

## EN BANC

[ G.R. No. 124295, October 23, 2001 ]

**JUDGE RENATO A. FUENTES, PETITIONER, VS. OFFICE OF THE OMBUDSMAN-MINDANAO, GRAFT INVESTIGATION OFFICER II, MARIVIC A. TRABAJO-DARAY, ANTONIO E. VALENZUELA IN HIS CAPACITY AS THE DIRECTOR FOR FACT FINDING AND INTELLIGENCE OF THE OFFICE OF THE DEPUTY OMBUDSMAN FOR MINDANAO, AND MARGARITO P. GERVACIO, JR., IN HIS CAPACITY AS DEPUTY OMBUDSMAN FOR MINDANAO, RESPONDENTS.**

### DECISION

**PARDO, J.:**

The case is a petition<sup>[1]</sup> for *certiorari* assailing the propriety of the Ombudsman's action investigating petitioner for violation of Republic Act No. 3019, Section 3(e).<sup>[2]</sup>

On August 23, 1995, we promulgated a decision in Administrative Matter No. RTJ-94-1270.<sup>[3]</sup> The antecedent facts are as follows:

"x x x [P]ursuant to the government's plan to construct its first fly-over in Davao City, the Republic of the Philippines (represented by DPWH) filed an expropriation case against the owners of the properties affected by the project, namely, defendants Tessie Amadeo, Reynaldo Lao and Rev. Alfonso Galo. The case was docketed as Special Civil Case No. 22,052-93 and presided by Judge Renato A. Fuentes.

"The government won the expropriation case. x x x

"As of May 19, 1994, the DPWH still owed the defendants-lot owners, the total sum of P15,510,415.00 broken down as follows:

Dr. Reynaldo Lao -P 489,000.00  
Tessie P. Amadeo -P 1,094,200.00  
Rev. Alfonso Galo-P 13,927,215.00

"In an order dated April 5, 1994, the lower court granted Tessie Amadeo's motion for the issuance of a writ of execution against the DPWH to satisfy her unpaid claim. The Order was received by DPWH (Regional XI) through its Legal Officer, Atty. Warelito Cartagena. DPWH's counsel, the Office of the Solicitor General, received its copy of the order only on May 10, 1994.

"On April 6, 1994, Clerk of Court Rogelio Fabro issued the corresponding Writ of Execution. On April 15, 1994, the writ was served by respondent Sheriff Paralisan to the DPWH-Region XI (Legal Services) through William Nagar.

"On May 3, 1994, respondent Sheriff Paralisan issued a Notice of Levy, addressed to the Regional Director of the DPWH, Davao City, describing the properties subject of the levy as `All scrap iron/junks found in the premises of the Department of Public Works and Highways depot at Panacan, Davao City'x x x.

"The auction sale pushed through on May 18, 1994 at the DPWH depot in Panacan, Davao City. Alex Bacquial emerged as the highest bidder. x x x Sheriff Paralisan issued the corresponding certificate of sale in favor of Alex Bacquial. x x x

"Meanwhile, Alex Bacquial, together with respondent Sheriff Paralisan, attempted to withdraw the auctioned properties on May 19, 1994. They were, however, prevented from doing so by the custodian of the subject DPWH properties, a certain Engr. Ramon Alejo, Regional Equipment Engineer, Regional Equipment Services, DPWH depot in Panacan, Davao City. Engr. Alejo claimed that his office was totally unaware of the auction sale, and informed the sheriff that many of the properties within the holding area of the depot were still serviceable and were due for repair and rehabilitation.

"On May 20, 1994, Alex Bacquial filed an ex-parte urgent motion for the issuance of a `break through' order to enable him to effect the withdrawal of the auctioned properties. The motion was granted by Judge Fuentes on the same date.

"On May 21, 1994, Alex Bacquial and Sheriff Paralisan returned to the depot, armed with the lower court's order."<sup>[4]</sup>

Thus, Bacquial succeeded in hauling off the scrap iron/junk equipment in the depot, including the repairable equipment within the DPWH depot. He hauled equipment from the depot for five successive days until the lower court issued another order temporarily suspending the writ of execution it earlier issued in the expropriation case and directing Bacquial not to implement the writ.<sup>[5]</sup>

However, on June 21, 1994, the lower court issued another order upholding the validity of the writ of execution issued in favor of the defendants in Special Civil Case No. 22, 052-93.<sup>[6]</sup>

On the basis of letters from Congressman Manuel M. Garcia of the Second District of Davao City and Engineer Ramon A. Alejo, the Court Administrator, Supreme Court directed Judge Renato A. Fuentes and Sheriff Norberto Paralisan to comment on the report recommending the filing of an administrative case against the sheriff and

other persons responsible for the anomalous implementation of the writ of execution. Also, on September 21, 1994, the Department of Public Works and Highways, through the Solicitor General, filed an administrative complaint against Sheriff Norberto Paralisan for conduct prejudicial to the best interest of the service, in violation of Article IX, Section 36 (b) of P. D. No. 807.<sup>[7]</sup>

After considering the foregoing facts, on August 23, 1995, the Supreme Court promulgated a decision, the dispositive portion of which states:

"IN VIEW WHEREOF, respondent NORBERTO PARALISAN, Sheriff IV, Regional Trial Court (Branch XVII), Davao City, is declared guilty of conduct prejudicial to the best interest of the service, in violation of Section 36 (b), Article IX of PD 807. Accordingly, respondent sheriff is DISMISSED from the service, with forfeiture of all retirement benefits and accrued leave credits and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations. The office of the Court Administrator is directed to conduct an investigation on Judge Renato Fuentes and to charge him if the result of the investigation so warrants. The Office of the Solicitor General is likewise ordered to take appropriate action to recover the value of the serviceable or repairable equipment which were unlawfully hauled by Alex Bacquial."<sup>[8]</sup> (underscoring ours)

On January 15, 1996, Director Antonio E. Valenzuela (hereafter, Valenzuela) of the Office of the Ombudsman-Mindanao recommended that petitioner Judge Renato A. Fuentes be charged before the Sandiganbayan with violation of Republic Act No. 3019, Section 3 (e) and likewise be administratively charged before the Supreme Court with acts unbecoming of a judge.<sup>[9]</sup>

On January 22, 1996, Director Valenzuela filed with the Office of the Deputy Ombudsman for Mindanao a criminal complaint<sup>[10]</sup> charging Judge Rentao A. Fuentes with violation of Republic Act No. 3019, Section 3 (e).

On February 6, 1996, the Office of the Ombudsman-Mindanao through Graft Investigation Officer II Marivic A. Trabajo-Daray issued an order directing petitioner to submit his counter-affidavit within ten days.<sup>[11]</sup>

On February 22, 1996, petitioner filed with the Office of the Ombudsman-Mindanao a motion to dismiss complaint and/or manifestation to forward all records to the Supreme Court.<sup>[12]</sup>

On March 15, 1996, Graft Investigation Officer Marivic A. Trabajo-Daray denied the motion of petitioner.<sup>[13]</sup>

Hence, this petition.<sup>[14]</sup>

The issue is whether the Ombudsman may conduct an investigation of acts of a judge in the exercise of his official functions alleged to be in violation of the Anti-Graft and Corrupt Practices Act, in the absence of an administrative charge for the