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SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

SEP 03 2019

THIRD DIVISION

OFFICE OF THE OMBUDSMAN,
Petitioner,

G.R. No. 231345

- versus -

**MELCHOR J. CHIPOCO AND
CHRISTY C. BUGANUTAN,**
Respondents.

X-----X

ROBERTO R. GALON,
Petitioner,

G.R. No. 232406

Present:

PERALTA, J., Chairperson,
LEONEN,
REYES, A., JR.,
HERNANDO, and
INTING, JJ.

- versus -

**MELCHOR J. CHIPOCO AND
CHRISTY C. BUGANUTAN,**
Respondents.

Promulgated:

August 19, 2019

X-----Misa PDC Batt-----X

DECISION

PERALTA, J.:

At bench are two appeals¹ assailing the Decision² dated March 23, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 07524, which had set aside

¹ Both appeals were filed as a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.
² *Rollo*, G.R. No. 231345, pp. 52-56. Penned by Associate Justice Edgardo T. Lloren, with the concurrence of Associate Justices Rafael Antonio M. Santos and Ruben Reynaldo G. Roxas.

the Order³ dated May 27, 2016 of the Office of the Ombudsman (*Ombudsman*) in OMB-M-A-11-390-I.

The facts.

Galon's First Affidavit-Complaint and OMB-M-A-11-390-I

On January 28, 2011, the municipality of Labason, Zamboanga del Norte purchased a Nissan Patrol vehicle⁴ from one Eduardo A. Ayunting (*Ayunting*) for ₱960,000.00. This transaction was embodied in a *Deed of Sale of Motor Vehicle*⁵ that was signed by Ayunting and by the then Vice Mayor of Labason, Virgilio Go (*Go*).

Believing the above transaction to be anomalous, a certain Roberto R. Galon (*Galon*) filed with the Ombudsman an Affidavit-Complaint⁶ against Ayunting and several other officials of the Labason Municipal Government supposedly involved in the transaction. Among the Labason officials implicated in the affidavit-complaint were:

1. Wilfredo S. Balais (*Balais*), the incumbent municipal mayor;
2. Go;
3. The members⁷ of the *Sangguniang Bayan* of Labason;
4. Respondent Melchor J. Chipoco (*Chipoco*), the municipal treasurer and chairman of the Bids and Awards Committee (*BAC*) of the municipality; and
5. Respondent Christy C. Bugarutan, the municipal accountant and head of the Technical Working Group (*TWG*) of the BAC.

Galon, in essence, claimed that the purchase of the Nissan Patrol vehicle was designed to give undue benefit to Balais at the expense of the municipality. He pointed to the following circumstances in support:⁸

1. The Nissan Patrol vehicle was originally owned by Balais. It was the latter who sold the vehicle to Ayunting on November 26, 2010 for ₱500,000.00.⁹ Just a little over a month later,

³ *Id.* at 112-118.

⁴ *Id.* at 142. With the following specifics: (a) Model: 2001; (b) Plate Number: KCL 533; (c) Engine Number: ZD30-057279A; (d) Chassis Number: TWSSLFFY61-Y00506; and (e) Color: White.

⁵ *Id.*

⁶ *Id.* at 121-139.

⁷ Namely: Riza T. Melicor, Shane C. Galon, Alfie L. Roleda, Clark C. Borromeo, Lucio S. Panos, Armony Delos Reyes, Allan B. Digamon, Severino Bangcaya, Ma. Michelle M. Chipoco and Rey V. Josue.

⁸ *Rollo*, G.R. No. 231345, pp. 121-139.

⁹ *Id.* at 141. Under a Deed of Sale of Motor Vehicle.

however, the municipality curiously entered into the contested transaction — by purchasing the same vehicle from Ayunting, this time, for the price of ₱960,000.00.

2. The municipality's purchase of the Nissan Patrol vehicle was also made without a competitive public bidding, in violation of Republic Act (R.A.) No. 9184.

Galon's Affidavit-Complaint kick-started an administrative case and a criminal case with the Ombudsman. The administrative case was docketed as **OMB-M-A-11-390-I**, while the criminal case was docketed as OMB-M-C-11-0356-I.

On September 1, 2014, the Ombudsman rendered a Decision¹⁰ in **OMB-M-A-11-390-I**, holding Balais and the respondents administratively liable, but absolved the rest of the Labason officials named in the affidavit-complaint.¹¹

The Ombudsman found Balais guilty of *Grave Misconduct* and *Serious Dishonesty* and meted upon him the penalty of dismissal.¹² The respondents, however, were only found guilty of *Neglect of Duty*, levied with the penalty of suspension for three (3) months.¹³

In pinning the liability of the respondents, the Ombudsman, in the same decision, discussed:

Although respondents x x x may not have taken part in the execution of the contract, the fact that they processed the disbursement and allowed the payment, despite the transaction not being in accordance with the procurement law, indicates their laxity in the observance of the requirements in procurement and disbursement of funds. Accordingly, they should be held liable for Neglect of Duty.¹⁴

Meanwhile, the Ombudsman issued a Resolution¹⁵ in OMB-M-C-11-0356-I, finding the existence of probable cause to charge Ayunting, Balais and Go for violation of Section 3(e) of R.A. No. 3019. A corresponding Information¹⁶ was later filed before the Sandiganbayan against Ayunting, Balais and Go.

¹⁰ *Id.* at 102-111.

¹¹ *Id.* at 106-111.

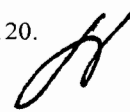
¹² *Id.* at 109.

¹³ *Id.*

¹⁴ *Id.* at 108.

¹⁵ CA *rollo*, Volume 1, pp. 127-147. Dated February 26, 2013.

¹⁶ *Id.* at 227-228. The Information was docketed as Criminal Case No. SB 15 CRM 0120.



Motions for Reconsideration in OMB-M-A-11-390-I

The Ombudsman's Decision in **OMB-M-A-11-390-I** was challenged by Galon and the respondents *via* separate motions for reconsideration. In his motion,¹⁷ Galon sought the imposition of stiffer penalties against respondents and a reversal of the absolutions handed down by the decision.

In their motion for reconsideration,¹⁸ on the other hand, the respondents pleaded for their exculpation. They denied that they had been lax in observing procurement and disbursement requirements, insisting that they only signed the disbursement voucher for the purchase of the Nissan Patrol vehicle after a competitive bidding had taken place and after all the necessary documents had been presented to them.

To bolster their position, the respondents annexed to their motion for reconsideration the following documents which tend to prove the conduct of a competitive bidding prior to the municipality's purchase of the Nissan Patrol vehicle:¹⁹

1. Certification as to the Posting of Notice/Invitation to Bid in Conspicuous Places, issued by Chipoco in his capacity as BAC chairman;²⁰
2. Price Quotations of the Participating Bidders, namely:
 - a. EVS Display Center;²¹
 - b. Catmon Car Sales;²² and
 - c. Oro Cars Display Center;²³
3. Department of Trade and Industry Certificates and Business Permits of the Participating Bidders;²⁴
4. Abstract of Bids dated January 19, 2011;²⁵
5. Minutes of the Meeting of the BAC held on January 19, 2011;²⁶
6. Notice of Award dated January 20, 2011 in favor of the winning bidder, Oro Cars Display Center;²⁷

¹⁷ Entitled, "Partial Motion for Reconsideration," dated January 10, 2016.

¹⁸ *Rollo*, G.R. No. 231345, pp. 185-199. Dated January 14, 2016.

¹⁹ *Id.* at 191.

²⁰ *CA rollo*, Volume 1, p. 166.

²¹ *Id.* at 167.

²² *Id.* at 170.

²³ *Id.* at 173.

²⁴ *CA rollo*, pp. 168-169, 171-172, 174 and 176.

²⁵ *Id.* at 177.

²⁶ *Id.* at 178.

²⁷ *Id.* at 179.

7. Purchase Order dated January 20, 2011 in favor of Oro Cars Display Center;²⁸
8. Acceptance and Inspection Report dated January 20, 2011;²⁹
9. Obligation Request dated January 21, 2011;³⁰ and
10. Disbursement Voucher No. 100-11-01-212 in favor of Oro Cars Display Center.³¹

Galon's Second Complaint-Affidavit

Yet, on February 9, 2016, Galon filed with the Ombudsman a *second* complaint-affidavit³² concerning the same transaction as in his original complaint-affidavit. The second complaint-affidavit also implicated the same persons named in the original, adding only a number of individuals as new defendants. Galon justified the filing of a second complaint-affidavit on what he claims as "*newly-discovered evidence*" in the form of several documents that had been attached by Ayunting in his (Ayunting's) application to become a state witness in the criminal case pending before the Sandiganbayan.³³

To avoid conflict with his pending motion for reconsideration in **OMB-M-A-11-390-I**, Galon prayed that the same be consolidated with the administrative aspect of his second complaint-affidavit.³⁴

Galon's second complaint-affidavit gave rise to the administrative case **OMB-M-A-16-0151** and the criminal case OMB-M-C-16-0112 before the Ombudsman. On April 11, 2016, the Ombudsman issued a Joint Order³⁵ in OMB-M-A-16-0151 and OMB-M-C-16-0112, directing the persons complained of in Galon's second complaint-affidavit to file their respective counter-affidavits.

Disposition of Motions for Reconsideration in OMB-M-A-11-390-I

During the pendency of **OMB-M-A-16-0151**, however, the Ombudsman issued an Order³⁶ dated May 27, 2016, disposing of the motions for reconsideration of respondents and Galon in **OMB-M-A-11-390-I**. In the order, the Ombudsman denied the motion for reconsideration of the respondents, but partially granted that of Galon.

²⁸ *Id.* at 180.
²⁹ *Id.* at 181.
³⁰ *Id.* at 165.
³¹ *Id.* at 164.
³² *Id.* at 183-205.
³³ *Id.*
³⁴ *Id.* at 204.
³⁵ *Id.* at 274-283.
³⁶ *Rollo*, G.R. No. 231345, pp. 112-118.



The Ombudsman held that the documents annexed to the respondents' motion for reconsideration do not at all settle the existence of a *bona fide* public bidding but, on the contrary, merely preview the conduct of a *sham* one.³⁷ It noted three (3) irregularities that lend to such view.³⁸

1. The documents submitted by the respondents do not justify the municipality's purchase of the Nissan Patrol vehicle from Ayunting. The Notice of Award, Purchase Order, Obligation Request, and Disbursement Voucher all identified a certain Oro Cars Display Center as the winning bidder, which must then supply the municipality with a Nissan Patrol vehicle. However, the deed of sale for the said vehicle was actually executed not between the municipality and Oro Cars Display Center, but between the municipality and Ayunting.
2. The fact that an invitation to bid was posted, in accordance with the law, was also not established. The Certification as to the Posting of Notice/Invitation to Bid in Conspicuous Places submitted by the respondents does not suffice to prove said fact. Such certification cannot substitute for the actual copy of the Invitation to Bid as proof that such an invitation was, in fact, posted.
3. The Price Quotations prepared by the Labason BAC are also non-compliant with the procurement law. The quotations, in their "*Items & Description*" portion, specifically identified "*Nissan Patrol Year 2001 Model*" as the vehicle subject of bidding. This is a clear violation of Section 18 of R.A. No. 9184, which provides that specifications for the procurement of goods shall be based on relevant characteristics and/or performance requirements, and prohibits any reference to brand names in any bidding documents.

The Ombudsman stressed that the respondents, due to them being part of the Labason BAC, cannot feign ignorance of the above irregularities.³⁹ Accordingly, the Ombudsman heightened the administrative culpability of respondents from Neglect of Duty to Grave Misconduct, and increased their penalty from suspension to dismissal from the service.

Petition for Review to the CA and the Instant Appeals by Petitioners

Aggrieved, respondents elevated the Order of the Ombudsman to the CA by way of a petition for review under Rule 43 of the Rules of Court. The petition was titled, "*Melchor J. Chipoco and Christy C. Baganutan v. Honorable Office of the Ombudsman (herein represented by Honorable Conchita Carpio-Morales, in her capacity as Tanodbayan and Honorable*

³⁷ *Id.* at 115.

³⁸ *Id.*

³⁹ *Id.*



Gian Carla V. Hernal, in her capacity as Graft Investigation and Prosecution Officer I) and Roberto R. Galon,” and was docketed as CA-G.R. SP No. 07524.⁴⁰

On March 23, 2017, the CA rendered a Decision setting aside the Order of the Ombudsman for being *premature*, remanding **OMB-M-A-11-390-I** back to the latter, and ordering the consolidation of the motions for reconsideration of respondents and Galon in **OMB-M-A-11-390-I** with **OMB-M-A-16-0151**. The CA held that the Ombudsman should have refrained from disposing of such motions for reconsideration precisely in light of Galon’s second complaint-affidavit and its resulting administrative case. As the CA ratiocinated:

Both the original and the new complaints filed by x x x Galon before the [Ombudsman] referred to the same transaction. Despite the fact that it was still investigating another administrative case arising from the same transaction, the [Ombudsman] issued the assailed Order.

The respective administrative liabilities of [respondents] in the transaction complained of will be reexamined by the [Ombudsman] in the resolution of the new administrative case. There is no indication that [respondents] were no longer required to participate in the new case. On the contrary, it is noted that [respondents] were among those directed to submit their counter-affidavit in the new case.

With the pendency of the new case, the [Ombudsman] should have refrained from ruling on the administrative liabilities of [respondents]. As to them, the new case would be rendered meaningless since it would appear that the [Ombudsman] had already made a definitive finding on their liabilities. The [Ombudsman] would not reexamine [respondents’] case if it had already decided on their liabilities. It would thus be premature for the [Ombudsman] to resolve the motions for reconsideration in view of the pendency of the new case.

x x x x

For a judicious determination of [respondents’] liabilities, the motions for reconsideration must be consolidated with the new case. It bears stressing that even x x x Galon prayed for the consolidation of his Partial Motion for Reconsideration with his new complaint. Hence, the remand of the instant case to [Ombudsman] is warranted.⁴¹

Hence, the respective appeals of the Ombudsman and Galon. The Ombudsman’s appeal was docketed as **G.R. No. 231345**, whereas Galon’s appeal was docketed as **G.R. No. 232406**.



⁴⁰ CA rollo, Volume I, pp. 2-33.

⁴¹ Rollo, G.R. No. 231345, pp. 54-55.

OUR RULING

We grant the appeals.

I

Before delving into the merits, we shall first address the issue, duly raised by the respondents in their Comment,⁴² which challenges the standing of the Ombudsman to file an appeal to this Court.

Respondents point out that the Ombudsman was not an original party to the main administrative case from which the present and previous appeals had sprung, but rather the very quasi-judicial agency that decided the said case.⁴³ As such, respondents argued that the Ombudsman may be likened to a judge or tribunal which, by reason of the impartiality required of it as an adjudicator, is neither allowed to participate in proceedings where its decision is under review nor considered to be a proper party to appeal a subsequent reversal of its decision.⁴⁴ Accordingly, respondents submit that the Ombudsman — as the entity which actually issued the order set aside by the CA in its decision — should not be allowed to appeal the CA's decision.

To bolster their submission, respondents cite the 2012 case of *Office of the Ombudsman v. Liggayu*⁴⁵ wherein we — for reasons allegedly similar to the ones conveyed above — refused to take cognizance of an appeal filed by the Ombudsman against a decision of the CA that reversed the former's ruling in an administrative case.

We are not convinced.

The question of whether the Ombudsman has the requisite standing to intervene and become a party in cases wherein its administrative ruling is under review was decisively settled in the *affirmative* by the *en banc* in the case of *Office of the Ombudsman v. Samaniego*.⁴⁶ *Samaniego* held that the Ombudsman, as a competent disciplining authority, possesses ample legal interest to take part in the said cases, *viz.*:

The Office of the Ombudsman sufficiently alleged its legal interest in the subject matter of litigation. Paragraph 2 of its motion for intervention and to admit the attached motion to recall writ of preliminary injunction averred:

⁴² *Id.* at 382-397.

⁴³ *Id.* at 383-386.

⁴⁴ *Id.*

⁴⁵ 688 Phil. 443 (2012).

⁴⁶ 586 Phil. 497 (2008).



2. As a competent disciplining body, the Ombudsman has the right to seek redress on the apparently erroneous issuance by this Honorable Court of the Writ of Preliminary Injunction enjoining the implementation of the Ombudsman's Joint Decision imposing upon petitioner the penalty of suspension for one (1) year, consistent with the doctrine laid down by the Supreme Court in *PNB [vs]. Garcia x x x and CSC [vs]. Dacoycoy[.]*

In asserting that it was a "competent disciplining body," the Office of the Ombudsman correctly summed up its legal interest in the matter in controversy. In support of its claim, it invoked its role as a constitutionally mandated "protector of the people," a disciplinary authority vested with quasi-judicial function to resolve administrative disciplinary cases against public officials. To hold otherwise would have been tantamount to abdicating its salutary functions as the guardian of public trust and accountability.

Moreover, the Office of the Ombudsman had a clear legal interest in the inquiry into whether respondent committed acts constituting grave misconduct, an offense punishable under the Uniform Rules in Administrative Cases in the Civil Service. It was in keeping with its duty to act as a champion of the people and preserve the integrity of public service that petitioner had to be given the opportunity to act fully within the parameters of its authority.⁴⁷ (Emphasis supplied; citations omitted.)

Samaniego further ruled that it is plain error to equate the Ombudsman to a judge or a court when the former is discharging its duty to decide administrative cases. Unlike a judge or a court, the Ombudsman — by virtue of its special power, duty and function under the Constitution and the law — is on “*a league of its own*” and thus cannot be “*detached, disinterested or neutral*” with respect to the administrative decisions it renders.⁴⁸ Hence, the Ombudsman ought not to be precluded from defending its decision on appeal:

Both the CA and respondent likened the Office of the Ombudsman to a judge whose decision was in question. This was a tad too simplistic (or perhaps even rather disdainful) of the power, duties and functions of the Office of the Ombudsman. The Office of the Ombudsman cannot be detached, disinterested and neutral specially when defending its decisions. Moreover, in administrative cases against government personnel, the offense is committed against the government and public interest. What further proof of a direct constitutional and legal interest in the accountability of public officers is necessary?⁴⁹ (Emphasis supplied; citations omitted.)

We are not, however, unaware of *Liggayu* and of the like cases of *Office of the Ombudsman v. Magno, et al.*⁵⁰ and *Office of the Ombudsman v. Sison*⁵¹

⁴⁷ *Id.* at 510-511.

⁴⁸ *Id.* at 512.

⁴⁹ *Id.*

⁵⁰ 592 Phil. 636 (2008).

⁵¹ 626 Phil. 598 (2010).

that seemingly depart from the doctrine established in *Samaniego*. Be that as it may, we still hold *Samaniego* controlling for the foregoing reasons:

First. *Liggayu, Magno* and *Sison* were all cases decided by a Division of the Court.⁵² Hence, none of these cases, under Section 4(3), Article VIII of the Constitution,⁵³ has sufficient doctrinal force to modify, much less overturn, the pronouncement in *Samaniego*.⁵⁴

Second. Cases more recent than *Liggayu, Magno* and *Sison* have all reaffirmed *Samaniego*. In the 2013 case of *Office of the Ombudsman v. De Chavez, et al.*,⁵⁵ the 2015 case of *Office of the Ombudsman v. Quimbo, et al.*,⁵⁶ and the 2017 case of *Office of the Ombudsman v. Gutierrez*,⁵⁷ we demonstrated our firm commitment to uphold the *Samaniego* pronouncement and its place in our jurisprudence. Thus, in *Office of the Ombudsman v. De Chavez, et al.*,⁵⁸ we declared:

The CA should have allowed the Office of the Ombudsman to intervene in the appeal pending with the lower court. The wisdom of this course of action has been exhaustively explained in *Office of the Ombudsman v. Samaniego*. In said case, the CA also issued a Resolution denying the Office of the Ombudsman's motion to intervene. In resolving the issue of whether the Office of the Ombudsman has legal interest to intervene in the appeal of its Decision, the Court expounded, thus:

X X X X

Here, since its power to ensure enforcement of its Joint Decision and Supplemental Resolution is in danger of being impaired, the Office of the Ombudsman had a clear legal interest in defending its right to have its judgment carried out. The CA patently erred in denying the Office of the Ombudsman's motion for intervention.

Then, in the case of *Office of the Ombudsman v. Quimbo, et al.*,⁵⁹ we held:

⁵² *Liggayu, Magno* and *Sison* were all promulgated by the Court's Third Division.

⁵³ Article VIII, Section 4(3) of the 1987 Constitution provides: "(3) Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided en banc: **Provided, that no doctrine or principle of law laid down by the court in a decision rendered en banc or in division may be modified or reversed except by the court sitting en banc.**" (Emphasis supplied.)

⁵⁴ Notably, the case of *Office of the Ombudsman v. Gutierrez* (811 Phil. 389 [2017]) offers an alternative appreciation of *Liggayu, Magno* and *Sison*. *Gutierrez* points out that *Liggayu, Magno* and *Sison* were all confronted with motions for intervention that were only filed by the Ombudsman after the CA had rendered its decision in the petition for review. In this light, *Liggayu, Magno* and *Sison* may still maintain their relevance as jurisprudential bases for denying belated motions for intervention filed by the Ombudsman.

⁵⁵ 713 Phil. 211, 218 (2013).

⁵⁶ 755 Phil. 41, 52 (2015).

⁵⁷ 811 Phil. 389 (2017).

⁵⁸ *Supra* note 55, at 218-219 (citation omitted).

⁵⁹ *Supra* note 56, at 52 (citations omitted).

The issue of whether or not the Ombudsman possesses the requisite legal interest to intervene in the proceedings where its decision is at risk of being inappropriately impaired has been laid to rest in *Ombudsman vs. De Chavez*. In the said case, the Court conclusively ruled that even if the Ombudsman was not impleaded as a party in the proceedings, part of its broad powers include defending its decisions before the CA. And pursuant to Section 1 of Rule 19 of the Rules of Court, the Ombudsman may validly intervene in the said proceedings as its legal interest on the matter is beyond cavil.

And, finally, in the case of *Office of the Ombudsman v. Gutierrez*:⁶⁰

Thus, as things currently stand, *Samaniego* remains to be the prevailing doctrine. The Ombudsman has legal interest in appeals from its rulings in administrative cases. Petitioner could not then be faulted for filing its Omnibus Motion before the appellate court in CA-G.R. SP No. 107551.

We add here our concurrence with *Samaniego*.

With the standing of the Ombudsman to file its appeal now placed beyond cavil, we shall now venture to the resolution of the substantial issues.

II

The common question posed by the present appeals is whether the CA erred in setting aside the Order in **OMB-M-A-11-390-I** and directing the consolidation of that case with **OMB-M-A-16-0151**. The CA, it can be remembered, declared the Order in **OMB-M-A-11-390-I** to be premature on account of the pendency of **OMB-M-A-16-0151**. The Ombudsman and Galon, however, dispute such declaration by reason of the fact that **OMB-M-A-11-390-I** and **OMB-M-A-16-0151** are distinct cases and, thus, could be decided independently of each other.

We side with the Ombudsman and Galon.

***Order in OMB-M-A-11-390-I is Not Premature;
Consolidation of OMB-M-A-11-390-I and OMB-M-A-16-0151 Requires an Exercise of Discretion
on the Part of the Ombudsman***

We take exception to the CA's characterization of the Order in **OMB-M-A-11-390-I** as "*premature*." To consider the said order as premature would imply that the necessary conditions required for its valid rendition were

⁶⁰ *Supra* note 57, at 407.

not fulfilled or had yet to take place at the time of its issuance. Such, however, cannot be said of the Order in **OMB-M-A-11-390-I**.

To be sure, the issuance of the Order in **OMB-M-A-11-390-I** appears to be perfectly apt. The order was only meant to settle the pending motions for reconsideration filed by the respondents and Galon after the decision in **OMB-M-A-11-390-I** had been duly promulgated. Under the Rules of Procedure of the Office of the Ombudsman (*RPOO*),⁶¹ the issuance of an order disposing of such motions is merely something that the Ombudsman is expected, nay authorized, to do given the circumstances.

The mere filing by Galon of a second complaint-affidavit (consequently docketed as **OMB-M-A-16-0151**) does not, by itself, strip the Ombudsman of the authority to resolve **OMB-M-A-11-390-I** on its own. The consolidation of the two cases does not happen automatically or as a matter of course just because they happen to share the same underlying facts and implicate the same parties; that still requires an exercise of discretion by the Ombudsman.⁶²

Consolidation, in the context of legal proceedings, is a procedural tool that permits individual cases that involve common questions of fact or law to be jointly heard and resolved by a court or tribunal.⁶³ It bears stressing, however, that the RPOO does not contain a direct provision on the consolidation of related administrative cases pending with the Ombudsman. Be that as it may, a guide for the application of the tool may be derived from Section 1, Rule 31 of the Rules of Court which, by virtue of Section 18(2) of R.A. No. 6770,⁶⁴ in relation to Section 3, Rule V of the RPOO,⁶⁵ has supplementary application to proceedings before the Ombudsman. Section 1, Rule 31 of the Rules of Court reads:

RULE 31
Consolidation or Severance

Section 1. *Consolidation*. — When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions

⁶¹ Under the RPOO, a motion for reconsideration of a decision in an administrative case is first resolved by a hearing officer (see Section 8, Rule III of the RPOO, as amended by Administrative Order No. 17, s. of 2003) and then submitted to either the Ombudsman or the appropriate approving authority for review and approval.

⁶² A contrary view, aside from having no basis in law or the RPOO, would be damaging to the Ombudsman's ability to act on and decide administrative cases. Any order or decision of the Ombudsman in an administrative case would certainly hold less weight, even none at all, if its finality or execution can easily be frustrated by the mere filing of a second complaint invoking the same facts and parties as the first. Such an outcome certainly cannot be countenanced.

⁶³ See *Neri v. Sandiganbayan*, 716 Phil. 186 (2013).

⁶⁴ Section 18. *Rules of Procedure*. —

X X X X

(2) The rules of procedure shall include a provision whereby the Rules of Court are made supplementary.

⁶⁵ Section 3. *Rules of Court, application*. — In all matters not provided in these rules, the Rules of Court shall apply in a supplementary character, or by analogy whenever practicable and convenient.



consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

What is apparent from the above is that the consolidation of two or several erstwhile similar cases is, at least as a rule, *not* considered as mandatory or automatic, but merely discretionary.⁶⁶ This can be gleaned from the provision's use of the permissive term *may* in describing the court's or, as applied to this case, the Ombudsman's authority to order the consolidation of cases. Verily, it can be said that the matter of consolidating **OMB-M-A-16-0151** and **OMB-M-A-11-390-I** still lies within the discretion of the Ombudsman.

In issuing the Order disposing of the pending motions for reconsideration in **OMB-M-A-11-390-I**—despite the pendency of **OMB-M-A-16-0151**—it is clear that the Ombudsman merely opted not to push through with the consolidation of the two cases. Unless this choice is shown to be patently erroneous for some reason, however, the Ombudsman's Order in **OMB-M-A-11-390-I** cannot at all be considered as premature.

The question that comes to the fore then is whether the Ombudsman erred when it chose not to consolidate **OMB-M-A-16-0151** and **OMB-M-A-11-390-I**.

The Ombudsman Did Not Err in Opting Not to Consolidate OMB-M-A-16-0151 and OMB-M-A-11-390-I

The CA, in its Decision, answered the foregoing question in the affirmative. It viewed the consolidation of **OMB-M-A-16-0151** and **OMB-M-A-11-390-I** as *necessary* in order to arrive at a judicious determination of the administrative liabilities of the respondents.⁶⁷

We disagree.

At first blush, the CA's view seems to find justification in the perception created by Galon's second complaint-affidavit that there are "*newly-discovered evidence*" that will be introduced therein that had not been presented or made available in **OMB-M-A-11-390-I**. These pieces of evidence comprise of the following documents culled from Ayunting's application to become a state witness in a criminal case pending before the Sandiganbayan, *viz.*:⁶⁸

⁶⁶ Regalado, Florenz, Remedial Law Compendium, Volume I, Seventh Revised Edition (1999), p. 348.

⁶⁷ *Rollo*, G.R. No. 231345, p. 55.

⁶⁸ *Id.* at 205-207.

1. Invitation to Apply for Eligibility and to Bid, signed by Chipoco in his capacity as BAC chairman;
2. Purchase Request dated January 7, 2011, signed by Go, Balais and Chipoco;
3. Letter addressed to Go dated January 10, 2011, signed by Paz G. Tawi, owner of Oro Cars Display Center;
4. Price Quotations of Catmon Car Sales and Oro Cars Display Center;
5. Abstract of Bids dated January 19, 2011;
6. Minutes of the Meeting of the BAC held on January 19, 2011;
7. Notice of Award dated January 20, 2011 in favor of the winning bidder, Oro Cars Display Center;
8. Purchase Order dated January 20, 2011 in favor of Oro Cars Display Center;
9. Acceptance and Inspection Report dated January 20, 2011;
10. Requisition and Issue Slip (*RIS*) No. 0001-11 dated January 24, 2011 signed by Go, Balais and one Gemma A. Bernido;
11. Obligation Request dated January 21, 2011; and
12. Disbursement Voucher No. 100-11-01-212 in favor of Oro Cars Display Center.

A review of the records, however, will quickly discredit such perception.

The records of **OMB-M-A-11-390-I** reveal the undeniable fact that the “*newly-discovered evidence*” introduced in **OMB-M-A-16-0151** is not entirely novel insofar as the former case is concerned. In truth, much of the said evidence had already been submitted in **OMB-M-A-11-390-I** through the respondents’ motion for reconsideration of the decision in the said case. By our count, eight (8) of the twelve (12) relevant documents cited in **OMB-M-A-16-0151**, as newly discovered, have already been annexed to respondents’ motion for reconsideration in **OMB-M-A-11-390-I**. Only document numbers **1** (Invitation to Apply for Eligibility and to Bid), **2** (Purchase Request dated January 7, 2011), **3** (Letter addressed to Go dated January 10, 2011), and **10** (*RIS* No. 0001-11 dated January 24, 2011), listed above, were not presented in **OMB-M-A-11-390-I**. And, as we shall expound in the discussion that follows, none of these documents are particularly critical in altering or changing the administrative liabilities of the respondents as determined by the Ombudsman in its Order in **OMB-M-A-11-390-I**.



In fine, we see no adequate reason to conclude that the consolidation of **OMB-M-A-16-0151** and **OMB-M-A-11-390-I** is absolutely necessary for a judicious determination of the administrative liabilities of the respondents. Indeed, given the marginal difference between the two cases from an evidentiary standpoint, we even find that the choice not to consolidate the two actions to be the prudent course of action to take under the circumstances.

We have to consider that **OMB-M-A-11-390-I** was already nearing its final stages at the time **OMB-M-A-16-0151** was filed. A decision was already promulgated in **OMB-M-A-11-390-I**, and the only matters left pending therein are the motions for reconsideration of the respondents and Galon. In this scenario, opting to consolidate such motions with **OMB-M-A-16-0151**—for no substantial or critical reason—would actually only waste resources, create more delay and, thus, ultimately subvert the very objectives of consolidating cases in the first place.⁶⁹ When confronted with this situation, it is certainly more efficient and economical on the part of the Ombudsman to just resolve the pending matters in **OMB-M-A-11-390-I** on their own and then simply order the exclusion of the respondents in **OMB-M-A-16-0151**. **OMB-M-A-16-0151** can then proceed with respect to those individuals not included in **OMB-M-A-11-390-I**.

III

Rather than directing the remand of this case to the CA for the purpose of reviewing the respondents' appeal from the Order in **OMB-M-A-11-390-I** on the merits, we opt to undertake such review ourselves. We do this in the interest of avoiding further protraction of the instant controversy, and also in consideration of the fact that all evidence necessary to undertake such review is, just the same, already attached to the instant appeal.

In their appeal to the CA,⁷⁰ respondents argued that the Ombudsman erred in finding them guilty of Grave Misconduct. They claimed that they had nothing to do with the scheme of Balais to have the municipality purchase his vehicle, and maintained that their only participation in the said purchase was through the bidding process for a Nissan Patrol vehicle which, as to them, appeared to be in order and regular.⁷¹ They insisted that they had no influence in the municipality entering into a contract with Ayunting, as the very disbursement voucher that they signed clearly indicated a certain Oro Cars Display Center as the winning bidder.

We are not convinced.



⁶⁹ See *Sps. de Vera v. Hon. Agloro*, 489 Phil. 185, 198 (2005).

⁷⁰ *CA rollo*, pp. 2-33.

⁷¹ *Id.* at 20.

The respondents' claim of innocence largely depends on the regularity or legitimacy of the competitive bidding for the purchase of the Nissan Patrol vehicle that they—as part of the BAC and BAC TWG for the municipality of Labason—supposedly oversaw and undertook. It can be recalled that, at the time of the contested purchase, Chipoco served both as the BAC chairman and municipal treasurer, while Buganutan headed the BAC TWG, aside from being the municipal accountant.

The records, however, disclose that there have been patent lapses in the manner in which such bidding was undertaken:

1. As already found by the Ombudsman,⁷² the Price Quotations prepared by the BAC were non-compliant with the procurement law. The “*Items & Description*” portion of the quotations specifically identified “*Nissan Patrol Year 2001 Model*” as the vehicle subject of bidding. The use of brand names to identify the property to be purchased in any bidding document is expressly proscribed under Section 18 of R.A. No. 9184.⁷³
2. As aptly pointed out by the Office of the Solicitor General,⁷⁴ there is no document on record which shows that the purchase of the Nissan Patrol vehicle was included in the municipality's approved Annual Procurement Plan (*APP*). This, in turn, violates Section 7 of R.A. No. 9184.⁷⁵
3. It also does not appear from the records that the BAC or BAC TWG had conducted any post qualification proceedings before awarding the contract to Oro Cars Display Center. The conduct of such proceedings is required under Section 34 of R.A. No. 9184.⁷⁶

⁷² *Rollo*, G.R. No. 231345, p. 115.

⁷³ SEC. 18. Reference to Brand Names. – Specifications for the Procurement of Goods shall be based on relevant characteristics and/or performance requirements. Reference to brand names shall not be allowed.

⁷⁴ *Rollo*, G.R. No. 231345, pp. 42-43 and 410-411. In their comment to the petition in G.R. No. 231345, respondents even implicitly admitted to committing the shortcomings pointed out by the Office of the Solicitor General, but stated that the same were only due to the fact they only underwent training on the updates on the Government Procurement Law, and its Implementing Rules and Regulations in 2012. They further explained that “[w]hatever shortcoming in competence there was, if at all, in the handling of procurement for the LGU of Labason prior to their training could not be said to be intentional as to amount to malice and bad faith.”

⁷⁵ SEC. 7. Procurement Planning and Budgeting Linkage. – All procurement should be within the approved budget of the Procuring Entity and should be meticulously and judiciously planned by the Procuring Entity concerned. Consistent with government fiscal discipline measures, only those considered crucial to the efficient discharge of governmental functions shall be included in the Annual Procurement Plan to be specified in the IRR.

No government Procurement shall be undertaken unless it is in accordance with the approved Annual Procurement Plan of the Procuring Entity. The Annual Procurement Plan shall be approved by the Head of the Procuring Entity and must be consistent with its duly approved yearly budget. The Annual Procurement Plan shall be formulated and revised only in accordance with the guidelines set forth in the IRR. In the case of Infrastructure Projects, the Plan shall include engineering design and acquisition of right-of-way. (Emphasis supplied.)

⁷⁶ SEC. 34. Objective and Process of Post-qualification. – Post-qualification is the stage where the bidder with the Lowest Calculated Bid, in the case of Goods and Infrastructure Projects, or the Highest Rated Bid, in the case of Consulting Services, undergoes verification and validation whether he has passed all the requirements and conditions as specified in the Bidding Documents.

4. The foregoing lapses indicate that the conduct of the competitive bidding—if it even can be said that one was undertaken—had been marred with inexcusable laxity on the part of the BAC and BAC TWG. Taken together, the lapses thus betray a sham bidding rashly put together solely to facilitate the sale of Balais' vehicle to the municipality.

First. The specific identification of “Nissan Patrol Year 2001 Model” as the object of bidding in the Price Quotation is in itself suspicious. The interest of the municipality in that *particular* vehicle model was never explained in the records. In the absence of such explanation, the specificity of the Price Quotation gives the impression that the bidding was skewed to favor Balais—who conveniently owns a vehicle of the same exact make, model and year of release as the vehicle indicated in the quotation.

Second. The non-inclusion of the procurement of the Nissan Patrol vehicle in the APP, on one hand, and the absence of post qualification proceedings, on the other hand, show unjustified rashness in the conduct of the supposed competitive bidding. Of the two, though, the latter is especially blameworthy.

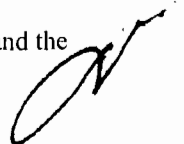
Post qualification proceedings, as contemplated under R.A. No. 9184, refer to that stage in the procurement process where the statements and documents submitted by the bidder with the lowest calculated bid are supposed to be verified, validated and ascertained by the BAC or BAC TWG.⁷⁷ In this case, post qualification proceedings would have afforded the BAC and BAC TWG the opportunity to verify the statements made by the winning bidder, Oro Cars Display Center, in its bidding documents—including the latter's title or rights over the Nissan Patrol vehicle it proposed to supply the municipality. Had this been done, the BAC or BAC TWG could have easily determined that the very vehicle that Oro Cars Display Center is proposing to sell to the municipality is not its own—but rather belongs to Balais. The 2007 certificate of registration covering the Nissan Patrol vehicle unequivocally named Balais, not Oro Cars Display Center, as the owner of the said vehicle.⁷⁸

If the bidder with the Lowest Calculated Bid or Highest Rated Bid passes all the criteria for post-qualification, his Bid shall be considered the “Lowest Calculated Responsive Bid,” in the case of Goods and Infrastructure or the “Highest Rated Responsive Bid,” in the case of Consulting Services. However, if a bidder fails to meet any of the requirements or conditions, he shall be “post-disqualified” and the BAC shall conduct the post-qualification on the bidder with the second Lowest Calculated Bid or Highest Rated Bid. If the bidder with the second Lowest Calculated Bid or Highest Rated Bid is post-disqualified, the same procedure shall be repeated until the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid is finally determined.

In all cases, the contract shall be awarded only to the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid.

⁷⁷ Nacor, Florante B., *The Philippine Government Procurement Reform Act (R.A. No. 9184) and the Revised IRR, Annotated (2011)*, p. 432.

⁷⁸ *Rollo*, G.R. No. 231345, p. 145.



As heads of the BAC and BAC TWG, respectively, respondents Chipoco and Buganutan can certainly be held administratively liable for their involvement in conducting a sham bidding. The BAC and BAC TWG, it must be emphasized, are duty bound to ensure that every government procurement abides by the standards and procedure set forth under R.A. No. 9184 and its implementing rules and regulations.⁷⁹ They exist precisely to preserve the sanctity of the competitive bidding process and protect their mother agency or local government unit against the possibility of entering into anomalous or disadvantageous contracts or agreements. By the aforementioned lapses, however, it is evident that respondents had been remiss in their duties.

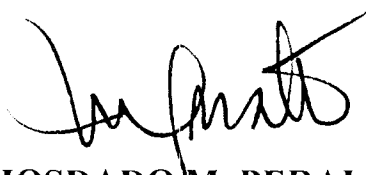
The respondents may then be faulted too, in their capacities as municipal treasurer and accountant, for their act of signing the disbursement voucher in favor of Oro Cars Display Center despite their knowledge that a *bona fide* public bidding—one that is fully compliant with procurement law—had not been undertaken.

The Ombudsman was, therefore, right in holding the respondents liable for Grave Misconduct. There is said to be Grave Misconduct when the transgression of some established and definite rule is coupled with the element of willful intent to violate the law or to disregard established rules.⁸⁰ This definition perfectly fits the lapses of the respondents.

The lapses committed by the respondents, as can be seen, were far from innocent. They pertain to basic and uncontroversial requirements of the procurement law. They are also numerous and, when appreciated alongside each other, reveal a latent intent on the part of the actors to accomplish something anomalous and illegal. Hence, we find no quibble about the liabilities of the respondents.

WHEREFORE, premises considered, the consolidated appeals are **GRANTED**. The Decision dated March 23, 2017 of the Court of Appeals in CA-G.R. SP No. 07524 is **REVERSED** and **SET ASIDE**. The Order dated May 27, 2016 of the Office of the Ombudsman in OMB-M-A-11-390-I is **REINSTATED**.

SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

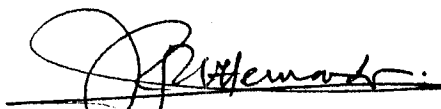
⁷⁹ See Section 12 of R.A. No. 9184.

⁸⁰ *Fajardo v. Corral*, 813 Phil. 149, 158 (2017).

WE CONCUR:


MARVIC MARIO VICTOR F. LEONEN
 Associate Justice


Reyes
ANDRES B. REYES, JR.
 Associate Justice


RAMON PAUL L. HERNANDO
 Associate Justice


HENRI JEAN PAUL B. INTING
 Associate Justice


ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


DIOSDADO M. PERALTA
 Associate Justice
 Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
 Acting Chief Justice

CERTIFIED TRUE COPY

Misa DC Batt
MISAELO DOMINGO C. BATTUNG III
 Deputy Division Clerk of Court
 Third Division

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