

## SECOND DIVISION

[ G.R. No. 110220, May 18, 2000 ]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. RODOLFO V. TOLEDANO, IN HIS CAPACITY AS PRESIDING JUDGE OF THE RTC, BRANCH 69 AND ROLANDO BUNAO, ACCUSED IN CRIMINAL CASE NO. RTC-1274-1, RESPONDENTS.**

### DECISION

**BUENA, J.:**

In this petition for *certiorari* and mandamus, petitioner seeks to (1) annul and set aside the Orders of the Regional Trial Court of Zambales in Criminal Case No. RTC 1274-I, entitled "People of the Philippines versus Rolando Bunao," dated February 26, 1993 and April 12, 1993, which dismissed the information filed against private respondent Bunao and denied petitioner's motion for reconsideration of the dismissal order, respectively; and (2) prevent respondent judge from hearing the case in the event of reinstatement of the information.

On June 25, 1990, private respondent Rolando Bunao, while allegedly a member of the Sangguniang Bayan of Sta. Cruz, Zambales and its Committee on Bids and Awards, entered into a lease contract with said municipality covering two (2) public market stalls. As a consequence, two (2) administrative charges for violation of Section 3(h) of Republic Act No. 3019<sup>[1]</sup> docketed as OMB-1-91-1482 and Republic Act No. 6713 docketed as OMB-ADM-1-91-0327 were filed against private respondent with the Office of the Ombudsman for Luzon.

On October 12, 1992 the Office of the Ombudsman dismissed Administrative Case No. OMB-1-91-1482 but recommended the prosecution of private respondent under Section 41, par.(1) in relation to Section 221 of Batas Pambansa Blg. 337 otherwise known as the 1983 Local Government Code. Similarly, on November 24, 1992 Administrative Case No. OMB-ADM-1-91-0327 was likewise dismissed but respondent was enjoined to terminate and surrender the contract of lease he executed with the municipality of Sta. Cruz, Zambales over stall nos. 115 and 116 at the new public market of said municipality.

On December 7, 1992 an information for violation of Section 41(1) in relation to Section 221 of Batas Pambansa Blg. 337 was filed against private respondent before the Regional Trial Court of Iba, Zambales. The information reads:

"That on or about the 25th day of June 1990, in the municipality of Sta. Cruz, province of Zambales, Philippines, and within the jurisdiction of this Honorable Court the above-named accused being then a member of the Sangguniang Bayan of Sta. Cruz, Zambales and the Committee on Bids and Awards of said Sanggunian and taking advantage of said positions, did then and there willfully, unlawfully and feloniously execute a lease

contract with the municipality of Sta. Cruz, Zambales for two(2) market stalls at the public market thereat, in his favor, to the detriment of other stall holders and business competitors.

CONTRARY TO LAW."

The pertinent provision of the old Local Government Code or B.P. Blg. 337 that was allegedly violated reads:

"Section 41. *Officials not to Engage in Business Transactions or Possess Pecuniary Interest.*- It shall be unlawful for any lawful government official, directly or indirectly, individually or as a member of a firm:

- (1) To engage in any business transaction with the local government unit of which he is an official or over which he has the power of supervision, or with any of its authorized official, boards, agents, or attorneys, whereby money is to be paid, or property or any other thing of value is to be transferred, directly or indirectly, out of the resources of the local government unit to such person or firm;

x x x      x x x      x x x"

Section 221 of the same Code provides for the penal sanctions for such violation, thus:

"Section 221. *Engaging in Business Transactions or Possessing Pecuniary Interest.*- Any local government official and any person or persons dealing with him who violate the prohibitions provided in Section 41 hereof, shall be punished with prision correccional or fine of not less than three thousand pesos (P3,000.00) nor more than ten thousand pesos(P10,000.00), or both such imprisonment and fine at the discretion of the court."

Before arraignment, private respondent moved to dismiss the information on the ground that the charge had already become moot and academic and that any criminal liability he may have incurred has been extinguished.<sup>[2]</sup> In an Order dated February 26, 1993, respondent Court dismissed the information, to wit:

"Considering that:

"1. The contract of lease is a bilateral contract perfected upon the meeting of the minds of the lessor and the lessee, and therefore cannot be consummated without the knowledge and consent of both, the complainant/lessor in his capacity as Mayor of Municipality of Sta. Cruz, Zambales and the accused as lessee. If any crime was consummated with the execution of the contract of lease, then the information charging the offense should not have been only against the accused but also against the complainant;

"2. The charge against the accused in OMB-ADM-1-91-0327 by the Office

of the Deputy Ombudsman for Luzon was dismissed by the said office;  
"3. It will result in absurdity and inconsistency if the accused were made to answer and be liable in OMB-1-91-1482 and absolved from any liability under OMB-ADM-1-91-0327 when in both cases he is charged for violation of Section 41 of B.P. Blg. 337 otherwise known as the Local Government Code;  
"4. The re-election of the accused as a Kagawad in the 11 May 1992 elections;  
"5. The decision of the Supreme Court in Aguinaldo vs. Santos (supra);  
"6. The Court should be cautious and vigilant so that it does not unknowingly become an instrument of any protagonist in the political arena,

may the accused be still held liable under Section 41, par.(1) of BP Blg. 337. The answer is in the NEGATIVE.

"WHEREFORE, the Information filed against the accused for violation of Section 41, par.(1) in relation to Section 221 of B.P. Blg. 337 is DISMISSED. The cashbond posted by the accused in the amount of P6,000.00 deposited with the Clerk of Court on 15 January 1993 under O.R. No. 147387 is ordered reimbursed to the accused.

SO ORDERED."<sup>[3]</sup>

On April 2, 1993, 2nd Assistant Provincial Prosecutor Benjamin A. Fadera filed a motion for reconsideration of the order of dismissal. With the denial of the motion for reconsideration in an Order dated April 12, 1993,<sup>[4]</sup> Dorentino Z. Floresta, in his capacity as Provincial Prosecutor of Zambales and Deputized Tanodbayan Prosecutor and Benjamin A. Fadera, in his capacity as Assistant Provincial Prosecutor of Zambales and Deputized Tanodbayan Prosecutor filed, on June 2, 1993, this petition for certiorari and mandamus questioning the Orders issued by the respondent court dismissing the information.

Initially, the procedural infirmity regarding the filing of this petition, having been filed by the provincial prosecutor and assistant provincial prosecutor of Zambales instead of the Solicitor General who is authorized to bring and defend actions in behalf of the People or Republic of the Philippines in cases brought before the Supreme Court or the Court of Appeals<sup>[5]</sup> was cured when this Court, in a Resolution dated February 21, 1994, noted and granted the manifestation and motion filed by the Solicitor General "stating that they adopt the petition as their own, and prays that the People be impleaded as party petitioner and the reliefs prayed for in the petition be granted." In view thereof, we now consider the People as the sole petitioner in this case duly represented by the Solicitor General.

The petition is meritorious.

As indicated above, respondent judge dismissed the information on the ground that the administrative case filed against private respondent Bunao with the Office of the Ombudsman had been dismissed. In the memorandum filed by the Solicitor General dated January 11, 1995,<sup>[6]</sup> said order of dismissal on the ground of extinction of criminal liability is assailed for having been issued with grave abuse of discretion amounting to lack of jurisdiction on the part of respondent judge, thus: