

THIRTEENTH DIVISION

[CA-G.R. SP. NO. 127450, February 28, 2014]

**FRANCISCO T. CAPARAS, PETITIONER, VS. NESTOR PALOMANIA,
ALEXANDER M. CATURAO AND FIELD INVESTIGATION OFFICE,
OFFICE OF THE OMBUDSMAN, RESPONDENTS.**

DECISION

YBAÑEZ, J.:

Before Us is a petition for review^[1] under Rule 43 of the 1997 Revised Rules of Court seeking to reverse and set aside the *Decision*^[2] penned by GIPO I Clarisa V. Tejada of the Field Investigation Office of the Office of the Ombudsman dated 12 May 2011 finding petitioner guilty of *Grave Misconduct and Dishonesty*. Also, assailed in this petition is the Memorandum^[3] dated 12 August 2012 penned by Acting Director Manuel T. Soriano which recommends that the 12 May 2011 Decision be maintained.

The Facts

The facts of the case, as may be culled from the records, are as follows:

The issue in the instant case sprung from a complaint initiated by private respondents against several government officials of the Province of Bataan, including herein petitioner, for Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service.

On 08 June 2005, Provincial Agriculturist Imelda D. Inieto requested from the provincial government of Bataan a Patrol Boat equipped with a 6 cylinder gas engine.^[4] Thereafter, an invitation to apply for eligibility and to bid was issued by the Bids and Awards Committee (BAC) of the provincial government of Bataan.^[5] When no bidders applied for eligibility, the BAC resorted to limited source of bidding otherwise known as selective bidding.^[6] The contract to build the patrol boat was eventually awarded to Ernesto Asistin, Jr.^[7]

On 05 January 2006, Provincial Agriculturist Imelda Inieto issued a Justification that a 4 cylinder engine will be used for the patrol boat instead of a 6 cylinder engine.^[8]

On 18 January 2006, the patrol boat was delivered and the Provincial Agriculturist requested from the provincial government of Bataan to send representatives for the inspection of the patrol boat.^[9]

On 23 January 2006, herein petitioner came with Supply Officer Pedro Baluyot and M.A.A. Angelina Villanueva to Barangay Wawa, Orion, Bataan where they conducted the inspection of the patrol Boat.^[10]

On 16 February 2006, the payment for the patrol boat was released to Ernesto Asistin, Jr.^[11]

On 03 August 2006, private respondent Nestor Palomania wrote Provincial Agriculturist Imelda Inieto inquiring about the whereabouts of the supposed patrol boat that was procured or bought by the provincial government of Bataan.^[12] Inieto immediately replied on the query and told Palomania that the patrol boat was based in the station of the Anti-Illegal Fishing Task Force at Wawa, Orion, Bataan.^[13]

Not satisfied with the reply of the Provincial Agriculturist, Palomania filed a complaint for Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service against several officials of the Province of Bataan which includes herein petitioner. More than two years later, on 29 September 2006, a Supplemental Complaint was filed by Associate Graft Investigation Officer I Eugenio G. Ferrer.^[14]

On 12 May 2011, Graft Investigation and Prosecution Officer I (GIPO I) Clarisa V. Tejada rendered the assailed Decision finding petitioner guilty of Grave Misconduct and Dishonesty. But on 17 August 2011, the same GIPO I Clarisa V. Tejada resolved to dismiss the complaint against petitioner as she found no substantial evidence to hold petitioner for the acts leveled against him.^[15] However, in a memorandum dated 12 August 2012, the dismissal of the complaint against petitioner was disapproved and the 12 May 2011 Decision was maintained.^[16]

Hence, this petition.

ISSUE

WHETHER OR NOT THE DECISION OF THE OFFICE OF THE OMBUDSMAN ORDERING PETITIONER FRANCISCO T. CAPARAS' DISMISSAL FROM THE OFFICE FOR GRAVE MISCONDUCT AND DISHONESTY IS MERITORIOUS.

Our Ruling

At the outset, the only factual issue to determine the guilt of petitioner for grave misconduct and dishonesty is whether there was a delivery of the patrol boat that they inspected on 23 January 2006. The Associate Graft Investigator alleges that there was only a ghost delivery of the patrol but petitioner insists that it did inspect the patrol boat on 23 January 2006.

The petition is impressed with merit.

In the assailed 12 May 2011 *Decision* and the *Order* dated 12 August 2012, the Office of the Ombudsman concluded that there was ghost delivery of the patrol boat for the anti-illegal fishing campaign. The Office of the Ombudsman relied on the affidavits of complainants and their witnesses in finding for the suspension of the petitioner from work.

It is well settled that in administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in his complaint. Section 27 of

the Ombudsman Act is unequivocal. Findings of fact by the Office of the Ombudsman, when supported by substantial evidence, are conclusive. **Conversely, when the findings of fact by the Ombudsman are not adequately supported by substantial evidence, they shall not be binding upon the courts.**^[17] Here, We find the necessity to review the findings of facts of the Office of the Ombudsman.

The only evidence which purports to support the allegations in the complaint of Nestor Palomania and Alexander Caturao as well as the Supplemental Complaint filed by Associate Graft Investigation Officer I Eugenio G. Ferrer is the affidavit allegedly executed by one Ernesto Asistin, Jr. to whom the contract to build the boat was awarded.

After a careful perusal of the affidavits allegedly executed by one Ernesto Asistin, Jr. that was utilized in support of the complaint in the instant case, We find questionable veracity in the execution of the said affidavits. There was no proper identification of the affiant.^[18] A perusal of the said affidavits show that they were merely notarized but no identification of the affiant was stated at the notarial acknowledgement portion of the affidavit.

It is well to emphasize that a notary public should not notarize a document unless the person who signs it is the same person who executed it, personally appearing before him to attest to the contents and the truth of what are stated therein. This is to enable the notary public **to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act.**^[19]

Section 1, Public Act No. 2103, otherwise known as the Notarial Law states:

"The acknowledgement shall be before a notary public or an officer duly authorized by law of the country to take acknowledgements of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgement shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, acknowledged that the same is his free act and deed. The certificate shall be made under the official seal, if he is required by law to keep a seal, and if not, his certificate shall so state."

Such requirement of affiant's personal appearance was further emphasized in Section 2 (b) of Rule IV of the Rules on Notarial Practice of 2004 which provides that:

"A person shall not perform a notarial act if the person involved as signatory to the instrument or document –"