

FIRST DIVISION

[G.R. Nos. 150353-54, July 27, 2004]

**ANTONIO BALAY MATURAN, PETITIONER, VS. THE PEOPLE OF
THE PHILIPPINES, THE HONORABLE OMBUDSMAN AND THE
HONORABLE SANDIGANBAYAN, RESPONDENTS.**

D E C I S I O N

QUISUMBING, J.:

This petition for review seeks to annul the **Order** dated September 12, 2001 of the Office of the Ombudsman in Criminal Cases Nos. 24635-24636, adopting the recommendation of the Office of the Chief Legal Counsel of the Ombudsman, which found probable cause for filing charges against the petitioner for violation of Sec. 3 (e) of the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019), as amended.
^[1]

The records show that the abovenumbered cases stemmed from the complaints filed with the Office of the Ombudsman for Mindanao by one Amado S. Teposo averring that petitioner, who was then the municipal mayor of Prosperidad, Agusan del Sur, had caused the purchase and installation of a radio antenna in his residence at an overprice, or above allowable cost. Consequently, the Office of the Ombudsman for Mindanao requested the Commission on Audit (COA) to conduct a special audit of the said project.

In its Special Audit Report, the COA found that the municipal government of Prosperidad, Agusan del Sur, did acquire an 80-foot radio tower from "Radio Shack Enterprises" located at San Francisco, Agusan del Sur, for a purchase price of P17,200. The price paid for the tower exceeded by more than 10% the prevailing market price of P10,450 per canvass of the auditor. The price variance of P6,750 was more than the allowable range. The COA also found that said tower was installed at the petitioner's residence in San Jose, Prosperidad, Agusan del Sur, and not at the Municipal Hall.^[2]

On the basis of the COA's audit report, the Office of the Ombudsman for Mindanao found probable cause to file two (2) Informations against petitioner for violation of Section 3(e) and (g)^[3] of the Anti-Graft and Corrupt Practices Act before the Sandiganbayan, to wit:

Criminal Case No. 24635

That in November, 1994, ... Accused ANTONIO BALAY MATURAN, ... Mayor of Prosperidad, [Agusan del Sur], acting in the performance of his official functions and taking advantage of his official position, did then and there wilfully, unlawfully and criminally cause undue injury to the government through evident bad faith and manifest partiality by causing

to be installed a municipality-owned 80-foot tower antenna at his place of residence and not within the premises of the municipal hall to the damage and prejudice of the government.

CONTRARY TO LAW. [4]

Criminal Case No. 24636

That in November, 1994 ... Accused ANTONIO BALAY MATURAN and JOHN DOES, all public officers being then the Mayor of Prosperidad, Agusan del Sur, and members of the Committee on Awards ... confederating and conspiring with each other and with Accused JANE DOE, ... member of the Sangguniang Bayan ... and Accused TOM DOE, the proprietor or representative of Radio Shack Enterprises ... did then and there wilfully, unlawfully and criminally award and execute a contract, in behalf of the said municipality, for the procurement of an "80-[foot] Tower With Omni Antenna Complete With Guy Wire, Turn Buckles With Installation", in favor of Radio Shack Enterprises ... which contract was manifestly and grossly disadvantageous to the said municipality as it carried an overpriced contractual consideration of P17,200.00 ... when the said equipment then had a market price of P10,450.00 only, to the damage and prejudice of the government.

CONTRARY TO LAW. [5]

On September 21, 1998, petitioner filed a **Motion for Reinvestigation**, which the Sandiganbayan granted.

In a **Resolution** dated August 22, 2001, Ombudsman Special Prosecutor (OSP) Jesus A. Micael recommended the dismissal of Criminal Cases Nos. 24635-36 for lack of probable cause.

On the charge of overpricing, the Special Prosecutor found that the purchase of the radio antenna and the installation of the 80-foot tower by the municipal government of Prosperidad, Agusan del Sur, was above board. The allegation of overpricing was unfounded as the lower price obtained by COA did not include the additional expenses for the installation of the antenna, such as labor and transportation costs, as well as the additional accessories. The OSP likewise observed from the price quotations on record that the price for the antenna varied, depending on what the package included. In sum, according to the OSP, there is no probable cause to hold the petitioner liable for entering into a transaction disadvantageous to the government.

On the propriety of installing the radio antenna at petitioner's residence, the Special Prosecutor found that the installation of said antenna was in response to the demand of the various *barangays* of the municipality. The Association of Barangay Councils (ABC) of Prosperidad, Agusan del Sur, which passed ABC Resolution No. 38, Series of 1994 on September 5, 1994, urged petitioner to establish a Very High Frequency (VHF) Radio Transceiver with aerial antenna at his residence in San Jose, Prosperidad, to facilitate communication between petitioner and his constituents, thus:

The resolution was premised on the fact that the geographical situation of the town and the lack of communication facilities that could reach the residence of the Mayor greatly diminished effective and efficient public service on a 24 hour basis; that the regular interaction between and among local executives and its constituents is inevitable in the exercise of its supervisory powers and responsibilities; that the residence of the mayor is located about 14 km. away from the Municipal Hall and the only mode of communication he could be reached immediately is through VHF Radio of which all Barangay Captains utilize thereby creating a network; and that the presence of strong insurgency movement and other crimes in the town necessitates the regular contact with the Mayor personally during night time or whenever the latter was away from his office.

. . .

On postscript, ... upon the recommendation of the commission on audit, the radio antenna was reinstalled and transferred to the newly constructed PNP building at Prosperidad, Agusan del Sur.^[6]

On instructions of Ombudsman Aniano Desierto, the Office of the Chief Legal Counsel of the Ombudsman reviewed the resolution of the OSP. In its **Memorandum** of September 12, 2001, the Office of the Chief Legal Counsel approved the withdrawal of the information for violation of Sec. 3 (g) of Rep. Act No. 3019, but recommended the prosecution of petitioner for violation of Sec. 3 (e) of Rep. Act No. 3019. The Office of the Chief Legal Counsel explained:

. . .

However, the information for violation of R.A. 3019, Sec. 3 (e) should be sustained on the ground that the installation of the antenna should not have been made in the premises of the residence of the accused, but on government owned or non-private property. It must be pointed out that the argument of proximity does not hold water since the accused is not supposed to hold office in his residence (at least not in the daytime, or during office hours), or conduct official business therein, but in the town hall. The subsequent transfer of the antenna simply drove home the point that in the first place, it should not have been installed on a private property away from or outside of the perimeter of the municipal hall. Such subsequent transfer entailed additional and unnecessary expense on the part of the government.^[7]

Ombudsman Desierto approved the foregoing recommendation in his **Order** of September 12, 2001.

Hence, this petition. In its **Comment** on the petition, respondent Ombudsman, through the OSP, cites as issues the following:

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WHETHER THIS HONORABLE COURT SHOULD GIVE DUE COURSE TO THE INSTANT PETITION CONSIDERING THAT THE ISSUE RAISED BY THE PETITIONER CONCERNS THE CORRECTNESS OF THE ACTION OF THE OMBUDSMAN IN NOT DISMISSING THE CASE AGAINST THE PETITIONER