

FIRST DIVISION

[G.R. No. 119990, June 21, 2004]

REMBERTO C. KARA-AN, PETITIONER, VS. OFFICE OF THE OMBUDSMAN, HON. CONRADO M. VASQUEZ, HON. ABELARDO L. APORTADERA, JR., HON. RAUL ARNAU, HON. ROLINE M. GINEZ-JABALDE, AS APPROVING RECOMMENDING OFFICERS AND AUTHOR OF THE ORDER ASSAILED HEREIN; ROBERTO F. DE OCAMPO, ALFREDO C. ANTONIO, FAROUK A. CARPIZO, BERNICE SYQUIA, IBRAHIM MAMAO, REYNALDO PALMIERY, AND GERARDO TARUC AS FORMER CHAIRMAN AND INCUMBENT MEMBERS, RESPECTIVELY, OF THE PHILIPPINE AMANAH BANK (NOW THE AL-AMANAH ISLAMIC INVESTMENT BANK OF THE PHILIPPINES AND BRIEFLY REFERRED TO HEREIN AS ISLAMIC BANK), RESPONDENTS.

DECISION

CARPIO, J.:

The Case

This petition for review on certiorari^[1] seeks to reverse the Ombudsman's Resolution dated 27 January 1995 dismissing petitioner Remberto C. Kara-an's ("petitioner") complaint for violation of Republic Act No. 3019^[2] ("RA 3019") and the Order dated 17 April 1995 denying petitioner's motion for reconsideration in OMB-0-94-0705.

The Antecedents

On 14 February 1994, petitioner wrote then Senator Ernesto Maceda imputing certain criminal acts to "the present number and membership" or "the clique of six" in the Board of Directors of the Al-Amanah Islamic Investment Bank of the Philippines ("Islamic Bank"). Petitioner claimed that "the clique of six" granted a loan of P250,000 to Compressed Air Machineries & Equipment Corporation ("CAMEC") without a valid collateral. Petitioner also claimed that the "clique of six" approved the real estate mortgage on CAMEC's loan without requiring the cancellation of a prior subsisting mortgage and without securing the written consent of the first mortgagee in violation of law. Thus, petitioner asserts that the "clique of six" is liable for entering into a contract which is manifestly and grossly disadvantageous to the government, which is punishable under RA 3019.

On 22 February 1994, Senator Maceda endorsed petitioner's letter to then Ombudsman Conrado M. Vasquez for appropriate investigation. On 25 March 1994, public respondent Raul R. Arnau ("Arnau"), Head of the Evaluation and Preliminary Investigation Bureau ("EPIB"), required respondents who were incumbent members of the Islamic Bank's Board of Directors ("Bank's Board") to comment on the

complaint. Those required to comment were Roberto F. De Ocampo, as former chairman, and Alfredo C. Antonio, Farouk A. Carpizo, Bernice Syquia, Ibrahim Mamao, Reynaldo Palmieri and Gerardo Taruc ("respondents").

On 10 May 1994, respondents filed their Comment stating that:

1. Roberto F. De Ocampo, presently Secretary of Finance, used to be a Director and Chairman of the Bank's Board commencing on 9 March 1989;
2. Alfredo C. Antonio, representing the shares/interest of the National Government commenced his Directorship on 9 March 1989;
3. Farouk A. Carpizo, representing the shares/interest of the National Government commenced his Directorship some time in March 1981;
4. Bernice Syquia, representing the shares/interest of the Asset Privatization Trust commenced her Directorship on 31 March 1990;
5. Ibrahim Mamao, representing the shares/interest of the National Government commenced his Directorship on 14 June 1993;
6. Reynaldo Palmieri, representing the shares/interest of the Social Security System commenced his Directorship on 9 March 1989;
7. Gerardo Taruc, representing the shares/interest of the Government Service Insurance System commenced his Directorship on 13 December 1993.^[3]

In petitioner's Reply, he alleged that respondents concealed the names and terms of the directors before them. Petitioner theorized that respondents' failure to disclose their predecessors' names "makes them participants in the crime, giving aid and comfort to their co-offenders." Petitioner argued that under Republic Act No. 6770 or The Ombudsman Act of 1989 ("RA 6770"),^[4] the Ombudsman can demand information on the names and terms of directors who approved the CAMEC loan in 1986.

On 27 January 1995, the Ombudsman issued the first assailed Resolution^[5] dismissing the complaint for lack of merit. The Ombudsman reasoned out:

Respondents maintain that they were not yet even members of the Board of Directors of the Islamic Bank when the CAMEC transaction came about in 1986. Even if we are to assume "arguendo" that the CAMEC transaction started during the term of the respondents as chairman and directors of the Islamic Bank, the complainant and his cohorts by their individual and collective misconduct and omission, had thereby unduly exposed the Islamic Bank's Board from approving the CAMEC loan transaction predicated upon the false reports presented to the Board. The Board could not reasonably be expected to personally go out in the field and check the minute details of the loan application, much less, the personal whereabouts and identities of the applicants nor the physical location and legal status of the collaterals. Having received all the

favorable reports from the subordinate officials of the bank and after going through with the merits of the loan application, the Board could not reasonably be expected to do anything more but determine the merits of the recommendations submitted to them by the subordinate officials of the Islamic Bank. Thus, assuming that there were discrepancies, errors or failures in the appraisal, assessment and legal status of the collaterals and credit investigation of the borrowers and the responsible subordinate official, such as the complainant, must be held accountable for the end result.

After a careful and judicious evaluation of the facts of the case, the complaint filed by Kara-an against the Board is doomed to be dismissed from the very beginning. While he was the Officer-in-Charge of the Makati Branch of the Islamic Bank, he was the one directly responsible in screening the qualifications of the various applicants for loan. He cannot delegate this responsibility to the higher up because this is his main duty as the officer-in-charge of the said branch.^[6]

On 22 March 1995, petitioner filed a Motion for Reconsideration or Reinvestigation. Petitioner denied that he was the officer-in-charge of the Islamic Bank's Makati Branch responsible for screening loan applications in 1986. Petitioner alleged that when Islamic Bank approved the CAMEC loan in 1986, Tupaán A. Datu-Imam ("Datu-Imam") was the Makati branch manager while Michael O. Mastura ("Mastura") was the Islamic Bank president. In the Order of 17 April 1995, the Ombudsman denied petitioner's motion for these reasons:

Complainant reiterates that the particular incident or mortgage transactions he is complaining of in this case took place between the dates of inscription of the entries referred to by the complainant between March 22, 1982 and May 17, 1986. Except for Farouk Carpizo, all the respondents herein were appointed after the 1986 EDSA Revolution.

He likewise maintains that he is not yet the officer-in-charge of the Islamic Bank, Makati Branch during that period. The Branch Manager then was Tupaán A. Datu-Imam. The loan recommendation dated 28 April 1986 concerning CAMEC was signed by then Makati Branch Manager Tupaán A. Datu-Imam and Philippine Amanah Bank President Michael O. Mastura. He did not participate in the screening of said loan application, incidents or mortgage transaction in 1986.

Granting that he is not yet the officer-in-charge then of the Islamic Bank, Makati Branch when the said loan application in 1986 was approved is of no moment. The respondents did not either approve said loan application being appointed only beyond 1986. Hence, they could not be the proper parties in this case.^[7]

Hence, the present recourse.

The Issues

In his memorandum, petitioner raises these issues:

- I. WHETHER THE OMBUDSMAN OFFICIALS CONDUCTED APPROPRIATE INVESTIGATIONS ACCORDING TO THEIR CONSTITUTIONAL, STATUTORY AND ADMINISTRATIVE MANDATES, REQUIREMENTS AND THEIR SWORN DUTIES AS REQUESTED AND ENDORSED BY SENATOR MACEDA OF THE SENATE BLUE RIBBON COMMITTEE.
- II. WHETHER CRIMES HAVE BEEN COMMITTED.
- III. WHETHER TUPAAN A. DATU-IMAM, MICHAEL O. MASTURA, FAROUK A. CARPIZO AND THE OTHER FOUR MEMBERS OF THE PHILIPPINE AMANAH BANK BOARD OF DIRECTORS ARE GUILTY OR LIABLE.
- IV. WHETHER THE OMBUDSMAN OFFICIALS ACTED WITH PATENTLY GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION IN RENDERING THEIR RESOLUTION AND ORDER ASSAILED AS VOID.^[8]

The Solicitor General, on the Ombudsman's behalf, and the Government Corporate Counsel, representing respondents, pray for the dismissal of the petition for lack of merit.

Remedy from Ombudsman's Order in Criminal Cases

The title of this petition shows that petitioner filed the petition under Rule 45 of the Rules of Court. The remedy from resolutions of the Ombudsman in preliminary investigations of criminal cases is a petition for certiorari under Rule 65, not a petition for review on certiorari under Rule 45. By availing of a wrong remedy, the petition should be dismissed outright.

Rule 45 of the Rules of Court provides that only judgments or final orders or resolutions of the Court of Appeals, Sandiganbayan, the Regional Trial Court and other courts, whenever authorized by law may be the subject of a petition for review on certiorari to this Court. The second to the last paragraph of Section 27 of RA 6770 is clear. It reads:

SEC. 27. *Effectivity and Finality of Decisions.* -- (1) All provisional orders of the Office of the Ombudsman are immediately effective and executory.

A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice and shall be entertained only on any of the following grounds:

- (1) New evidence has been discovered which materially affects the order, directive or decision;
- (2) Errors of law or irregularities have been committed prejudicial to the interest of the movant. The motion for reconsideration shall be resolved within three (3) days from filing: Provided, That only one motion for reconsideration shall be entertained.

Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive, or decision imposing the penalty of public censure or reprimand, suspension of not more than one month salary shall be final and unappealable.

In all administrative disciplinary cases, orders, directives or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for certiorari within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.

The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require. (Emphasis supplied)

Under Section 27 of RA 6770, a decision of the Ombudsman in an administrative disciplinary action is appealable to this Court by petition for review under Rule 45. However, this does not include decisions of the Ombudsman in preliminary investigations of criminal cases. Neither does it include orders resolving incidents in preliminary investigations of criminal cases. In other words, the right to appeal under Rule 45 does not apply to orders and decisions of the Ombudsman in criminal cases. Such right is granted only from orders or decisions of the Ombudsman in administrative cases.^[9] Even in administrative cases, appeals from decisions of the Ombudsman is first taken to the Court of Appeals under the provisions of Rule 43.^[10]

However, an aggrieved party in criminal actions is not without any recourse. Where grave abuse of discretion amounting to lack or excess of jurisdiction taints the findings of the Ombudsman on the existence of probable cause, the aggrieved party may file a petition for certiorari under Rule 65. Nevertheless, we will consider the present petition as one filed under Rule 65 of the Rules of Court since a reading of the contents reveals that petitioner is imputing grave abuse of discretion on the Ombudsman for dismissing his complaint.^[11]

Whether Dismissal of the Complaint was Proper

Cutting through the convoluted language of petitioner's arguments, the pivotal issue is whether the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing petitioner's complaint.

The answer is in the negative.

Section 12, Article XI of the 1987 Constitution provides:

Sec. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.