

SECOND DIVISION

[G.R. NO. 146486, March 04, 2005]

**OFFICE OF THE OMBUDSMAN, PETITIONER, VS. HONORABLE
COURT OF APPEALS AND FORMER DEPUTY OMBUDSMAN FOR
THE VISAYAS ARTURO C. MOJICA, RESPONDENTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

This is a “petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, and alternatively, an original special civil action for *certiorari* under Sec. 1, Rule 65” of the Decision^[1] of the Court of Appeals of 18 December 2000 in CA-G.R. SP No. 58460 entitled, *Arturo C. Mojica, Deputy Ombudsman for the Visayas v. Ombudsman Aniano Desierto, Over-all Deputy Ombudsman Margarito Gervacio, Jr. and the Committee of Peers composed of Deputy Ombudsman Jesus F. Guerrero, Deputy Ombudsman Rolando Casimiro and Special Prosecutor Leonardo P. Tamayo.*

The case had its inception on 29 December 1999, when twenty-two officials and employees of the Office of the Deputy Ombudsman (OMB) for the Visayas, led by its two directors, filed a formal complaint^[2] with the Office of the Ombudsman requesting an investigation on the basis of allegations that then Deputy Ombudsman for the Visayas, herein private respondent Arturo Mojica, committed the following:

1. Sexual harassment against Rayvi Padua-Varona;
2. Mulcting money from confidential employees James Alueta and Eden Kiamco; and
3. Oppression against all employees in not releasing the P7,200.00 benefits of OMB-Visayas employees on the date the said amount was due for release.

The complainants further requested that an officer-in-charge from the OMB-Manila be appointed to manage their office to prevent the Deputy Ombudsman from harassing witnesses and wielding his influence over them. To underscore the seriousness of their intentions, they threatened to go on a mass leave of absence, and in fact took their cause to the media.^[3]

The subsequent events, as stated by the Ombudsman and adopted by the Court of Appeals,^[4] are as follows:

The Ombudsman immediately proceeded to the OMB-Visayas office in Cebu City to personally deal with the office rebellion. Reaching Cebu, the Ombudsman was informed by Petitioner that Petitioner wanted to proceed to Manila, apparently because of his alienation and the fear for

reprisal from his alleged lady victims' husbands. Petitioner in fact already had a ticket for the plane leaving two hours later that day. The Ombudsman assented to the quick movement to Manila for Petitioner's safety and the interest of the Office's operations. Subsequently, the Ombudsman installed Assistant Ombudsman Nicanor J. Cruz as the Officer-in-Charge of OMB-Visayas.

Acting on the formal complaint against petitioner, the Ombudsman directed his Fact-Finding and Intelligence Bureau (FFIB) to conduct a verification and fact-finding investigation on the matter. The FFIB, later in its Report, found the evidence against Petitioner strong on the charges of acts of extortion, sexual harassment and oppression. The FFIB report was referred by the Ombudsman to a constituted Committee of Peers composed of the Deputy Ombudsman for Luzon, The Special Prosecutor and the Deputy Ombudsman for the Military.

The Committee of Peers initially recommended that the investigation be converted into one solely for purposes of impeachment. However, this recommendation was denied by the Ombudsman after careful study, and following the established stand of the Office of the Ombudsman that the Deputy Ombudsmen and The Special Prosecutor are not removable through impeachment. As succinctly (sic) stated by the Ombudsman in his Memorandum dated March 27, 2000 (in reiteration of the March 13, 2000 Order of Overall Deputy Ombudsman) -

Acting on your query as to whether or not the Ombudsman confirms or affirms the disapproval by Overall Deputy Ombudsman Margarito P. Gervacio, Jr., of your recommendation to conduct instead an investigation of the complaint against Deputy Ombudsman Arturo C. Mojica solely for the purpose of impeachment, I hereby confirm the action of disapproval.

x x x

Moreover, as demonstrated in many previous cases against Deputy Ombudsman Arturo C. Mojica, Deputy Ombudsman Manuel B. Casaclang, Deputy Ombudsman Jesus F. Guerrero, Special Prosecutor Leonardo P. Tamayo and former Overall Deputy Ombudsman Francisco A. Villa, the official position of the Office is that the Constitution, R.A. 6770 and the Supreme Court in *Zaldivar vs. Gonzales*, G.R. No. 80578, 19 May 1988, exclude the Deputy Ombudsman and the Special Prosecutor from the list of impeachable officials and the *Jarque* case involves Ombudsman Aniano A. Desierto as respondent, hence, the mention therein of the Deputy Ombudsmen is merely an *obiter dictum*. Two of your present members in fact participated in the investigation of the previous Mojica cases and thereafter recommended the dismissal thereof for lack of merit.

In the same Memorandum, the Ombudsman directed the Committee of Peers to evaluate the merits of the case and if warranted by evidence, to conduct administrative and criminal investigation(s) immediately thereafter. Upon evaluation, the Committee recommended the docketing

of the complaint as criminal and administrative cases. The Committee of Peers' Evaluation dated 30 March 2000, stated as follows:

On the basis of the foregoing facts, duly supported with sworn-statements executed by all concerned parties, the undersigned members of the COP find sufficient cause to warrant the conduct of preliminary investigation and administrative adjudication against Deputy Ombudsman Arturo C. Mojica for the following criminal and administrative offenses, namely:

I. CRIMINAL

Violation of Section 3, paragraph[s] (b) and (e) of R.A. 3019 (Anti-Graft and Corrupt Practices Act);

Violation of R.A. 7877 (Anti-Sexual Harassment Act of 1995),

II. ADMINISTRATIVE

- a. Dishonesty
- b. Grave Misconduct
- c. Oppression
- d. Conduct grossly prejudicial to the best interest of the service
- e. Directly or indirectly having financial and material interest in any transaction requiring the approval of his Office; (Section 22, paragraphs (A), (C), (N), (T) and (U), Rule XIV of Executive Order No. 292, otherwise known as the "Administrative Code of 1987".)

Accordingly, let the instant case be docketed separately, one for the criminal case and another for the administrative case covering all the offenses specified above and, thereafter, a formal investigation be simultaneously and jointly conducted by the Committee of Peers, pursuant to Administrative Order No. 7.

Accordingly, on 6 April 2000, the Committee of Peers (COP) directed the herein private respondent Mojica in OMB-0-00-0615 entitled, *Padua-Varona v. Mojica*, for violation of Republic Act No. 7877 (*Anti-Sexual Harassment Act of 1995*) and Sec. 3, par. (b) and (c) of Rep. Act No. 3019 (*Anti-Graft and Corrupt Practices Act*) to submit his controverting evidence.

On 10 April 2000, the complainants in OMB-0-00-0615 filed a Motion to Place Respondent Under Preventive Suspension,^[5] claiming that the offenses for which private respondent Mojica was charged warranted removal from office, the evidence against him was strong, and that Mojica's continued stay in office would prejudice the case, as he was harassing some witnesses and complainants to recant or otherwise desist from pursuing the case.

On the same date, the Ombudsman issued a Memorandum^[6] to the COP, directing them to conduct administrative proceedings in OMB-ADM-0-00-0316 entitled, *OMB Visayas Employees v. Mojica* (for dishonesty, grave misconduct, oppression, conduct grossly prejudicial to the best interest of the service, and directly or indirectly having financial and material interest in any transaction requiring the approval of his

office), and submit a recommendation on the propriety of putting Mojica under preventive suspension.

Subsequently, the COP issued an Order^[7] in OMB-ADM-0-00-0316 finding *prima facie* evidence against Mojica and requiring him to submit an answer to the above-mentioned offenses within ten days, as well as his counter-affidavit and supporting evidence.^[8]

Aggrieved, the private respondent filed a petition^[9] for *Certiorari* before the Court of Appeals praying that a resolution be issued:

1. . . . issuing a Temporary Restraining Order (TRO) upon the filing of the petition to enjoin and restrain the respondents, (the Ombudsman, the Over-all Deputy Ombudsman, the Committee of Peers, and the Special Prosecutor) their agents and representatives, from suspending the petitioner (herein private respondent Mojica);
2. thereafter, converting said TRO into a Writ of Preliminary Injunction;
3. after hearing, a decision be rendered declaring the following acts of the Ombudsman null and *void ab initio*:
 - a. detailing and assigning indefinitely the petitioner to OMB-Manila "in a [special] capacity," thus effectively demoting/suspending petitioner, and preventing him from preparing his defense;
 - b. authorizing or directing the docketing of the complaints against the petitioner, which is equivalent to authorizing the filing of the administrative and/or criminal cases against the petitioner, who is an impeachable official;
 - c. denying the request of petitioner for leave of absence, which acts were done without lawful authority, in a malevolent and oppressive manner and without jurisdiction.

On 04 May 2000, the Court of Appeals resolved to grant the prayer for Temporary Restraining Order and required the Ombudsman to comment and show cause why no writ of preliminary injunction should be issued, which reads in part:

Meanwhile, to maintain the *status quo* and in order to forestall the petition at bench from becoming moot and academic, and considering that upon examination of the records we believe that there is an urgent need for the issuance of a temporary restraining order to prevent great and irreparable injury that would result to herein petitioner before the matter could be heard on notice, the herein respondents, their agents and representatives acting for and in their behalf or under their authority, are hereby enjoined and restrained from proceeding with the hearing of the Motion to Place Respondent Under Preventive Suspension dated April 10, 2000, which hearing is set on May 9, 2000 at 2:00 o'clock in the afternoon and/or from conducting any further proceedings relative to the

suspension from (o)ffice of the herein petitioner until further order and/or notice from this Court.^[10]

Nevertheless, on 6 June 2000, the COP issued an Order^[11] in both OMB-0-00-0615 and OMB-ADM-0-00-0316 to the effect that having failed to submit the required counter-affidavits despite the lapse of seventeen days from the expiration of the extended reglementary period for filing the same, respondent Mojica was deemed to have waived his right to present his evidence. The COP thus deemed both criminal and administrative cases submitted for resolution on the basis of the evidence on record.

Thus, on 13 June 2000, the private respondent thus filed an urgent motion^[12] before the Court of Appeals to enjoin the Ombudsman from taking any action whatsoever in the criminal and administrative cases aforementioned. The following day, the private respondent filed another urgent motion, this time praying that the Court of Appeals issue an order requiring the Ombudsman to show cause why it should not be cited for contempt for failing to conform with the 4 May 2000 Resolution of the Court of Appeals. On 20 June 2000, the Court of Appeals directed^[13] the Ombudsman to comment on the above pleadings, and to comply with the former's Temporary Restraining Order of 4 May 2000.

The parties subsequently exchanged various pleadings that culminated in a Resolution^[14] by the Court of Appeals on 5 July 2000 that, among other things, directed the issuance of a writ of preliminary injunction enjoining all therein respondents from taking any action whatsoever in cases No. OMB-0-00-0615 (criminal) and No. OMB-ADM-0-00-0316 (administrative) against Mojica, and deemed the instant petition submitted for resolution on the merits upon the submission of the comment or explanation on the appellate court's show cause Resolution of 20 June 2000.

Meanwhile, on 19 June 2000, the Office of the Deputy Ombudsman for the Military directed the private respondent Mojica ostensibly to answer a different set of charges for "violation of Art. 266 and Sec. 3(e) of Rep. Act No. 3019" (OMB-00-0-1050) and for "grave misconduct, gross neglect of duty, and conduct prejudicial to the best interest of the service"^[15] (OMB-ADM-0-00-0506). Feeling that this was merely an attempt at circumventing the directives of the Court of Appeals, Mojica filed an urgent motion before the Court of Appeals for respondents to show cause again why they should not be cited for contempt.

By way of opposition, the Ombudsman pointed out that the writ of preliminary injunction issued by the appellate court was against any action taken in cases No. OMB-0-00-0615 and No. OMB-ADM-0-00-0316, and not against any new cases filed against the private respondent thereafter. The Ombudsman further pointed out that since Mojica's term of office had already expired as of 6 July 2000, the private respondent could no longer invoke his alleged immunity from suit.

On 14 August 2000, the Office of the Deputy Ombudsman for the Military issued an order deeming that cases No. OMB-0-00-1050 and No. OMB-ADM-0-00-0506 had been deemed submitted for resolution on the basis of the evidence at hand. On 17 August 2000, the private respondent filed an urgent motion for the immediate issuance of an order enjoining the Ombudsman from taking any further action