

SPECIAL FIFTEENTH DIVISION

[CA–G.R. SP No. 130515, May 23, 2014]

**HURLEY D. SALIG, PETITIONER-APPELLANT, V. OFFICE OF THE
DEPUTY OMBUDSMAN FOR LUZON, RESPONDENT-APPELLEE.**

D E C I S I O N

GALAPATE-LAGUILLES, J:

Before Us is a *Petition for Review*^[1] under Rule 43 of the Rules of Court seeking the reversal of the Decision^[2] dated March 26, 2012 of the Office Deputy Ombudsman for Luzon (public respondent) finding Hurley D. Salig guilty of Grave Misconduct, Dishonesty and violation of Section 8 of Republic Act No. 6713, viz:

WHEREFORE, judgment is hereby rendered finding respondent Hurly D. Salig **GUILTY of Grave Misconduct, Serious Dishonesty and violation of Section 8 of Republic Act No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees.** Respondent Hurley D. Salig is hereby meted the penalty of **DISMISSAL FROM THE SERVICE with accessory penalties of Cancellation of Eligibility, Forfeiture of Retirement Benefits and Perpetual Disqualification for Re-employment in the Government Service** pursuant to Section 10, Rule III, Administrative Order No. 07, as amended by Administrative Order No. 17 in relation to Section 25 of Republic Act No. 6770.

The Secretary of the Department of Environment and Natural Resources (DENR), Visayas Avenue, Quezon City, is hereby directed to implement this DECISION immediately upon receipt thereof pursuant to Section 7, Rule III of Administrative Order No. 07, as amended by Administrative Order No. 17 (Ombudsman Rules of Procedure) in relation to Memorandum Circular No. 1, Series of 2006 dated 11 April 2006, and to promptly inform this Office of the action taken hereon.

SO DECIDED.^[3]

The facts follow.

On September 26, 2005, an unidentified person writing in the style of "Concerned Citizen of Cavite" sent a letter^[4] to the Chairman of the Presidential Anti-Graft Commission, Constanca De Guzman, accusing Hurley D. Salig, then Officer-In-Charge – PENRO of Trece Martires, Cavite, of corrupt practices and amassing unexplained wealth. Considering that Salig was not a presidential appointee, the PACG indorsed the letter to the Office of the Ombudsman for appropriate action.^[5] Believing that the letter warranted investigation, the Public Assistance and Corruption Prevention Office (PACPO) of the Office of the Deputy Ombudsman for Luzon conducted a lifestyle check against Salig, docketed as CPL-L-05-2245.

On June 27, 2007, Associate Graft Investigation Officer Lorna T. Sitjar submitted a Fact-Finding Report^[6] recommending that an administrative proceeding for violation of Republic Act No. 1379 (Unexplained Wealth) be conducted against Salig. The said report contained

the list of real properties and business interests of Salig and/or his family, as certified by various government agencies, which were summarized as follows:

1. Letter-reply from the LTO disclosed that PENRO Salig owns three (3) utility vehicles, to wit:

- (a) MITSUBISHI STRADA 2006 MODEL
- (b) HYUNDAI STAREX GOLD CRD 2005 MODEL; and
- (c) MITSUBISHI-UTILITY VEHICLE 2002 MODEL

Another vehicle, a HONDA CITY 1998 MODEL, is registered under the name of [Salig's] wife, Mrs. Elenita Tamisin Salig;

2. The Office of the City Assessor, Calamba City, Laguna submitted two (2) Declarations of Real Property in the name of Spouses Salig, to wit:

- (a) TD No. 04534- RESIDENTIAL LOT (168 square meters), acquired on April 26, 2000 for P117,600.00, covered by TCT No. T-461154, located at Sta. Cecilia Subdivision, Barangay Parian, Calamba City, Laguna; and
- (b) TD No. 04898- RESIDENTIAL LOT (267 square meters), Block 3, Lot 6, Sta. Cecilia Subd., Barangay Parian, Calamba City, Laguna, with a Market Value of P1,629,175.25;

3. The sworn Statement of Assets, Liabilities and Networth (SALN) of respondent Salig for the years 2002 to 2005 disclosed that he has a total networth of Five Million [pesos], more or less;

4. xxx

5. The records of the Department of Trade and Industry reveal that respondent's wife, Elenita Tamisin Salig, is engaged in the following business ventures:

<u>Business Name</u>	<u>Location</u>	<u>Date of Registration</u>
(a) Joval Billiard Hall	Los Baños	January 2002
b) Twin-Queen Travel and Tours	Calamba City	January 2005
(c) Flawless Videoke Bar and Disco	Calamba City	August 2005
(d) Flawless 2 Cafe Bar and Videoke	Los Baños	August 2005
(e) Salig Management Consultancy and Services	Calamba City	August 2005 ^[7]

On the same date, Wilbert L. Candelaria, Director of PACPO-Luzon formally filed before the Office of the Deputy Ombudsman for Luzon (public respondent) a Complaint-Affidavit based on the facts set forth in the Fact-Finding Report. The case was docketed as OMB-L-A-0481-G. Subsequently, the public respondent directed Salig to submit his counter-affidavit, affidavit of his witness and other controverting evidence in support of his defense against the charges against him.^[8]

Accordingly, on October 23, 2007, Salig filed his Counter-Affidavit (with Motion to Dismiss) arguing that his properties and family businesses were lawfully acquired. He explained that he obtained a Real Estate Loan in the amount of P3,102,699.05 from RCBC Savings Bank on September 30, 2003, as shown in the Certification^[9] issued by the said Bank, in order "to pursue and make profitable the following business ventures:

1. Twin-Queen Travel and Tours
2. Salig Management and Consultancy Services
3. Flawless Videoke Bar and Disco
4. Flawless 2 Cafe Bar and Videoke

Salig contended that these businesses augmented their family income. As to the utility vehicles registered in his name, Salig also averred that these were acquired through car loans from various banks, such as RCBC Saving Bank,^[10] Philippine National Bank^[11] and EastWest Bank,^[12] to support the car rental of their travel-and-tour business. As regards the real properties, Salig explained that the house and lot in Los Baños, Laguna was inherited from his parents while the property in Calamba City was acquired through a bank loan. Salig thus prayed that the complaint against him be dismissed for lack of merit or for insufficiency of evidence.

On March 26, 2012, the Office of the Deputy Ombudsman for Luzon rendered the assailed Decision, the *fallo* of which We have quoted at the outset, holding that the evidence against Salig clearly and convincingly proved that the latter acquired properties that were manifestly disproportionate to his salary and lawful income. According to the public respondent, this constituted Grave Misconduct "since the elements of corruption, clear intent to violate the law and flagrant disregard of established rule are present in the instant case."^[13] Salig was further held liable for violation of Section 8 of Republic Act No. 6713 and Dishonesty for his failure to declare in his SALN for the years 2002 to 2005 some of his properties and his wife's business ventures and properties. For these reasons, Salig was dismissed from service.

Aggrieved, Salig filed a Motion for Reconsideration maintaining his innocence of the offense charged and averring that the severe penalty of dismissal is not warranted under the circumstances. He further posited that the public respondent should have dismissed the complaint outright for want of proper verification and certification against forum shopping, a mandatory requirement under the Rules of Procedure of the Office of the Ombudsman.

The public respondent was unconvinced and denied Salig's Motion for Reconsideration in its Order^[14] dated May 2, 2013. It ruled that Salig utterly failed to prove by substantial evidence the allegations in his Counter-affidavit. Also, the public respondent brushed aside the alleged procedural error because the complaint was filed by PACPO-Luzon, and not by an anonymous person, after conducting a records verification to determine whether there were existing or pending administrative cases filed against Salig. According to the public respondent, this substantially complied with the verification and certification of non-forum shopping requirements. According further to the public respondent, Salig was already estopped from raising this issue as he failed to do so at the earliest opportune time, such as when he filed his Counter-Affidavit.

In his unwavering quest for exoneration, Salig comes before Us through the instant Petition for Review alleging that:

1. THE COMPLAINT-AFFIDAVIT FILED AGAINST PETITIONER BY THE OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON THRU PACPO-LUZON WAS NOT VERIFIED AND DID NOT CONTAIN CERTIFICATION OF NON-FORUM SHOPPING WHICH IS A VIOLATION OF ADMINISTRATIVE ORDER NO. 07 OF THE RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN.

2. RESPONDENT COMMITTED (SIC) GRAVELY ERRED IN FINDING THAT PETITIONER WILFULLY AND MALICIOUSLY MADE UNTRUTHFUL STATEMENTS OF HIS SALN FOR THE YEARS 2002-2005.

3. RESPONDENT COMMITTED GRAVE ERRORS IN LAW IN FINDING THE DISMISSAL OF PETITIONER FROM SERVICE WITH ACCESSORY PENALTIES OF CANCELLATION OF ELIGIBILITY, FORFEITURE OF RETIREMENT BENEFITS AND PERPETUAL DISQUALIFICATION FOR RE-EMPLOYMENT IN THE GOVERNMENT SERVICE.^[15]

The petition proffers both procedural and substantive issues. Anent the procedural aspect, petitioner Salig asserts that the complaint against him should have been dismissed outright for want of verification and certification against forum shopping.

We do not agree.

As aptly noted by the public respondent, the complaint-affidavit against Salig was initiated by the PACPO Luzon which is an integral component of the Office of the Deputy Ombudsman. Rule III, Section 3 of the Rules of Procedure of the Office of the Ombudsman authorizes the Ombudsman or his Deputy to order an administrative proceedings, on his initiative, against erring public officials, *viz*:

Section 3. How initiated. - An administrative case may be initiated by a written complaint under oath accompanied by affidavits of witnesses and other evidences in support of the charge. Such complaint shall be accompanied by a Certificate of Non-Forum Shopping duly subscribed and sworn to by the complainant or his counsel. An administrative proceeding may also be ordered by the Ombudsman or the respective Deputy Ombudsman on his initiative or on the basis of a complaint originally filed as a criminal action or a grievance complaint or request for assistance.

A reading of the above-cited provisions would ostensibly show that an administrative proceeding initiated by the Office of the Ombudsman does not require a Certificate of Non-Forum Shopping as the said requirement is necessary only in a written complaint filed by a complainant other than the said Office. Suffice it to state that the Office of the Ombudsman has capacity to verify whether there is a complaint, administrative or criminal, that is pending against a government official being investigated. Thus, We stamp with approval the following ratiocination of the public respondent:

It must be noted that the complainant in the instant administrative case is the PACPO-Luzon, which is part of the organizational unit of this Office. It must also be stressed that before the filing of the instant administrative case, the PACPO-Luzon had already made the records verification on June 26, 2007, pursuant to Office Order No. 008, Series of 2004, dated February 10, 2004, issued by then Deputy Ombudsman for Luzon Victor C. Fernandez, and it was found out that at that time, there is no existing or pending administrative case filed before this Office against the respondent/movant involving the same issues or subject matter. Considering that the instant complaint was filed after the verification was made advising that no similar case was filed against the respondent/movant before this Office, the requirement for a "Certificate of Non-Forum Shopping" is deemed satisfied.^[16]

At any rate, any procedural irregularity in the complaint is deemed waived when Salig failed to raise the same seasonably in his Counter-Affidavit. Well-entrenched is the rule that no question will be entertained for the first time on appeal, or in the motion for reconsideration, unless it has been raised in the proceedings below as this would contravene the basic rules of fair play and justice.

As regards the substantive aspect of the case, Salig vehemently denies that he acquired his property and the business ventures of his family through illegal or unlawful means. He insists that he acquired real properties and several vehicles through bank loans and the businesses managed by his wife. The Ombudsman, however, ignored Salig's explanation and held him liable for grave misconduct for allegedly amassing wealth that is manifestly disproportionate to his income and dishonesty and violation of Section 8 of Republic Act 6713 for his alleged failure to include all his properties and business interests in his SALN for the years 2002-2005.

We hold a different view and find partly in favor of petitioner Salig.

Grave Misconduct

Well-settled is the rule that for gross or grave misconduct to exist, there must be substantial evidence to prove the elements of corruption, clear intent to violate the law and flagrant disregard of established rule.^[17] In the case of *Largo v. Court of Appeals*,^[18] the Supreme Court categorically instructed that to constitute misconduct, the complained act or omission must have a direct relation and be linked to the performance of official duties, thus:

In *Manuel v. Calimag, Jr.*, it was held that:

Misconduct in office has been authoritatively defined by Justice Tuazon in *Lacson v. Lopez* in these words: "Misconduct in office has a definite and well-understood legal meaning. **By uniform legal definition, it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual.** In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer x x x. **It is settled that misconduct, misfeasance, or malfeasance warranting removal from office of an officer must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office x x x** More specifically, in *Buenaventura v. Benedicto*, an administrative proceeding against a judge of the court of first instance, the present Chief Justice defines misconduct as referring 'to a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer."

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In *Salcedo v. Inting* we also ruled –

It is to be noted that the acts of the respondent judge complained of have no direct relation with his official duties as City Judge. **The misfeasance or malfeasance of a judge, to warrant disciplinary action must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of said judge. (Emphasis Ours; citations omitted)**

More importantly, in *Gupilan-Aguilar v. Office of the Ombudsman*,^[19] the Supreme Court applied the above-mentioned pronouncements and ruled that acquiring unexplained wealth and failing to include several properties in the SALNs do not amount to grave misconduct since the said acts do not deter the public official in the dispensation of his public function. It explained the *raison d'être* as follows:

Owning properties disproportionate to one's salary and not declaring them in the corresponding SALNs cannot, without more, be classified as