

## **SPECIAL FOURTH DIVISION**

**[ CA-G.R. SP NO. 121893, November 26, 2014 ]**

**ELMER CRIS L. RILLO, PETITIONER, VS. OFFICE OF THE  
OMBUDSMAN AND TERESITA REYES-DOMINGO, RESPONDENTS.**

### **DECISION**

**SORONGON, J.:**

This petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure seeks to nullify the following issuances of the Office of the Deputy Ombudsman for Luzon (Ombudsman) in OMB-C-A-06-0558-J (LSC): (1) Decision<sup>[1]</sup> dated September 3, 2009 finding petitioner Elmer Cris L. Rillo guilty of Simple Misconduct; and (2) Order<sup>[2]</sup> dated May 31, 2011 denying petitioner's motion for reconsideration.

### **The Factual Antecedents**

Private respondent Teresita Reyes-Domingo (Domingo) is the Assistant Secretary for Legislative Affairs and concurrent Officer-in-Charge of the Technical Staff of the Department of Justice (DOJ). As head of the Technical Staff, she had under her supervision several lawyers and one of whom is herein petitioner Elmer Cris L. Rillo (Rillo).

Rillo incurred tardiness and absences from his work due to several trips abroad. A verification with the Bureau of Immigration (BOI) revealed that Rillo traveled abroad on January 16, 2005, November 27, 2005 and December 17, 2005 without securing the necessary travel authority from the DOJ for the said travels as required by Section 2 of Executive Order (E.O.) No. 459<sup>[3]</sup>. It was also discovered that Rillo did not file his Statement of Assets, Liabilities and Networth (SALN) for the years 2001 and 2002 while his SALN for the years 2000, 2003, 2004 and 2005 showed his meager income which is not enough to afford his frequent travels.

On September 13, 2006, Domingo filed a Complaint-Affidavit<sup>[4]</sup> against Rillo with the Ombudsman for violation of Section 7 of Republic Act (RA) No. 3019<sup>[5]</sup> for non-filing of his SALN for the years 2001 and 2002, unexplained wealth under Section 8 of RA No. 3019 and violation of Section 2 of E.O. 459 for unauthorized travels abroad.

In his Counter-Affidavit<sup>[6]</sup>, Rillo vehemently denied the accusations against him in this wise: he submitted his SALN for the years 2001 and 2002 with the Office of the Personnel, DOJ as shown by the matrix issued by the Civil Service Commission (CSC). As regards his travels abroad, he did not secure the necessary travel authority when he went to Japan on November 27, 2007 to meet his former fiancée because he left the country on a Sunday and returned the next day, which was a public holiday. Besides, E.O. 459 is not applicable to his case because the law

pertains to travel that would entail the use of government funds. He is a government lawyer for five (5) years and out of his meager income he was able to save money to pay for his airfare. He did not violate the Anti-Graft and Corrupt Practices Act.

In her Reply,<sup>[7]</sup> Domingo insisted that with Rillo's salary as his only source of income, it is highly doubtful for him to sustain an expensive lifestyle, *i.e.*, sending Php20,000.00 to Php30,000.00 a month to his family in the province; and owning a Mercedes Benz, classy cellphones and expensive perfumes. His SALN for the years 2000 to 2005 drastically increased as shown by his previous networth which started only with Php15,000.00, then Php30,000.00, Php40,000.00, Php144,000.00, Php340,000.00 and Php410,000.00.

In his Rejoinder<sup>[8]</sup>, Rillo stressed that the changes in his networth is the result of long years of accumulation of certain properties. His Mercedes Benz is a 1994 model which he purchased on installment and the downpayment for it came from his brother who is working abroad.

### **Ruling of the Ombudsman**

On September 3, 2009, the Ombudsman rendered the herein assailed judgment finding Rillo guilty of simple misconduct, the dispositive portion whereof reads:

*WHEREFORE, premises considered, this Office finds respondent Elmer Cris L. Rillo, State Counsel III, Technical Staff, Department of Justice, GUILTY of SIMPLE MISCONDUCT for his failure to secure the requisite authority to travel abroad prior to his travel to Japan on November 27, 2005 and as such, is imposed the penalty of SIX MONTHS SUSPENSION FROM OFFICE WITHOUT PAY pursuant to Section 10 of Administrative Order No. 07 as amended otherwise known as the "Rules of Procedure of the Office of the Ombudsman", effective upon receipt of a copy of this Decision. The respondent is hereby exonerated of the other two charges.*

*Pursuant to Section 7, Administrative Order 17 of the Office of the Ombudsman and the Ombudsman Memorandum Circular No. 01, Series of 2006, the Honorable Secretary, Department of Justice, is hereby directed to implement this Decision and to submit promptly a Compliance Report within five (5) days from receipt indicating the OMB case number, to this Office, thru the Central Records Division, 2<sup>nd</sup> Floor, Ombudsman Building, Agham Road, Government Center, North Triangle, Diliman, 1128, Quezon City.*

*Compliance is respectfully enjoined consistent with Section 3 (e) of R.A. 3019 (Anti-Graft and Corrupt Practices Act) and Section 15 (3) of R.A. 6770 (Ombudsman Act of 1989).*

**SO ORDERED.**<sup>[9]</sup>

On motion for reconsideration, the Ombudsman modified its earlier ruling by reducing the imposed penalty from six (6) months suspension from office without

pay to one (1) month suspension without pay, thus:

WHEREFORE, the motion for reconsideration is hereby DENIED with finality. The imposable penalty against respondent-movant ELMER CRIS L. RILLO is hereby LOWERED from SIX MONTHS SUSPENSION FROM OFFICE WITHOUT PAY to ONE MONTH SUSPENSION FROM OFFICE WITHOUT PAY effective upon receipt of a copy of this ORDER. Pursuant to Section 7, Administrative Order 17 of the Office of the Ombudsman and the Ombudsman Memorandum Circular No. 01, Series of 2006, the Honorable Secretary, Department of Justice, is hereby directed to implement this Order and to submit promptly a Compliance Report within five (5) days from receipt indicating the OMB case number, to this Office, thru the Central Records Division, 2nd Floor, Ombudsman Building, Agham Road, Government Center, North Triangle, Diliman, 1128, Quezon City.

Compliance is respectfully enjoined consistent with Section 3 (e) of R.A. 3019 (Anti-Graft and Corrupt Practices Act) and Section 15 (3) of R.A. 6770 (Ombudsman Act of 1989).

SO ORDERED.<sup>[10]</sup>

### **ISSUES**

Not satisfied yet, Rillo via this recourse alleged:

#### **I.**

**THAT THE OMBUDSMAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT RENDERED THE ASSAILED DECISION FINDING THE PETITIONER GUILTY OF SIMPLE MISCONDUCT AND IMPOSING THE PENALTY OF SUSPENSION IN VIOLATION OF ESTABLISHED PROCEDURE IN THE OFFICE OF THE OMBUDSMAN;**

#### **II.**

**THAT THE OMBUDDSMAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT RENDERED A DECISION WITH FINALITY ONLY AFTER 4-5 YEARS FROM THE TIME THE COMPLAINT WAS FILED IN VIOLATION OF THE CONSTITUTIONAL RIGHT TO SPEEDY TRIAL UNDER THE BILL OF RIGHTS (SECTION 16, ARTICLE III OF THE 1987 CONSTITUTION); AND**

#### **III.**

**THAT THE OMBUDSMAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF**

**JURISDICTION WHEN IT RENDERED THE ASSAILED DECISION IN VIOLATION OF THE CONSTITUTIONAL RIGHT OF THE RESPONDENT TO TRAVEL AS PROVIDED FOR UNDER SECTION 6, ARTICLE III OF THE 1987 PHILIPPINE CONSTITUTION.**

**RULING OF THE COURT**

Anent the first ground, Rillo argued that the September 3, 2009 Decision of the Ombudsman is not in compliance with Section 6, Administrative Order No. 7, Series of 1990 (Rules of Procedure of the Office of the Ombudsman). The questioned decision was signed by Mark E. Jalandoni (Jalandoni), the Deputy Ombudsman for Luzon. Meaning to say, he acted alone and unilaterally abrogated upon himself the function of prosecuting, drafting, reviewing and approving the said decision. He (Jalandoni) has no authority to decide the case because there was no express designation from the President of the Philippines to perform the functions of the Ombudsman. In case of absence of the Ombudsman, it should be the Overall Deputy Ombudsman that should assume and discharge the Office of the Ombudsman, not Jalandoni who is only the Deputy Ombudsman for Luzon. Hence, the assailed Decision dated September 3, 2009 is illegal.

We do not agree.

The records of the case belied the allegation of Rillo that the assailed decision was prosecuted, decided, reviewed and approved by Jalandoni alone. A Memorandum<sup>[11]</sup> dated September 3, 2009 states that the questioned decision was initially prepared by Janet C. Cabigas-Vejerano, Graft Investigation and Prosecution Officer (GIPO) II in a draft Decision dated February 29, 2008. It was forwarded for review to another GIPO II in the name Vladimir F. Pelaez, who prepared and drafted the September 3, 2009 Decision. The draft was later on approved and signed by Jalandoni. Thus, the Ombudsman's Rules of Procedure, which is to ensure the correctness of the decision thru a system of review was substantially complied with. Rillo's fear that Jalandoni acted on his own and "signed the decision alone" is unfounded.<sup>[12]</sup>

With respect to the authority of Jalandoni to render the assailed decision, we agree with the Ombudsman that such power was validly delegated to him, thus:

*"Section 15. Powers, Functions and Duties. - The Office of the Ombudsman shall have the following powers, functions and duties:*

*xxx*

*(10) Delegate to the Deputies, or its investigators or representatives such authority or duty as shall ensure the effective exercise or performance of the powers, functions, and duties herein or hereinafter provided;*

*xxx" (underscoring supplied)*

*Hence, as long as the case is included in those delegated to be signed by*