

TWENTY-SECOND DIVISION

[CA-G.R. SP. NO. 04509-MIN, January 30, 2014]

**ROLTON S. NORICO AND BENJAMIN V. GENOTA, PETITIONERS,
VS. ARNEL DAYANGHIRANG, RESPONDENT.**

D E C I S I O N

LOPEZ, J.:

Before us is a Petition for Review^[1] under Rule 43 of the Rules of Court filed by petitioners to assail the July 14, 2006 Decision^[2] of the Office of the Ombudsman , Mindanao, rendered in Case No. OMB-M-A-06-017-A for Grave Misconduct/Oppression. The assailed Decision decreed thus:

“WHEREFORE, PREMISES CONSIDERED, this Office finds substantial evidence to hold respondents BENJAMIN ROBLE LAO, ROLTON SANDOVAL NORICO and BENJAMIN VICERA GENOTA GUILTY of GRAVE MISCONDUCT and OPPRESSION pursuant to Section 52 (A)(3) and (14) and Section 55 of Resolution No. 991936 otherwise known as the Uniform Rules on Administrative Cases in the Civil Service and are hereby DISMISSED from the service with forfeiture of all the retirement benefits, if any, and with prejudice to re-employment in any branch, agency, or instrumentality of the government including government-owned or controlled corporations.

The Honorable Commissioner Alipio F. Fernandez, Jr., is hereby directed to immediately implement the Decision and to inform this Office of the action taken within ten (10) days from receipt hereof.

SO DECIDED.”

Petitioners likewise assail its September 8, 2011 Resolution^[3] denying their motion for reconsideration.

The Antecedents

The facts, as culled by the Office of the Ombudsman, are as follows:

For arbitrarily detaining two (2) Chinese nationals and soliciting for their release \$5,000.00 U.S. Dollars per person, Alien Control Officer Benjamin Roble Lao, Immigration Officer I Rolton Sandoval Norico, and Intelligence Officer II Benjamin Vicera Genota, of the Bureau of Immigration and Deportation (BID), Davao District Office, Davao City, are administratively charged with Grave Misconduct and Oppression.

In his affidavit^[4], complainant Arnel A. Dayanghirang alleged that on December 31, 2005, at around 3:30 in the afternoon, Mr. Linkun Qui and Ms. Qingying Wang, Chinese Nationals, were illegally detained by respondent Benjamin Genota, at the

Bureau of Immigration and Deportation (BID) under the verbal order of Commissioner Alipio Fernandez of BID. He was requested by the above-mentioned Chinese Nationals to inquire as to the legality of their detention in the Immigration Office. Accordingly, on the said date, he asked respondent Genota if he has any evidence or document to support the legality of the detention but respondent Genota did not present the Charge Sheet or any evidence or document. Allegedly, respondent Genota asked him how much was his budget to facilitate the release of the two Chinese Nationals, and he told him (Genota) that he did not know what he meant by it so he remained mum about it.

On the following day, January 1, 2006, he went to the Immigration Office together with Atty. Pablo Teñoso to inquire as to the legality of the detention of the said Chinese Nationals but unfortunately respondent Genota again failed to present the Charge Sheet. Instead respondent Genota advised them to ventilate their query before the Commissioner of the Bureau of Immigration and Deportation.

On January 2, 2006, at around 11:50 in the morning, he together with respondent Genota, Johnny Go (Chinese Interpreter) and an unnamed intelligence agent, were in the office of respondent Benjamin Lao to follow-up the detention of the said aliens. On the said instance, respondent Lao told him to settle the matter amicably with respondent Genota. Allegedly, respondent Lao allowed the use of his office in order to facilitate their corrupt practices to his prejudice. Thus, he asked respondent Genota how to settle the matter amicably. When respondent Genota was about to answer, respondent Norico opened the door of the office of respondent Lao and called the former to go outside the room. After five minutes, respondent Genota came back in the room and told him that the amicable settlement for the release of the detained aliens was \$5000.00 U.S. Dollars per person because according to him the Manila head office already knew of the said situation and that was the amount his boss told him. He told respondent Genota that he cannot afford to pay such amount and he will just settle this matter by legal means.

Complainant stressed that the Memorandum dated December 31, 2005 issued by respondent Rolton Norico and the Commitment Order dated January 2, 2006 issued by Atty. Faizal Hussin, the Chief of the Intelligence Division of the BID contained the names Chen Hua and Lze Zhiang Hua. However, in the Joint-Affidavit executed by the detained Chinese Nationals, their names are Mr. Linkun Qui and Ms. Qingying Wang. Due to the discrepancy of the above-mentioned documents, it is apparent that the immigration officers are detaining the wrong persons. In fact, from December 31, 2005 up to January 4, 2006, the said Chinese Nationals were still arbitrarily detained in the Immigration Office. Hence, the complaint before the Office of the Ombudsman.

Affiants Barsabas "Bobby" B. Largo and Marconi "Jong" Sukyo, Jr., both media men of Gold City Express Publication, corroborated the statement of complainant Dayanghirang that they heard and saw respondent Benjamin Genota asked \$5,000.00 U.S. Dollars per head to facilitate the release of two (2) Chinese Nationals.^[5]

Affiants Mr. Linkun Qui and Ms. Qingying Wang in their Joint-Affidavit^[6], alleged that on December 31, 2005, at around 3:30 in the afternoon, they were detained illegally without any legal grounds whatsoever by respondent Genota. They further alleged that they were not aware of any charge whatsoever, as there was no evidentiary document presented to them, and they do not know why they were detained.

Finding the complaint sufficient in form and substance, the Office of the Ombudsman issued an Order directing the therein respondents to answer the charge.^[7]

Vehemently denying the allegations and insinuations made against them, respondents in their joint counter-affidavit^[8] explained among others, that last December 31, 2005, respondent Rolton Norico was the Acting Officer-In-Charge assigned at the Davao International Airport.^[9]

Upon the arrival of Silkair Flight No. MI-566 at around 2:45p.m. on that day, among the passengers were two persons who were deported by Singapore immigration authorities for, among others, holding altered U.S. visas and photosub (substituted photos) Philippine Passports.^[10] When the said two Chinese looking persons were interviewed by respondent Rolton Norico, they were holding Philippine Passports with Nos. HH507550 and GG804852, respectively, identifying them as Mr. Virgilio Parumog and Ms. Marie Christine Litton.

However, despite having Philippine Passports, the said persons were unable to answer questions posed to them in Filipino and even when the questions were made in English.

Upon examination of the passports, it was revealed that they had exited from the Philippines on July 4, 2005, as shown by the departure stamp with No. 446.^[11] These circumstances prompted respondent Rolton Norico to instruct Atty. Samson Magoncia, the assigned immigration officer on duty, to hold the said passengers and to submit the necessary incident report and have the said passports turned over for investigation.

Strangely, instead of doing all of these things, Atty. Magoncia just took the said passengers' Philippine passports and apparently went to the Departure Area of the airport and subsequently left the premises of the airport.^{[1]2}

Since Atty. Magoncia had disappeared, respondent Norico called up respondent Genota and took these passengers to the Davao District Office and turned them over to respondent Genota.

Allegedly, the said incident was immediately reported by respondent Genota to Atty. Faizal Hussin, the Chief of the Intelligence Division of the Bureau of Immigration who instructed respondent Genota to hold the said aliens and, subsequently, a formal commitment order was issued. Thus, the passengers were immediately detained at the detention center for further investigation.^[13]

Allegedly, upon investigation, the said passengers gave their Chinese names as Lee Zhiang Hua and Chen Hua, and claimed to be nationals of the People's Republic of China (PROC) from the Fujian Province. Subsequently, said Chinese nationals were brought from the Davao International Airport to the detention area of the Davao District Office at around 4:00 p.m. on December 31, 2005.

Considering that these passengers have neither cellular phones nor any opportunity up to that point to call any person, it is quite strange that only a few minutes later at around 4:10 in the afternoon, complainant Arnel Dayanghirang arrived at the Davao District Office and went directly to the office of Atty. Magoncia.

Accordingly, complainant together with Atty. Magoncia, talked to respondent Norico requesting that the said Chinese nationals be released, which request was rejected by respondent Norico.^[14]

On January 2, 2006, complainant together with his lawyer and others talked to respondents Lao and Genota. Allegedly, complainant Dayanghirang and Atty. Tenoso were requesting the release of the detained nationals. Respondents Lao and Genota denied the request of complainant Dayanghirang to release the two aliens.

However, complainant Dayanghirang and Atty. Tenoso talked to the said Chinese nationals with the help of Mr. Johnny Go and another interpreter. Accordingly, they were trying to convince the said Chinese nationals to sign a prepared affidavit alleging that they were being illegally detained by respondent Genota without any basis. It was in the said affidavit that the Chinese nationals first identified themselves as Linkun Qui and Qingying Wang.^[15]

After the affidavit was signed, complainant and his party left. Respondents maintained that at no instance during these meetings with complainant Dayanghirang and Atty. Tenoso, were there any discussions about payments or amounts of money for the release of the Chinese nationals. While the original schedule for the said Chinese nationals to be brought to Manila for further investigation and deportation proceedings, if necessary, was on January 2, 2006, the lack of available seats on airline flights caused a delay, and the two aliens were brought to Manila and turned over to the Bureau of Immigration Intelligence Office only on January 6, 2006.

Respondents maintained that it is incumbent upon them to detain the subject Chinese nationals because of the obvious circumstances indicating fraudulent travel documents as well as false representations. They further maintained that the accusation of attempted extortion is false and intended solely to malign them.

Pursuant to Administrative Order No.17, amending Rule III of A.O. No. 07 providing for the Rules of Procedure of the Office of the Ombudsman, both parties were directed to file their respective verified position papers.^[16]

Except for complainant Arnel Dayanghirang, respondents Benjamin Lao, Benjamin Genota and Rolton Norico submitted their Position Paper.^[17]

On April 10, 2006, the Office of the Ombudsman directed Atty. Samson Magoncia, Senior Immigration Officer, Bureau of Immigration, Davao District Office, to comment on the Joint Counter-Affidavit of respondents Benjamin R. Lao, Rolton S. Norico and Benjamin V. Genota,^[18] and likewise directed to furnish the Office of the Ombudsman the certified true copies of the subject passports and travel documents of A.K.A. Lze Zhiang Hua and Chen Hua.

In his comment,^[19] Atty. Samson Magoncia denied among others, that the passports were with him because Rolton Norico, as apprehending officer, never gave him the falsified Philippine passports and other travel documents of the two Chinese nationals. Not being the apprehending officer, he did not have the custody of the Chinese nationals, their Philippine passports and other travel documents. Accordingly, it was not his duty to prepare an incident report, not being the officer who apprehended the two (2) Chinese nationals and confiscated their passports and other travel documents.

On July 14, 2006, the Office of the Ombudsman rendered the assailed Decision finding herein petitioners guilty of Grave Misconduct and Oppression and ordering their dismissal from the service.

Petitioners' motion for reconsideration of the assailed Decision was further denied in its September 8, 2011 Order.

Hence, the instant Petition for Review under Rule 43 of the Rules of Court.

The Issues

1. Whether or not petitioners may be held liable for grave misconduct; and
2. Whether or not petitioners may be held liable for Oppression.

This Court's Ruling

The issues shall be jointly discussed for being interrelated.

In its decision, the Office of the Ombudsman cites the pieces of evidence that support its ruling. It discussed its findings thus:

"One of the constitutional requirements of a valid search warrant or warrant of arrest is that it must be based upon probable cause. Probable cause is based neither on clear and convincing evidence of guilt nor evidence establishing absolute certainty of guilt. It is merely based on opinion and reasonable belief, and so it is enough that there exist such state of facts as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so.

As observed the two (2) Chinese nationals were arrested by respondent Rolton Norico on the pretext that the two were holding falsified U.S. visas and photosub (substituted photos) Philippine passports. But respondents cannot even present the falsified U.S. Visas and photosub Philippine passports. The defense of respondent Rolton Norico that the subject U.S. Visas and photosub Philippine passports of the two aliens were in the possession of Atty. Samson Magoncia is weak. Records show respondent Rolton Norico was the Acting Officer-in-Charge assigned at the Davao International Airport last 31 December 2005. He was the one who interviewed the two Chinese looking persons and examined the passports of the two Chinese nationals who were allegedly holding Philippine Passports with Nos. HH507550 and GG804852. He even apprehended the two (2) Chinese nationals. Since respondent Norico was the apprehending officer, why would he direct Atty. Samson Magoncia to hold the passports of the two Chinese nationals and to submit an incident report? Moreover, it is highly unusual that if indeed the falsified passports of the two Chinese nationals bore departure stamp no. 446, why would respondent Norico entrust the said passports to Atty. Magoncia since said passports are the evidence that they bore departure stamp no. 446?

Likewise, the asseveration of a certain Bobby Salvacion that he turned over personally the passports of the two Chinese nationals to Atty. Magoncia is unconvincing. Respondent Norico in his defense asserted that "when the said two Chinese looking persons were interviewed by