

TWENTY-THIRD DIVISION

[CA-G.R. SP NO. 05138, January 23, 2014]

**DOMINIC SARCON CERRO, PETITIONER, VS. SEOK MI LEE AND
OFFICE OF THE OMBUDSMAN, RESPONDENTS.**

D E C I S I O N

LLOREN, J.:

This is a petition for review of the Decision^[1] dated April 24, 2006 of the Office of the Ombudsman (OMB) in Administrative Case No. OMB-M-A-05-439-L for Grave Misconduct, Abuse of Authority and Violation of Section 4 (c) of R.A. No. 6713 filed by Seok Mi Lee (respondent) against Boye P. Mama (Mama), U.R. Bahinting (Bahinting) and Dominic Sarcon Cerro (petitioner).

The facts as narrated by the OMB are as follows:

Sometime on May 14, 2004, respondents served Search Warrant No. 1044 upon Seoul Motors Trading Corporation wherein complainant Seok Mi Lee (Lee, for brevity) is the General Manager and Chairman. Respondents seized thirty-seven (37) motor vehicles but returned the two (2). A Receipt of Items Seized was issued but it did not show the engine and chassis numbers of the vehicles.

In an Order dated August 23, 2005, Branch 11, Regional Trial Court, Davao City, quashed Search Warrant No. 1044 and directed for the return of complainant's vehicles. The vehicles were finally located inside the compound of Felix Sanchez Jr. at F.S. Steel Corporation in Communal, Buhangin District, Davao City. However, complainant only found twenty five (25) of the thirty-five (35) vehicles originally seized. Worse, all were in disarray and cannibalized.

Complainant also alleged that respondents' jurisdiction is in General Santos City. Thus, respondents exceeded their authority when they applied for the search warrant in Davao City and served it upon Seoul Motors Corporation which is also located in the same place.

Respondent S. Cerro countered that his co-respondent, U R. Bahinting, merely requested for his assistance relative to the service of Search Warrant No. 1044. Cerro admitted that his only participation was to fill-in the Receipt of Items Seized. Since he was unable to locate the engine and chassis numbers of the vehicles, Bahinting informed him that said details will be taken during the preparation of the inventory and return of the warrant. Cerro denied having any knowledge about the rest of complainant's averments.

For their part, respondents Bahinting and Mama averred that Lee was present when they served the Search Warrant No. 1044. The search and

seizure was lawfully made in the presence of witnesses. However, Lee was not anymore around when the vehicles were towed. All of the vehicles have no spare parts and some have incomplete accessories. Respondents averred that the court had knowledge where the seized vehicles were taken and it was only when they made their first return that they were required to include the engine and chassis numbers. They also maintained that Search Warrant No. 1044 was valid. However, respondents denied having any knowledge or information about the allegation that only 25 cannibalized vehicles were recovered from Felix Sanchez Jr. On this matter, respondents passed the buck to Sanchez.^[2]

On November 24, 2005, private respondent filed her Affidavit Complaint^[3] before the OMB. Finding that Mama, Bahinting and petitioner had custody of the seized vehicles, the OMB held them accountable for the losses thereto. It disposed of the case as follows:

WHEREFORE, PREMISES CONSIDERED, this Office finds substantial evidence to hold respondents BOYE PEDRO MAMA, U RAÑOLAS BAHINTING and DOMINIC SARCON CERRO liable for Grave Misconduct, Abuse of Authority and violation of Sec. 4(c) of R.A. 6713, and is hereby meted the penalty of DISMISSAL from government service with forfeiture of all retirement benefits and privileges pursuant to Section 25 of R.A. 6770, otherwise known as "The Ombudsman Act of 1989".^[4]

Mama, Bahinting and petitioner filed their respective motions for reconsideration. In his Motion for Reconsideration,^[5] petitioner claimed that the OMB erred in finding that he, along with Mama and Bahinting, had custody of the seized vehicles. He reiterated that he was just called upon by Bahinting to assist the latter and Mama in implementing the search warrant and that his participation was limited only to the listing of the number and types of vehicles seized.

In the Order^[6] dated May 16, 2012, the OMB denied the motions for reconsideration.

Petitioner now comes before this Court raising the following issues:

I

WHETHER OR NOT THE HONORABLE OFFICE OF THE OMBUDSMAN APPRECIATED THE FACTUAL BACKGROUND OF THE CASE WHICH DISTINCTLY SHOWED THAT PETITIONER IS MERELY A HANDYMAN-RECORDER AND EXERCISES NO DISCRETION WHATSOEVER IN THE OPERATION CONDUCTED BY HIS SUPERIORS.

II

WHETHER OR NOT THE HONORABLE OFFICE OF THE OMBUDSMAN APPRECIATED THE FACTS THAT THE PETITIONER IS NOT LIABLE FOR THE ACTS COMMITTED BY HIS SUPERIORS AND THAT HE IS NOT RESPONSIBLE IN ANY WAY IN THE CONDUCT OF THE SEARCH AND SEIZURE OPERATION AND SUBSEQUENT DISPOSITION OF THE ITEMS SEIZED.^[7]