

## FIRST DIVISION

[ G.R. Nos. 140619-24, March 09, 2001 ]

**BENEDICTO E. KUIZON, JOSELITO RANIERO J. DAAN AND ROSALINA T. TOLIBAS, PETITIONERS, VS. HON. ANIANO A. DESIERTO, IN HIS CAPACITY AS OMBUDSMAN AND THE HON. SANDIGANBAYAN (FOURTH DIVISION), RESPONDENTS.**

### DECISION

**PUNO, J.:**

This is a petition for certiorari under Rule 65 of the Rules of Court filed by incumbent Municipal Mayor of Bato, Leyte, Benedicto E. Kuizon, Joselito Raniero J. Daan and Rosalina T. Tolibas to set aside the approval by the respondent Ombudsman Aniano A. Desierto of the Memorandum dated May 17, 1999 of Paul Elmer M. Clemente of the Office of the Chief Legal Counsel, Office of the Ombudsman, recommending the prosecution of herein petitioners.

The cases subject of this petition emanated from a complaint<sup>[1]</sup> filed on December 8, 1995 by one Melanio Saporas with the Office of the Ombudsman-Visayas (OMB-Visayas) against petitioner Benedicto Kuizon for Nepotism and Malversation Thru Falsification of Public Documents in connection with the forging of signatures of some casual laborers of Bato, Leyte in the payroll slips of the municipality and the drawing of their salaries on different dates. The case was docketed as OMB-VIS-CRIM-95-0646.

Attached to Saporas' complaint is the affidavit of one Zacarias Kuizon who claimed to have been formerly hired by petitioner Kuizon as a laborer at Bato, Leyte. Petitioner Kuizon allegedly had already dispensed with the services of Zacarias for the month of February, 1995 but the latter's signature was forged in the payroll for the said month and somebody took his salary in the amount of P890.00 for that period.<sup>[2]</sup>

In an Evaluation Report dated December 19, 1995, June L. Iway, Graft Investigation Officer I of the OMB-Visayas, recommended that petitioners Rosalina T. Tolibas and Joselito Raniero J. Daan, Paymaster/Municipal Treasurer and Timekeeper, respectively, should be included in the complaint as respondents.

In an Order dated December 19, 1995, petitioners were ordered to file their counter-affidavits. On February 20, 1996, petitioners submitted their Answer with Special Affirmative Defenses,<sup>[3]</sup> attaching therewith the counter-affidavits of petitioners Daan and Tolibas<sup>[4]</sup> as well as the affidavits of several witnesses<sup>[5]</sup> to rebut the accusations of Saporas and Zacarias Kuizon.

Meanwhile on November 15, 1995, Saporas filed another complaint against petitioners with the Office of the Ombudsman, Manila docketed as OMB-2-96-0049.

The complaint was referred to the Office of the Deputy Ombudsman for the Visayas in an Indorsement dated January 29, 1996. On March 21, 1996, petitioners were required to file their respective counter-affidavits. On April 22, 1996, petitioner Kuizon, assisted by Atty. Leo Giron, filed his counter-affidavit,<sup>[6]</sup> attaching therewith the counter-affidavits of petitioners Tolibas and Daan. OMB-Visayas granted petitioners' Motion for Consolidation of Cases and Setting of Hearing of the two (2) complaints.

On May 28, 1996, complainant Saporas submitted the affidavits of Ceferino Cedejana<sup>[7]</sup> and Concordio Cedejana<sup>[8]</sup> in support of his allegations in OMB-2-96-0049. Both Ceferino and Concordio made virtually similar allegations as those made by Zacarias except the amounts representing their salaries for the month of February, 1995 which are P2,136.00 and P1,157.00, respectively.

Petitioners filed a Motion to Exclude the Affidavits of Ceferino and Concordio<sup>[9]</sup> which was denied in an Order dated July 8, 1996. They filed their supplemental counter-affidavit on July 26, 1996 in compliance with the order requiring them to do so. On separate dates, petitioners filed their Joint Position Paper<sup>[10]</sup> and Joint Supplemental Memorandum.<sup>[11]</sup>

On June 20, 1997, OMB-Visayas thru Graft Investigation Officer I Samuel Malazarte issued a Resolution<sup>[12]</sup> in OMB-VIS-CRIM-95-0646 and OMB-2-96-0049 recommending the filing of the Informations for Malversation and Falsification of Public/Official Document on two (2) counts each against all the petitioners before the Sandiganbayan. GIO Malazarte recommended however the dismissal of the complaint for nepotism against petitioner Kuizon. The pertinent portion of the said Resolution states:

"While complainant's witnesses, Zacarias Kuizon, is shown to have used two different signatures in signing documents, such as those found on a Joint Affidavit and an Affidavit (Annexes "1" and "2", respectively, of respondent Mayor's Counter-Affidavit), yet there is no proof shown that the aforesaid witness has affixed on any other document a signature similar, if not exactly the same, as the questioned signature purportedly that of the same witness appearing on the above-mentioned Time Book and Payroll for the period February 16 to 28, 1995. It is likewise not shown that complainants' two other witnesses, Ceferino Cedejana and Concordio Cedejana, has [sic] signed on any other document signatures similar, if not the same, as the questioned signature(s) appearing on the Time Book and payroll for the periods February 1 to 15, 1995 and February 16 to 28, 1995, in the case of Ceferino Cedejana, and February 1 to 15, 1995, in the case of Concordio Cedejana. Indeed, a person may use two or more signatures. But in a case as this, where the complainant, or his witnesses, specifically denied the particular signatures in question and imputed authorship of the falsifications thereof against the respondents, who otherwise claimed that said questioned signatures belong to the complainant's witnesses, it is incumbent upon the latter to disprove the denial by solid evidence, such as a finding of a handwriting examiner/expert - considering that they (respondents) are in possession of the original documents bearing the allegedly falsified/forged signatures. No such kind of evidence, however, was

adduced.

The respondents relied heavily for corroboration on the testimonies of witnesses who, at one time or another, were co-workers/laborers of complainant's witnesses in the above-mentioned construction of [a] new Municipal Hall Building of Bato, Leyte. But owing to a high possibility that said respondents' witnesses were coaxed, influenced, or pressured into signing the affidavits and to so testify, considering the circumstances of their work and place of residence, the undersigned cannot give full credence to the testimonies of said respondents' witnesses as against the complainant's witnesses' specific denial of ownership of the questioned signatures, for the purpose of this preliminary investigation.

From the claims of respondents Joselito Raniero J. Daan and Rosalina T. Tolibas that they personally know the aforementioned complainant's witnesses and had called their names, made them sign on the payroll[s] in question in their (respondents') presence and gave them their corresponding salaries, a clear inference can be drawn that there was collusion or connivance of the aforesaid respondents which is made more manifest by their respective certifications on the questioned Time Book and Payrolls for the periods February 1 to 15, 1995, and February 16 to 28, 1995. And the respondent Mayor Benedicto E. Kuizon's certification on the same questioned payrolls and his statement that he knows for a fact that the complainant's witnesses have actually worked during the questioned period of February 1995 serve to complete the conspiracy."  
[13]

The Resolution was approved by the respondent Ombudsman Aniano A. Desierto on September 5, 1997.

Petitioners learned that four (4) Informations dated June 20, 1997 were filed against them on September 16, 1997 with the Sandiganbayan<sup>[14]</sup> by the Office of the Ombudsman.<sup>[15]</sup> The cases were docketed as Criminal Case Nos. 24167<sup>[16]</sup> and 24169<sup>[17]</sup> for Falsification of Public/Official Document and Criminal Case Nos. 24168<sup>[18]</sup> and 24170<sup>[19]</sup> for Malversation of Public Funds.

On October 22, 1996, Saporas filed with the OMB-Visayas another Affidavit-Complaint<sup>[20]</sup> for Malversation of Public Funds Thru Falsification of Public Documents and violation of R.A. No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act against herein petitioners and three others, namely, Municipal Treasurer Lolita S. Regana, Municipal Accountant Ofelia F. Boroy and Budget Officer Glafica R. Suico for alleged connivance in including in the payrolls for the construction of the municipal building of Bato, Leyte, names of workers whose services were already terminated, making it appear that they still worked and received salaries even after their termination from service. The affidavits of Andres Soso Pague<sup>[21]</sup> and Danilo Cortes<sup>[22]</sup> were attached to the said complaint which was docketed as OMB-VIS-CRIM-96-1173 and OMB-VIS-ADM-96-0474.

Only petitioner Daan filed his counter-affidavit in OMB-VIS-CRIM-96-1173.<sup>[23]</sup> Petitioners Kuizon and Tolibas as well as the three (3) other respondents therein, namely, Regana, Boroy and Suico filed an Answer/Counter-Affidavits/Manifestation

in OMB-VIS-ADM-96-0474<sup>[24]</sup> as shown in the caption of their pleading. Attached therewith were the affidavits of petitioners' witnesses Felipe Cortez<sup>[25]</sup>, Melquiades Jupista, Alberto Gerongco, Noel Umapas,<sup>[26]</sup> Jhonny Mariño, Ricardo Garao, Savino Kuizon,<sup>[27]</sup> Domingo Echevarre,<sup>[28]</sup> Alfonso Tabale, Alberto Gerongco, Romeo Marino, Vicente Marino<sup>[29]</sup> and Marciano Bohol.<sup>[30]</sup>

On July 28, 1997, OMB-Visayas thru Graft Investigation Officer I Venerando Ralph P. Santiago, Jr. issued a Resolution<sup>[31]</sup> in OMB-VIS-CRIM-96-1173 finding sufficient grounds to hold petitioners for trial for Malversation of Public Funds and Falsification of Public Documents. The Resolution reads in part, thus:

"Joselito Rainero (sic) K. (sic) Daan, the lone respondent who filed his counter-affidavit, claimed that Danilo S. Cortez and Andres S. Pague, personally signed the payrolls. If these were true, then Messrs. Cortez and Pague must have worked during those times indicated in the payrolls when their names appeared. But according to them they worked only for less than one month, and this allegation was not controverted by the respondents - even by the answering respondent. How could they have claimed their salaries without working for these?

The claim of respondent Daan is even belied by the copies of the payrolls attached to the complaint. A scrutiny between the signatures of Danilo S. Cortez and Andres S. Pague in their affidavits and those in the payrolls reveals a striking difference, especially that of Danilo S. Cortez in the payrolls for the months of November and December, 1995 (pp. 22, 24 & 28, record). This dissimilarity of signatures of Messrs. Cortez and Pague in their affidavits and in the payrolls is sufficient to form a well founded belief that the latter documents had been forged and their salaries were maliciously appropriated by the respondents for their personal use. And the Forgery and Malversation could only be committed by the persons who prepared and approved the payrolls, namely: Benedicto E. Kuizon, Joselito Rainero (sic) K. (sic) Daan and Rosalinda T. Tolibas. This is not a farfetched conclusion because respondents Kuizon and Daan certified that the persons whose names appeared in the payrolls had rendered their services, while respondent Tolibas certified that he had paid in cash to the persons whose names appeared on the payrolls, the amount set opposite their names, they having presented themselves, established their identity and affixed their signatures or thumb marks on the space provided therefor.

This Office also finds that the falsification was committed to conceal the malversation, the payrolls having been used by the above-named respondents as supporting documents to liquidate the cash advances they had received for the payment of the salaries of the workers."<sup>[32]</sup>

The Resolution was approved by the respondent Ombudsman Aniano A. Desierto on September 19, 1997.

Upon verification, the petitioners learned that two (2) Informations<sup>[33]</sup> both dated July 28, 1997 were filed against them in September, 1997 by the Office of the Ombudsman with the Sandiganbayan.<sup>[34]</sup> The cases were docketed as Criminal Case

Nos. 24195 for Malversation of Public Funds and 24196 for Falsification of Public Documents.

Petitioners filed two (2) separate Motions for Reinvestigation<sup>[35]</sup> both dated October 4, 1997 in Criminal Case Nos. 24167 to 24170 and Criminal Case Nos. 24195 to 24196. Petitioners likewise filed a Motion for Consolidation of Criminal Case Nos. 24195 and 24196 with the four (4) other cases which was granted by the Sandiganbayan (Third Division) in its Order<sup>[36]</sup> dated October 30, 1997.

In an Order dated November 24, 1997,<sup>[37]</sup> the Sandiganbayan (Fourth Division) granted the two (2) Motions for Reinvestigation filed by the petitioners. On June 10, 1999, Special Prosecution Officer II Lemuel M. De Guzman filed a Manifestation<sup>[38]</sup> with the Sandiganbayan which reads as follows:

- "1. In a Memorandum dated August 19, 1998, a certified true copy of which is hereto attached and made an integral part hereof as Annex "A", the undersigned terminated action on the two (2) Motions for Reconsideration dated October 4, 1997 filed by all the accused as well as the Counter-Affidavit dated February 7, 1998 filed by accused Benedicto E. Kuizon in the above-captioned cases and recommended the exclusion of accused Mayor Benedicto E. Kuizon as party-accused therein and to remand the case to the regular court for the prosecution of accused Joselito Ramiero (sic) K. (sic) Daan and Rosalina T. Tolibas.
2. On September 8, 1998, the Honorable Special Prosecutor Leonardo P. Tamayo required Special Prosecution Officer Norberto B. Ruiz to take a second look into the undersigned's memorandum. In another Memorandum dated November 16, 1998, a certified true copy of which is hereto attached and made [an] integral part hereof as Annex "B", Prosecutor Ruiz recommended the affirmation of the previous memorandum, which the Honorable Special Prosecutor concurred in.
3. On May 7, 1999, before acting on the cases, the Honorable Ombudsman referred the records thereof to the Office of the Chief Legal Counsel (OCLC) '(F)or review considering that OSP seeks to reverse the Ombudsman's findings.'
4. In a Memorandum dated May 17, 1999, a certified true copy of which is hereto attached and made [an] integral part hereof as Annex "C", OCLC recommended the continued prosecution of all the accused 'there being no cogent grounds to warrant a reversal of the finding of probable cause by OMB-Visayas.' This memorandum was approved by the Honorable Ombudsman on June 1, 1999 and, accordingly, the undersigned's memorandum was disapproved with the following marginal note: 'Prosecution of all the accused shall proceed as recommended by OCLC.'"<sup>[39]</sup>