

## SECOND DIVISION

[ G.R. No. 136082, May 12, 2000 ]

**FRANKLIN P. BAUTISTA, PETITIONER, VS. SANDIGANBAYAN  
(THIRD DIVISION), OFFICE OF THE OMBUDSMAN AND PEOPLE  
OF THE PHILIPPINES, RESPONDENTS.**

### D E C I S I O N

**BELLOSILLO, J.:**

This petition seeks to set aside the 13 March 1998 Resolution of the Sandiganbayan<sup>[1]</sup> denying petitioner's *Motion to Quash* Crim. Case No. 24276 and its 9 October 1998 Resolution denying reconsideration. The petition also prays for the issuance of a writ of preliminary injunction and/or temporary restraining order to restrain and enjoin public respondents from proceeding in any manner with Crim. Case No. 24276 during the pendency of the petition.

An anonymous, unverified and unsigned letter-complaint dated 20 November 1996 allegedly prepared by the Contractors Association of Davao del Sur and the Good Government Employees<sup>[2]</sup> of Davao del Sur initiated this case. It was filed with the Office of the Ombudsman for Mindanao charging petitioner Franklin P. Bautista, incumbent mayor of the Municipality of Malita, Davao del Sur, for violation of Sec. 3, par. (e), of RA 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act.<sup>[3]</sup> The letter-complaint alleged, among others, that petitioner caused the hiring of one hundred and ninety-two (192) casual employees in the municipal government for political considerations and that the payment of their honoraria and salaries was charged to the peace and order fund despite meager savings of the municipality.<sup>[4]</sup>

Acting on the letter-complaint, Graft Investigation Officer II (GIO II) Corazon A. Arancon issued on 16 January 1997 an Order directing respondent Franklin P. Bautista, petitioner herein, to submit his counter-affidavit.<sup>[5]</sup> In his counter-affidavit of 26 February 1997 petitioner, answering the charges against him, claimed that the complaint, which was unsigned, was fictitious and fabricated as shown by the affidavits of Enrique Ponce De Leon, President of the Contractor's Association of Davao del Sur;<sup>[6]</sup> Rogelio E. Llanos, Governor for Davao del Sur;<sup>[7]</sup> Eduardo M. Masiwel Vice Mayor of Malita, Davao del Sur;<sup>[8]</sup> Engineer Antonio P. Cayoca, Department of Public Works and Highways, 2nd District, Davao del Sur;<sup>[9]</sup> Juanito A. Itorralba, Assistant Provincial Treasurer of Davao del Sur;<sup>[10]</sup> Juan L. de Guzman and Felipe D. Macalinao,<sup>[11]</sup> both teachers, therein attached, which disclaimed any knowledge of the institution of the complaint nor cause of its filing. He further argued that the hiring of the one hundred ninety-two (192) casuals and the payment of their honoraria and wages did not justify the filing of any charge against him.

After due consideration, GIO II Arancon in his Resolution dated 27 May 1997 found a *prima facie* case for violation of Sec. 3, par. (e), of RA 3019, as amended, against petitioner and forwarded the resolution to the Ombudsman for approval.

On 3 October 1997 the Ombudsman approved the resolution. Thereafter, an Information for violation of Sec. 3, par. (e), of RA 3019, as amended, was filed against petitioner before the Sandiganbayan, docketed as Crim. Case No. 24276,<sup>[12]</sup> which read -

That sometime in 1995 or sometime prior thereto, in the Municipality of Malita, Davao del Sur, and within the jurisdiction of this Honorable Court, the above-named accused, a high ranking public officer, being the Mayor, Municipality of Malita, Davao del Sur, while in the performance of his official functions, taking advantage of his position and committing the offense in relation to his office, with manifest partiality, did then and there willfully, unlawfully and criminally caused the hiring of some one hundred ninety-two (192) casual employees in flagrant disregard of Secs. 288 and 289 of the Government Accounting and Auditing Manual (GAAM), the honoraria and salaries of whom were charged to the peace and order fund and to the project component and other services activity fund, respectively and which represented 72.5% of the total personnel services expenditures, thereby giving unwarranted benefits, advantage and preference to the said casuals, causing undue injury to the Municipality of Malita.

On 13 November 1997 petitioner filed a *Motion to Quash* the Information anchored on the ground that the acts charged therein did not constitute the offense indicated in Sec. 3, par. (e), of RA 3019, as amended, and that more than one (1) offense was charged in the Information. After the filing of the opposition, the Sandiganbayan denied on 13 March 1998 the *Motion to Quash* stating that all essential elements of the crime charged were sufficiently alleged in the Information which charged only one offense. On 13 April 1998 petitioner filed a motion for reconsideration but on 9 October 1998 his motion was denied.

Petitioner assails in this petition the denial of his *Motion to Quash* despite failure of the Ombudsman to properly establish a cause of action. He asserts that there was no legal basis for the Ombudsman to conduct a preliminary investigation in Case No. CPL-MIN-96-180, much less file the Information in Crim. Case No. 24276, as the Ombudsman failed to direct the complainants to reduce their evidence into affidavits before requiring him to submit his counter-affidavit. Petitioner invokes Sec. 4, Rule II, of the *Rules of Procedure of the Ombudsman* which requires that for purposes of conducting a preliminary investigation the complainant must submit his affidavit and those of his witnesses before respondent can be required to submit his counter-affidavit and other supporting documents.<sup>[13]</sup> Conformably with such rule, the Ombudsman should have first required the Contractor's Association of Davao del Sur and the Good Government Employees of Davao del Sur to submit their respective affidavits before requiring him as respondent to submit his counter-affidavit, especially since the letter-complaint was unsigned and unverified; hence, there was no valid cause of action against petitioner.

Petitioner cites *Olivas v. Office of the Ombudsman*<sup>[14]</sup> where the Court declared that

in preliminary investigation of cases it is incumbent upon the complainants to submit their evidence in affidavit form and it is only after such submission that respondent may be required to explain and submit his counter-affidavit, also under oath.

This issue has long been laid to rest in *Olivas* where the Court explained that while reports and even raw information obtained from anonymous letters may justify the initiation of an investigation, this stage of the preliminary investigation can be held only after sufficient evidence, derived from submitted affidavits from the complainants and his witnesses, shall have been duly gathered and evaluated, and only thereafter can the respondent be required to submit his affidavits and other documents to explain, also under oath.<sup>[15]</sup> It is from such affidavits and counter-affidavits that the Ombudsman can determine whether there is a probable cause for bringing the case to court.

However, despite its wisdom, we must rule that the principle enunciated in *Olivas* has no bearing in the instant petition. What was assailed therein was the order of the Ombudsman compelling petitioner *Olivas* to file his counter-affidavit in answer to the charges against him, he having refused to do so since the order was not accompanied by a single affidavit from the complainants as mandated by law; while in the instant case, petitioner *Bautista* had already filed his counter-affidavit before the Ombudsman and only questioned the latter's failure to require the complainants to submit affidavits prior to the submission of his own counter-affidavit after the preliminary investigation had ended and an Information already filed before the Sandiganbayan. The issue therefore of requiring the complainants to submit their affidavits before respondent can be obliged to submit his counter-affidavit is moot and academic in light of *Bautista*'s submission of his counter-affidavit despite absence of the complainants' affidavits.

Criminal Case No. 24276 before the Sandiganbayan stemmed from the letter allegedly sent by the Contractors' Association of Davao del Sur and the Good Government Employees of Davao del Sur addressed to the Office of the Ombudsman for Mindanao. It may be true that GIO II Arancon in his Order of 16 January 1997 directed herein petitioner to submit his counter-affidavit thereto without requiring the complainants to submit theirs which were significantly necessary because of the unverified, unsigned and anonymous nature of their letter. However, despite the Ombudsman's noncompliance with the affidavit requirement, petitioner filed his counter-affidavit on 26 February 1997 and answered the charges against him. Hence, having submitted himself to the jurisdiction of the Ombudsman and having allowed the proceedings to go on until the preliminary investigation was terminated and the Information filed at the Sandiganbayan, petitioner is deemed to have waived whatever right he may otherwise have to assail the manner in which the preliminary investigation was conducted. Consequently, petitioner is likewise estopped from questioning the validity of the Information filed before the Sandiganbayan.

Petitioner likewise avers that the Sandiganbayan gravely abused its discretion in denying his *Motion to Quash* the Information as there were at least two (2) offenses charged - the giving of unwarranted benefits, advantage and preference to the casual employees in question, and causing undue injury to the Municipality of Malita. Petitioner invokes *Santiago v. Garchitorena*<sup>[16]</sup> where it was held that there were