. Arquiza, the General Manager of Davao Toyozu, Inc., notarized by their counsel, that he had not authorized petitioner to file the complaint against the respondents. [19] Petitioner responded by submitting documents, including a letter from Arquiza dated December 8, 2001, showing that he transacted for the Davao Toyozu, Inc. [20]

On May 27, 2002, the Ombudsman approved a Resolution [21] finding probable cause against the respondents for violation of Section 3(e) of R.A. No. 3019. The defenses offered by the respondents were rejected as mere "alibis," considering that the disbursement vouchers and other supporting documents for payment of the transactions between the Municipality and Davao Toyozu, Inc. had been processed as early as August 3, 2001 (for the dump truck) and July 4, 2001 (for the bulldozing works). It held that respondents simply refused to pay petitioner's claims upon demand and despite receiving letters from the Ombudsman. Respondent Mayor made no mention about Fuentes' withdrawal of the vouchers and other documents in his Letter dated September 20, 2001. It pointed out that the vouchers and documents should not have been turned over to Fuentes in the first place. The claim that no funds were available was belied by the allotments which were duly certified by the Budget Officer and Municipal Accountant.

Thus, the prosecuting Ombudsman filed an Information dated May 22, 2002 with

the Sandiganbayan charging Morales and Jimenez with violation of Section 3(e) of R.A. No. 3019. The accusatory portion of the Information reads:

That on 4 July 2001, or sometime prior or subsequent thereto in the Municipality of Baganga, Davao Oriental, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, Gerry J. Morales, a high-ranking public officer being the Municipal Mayor of the Municipality of Baganga, Davao Oriental, and Francisco S. Jimenez, Jr., Municipal Treasurer of the same municipality, both while in the performance of their official functions, committing the offense in relation to their office, taking advantage of their official positions, conspiring and confederating with each other acting with evident bad faith, did then and there willfully, unlawfully and criminally cause undue injury to complainant Carlos C. Fuentes, by refusing to pay his claims/transactions, lawfully and legally incurred by the municipality, despite having complied with all the pertinent documents required to support his claims in the total amount of P351,736.05, to the damage and prejudice of the complainant.

CONTRARY TO LAW.<sup>[22]</sup>

Respondents filed a motion for reconsideration, which the Ombudsman denied. This prompted respondents to file a Motion for Reinvestigation dated July 29, 2002 before the Sandiganbayan. They also filed a Manifestation dated August 15, 2002, where it was admitted that there were available funds for payment of petitioner's claims, including the two remaining mini dump trucks amounting to P570,000.00. However, while the Municipality was willing and capable of paying its obligations, payment could not be effected because petitioner withdrew all the vouchers and other pertinent documents from the Office of the Municipal Treasurer. Respondents pointed out that petitioner failed to refute this statement, and that the Ombudsman had hastily resolved the case without even furnishing a copy to their counsel of record.<sup>[23]</sup>

On September 20, 2002, the Municipality made a full payment of the dump trucks, for which Davao Toyozu, Inc. issued Official Receipt No. 36714. The Municipal Treasurer had apparently extracted copies of the vouchers and documents relative to the claims of petitioner from the records of the Commission on Audit, thus enabling them to prepare the checks thereon.

On December 18, 2002, the Sandiganbayan granted the motion of the accused for a reinvestigation. For his part, Special Prosecutor Officer I Eusebio M. Avila, Jr. requested a special audit of the Local Government of Baganga for the period of February to July 2001 relative to Criminal Case No. 27518. A panel of State Auditors from the Commission on Audit (COA) was then formed to conduct the same.

In the meantime, in a Letter dated January 3, 2003 addressed to petitioner, Assistant Municipal Treasurer Alicia B. Manligoy informed petitioner that after consultation with the COA, the withdrawn documents had been reproduced and used as the basis to pay the Municipality's obligations, and that his checks were ready for release from the cashier, as follows:

Date	Particulars	Check No.	Amount
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			(Net of VAT)
01-03-03	Dozing work of Sitio Mahug	PNB-Mati #52921	P 18,841.15
01-03-03	Dozing work Rehab of Dalingding Road	PNB-Mati #52920	P 53,320.91 =====
		Total	P 72,162.06

Petitioner was also requested to claim the checks from the cashier along with the appropriate official receipts.

Petitioner failed to claim the checks. Thus, in a Letter dated March 3, 2003, respondent Jimenez requested Provincial Attorney Alejandro A. Aquino to summon petitioner to receive the checks.<sup>[25]</sup> Atty. Aquino forwarded a Letter dated March 10, 2003 to petitioner, requesting him to claim the checks from Jimenez.<sup>[26]</sup> However, petitioner still failed to claim the checks.

The Municipal Treasurer replaced the checks on April 3, 2003, and they were then delivered to petitioner on April 8, 2003. Petitioner also received from the Municipal Treasurer the payment of the last unit of the dump truck, and received the balance of his commission from Davao Toyozu, Inc. on January 8, 2003. Thus, the Municipality had already settled its obligations to petitioner, who was acting for his principals.

On April 16, 2003, the State Auditors submitted their Report to the Office of the Special Prosecutor relative to the purchase of six mini dump trucks and the contract of the Municipality for bulldozing work. According to State Auditors, the bulldozing work contracts were not valid for lack of vital documents to support the transactions. The disbursement vouchers (DVs) and the checks covering the payments were not supported by contracts which should have been executed between the Municipality and petitioner as contractor. Moreover, no public bidding was conducted; thus, although the bulldozing works had actually been completed and paid for, it was not a valid government transaction due to non-compliance of government auditing rules and regulations.

Based on his review of the Report of the State Auditors and petitioner's Comment thereon, Special Prosecutor Avila submitted a Memorandum to the Ombudsman recommending that the Information against the accused be withdrawn for lack of sufficient evidence as shown by the following findings: (1) there was no evident bad faith in this case since the accused had valid reasons for refusing to pay petitioner's money claims of P351,736.05, which was confirmed in the audit's findings; (2) the acquisition of the six dump trucks "was not a valid transaction considering that the Disbursement Vouchers (DVs) covering payments thereof are not supported by complete documentation. Evaluation of the available documents attached to DVs revealed some inherent technical defects and irregularities in the issuance of the Purchase Order (P.O.) and submission of bidding documents by Davao Toyozu, Inc."; and, (4) the bulldozing work contracts were likewise not valid as they were not supported by the proper documents and no public bidding was conducted. Thus, according to Avila the accused were justified in withholding payment of petitioner's claims, considering further that the documents had been withdrawn from the Office of the Treasurer, and that there was no element of undue injury since the Municipality's obligations were eventually paid.<sup>[27]</sup>