



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ADELAIDA YATCO,

Petitioner,

- versus -

OFFICE OF THE DEPUTY
OMBUDSMAN FOR LUZON,
MARLYN "LEN" BELIZARIO
ALONTE-NAGUIT, WALFREDO
REYES DIMAGUILA, JR.,
VIRGILIO M. DIMARANAN, AND
ANGELITO ALONALON,

Respondents.

G.R. No. 244775

Present:

PERLAS-BERNABE, S.A.J.,
Chairperson,
HERNANDO,
INTING,
DELOS SANTOS, and
GAERLAN, * JJ.

Promulgated:

06 JUL 2020

x-----x

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ is the Resolution² dated February 7, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 156633, which partly dismissed the petition for *certiorari* before it on the ground that the CA has no jurisdiction over the criminal aspect of the cases coming from the Office of the Ombudsman (Ombudsman).

* Designated additional member per Special Order No. 2780 dated May 11, 2020.

¹ *Rollo*, pp. 11-19.

² *Id.* at 24-27. Penned by Associate Justice Victoria Isabel A. Paredes with Associate Justices Marlene B. Gonzales-Sison and Ruben Reynaldo G. Roxas, concurring.

2

The Facts

In 2016, petitioner Adelaida Yatco (petitioner) filed a complaint with the Ombudsman against four (4) officials of Biñan, Laguna, particularly: then Mayor Marlyn B. Alonte-Naguit (Alonte-Naguit), then Vice Mayor Walfredo R. Dimaguila, Jr. (Dimaguila), Municipal Accountant Virgilio M. Dimaranan, and Municipal Treasurer Angelito Alonalon (respondents), for violations of Republic Act No. (RA) 3019, RA 6713, Plunder, Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service, and Dishonesty, in relation to the purchase of a property for the expansion of the municipal cemetery. Petitioner alleged, among others, that the purchase was disadvantageous to the government and that respondent Alonte-Naguit had financial interest in the transaction.

In a Joint Resolution³ dated August 17, 2017 (Joint Resolution), the Ombudsman dismissed the complaint for lack of probable cause and lack of substantial evidence. It held, among others, that Alonte-Naguit had no direct or indirect financial interest in the subject transaction because the portion purchased by the municipality did not include the portion of the estate owned by her mother and that the purchase price was not grossly and manifestly disadvantageous to the government since it reflected the fair market value of similar properties in the vicinity.⁴

Petitioner moved for reconsideration, which was, however, denied in a Joint Order⁵ dated April 10, 2018 (Joint Order). **She then filed a petition for certiorari under Rule 65 of the Rules of Court before the CA, assailing the entirety of the Ombudsman's ruling.** She explained that since the Ombudsman “consolidated the decision for *both* the *criminal* and the *administrative*” aspects of the case, she filed the petition before the CA “as a whole.”⁶

Respondent Dimaguila filed a motion to dismiss on the ground of lack of jurisdiction. In turn, petitioner opposed the motion to dismiss.

³ Id. at 28-40. Signed by Graft Investigation and Prosecution Officer III Regina C. Anniban-Navarro and approved by Ombudsman Conchita Carpio Morales.

⁴ As regards the alleged violation of Section 7(a) of RA 6713, the Ombudsman held that respondent Alonte-Naguit cannot be said to have direct or indirect financial interest in the subject transaction because the portion purchased by the municipality did not include the portion of the estate owned by her mother. The Ombudsman also found no probable cause to indict respondents for violating RA 3019, explaining that the purchase price was not grossly and manifestly disadvantageous to the government since it reflected the fair market value of similar properties in the vicinity. The Ombudsman likewise held that the charge for Plunder must fail because petitioner failed to establish that respondents amassed ill-gotten wealth amounting to at least Fifty Million Pesos as a result of the subject transaction. Further, the Ombudsman found no substantial basis to hold respondent administratively liable due to petitioner's failure establish that respondents violated any law or rules, or that their actions tarnished the image or integrity of their office, or that the government was defrauded in the subject transaction. (See *id.* at 34-39).

⁵ Id. at 52-55.

⁶ Id. at 16.

Citing *Cortes v. Office of the Ombudsman (Cortes)*,⁷ she argued that “in cases involving consolidation of administrative and criminal complaints, the aggrieved party has the option to either file a petition for review under Rule 43 of the Rules of Court (Rule 43) with the [CA] or directly file a petition for *certiorari* under Rule 65 of the Rules of Court (Rule 65) before the Supreme Court.”⁸

The CA’s Ruling

In a Resolution⁹ dated February 7, 2019, the CA **dismissed the petition for *certiorari* “as regards the criminal aspect of the case.”** It held that it has jurisdiction over decisions of the Ombudsman in administrative disciplinary cases only, and accordingly, it cannot review the Ombudsman’s decisions in criminal or non-administrative cases. Further, it ruled that petitioner misconstrued the ruling in *Cortes*, because it did not contain a categorical pronouncement that an aggrieved party has “alternative remedies” in case of a consolidated decision by the Ombudsman resolving administrative and criminal complaints.¹⁰ In fact, in one case,¹¹ the Court held that the CA exceeded its jurisdiction when the latter touched on the criminal aspect of the Ombudsman’s decision.¹² Hence, this petition.

The Issue Before the Court

The issue before the Court is whether or not the CA correctly dismissed petitioner’s petition for *certiorari* as regards the criminal aspect of cases coming from the Ombudsman.

The Court’s Ruling

The petition lacks merit.

The corresponding remedies to assail Ombudsman rulings with respect to administrative and criminal charges are already well-settled in jurisprudence.

With respect to administrative charges, there is a delineation between appealable and unappealable Ombudsman rulings. Pursuant

⁷ 710 Phil. 699 (2013).

⁸ *Rollo*, p. 25.

⁹ *Id.* at 24-27.

¹⁰ *See id.* at 25-27.

¹¹ *Duyon v. CA*, 748 Phil. 375 (2014).

¹² *See id.* at 384-387.

N

to Section 27¹³ of the Ombudsman Act, any order, directive or decision of the Ombudsman “imposing the penalty of public censure or reprimand, [or] suspension of not more than one (1) month’s salary shall be final and unappealable.” Case law has explained that Ombudsman rulings which exonerate the respondent from administrative liability are, by implication, also considered final and unappealable.¹⁴ In these instances, the Court has ruled that even though such rulings are **final and unappealable**, it is still subject to judicial review on the ground of grave abuse of discretion, and the correct procedure is to file a **petition for certiorari under Rule 65 of the Rules of Court before the CA**.¹⁵

In contrast, in cases where the respondent is not exonerated and the penalty imposed is not merely public censure or reprimand, or suspension of not more than one (1) month’s salary, the Ombudsman’s decision is appealable, and the proper remedy is to file an **appeal under Rule 43 of the Rules of Court before the Court of Appeals**. As stated in Section 7, Rule III of the Ombudsman Rules:¹⁶

Section 7. *Finality and execution of decision.* – Where the respondent is **absolved of the charge**, and in case of **conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary**, the decision shall be **final, executory and unappealable**. **In all other cases**, the **decision may be appealed to the Court of Appeals** on a verified petition for review under the requirements and conditions set forth in **Rule 43 of the Rules of Court**, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

x x x x (Emphases and underscoring supplied)

Meanwhile, with respect to **criminal charges**, the Court has settled that the remedy of an aggrieved party from a **resolution of the Ombudsman finding the presence or absence of probable cause** is to file a **petition for certiorari under Rule 65 of the Rules of Court** and the petition should be filed not before the CA, but before the **Supreme**

¹³ Section 27. *Effectivity and Finality of Decisions.* –
x x x x

Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month’s salary shall be final and unappealable.

x x x x

¹⁴ See *Reyes, Jr. v. Belisario*, 612 Phil. 937, 952-953 (2009).

¹⁵ See *id.* at 953-954. The Court held that “if a sentence of censure, reprimand and a one-month suspension is considered final and unappealable, so should exoneration,” adding that “its inclusion is implicit.” The Court also stated that the clear import of the provision in the Ombudsman is “deny the complainant in an administrative complaint the right to appeal where the Ombudsman has exonerated the respondent of the administrative charge.” Accordingly, in the 2016 case of *Joson v. Ombudsman* (784 Phil. 172 [2016]), the Court held that an Ombudsman ruling absolving the respondent of the administrative charge possesses the character of finality, and thus, not subject to appeal.

¹⁶ Amendment of Rule III, Administrative Order No. 07, Ombudsman Administrative Order No. 17-03, September 15, 2003.

Court.¹⁷ In the fairly recent case of *Gatchalian v. Office of the Ombudsman*,¹⁸ (decided on August 1, 2018), the Court traced the genesis of the foregoing procedure and cited a wealth of jurisprudence recognizing the same:

The first case on the matter was the 1998 case of *Fabian vs. Desierto*, where the Court held that Section 27 of Republic Act No. 6770 (RA 6770), which provides that all “orders, directives, or decisions [in administrative cases] of the Office of the Ombudsman may be appealed to the Supreme Court by filing a *petition for certiorari* within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court,” was unconstitutional for it increased the appellate jurisdiction of the Supreme Court without its advice and concurrence. The Court thus held that “appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under the provision of Rule 43.”

Subsequently, in *Kuizon v. Desierto*, the Court stressed that the ruling in *Fabian* was limited only to administrative cases, and added that it is the Supreme Court which has jurisdiction when the assailed decision, resolution, or order was an incident of a criminal action. Thus:

In dismissing petitioners’ petition for lack of jurisdiction, the Court of Appeals cited the case of *Fabian vs. Desierto*. The appellate court correctly ruled that its jurisdiction extends only to decisions of the Office of the Ombudsman in administrative cases. In the *Fabian* case, we ruled that appeals from decisions of the Office of the Ombudsman in *administrative disciplinary cases* should be taken to the Court of Appeals under Rule 43 of the 1997 Rules of Civil Procedure. It bears stressing that when we declared Section 27 of Republic Act No. 6770 as unconstitutional, we categorically stated that said provision is involved only whenever an appeal by *certiorari* under Rule 45 is taken from a decision in an administrative disciplinary action. It cannot be taken into account where an original action for *certiorari* under Rule 65 is resorted to as a remedy for judicial review, such as from an incident in a criminal action. In fine, we hold that the present petition should have been filed with this Court.

In *Golangco vs. Fung*, the Court voided a decision of the CA which directed the Ombudsman to withdraw an Information already filed by it with a Regional Trial Court (RTC). The Court in *Golangco* reasoned that “[t]he Court of Appeals has jurisdiction over orders, directives and decisions of the Office of the Ombudsman in administrative disciplinary cases only. It cannot, therefore, review the orders, directives or decisions of the Office of the Ombudsman in criminal or non-administrative cases.”

¹⁷ See *Baviera v. Zoleta*, 535 Phil. 292, 312-314 (2006).

¹⁸ G.R. No. 229288, August 1, 2018.

✓

With regard to orders, directives, or decisions of the Ombudsman in criminal or non-administrative cases, the Court, in *Tirol, Jr. v. Del Rosario*, held that the remedy for the same is to file a petition for *certiorari* under Rule 65 of the Rules of Court. The Court explained:

True, the law is silent on the remedy of an aggrieved party in case the Ombudsman found sufficient cause to indict him in criminal or non-administrative cases. We cannot supply such deficiency if none has been provided in the law. We have held that the right to appeal is a mere statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of law. Hence, there must be a law expressly granting such privilege. The Ombudsman Act specifically deals with the remedy of an aggrieved party from orders, directives and decisions of the Ombudsman in administrative disciplinary cases. As we ruled in *Fabian*, the aggrieved party is given the right to appeal to the Court of Appeals. Such right of appeal is not granted to parties aggrieved by orders and decisions of the Ombudsman in criminal cases, like finding probable cause to indict accused persons.

However, an aggrieved party is not without recourse where the finding of the Ombudsman as to the existence of probable cause is tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction. An aggrieved party may file a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure.

The Court in *Tirol, Jr.*, however, was unable to specify the court – whether it be the RTC, the CA, or the Supreme Court – to which the petition for *certiorari* under Rule 65 should be filed given the concurrent jurisdictions of the aforementioned courts over petitions for *certiorari*.

Five years after, the Court clarified in *Estrada v. Desierto* that a petition for *certiorari* under Rule 65 of the Rules of Court questioning the finding of the existence of probable cause — or the lack thereof — by the Ombudsman should be filed with the Supreme Court. The Court elucidated:

But in which court should this special civil action be filed?

Petitioner contends that *certiorari* under Rule 65 should first be filed with the Court of Appeals as the doctrine of hierarchy of courts precludes the immediate invocation of this Court's jurisdiction. Unfortunately for petitioner, he is flogging a dead horse as this argument has already been shot down in *Kuizon v. Ombudsman* where we decreed —

In dismissing petitioners' petition for lack of jurisdiction, the Court of Appeals cited the case of *Fabian vs. Desierto*. The appellate court correctly ruled that its jurisdiction extends only to decisions of the Office of the Ombudsman in administrative cases. In the *Fabian* case, we ruled that appeals from decisions of

the Office of the Ombudsman in *administrative disciplinary* cases should be taken to the Court of Appeals under Rule 43 of the 1997 Rules of Civil Procedure. It bears stressing that when we declared Section 27 of Republic Act No. 6770 as unconstitutional, we categorically stated that said provision is involved only whenever an appeal by *certiorari* under Rule 45 is taken from a decision in an administrative disciplinary action. It cannot be taken into account where an original action for *certiorari* under Rule 65 is resorted to as a remedy for judicial review, such as from an incident in a criminal action. In fine, we hold that the present petition should have been filed with this Court.

Kuizon and the subsequent case of *Mendoza-Arce v. Office of the Ombudsman (Visayas)* drove home the point that **the remedy of aggrieved parties from resolutions of the Office of the Ombudsman finding probable cause in criminal cases or non-administrative cases, when tainted with grave abuse of discretion, is to file an original action for certiorari with this Court and not with the Court of Appeals.** In cases when the aggrieved party is questioning the Office of the Ombudsman's finding of lack of probable cause, as in this case, there is likewise the remedy of *certiorari* under Rule 65 to be filed with this Court and not with the Court of Appeals following our ruling in *Perez v. Office of the Ombudsman*.

In the 2009 case of *Ombudsman v. Heirs of Margarita Vda. De Ventura*, the Court reiterated *Kuizon*, *Golango*, and *Estrada*, and ruled that the CA did not have jurisdiction over orders and decisions of the Ombudsman in non-administrative cases, and that **the remedy of aggrieved parties was to file a petition for certiorari under Rule 65 with this Court.** The foregoing principles were repeatedly upheld in other cases, such as in *Soriano v. Cabais* and *Duyon v. Court of Appeals*. (Emphases and underscoring supplied)

Thus, it is evident from the foregoing that the remedy to assail the ruling of the Ombudsman in non-administrative/criminal cases (*i.e.*, file a petition for *certiorari* under Rule 65 of the Rules of Court **before the Supreme Court**) is well-entrenched in our jurisprudence.

This notwithstanding, petitioner insists that **when the Ombudsman issues a consolidated decision on administrative and criminal charges, the aggrieved party has alternative remedies, *i.e.*, to either file a petition for review under Rule 43 before the CA or a *certiorari* petition under Rule 65 before the Supreme Court.**¹⁹ As basis, she cites the following excerpt in the 2013 case of *Cortes*:

Considering that the case at bar was a consolidation of an administrative and a criminal complaint, petitioner had the **option to either file a petition for review under Rule 43 with the Court of Appeals or**

¹⁹ *Rollo*, p. 17.

directly file a certiorari petition under Rule 65 before this Court. Neither of these two remedies was resorted to by petitioner.

By availing of a wrong remedy, this petition merits an outright dismissal.²⁰ (Emphasis supplied)

Petitioner's reliance on *Cortes* is mistaken.

In the first place, it is well to point out that **petitioner filed a Rule 65 petition for certiorari before the CA to assail both the administrative and criminal aspects of the Ombudsman's consolidated ruling in this case.** As such, her recourse did not even conform to the supposed alternative remedies stated in the *Cortes* case (*i.e.*, a petition for review under Rule 43 before the CA or a *certiorari* petition under Rule 65 before the Supreme Court). Hence, *Cortes* is not a proper basis to grant petitioner's present appeal.

In any event, assuming that petitioner did pursue either of the supposed alternative remedies, the Court finds it fitting to clarify that each of these remedies remain viable only with respect to the corresponding nature of the charges assailed. The foregoing statement in *Cortes* – which, to note, is a division ruling – should not be taken as a modification of the well-settled configuration of remedies in our jurisprudence.

In *Cortes*, therein petitioner Amando P. Cortes (*Cortes*) filed before the Supreme Court a Rule 45 petition for review on *certiorari* to assail the Ombudsman's consolidated decision on an administrative and criminal complaint. Thus, the Court held that the filing of the Rule 45 petition was a procedural misstep that merited an outright dismissal. Consistent with the above-discussed procedural framework, the above-cited excerpt in *Cortes* should be understood to mean that Cortes could have assailed the administrative aspect by filing a Rule 43 petition for review with the CA when the right to appeal is available, or assailed the criminal aspect by filing a Rule 65 *certiorari* petition with the Court. Since Cortes did neither of these, the Ombudsman's ruling was not properly assailed.

The fact that the Ombudsman had rendered a consolidated ruling does not – as it should not – alter the nature of the prescribed remedy corresponding to the aspect of the Ombudsman ruling being assailed. Consolidation is an act of judicial discretion when several cases are already filed and pending before it. This assumes that the procedural vehicles taken when these remedies are filed in the deciding forum are proper and thus, are to be given due course. Rule 31 of the Rules of Court, which applies

²⁰ *Cortes v. Office of the Ombudsman*, supra note 7, at 703.

suppletorily in cases before the Ombudsman,²¹ provides that consolidation involves actions that are already *pending* before the Court:

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

As consolidation is a matter for the court to determine post-filing, it does not affect the nature of the procedural recourse taken by the aggrieved party. Here, when the Ombudsman consolidated the criminal and administrative charges against respondents, it deemed it proper to resolve both criminal and administrative aspects in one Joint Resolution because the charges involved common questions of fact or law. Ordinarily, administrative and criminal charges filed before the Ombudsman would usually pertain to one incident involving the same set of facts and parties, from which both criminal and administrative liabilities may stem. This gives rise to their consolidation. However, after the Ombudsman renders its consolidated ruling, the aggrieved party is then required to take the appropriate procedural remedies to separately assail the administrative and criminal components of the same. Clearly, a Rule 65 *certiorari* petition (which is the proper remedy to assail the criminal aspect of the Ombudsman ruling; or the administrative aspect of an unappealable Ombudsman ruling) is clearly different from a Rule 43 appeal (which is the proper remedy to assail the administrative aspect of an appealable ruling). As held in *Madrigal Transport, Inc. v. Lapanday Holdings*,²² the special civil action for *certiorari* and appeal are two different remedies that are mutually exclusive. They are different from one another with respect to purpose, manner of filing, subject matter, period of filing, and the need for a prior motion for reconsideration.²³

Verily, to accept petitioner's reading of the *Cortes* case would not only unnerve the settled jurisprudence on the matter, it would also obscure the well-defined distinctions between *certiorari* and appeal.

Besides, in cases decided subsequent to *Cortes*, the Court has consistently preserved the existing procedural approach in assailing the administrative and criminal aspects of the Ombudsman's ruling, regardless of their consolidation.

²¹ Section 3, Rule V of the Administrative Order No. 7, Rules of Procedure of the Ombudsman provides: "x x x in all matters not provided in these rules, the Rules of Court shall apply in a suppletory character, or by analogy whenever practicable and convenient."

²² 479 Phil. 768 (2004).

²³ See *id.* at 779-782.

N

In *Joson v. Ombudsman* (2016),²⁴ a Rule 65 petition was filed with the Supreme Court to assail the Ombudsman's dismissal of both administrative and criminal complaints. The Court ruled on the criminal aspect and found no grave abuse of discretion on the part of the Ombudsman. Meanwhile, as regards the administrative aspect, the Court held that the Ombudsman's finding "has already attained finality because Joson failed to file a petition for *certiorari* before the [CA]."²⁵

In *Ornales v. Office of the Deputy Ombudsman for Luzon*,²⁶ a Rule 65 petition was filed with the CA to question the Ombudsman's order holding respondent administratively liable for grave misconduct and finding probable cause to indict him for violation of RA 3019. The CA dismissed the Rule 65 petition for lack of jurisdiction. The Court affirmed the CA's dismissal of the petition for being the wrong remedy, stressing that it has "repeatedly pronounced that the [Ombudsman's] orders and decisions in criminal cases may be elevated to this Court in a Rule 65 petition, while its orders and decisions in administrative disciplinary cases may be raised on appeal to the [CA]."

In this case, the Ombudsman, through a Joint Resolution, exonerated respondents from administrative liability and dismissed the criminal charges due to lack of probable cause. After petitioner's motion for reconsideration was denied, she assailed the Joint Resolution by filing a petition for *certiorari* under Rule 65 of the Rules of Court before the CA. As above-discussed, while this is the proper procedural recourse to assail the administrative aspect of the Ombudsman's Joint Resolution, the same is not true for its criminal aspect. To reiterate, the prevailing rule is that the petition for *certiorari* questioning the criminal incident of the case should be filed with the Supreme Court, and not with the CA. Hence, the CA correctly dismissed the petition filed before it insofar as the criminal aspect is concerned.

WHEREFORE, the petition is **DENIED**. Accordingly, the February 7, 2019 Resolution of the Court of Appeals in CA-G.R. SP No. 156633 is hereby **AFFIRMED**.

SO ORDERED.

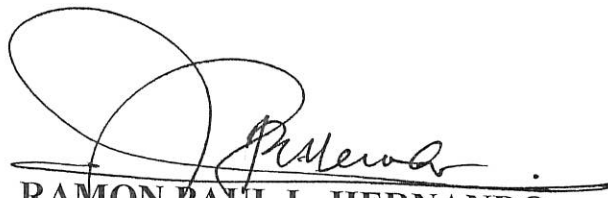

ESTELA M. PERLAS-BERNABE
Senior Associate Justice

²⁴ 784 Phil. 172 (2016).

²⁵ See id. at 184-191.


²⁶ G.R. No. 214312, September 5, 2018.

WE CONCUR:


RAMON PAUL L. HERNANDO
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice


SAMUEL H. GAERLAN
Associate Justice

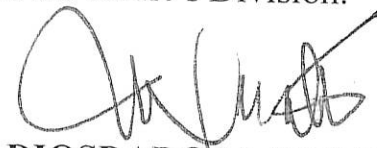
ATTESTATION

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.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson, Second 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.


DIOSDADO M. PERALTA
Chief Justice