Republic of the Philippines
Supreme Court
Baguio City

THIRD DIVISION

MARINA P. CLARETE, Former Representative, First District of Misamis Occidental, 14th Congress,
Petitioner,

G.R. No. 232968

- versus -

OFFICE OF THE OMBUDSMAN and FIELD INVESTIGATION UNIT – MINDANAO AREA OFFICE, OFFICE OF THE OMBUDSMAN,
Respondents.

x----------x

ARTHUR CUA YAP,
Petitioner,

G.R. No. 232974

- versus -

THE OFFICE OF THE OMBUDSMAN and FIELD INVESTIGATION UNIT – MINDANAO AREA OFFICE,
Respondents.

x----------x

ARTHUR CUA YAP,
Petitioner,

- versus -

SANDIGANBAYAN (THIRD DIVISION) and PEOPLE OF THE PHILIPPINES,
Respondents.

G.R. Nos. 238584–87

Present:

CAGUIOA, *Chairperson,*
INTING,
GAERLAN,
DIMAAMPAO, and
SINGH, *JJ.*

Promulgated:

April 15, 2024
MicDCBatt

x----------x

DECISION

DIMAAMPAO, *J.:*

At the pith of the instant controversy are three separate Petitions for *Certiorari* anchored on a common factual backdrop and hinged upon interrelated issues involving the same parties.

A diegeses of the Petitions follow.

1. The Petition for *Certiorari*[1] in **G.R. No. 232968** was filed by petitioner Marina P. Clarete (Clarete), former Representative of the First District of Misamis Occidental, 14th Congress. It seeks to nullify and set aside the Resolution[2] and the Order[3] of the Office of the Ombudsman (OMB) in OMB-C-C-14-0248. In the challenged Resolution, the OMB found probable cause to charge Clarete and her co-accused with 18 counts of violation of Section 3(e) of Republic Act No. 3019,[4] seven counts of malversation of public funds, and 11 counts of malversation of public funds through falsification. On the other hand, the Order of the OMB denied Clarete's Motion for Reconsideration;[5]

---

1 *Rollo,* G.R. No. 232968, pp. 3–62.
2 *Id.* at 241–331. The Resolution dated July 20, 2016 was approved by Ombudsman Conchita Carpio Morales on August 2, 2016.
3 *Id.* at 368–407. The Order dated January 16, 2017 was approved by Ombudsman Conchita Carpio Morales on May 29, 2017.
4 Anti-Graft and Corrupt Practices Act (1960).
5 *Rollo,* G.R. No. 232968, pp. 332–367.

2. In his Petition for *Certiorari*[6] in **G.R. No. 232974**, petitioner Arthur Cua Yap (Yap), former Secretary of the Department of Agriculture (DA), inveighs against the same OMB issuances[7] assailed in G.R. No. 232968; and

3. Finally, via another Petition for *Certiorari*[8] docketed as **G.R. Nos. 238584–87**, Yap impugns the two Resolutions issued by the Sandiganbayan (SBN) in SB-17-CRM-1510-1545, where he stood accused of two counts of violation of Section 3(e) of Republic Act No. 3019, one count of malversation of public funds, and one count of malversation through falsification. The first SBN Resolution[9] struck down Yap's Motion for Partial Reconsideration with Motion to Quash Informations,[10] while the subsequent Resolution[11] denied his Motion for Reconsideration thereof.[12]

Antecedents

These consolidated cases draw their collective origin from the anomalies which avowedly attended the utilization and disbursement of the Priority Development Assistance Fund (PDAF) allocations of Clarete for the years 2007 to 2009.

In its SAO Report No. 2012-03, the Special Audits Office (SAO) of the Commission on Audit (COA) found that during the Calendar Years 2007 to 2009, the PDAF was not properly released by the Department of Budget and Management (DBM) and several implementing agencies (IA) did not appropriately, efficiently, and effectively utilize the PDAF. As it happened, the DBM released the funds for projects identified by the legislators notwithstanding that such projects were to be implemented outside the legislative districts of the sponsoring legislators. It further discovered that the funds released to the IAs for the implementation of projects did not pertain to the IAs' mandated functions. Moreso, the IAs failed to comply with existing laws and rules and regulations in the disbursement of funds.[13]

---

6 *Rollo*, G.R. No. 232974, pp. 3–52.

7 *Id.* at 53–143, OMB Resolution dated July 20, 2016; and at 144–183, OMB Resolution dated January 16, 2017.

8 *Rollo*, G.R. No. 238584–87, pp. 3–54.

9 *Id.* at 55–82 the Resolution dated November 28, 2017 was penned by Presiding Justice Amparo M. Cabotaje-Tang with the concurrence of Associate Justices Bernelito R. Fernandez and Sarah Jane T. Fernandez.

10 *Id.* at 295–316.

11 *Id.* at 85–95; the Resolution dated March 1, 2018 was penned by Presiding Justice Amparo M. Cabotaje-Tang with the concurrence of Associate Justices Bernelito R. Fernandez and Sarah Jane T. Fernandez.

12 *Id.* at 407–422.

13 *Rollo*, G.R. No. 232968, pp. 247–250.

On the strength of the SAO Report No. 2012-03, and upon the independent field validations that the OMB itself conducted, the OMB-Mindanao Field Investigation Unit filed a Complaint,[14] docketed as OMB-C-C-14-0248, against Clarete and several other government officials and employees, private individuals, and non-governmental organizations (NGOs).[15] The accused were alleged to have acted in conspiracy to misuse Clarete's PDAF allocations covered by the following Special Allotment Release Orders (SAROs) and Notices of Cash Allocation (NCAs):

1. SARO No. ROCS-07-07894 dated October 10, 2007 under NCA No. 349022-2 dated December 20, 2007;
2. SARO No. ROCS-08-04170 dated May 8, 2008 under NCA No. 363223-0 dated June 12, 2008;
3. SARO No. ROCS-08-00596 dated January 10, 2008 under NCA No. 362406-2 dated March 6, 2008;
4. SARO No. ROCS-09-04240 dated June 25, 2009;
5. SARO No. ROCS-08-08961 dated November 4, 2008 under NCA No. 377716-3 dated December 9, 2008;
6. SARO No. ROCS-09-03611 dated May 26, 2009 under NCA No. 381431-1 dated July 1, 2009; and
7. SARO No. D-08-01438 dated February 8, 2008 under NCA No. 252804-6 dated February 15, 2008.[16]

During the subject period, the DBM released Clarete's PDAF totaling to PHP 65 million to the IAs she identified and after the DBM issued the corresponding SAROs and NCAs to the IAs, Clarete endorsed the following NGOs as "project partners" for the implementation of the Integrated Livelihood Development Projects in her congressional district:

1. Kabuhayan at Kalusugang Alay sa Masa Foundation, Inc. (KKAMFI)
2. Kasangga sa Magandang Bukas Foundation, Inc. (KMBFI)
3. Aaron Foundation Philippiens, Inc. (AFPI)[17]

Thereupon, the funds representing the cost of the projects/activities covered by the PHP 65-million PDAF of Clarete, i.e., livelihood technology kits (LTKs), farm input packages, and livelihood training course packages (LTCPs), were transferred from the IAs to the foregoing NGOs pursuant to the Memorandum of Agreements (MOAs) between Clarete, the IAs, as well as the NGOs. Theoretically, after the execution of such MOAs, the

---

14 *Rollo*, G.R. No. 232974, pp. 200–273.
15 *Rollo*, G.R. No. 232968, p. 250.
16 *Id.*
17 *Id.* at 251–252.

projects/activities were ripe for distribution by the NGOs to the identified beneficiaries in the municipalities of the First District of Misamis Oriental. However, no distribution was ever made by the NGOs.[18]

On-site verifications of the OMB divulged that the NGOs submitted fabricated documents to the IAs, including Partial and Final Physical Reports, Certificates of Acceptance, Auditor's Reports, Financial Status Reports, Summaries of Expenditures, Summaries of Training Expenses, Disbursement and Liquidation Reports, Disbursement Summaries, Acknowledgment Receipts, Certificates of Service Rendered, Pictures, Inspection Reports, Purchase Orders, Certificates of Completion, Distribution Summaries, Lists of Beneficiaries/Participants, Official Receipts, Delivery Receipts, and Sales Invoices.[19]

The LGUs of Oroquieta, Aloran, Baliangao, Calamba, Concepcion, Jimenez, Lopez Jaena, and Plaridel refuted any receipt of the LTKs and LTCPs. They likewise denied receiving *calamansi*, mango, or *rambutan* seedlings, hand tractors, water pumps, or any financial assistance, and even disavowed awareness of these projects. Withal, the purported recipients enumerated in the fabricated list of beneficiaries either: 1) denied having received the items; or 2) were not residents or registered voters of the place where they were listed as beneficiaries, fictitious, or already deceased. In a nutshell, the livelihood projects were "ghost projects."[20]

The OMB likewise implicated certain officers of the concerned IAs, including the DA, National Agribusiness Corporation (NABCOR), National Livelihood Development Corporation (NLDC), and Technology Resource Center (TRC), for failing to perform their duty to safeguard the property of the government.[21] According to the OMB, these IAs did not exercise the diligence required of them and did not even verify the accuracy of the information provided in the PDAF documents.[22] In particular, Yap was indicted for having executed the MOA[23] in relation to SARO No. ROCS-09-04240[24] with Alan A. Javellana (Javellana), former Director and President of NABCOR, for the transfer of Clarete's PDAF of PHP 8 million to NABCOR.[25]

The OMB drew up the following *modus operandi* followed by Clarete, Yap, and their co-accused, in consummating the charges hurled against them:

---

18 *Id.* at 255–256.
19 *Id.* at 260.
20 *Id.* at 261.
21 *Id.*
22 *Id.* at 298.
23 *Rollo,* G.R. Nos. 238584–87, pp. 99–101.
24 *Id.* at 96.
25 *Rollo,* G.R. No. 232968, p. 289.

> The scheme commences when the legislator would request the Speaker of the House of Representatives (Speaker) for the immediate release of his or her PDAF. The Speaker would then endorse the request to the DBM. This initial letter-request to the DBM contained a program or project, list of the IAs and the amount of PDAF to be released. Based on the request, the DBM would issue to the named IA the corresponding SARO and Advice of Notice of Cash Allocation (NCA).
>
> The legislator would then write a letter addressed to the IAs, identifying his or her preferred NGOs to undertake the PDAF-funded projects and directing the IAs to release the PDAF directly to the NGOs to expedite the implementation of the project. After the DBM had released the NCA, the IA would expedite the processing of the transaction and the release of the corresponding check representing the PDAF disbursement.
>
> The IA would also prepare the MOA that will subsequently be entered into by the legislator, the IA and the NGO. Thereafter, the IA would conduct an evaluation and validation on the NGO and submit a report thereof, while the NGO would submit a project proposal indicating the project details such as the activities, costs, beneficiaries, timeframe and other particulars. The project proposal, together with the evaluation and validation report, as well as other required attachments, would be approved by the legislature.
>
> The projects were authorized as eligible under the DBM's menu for pork barrel allocations. Note that the NGO was directly selected by the legislator. No public bidding or negotiated procurement took place, thereby violating RA 9184.
>
> The legislator would then write the IA to release the first tranche of funds. The IA would process the release of funds, that is, DVs with supporting documents, which would lead to the issuance of a check to the NGO. The officers of the NGO would then manufacture fictitious reports and their supporting documents that would make it appear that the PDAF projects were underway. Said documents would then be submitted to the IA for its review and evaluation.
>
> The legislator would then write the IA certifying the implementation of the project under the first tranche, and requesting the subsequent release of funds. This scheme would continue until the final PDAF allocation would be fully released to the NGO.
>
> To liquidate the disbursements, the officers and staff of the NGO would then manufacture fictitious lists of beneficiaries, liquidation reports, inspection reports, project activity reports and similar documents that would make it appear that the PDAF-related projects were implemented.[26]

Ultimately, the OMB, in its assailed Resolution,[27] found probable cause to inculpate Clarete for 18 counts of violation of Section 3(e) of Republic Act

---

[26] *Id.* at 284–285.

[27] *Id.* at 241–331, OMB Resolution dated July 20, 2016.

No. 3019, seven counts of malversation of public funds, and 11 counts of malversation of public funds through falsification.[28] On the other hand, Yap was charged with two counts of violation of Section 3(e) of Republic Act No. 3019, one count of malversation of public funds, and one count of malversation through falsification.[29]

Clarete and Yap separately sought reconsideration, but their Motions[30] were given short shrift in the challenged OMB Order.[31]

Taking umbrage at the foregoing disposition, Clarete and Yap successively filed their respective Petitions for *Certiorari*[32] before this Court, docketed as G.R. No. 232968 and G.R. No. 232974. The issues/grounds relied upon by the two petitioners are as follows:

In **G.R. No. 232968** —

> **I**
>
> **WHETHER OR NOT THE RESPONDENT OFFICE OF THE OMBDUSMAN GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONER CLARETE'S RIGHT TO DUE PROCESS OF LAW AND IN IGNORING THE DOCTRINE OF PRIMARY JURISDICTION BY ENTERTAINING THE CRIMINAL COMPLAINT AND FINDING PROBABLE CAUSE IN CONNECTION WITH THE ALLEGED MISUSE FUND (PDAF) DESPITE THE FACT THAT THE COMMISSION ON AUDIT (COA) NOTICES OF DISALLOWANCE WITH RESPECT TO THE OTHER THREE (3) SAROS ARE YET TO BE ISSUED BY THE COA.**
>
> **II**
>
> **WHETHER OR NOT THE RESPONDENT OFFICE OF THE OMBUDSMAN GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING PROBABLE CAUSE AGAINST PETITIONER CLARETE FOR EIGHTEEN (18) COUNTS OF VIOLATION OF SECTION 3(E) OF THE ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019), SEVEN (7) COUNTS OF MALVERSATION OF PUBLIC FUNDS, AND ELEVEN (11) COUNTS OF MALVERSATION OF PUBLIC FUNDS THROUGH FALSIFICATION BASED ON A DEFECTIVE COMPLAINT AND AN INCOMPLETE AUDIT AND SELECTIVE AND IRREGULAR FACT-FINDING INVESTIGATION, A SUBSTANTIAL PART OF WHICH WAS NOT EVEN COVERED BY AFFIDAVITS OF SUPPORTING WITNESSES IN**

---

28 *Id.* at 318–327.

29 *Id.*

30 *Id.* at 332–367; and *rollo*, G.R. Nos. 238584–87, pp. 221–243.

31 *Rollo,* G.R. No. 232968, pp. 368–407; the Order dated January 16, 2017 was approved by Ombudsman Conchita Carpio Morales on May 29, 2017.

32 *Id.* at 3–62; and *rollo,* G.R. No. 232974, pp. 3–52.

VIOLATION OF SECTION 4, RULE II OF THE RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN (ADMINISTRATIVE ORDER NO. 7), WHICH REQUIRES THAT SUPPORTING WITNESSES MUST EXECUTE AND SUBMIT THEIR AFFIDAVITS TO SUBSTANTIATE A COMPLAINT AGAINST A PERSON UNDER PRELIMINARY INVESTIGATION.

III

WHETHER OR NOT THE RESPONDENT OFFICE OF THE OMBUDSMAN GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING PROBABLE CAUSE AGAINST PETITIONER CLARETE FOR EIGHTEEN (18) COUNTS OF VIOLATION OF SECTION 3(E) OF THE ANTI-GRAFT AND CORRUPT PRACTES ACT (R.A. NO. 3019), IN THE ABSENCE OF CONCURRENCE OF ALL OF THE ELEMENTS OF THE OFFENSE.

IV

WHETHER OR NOT THE RESPONDENT OFFICE OF THE OMBUDSMAN GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING PROBABLE CAUSE AGAINST PETITIONER CLARETE FOR SEVEN (7) COUNTS OF MALVERSATION OF PUBLIC FUNDS THROUGH FALSIFICATION, IN THE ABSENCE OF CONCURRENCE OF ALL OF THE ELEMENTS OF THE CRIMES.

V

WHETHER OR NOT THE RESPONDENT OFFICE OF THE OMBUDSMAN GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT THE PRESENCE OF CONSPIRACY AMONG PETITIONER CLARETE AND OTHERS IS MANIFEST.

VI

WHETHER OR NOT THE RESPONDENT OFFICE OF THE OMBUDSMAN GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN USING THE NUMBER OF DISBURSEMENT VOUCHERS, NOT THE NUMBER OF COUNTS OF THE ALLEGED CRIMES.

In **G.R. No. 232974** —

I

THE COMPLAINT A *QUO* MUST BE DISMISSED OUTRIGHT DUE TO THE INORDINATE DELAY IN THE TERMINATION OF THE PRELIMINARY INVESTIGATION BY THE OMBUDSMAN.

II

THE OMBUDSMAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT FOUND PROBABLE CAUSE TO CHARGE PETITIONER WITH VIOLATION OF SECTION 3(E) OF

R.A. NO. 3019, MALVERSATION OF PUBLIC FUNDS, AND MALVERSATION THROUGH FALSIFICATION.

II.A

There is NO evidence that Petitioner violated Section 3(e) of R.A. No. 3019. The only overt act attributed to Petitioner is his having represented the DA in the execution of the *DA-NABCOR MOA*. There is NO evidence that he acted with manifest partiality, evident bad faith or gross inexcusable negligence, or evidence that he caused undue injury or gave unwarranted benefit to any private party in executing the *DA-NABCOR MOA*.

II.B

There is NO evidence that Petitioner committed the crime of Malversation of Public Funds. Petitioner did not have custody over the subject PDAF Funds. Moreover, there is NO evidence that he misappropriated or benefited from such funds or evidence that he allowed another person to appropriate the same through negligence or abandonment.

II.C.

There is NO evidence that Petitioner committed the crime of Malversation through Falsification. The charge was not even included in the *Complaint,* in violation of Petitioner's right to be informed of the charges against him. Furthermore, Petitioner did not have any participation in the preparation and submission by KKAMFI of allegedly spurious documents to show that the livelihood projects were implemented.

II.D.

There is NO evidence that Petitioner conspired with his co-respondents to commit violations of Section 3(e) of R.A. No. 3019, Malversation of Public Funds, and/or Malversation through Falsification.

On August 30, 2017, this Court ordered the consolidation of the two cases, considering that they involve common parties and issues and assail the same issuances of the OMB.[33]

During the interregnum, the OMB proceeded to file the Informations against Clarete and Yap before the SBN, which were later docketed as SB-17-CRM-1526, SB-17-CRM-1527, SB-17-CRM-1531, and SB-17-CRM-1544. The inculpatory portions of the Informations read:

---

[33] *Rollo,* G.R. No. 232974, p. 332; the Notice of Resolution dated August 30, 2017 was signed by Deputy Division Clerk of Court Wilfredo Lapitan.

SB-17-CRM-1526

That in 2009, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within this Honorable Court's jurisdiction, accused public officers **MARINA P. CLARETE (Clarete),** being then the Congresswoman of the 1st District of Misamis Occidental, **ARTHUR CUA YAP (Yap),** being then the Secretary of the Department of Agriculture (DA), **ALAN ALUNAN JAVELLANA (Javellana),** being then the President, **RHODORA BULATAO MENDOZA (Mendoza),** being then the Vice President for Administration and Finance, **MARIA NINEZ PAREDES GUAÑIZO (Guañizo),** being then the Officer-in-Charge, Accounting Division, and **VICTOR ROMAN COJAMCO CACAL (Cacal),** being then the General Services Supervisor, all of the National Agribusiness Corporation (NABCOR), while in the performance of their administrative and/or official functions, conspiring with one another and with private individuals **FLERIDA A. ALBERTO (Alberto)** and **MARIA PAZ B. VEGA** (Vega), acting with manifest partiality, evident bad faith and/or gross inexcusable negligence, did then and there willfully, unlawfully and criminally cause undue injury to the government and/or give unwarranted benefits and advantage to said private individuals amounting to at least **SIX MILLION FIVE HUNDRED NINETY-SIX THOUSAND PESOS (Php6,596,000.00),** through the following acts:

(a) **Clarete** unilaterally chose and indorsed Kabuhayan at Kalusugan Alay sa Masa Foundation, Inc. (KKAMFI), a non-government organization operated and/or controlled by **Alberto**, as "project manager" in implementing the livelihood project for barangays in the 1st District of Misamis Occidental, which project was funded by Clarete's Priority Development Assistance Fund (PDAF) amounting to EIGHT MILLION PESOS (Php8,000,000.00) covered by **Special Allotment Release Order No. ROCS-09-04240**, in disregard of the appropriation law and its implementing rules, and without public bidding as required under Republic Act No. 9184 and its implementing rules and regulations, and with KKAMFI being unaccredited and unqualified to undertake the project;

(b) DA Secretary **YAP** then entered into a Memorandum of Agreement (1st MOA) with NABCOR, represented by **Javellana**, on the purported implementation of **Clarete's** PDAF-funded Project;

(c) **Clarete**, NABCOR's **Javellana** and KKAMFI, represented by **Alberto**, then entered into a 2nd MOA on the purported implementation of **Clarete's** PDAF-funded project;

(d) **Javellana**, **Cacal**, **Guañizo** and **Mendoza** facilitated and processed the disbursement of the subject PDAF release by approving (**Javellana**) for payment the expenditure of P6,596,000.00 covered by Disbursement Voucher (DV) No. 10010192 dated 22 January 2010 and certifying in the DV that the expenses or advances are necessary, lawful and incurred under his direct supervision (**Cacal**), and the supporting documents are complete and proper (**Guañizo**), as well as signing and causing the issuance (both **Javellana** and **Mendoza**) of the corresponding United Coconut Planters Bank (UCPB)

Check No. 462970 for said amount to KKAMFI, without accused NABCOR officers and employees having complied with the provisions of the 2nd MOA requiring that the PDAF releases be in four tranches instead of two tranches only, and having carefully examined and verified the transactions' supporting documents

(e) **Vega** acting for and in behalf of KKAMFI, received the UCPB check and issued to NABCOR the corresponding Official Receipt No. 0166;

(f) The above acts of the accused public officials thus allowed KKAMFI to divert said PDAF-drawn public funds into **Alberto's** control and benefit instead of implementing the PDAF-fund project, which turned out to be non-existent, while **Alberto** signed and/or submitted to NABCOR the project physical report, disbursement and liquidation report, auditor's report, certificate of acceptance of 2,218 sets of livelihood technology kits (LTKs) signed by **Clarete**, certification signed by **Clarete** confirming the distribution of 2,218 sets of LTKs to qualified beneficiaries and other liquidation documents to conceal the fictitious nature of the transaction, to the damage and prejudice of the Republic of the Philippines.

CONTRARY TO LAW.[34]

SB-17-CRM-1527

That in 2009, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within this Honorable Court's jurisdiction, accused public officers **MARINA P. CLARETE (Clarete),** being then the Congresswoman of the 1st District of Misamis Occidental, **ARTHUR CUA YAP (Yap),** being then the Secretary of the Department of Agriculture (DA), **ALAN ALUNAN JAVELLANA (Javellana),** being then the President, **RHODORA BULATAO MENDOZA (Mendoza),** being then the Vice President for Administration and Finance, **MARIA NINEZ PAREDES GUAÑIZO (Guañizo),** being then the Officer-in-Charge, Accounting Division, and **VICTOR ROMAN COJAMCO CACAL (Cacal),** being then the General Services Supervisor, all of the National Agribusiness Corporation (NABCOR), while in the performance of their administrative and/or official functions, conspiring with one another and with private individuals **FLERIDA A. ALBERTO (Alberto)** and **MARIA PAZ B. VEGA (Vega)**, acting with manifest partiality, evident bad faith and/or gross inexcusable negligence, did then and there willfully, unlawfully and criminally cause undue injury to the government and/or give unwarranted benefits and advantage to said private individuals amounting to at least **ONE MILLION ONE HUNDRED SIXTY-FOUR THOUSAND PESOS (PhP1,164,000.00),** through the following acts:

(a) **Clarete** unilaterally chose and indorsed Kabuhayan at Kalusugang Alay sa Masa Foundation, Inc. (KKAMFI), a non-government organization operated and/or controlled by **Alberto**, as "project partner" in implementing the livelihood project for

---

34 *Rollo,* G.R. No. 232974, pp. 521–522. (Emphasis supplied)

barangays in the 1st District of Misamis Occidental, which project was funded by **Clarete's** Priority Development Assistance Fund (PDAF) amounting to EIGHT MILLION PESOS (Php8,000,000.00) covered by **Special Allotment Release Order No. ROCS-09-04240**, in disregard of the appropriation law and its implementing rules, and without public bidding as required under Republic Act No. 9184 and its implementing rules and regulations, and with KKAMFI being unaccredited and unqualified to undertake the project;

(b) DA Secretary **YAP** then entered into a Memorandum of Agreement (1st MOA) with NABCOR, represented by **Javellana**, on the purported implementation of **Clarete's** PDAF-funded Project;

(c) **Clarete**, NABCOR's **Javellana** and KKAMFI, represented by **Alberto**, then entered into a 2nd MOA on the purported implementation of **Clarete's** PDAF-funded project;

(d) **Clarete** and **Javellana** approved the project proposal, and work and financial plan submitted by KKAMFI;

(e) **Javellana**, **Cacal**, **Guañizo** and **Mendoza** facilitated and processed the disbursement of the subject PDAF release by approving (**Javellana**) for payment the expenditure of PhP1,164,000.00 covered by Disbursement Voucher (DV) No. 10010031 dated 08 January 2010 and certifying in the DV that the expenses or advances are necessary, lawful and incurred under his direct supervision (**Cacal**), and the supporting documents are complete and proper (**Guañizo**), as well as signing and causing the issuance (both **Javellana** and **Mendoza**) of the corresponding United Coconut Planters Bank (UCPB) Check No. 462958 for said amount to KKAMFI, without accused NABCOR officers and employees having carefully examined and verified the accreditation and qualification of KKAMFI and the transactions' supporting documents;

(f) **Vega** acting for and in behalf of KKAMFI, received the UCPB check and issued to NABCOR the corresponding Official Receipt No. 0159; and

(g) The above acts of the accused public officials thus allowed KKAMFI to divert said PDAF-drawn public funds into **Alberto's** control and benefit instead of implementing the PDAF-funded project, which turned out to be non-existent, to the damage and prejudice of the Republic of the Philippines.

CONTRARY TO LAW.[35]

SB-17-CRM-1531

That in 2009, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within this Honorable Court's jurisdiction, accused public officers **MARINA P. CLARETE (Clarete),** being then the Congresswoman of the 1st District of Misamis Occidental, **ARTHUR CUA YAP (Yap),** being then the Secretary of the Department of Agriculture (DA), **ALAN ALUNAN JAVELLANA (Javellana),** being then the

---

[35] *Id.* at 525–526. (Emphasis supplied)

President, **RHODORA BULATAO MENDOZA (Mendoza),** being then the Vice President for Administration and Finance, **MARIA NINEZ PAREDES GUAÑIZO (Guañizo),** being then the Officer-in-Charge, Accounting Division, and **VICTOR ROMAN COJAMCO CACAL (Cacal),** being then the General Services Supervisor, all of the National Agribusiness Corporation (NABCOR), while in the performance of their administrative and/or official functions, conspiring with one another and with private individuals **FLERIDA A. ALBERTO (Alberto)** and **MARIA PAZ B. VEGA (Vega)**, did then and there willfully, unlawfully and feloniously appropriate, take, misappropriate or consent, or through abandonment or negligence, allow herein private individuals to take public funds by means of falsifying the corresponding physical report, disbursement and liquidation report, certificate of acceptance, list of beneficiaries, official receipt, delivery receipt, sales invoice and disbursement voucher to make it appear that Kabuhayan at Kalusugang Alay sa Masa Foundation, Inc. (KKAMFI) undertook and completed the livelihood project to secure the release of the 2nd tranche of the Priority Development Assistance Fund (PDAF) payments amounting to at least **SIX MILLION FIVE HUNDRED NINETY-SIX THOUSAND PESOS (Php6,596,000.00)**, through the following acts:

(a) **Clarete,** a public officer accountable for and exercising control over the PDAF allocated to her by the 2009 General Appropriation Law, unilaterally chose and indorsed Kabuhayan at Kalusugan Alay sa Masa Foundation, Inc. (KKAMFI), a non-government organization operated and/or controlled by **Alberto**, as "project partner" in implementing the livelihood project for barangays in the 1st District of Misamis Occidental, which project was funded by **Clarete's** Priority Development Assistance Fund (PDAF) amounting to EIGHT MILLION PESOS (Php8,000,000.00) covered by **Special Allotment Release Order No. ROCS-09-04240**, in disregard of the appropriation law and its implementing rules, and without public bidding as required under Republic Act No. 9184 and its implementing rules and regulations, and with KKAMFI being unaccredited and unqualified to undertake the project;

(b) DA Secretary **Yap** then entered into a Memorandum of Agreement (1st MOA) with NABCOR, represented by **Javellana**, on the purported implementation of **Clarete's** PDAF-funded Project;

(c) **Clarete**, NABCOR's **Javellana** and KKAMFI, represented by **Alberto**, then entered into a 2nd MOA on the purported implementation of **Clarete's** PDAF-funded Project;

(d) **Javellana**, **Cacal**, **Guañizo** and **Mendoza** facilitated and processed the disbursement of the subject PDAF release by approving (**Javellana**) for payment of the expenditure of P6,596,000.00 covered by Disbursement Voucher (DV) No. 10010192 dated 22 January 2010 and certifying in the DV that the expenses or advances are necessary, lawful and incurred under his direct supervision (**Cacal**), and the supporting documents are complete and proper (**Guañizo**), as well as signing and causing the issuance (both **Javellana** and **Mendoza**) of the corresponding United Coconut Planters Bank (UCPB)

Check No. 462970 for said amount to KKAMFI, without accused NABCOR officers and employees having complied with the provisions of the 2nd MOA requiring that the PDAF releases be in four tranches instead of two tranches only, and having carefully examined and verified the transactions' supporting documents.

(e) **Vega** acting for and in behalf of KKAMFI, received the UCPB check and issued to NABCOR the corresponding Official Receipt No. 0166;

(f) The above acts of the accused public officials thus allowed **Alberto** and themselves, through KKAMFI, to take possession of and thus misappropriate said PDAF-drawn public funds instead of implementing the PDAF-funded project, which turned out to be non-existent, while Alberto signed and/or submitted to NABCOR the project physical report, disbursement and liquidation report, auditor's report, certificate of acceptance of 2,218 sets of livelihood technology kits (LTKs) signed by **Clarete**, certification signed by **Clarete** confirming the distribution of 2,218 sets of LTKs to qualified beneficiaries and other liquidation documents to conceal the fictitious nature of the transaction, to the damage and prejudice of the Republic of the Philippines.

CONTRARY TO LAW.[36]

SB-17-CRM-1544

That in 2009, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within this Honorable Court's jurisdiction, accused public officers **MARINA P. CLARETE (Clarete),** being then the Congresswoman of the 1st District of Misamis Occidental, **ARTHUR CUA YAP (Yap),** being then the Secretary of the Department of Agriculture (DA), **ALAN ALUNAN JAVELLANA (Javellana),** being then the President, **RHODORA BULATAO MENDOZA (Mendoza),** being then the Vice President for Administration and Finance, **MARIA NINEZ PAREDES GUAÑIZO (Guañizo),** being then the Officer-in-Charge, Accounting Division, and **VICTOR ROMAN COJAMCO CACAL (Cacal),** being then the General Services Supervisor, all of the National Agribusiness Corporation (NABCOR), while in the performance of their administrative and/or official functions, conspiring with one another and with private individuals **FLERIDA A. ALBERTO (Alberto)** and **MARIA PAZ B. VEGA (Vega)**, did then and there willfully, unlawfully and feloniously appropriate, take, misappropriate or consent, or through abandonment or negligence, allow herein private individuals to take public funds amounting to at least **ONE MILLION ONE HUNDRED SIXTY FOUR THOUSAND PESOS (Php1,164,000.00)**, through the following acts:

(a) **Clarete,** a public officer accountable for and exercising control over Priority Development Assistance Fund (PDAF) allocated to her by the 2009 General Appropriation Law, unilaterally

---

[36] *Id.* at 529–531. (Emphasis supplied)

chose and indorsed Kabuhayan at Kalusugan Alay sa Masa Foundation, Inc. (KKAMFI), a non-government organization operated and/or controlled by **Alberto**, as "project partner" in implementing the livelihood project for barangays in the 1st District of Misamis Occidental, which project was funded by **Clarete's** PDAF amounting to EIGHT MILLION PESOS (PhP8,000,000.00) covered by **Special Allotment Release Order No. ROCS-09-04240**, in disregard of the appropriation law and its implementing rules, and without public bidding as required under Republic Act No. 9184 and its implementing rules and regulations, and with KKAMFI being unaccredited and unqualified to undertake the project;

(b) DA Secretary **Yap** then entered into a Memorandum of Agreement (1st MOA) with NABCOR, represented by **Javellana**, on the purported implementation of **Clarete's** PDAF-funded Project;

(c) **Clarete**, NABCOR's **Javellana** and KKAMFI, represented by **Alberto**, then entered into a 2nd MOA on the purported implementation of **Clarete's** PDAF-funded project;

(d) **Clarete** and **Javellana** approved the project proposal, and work and financial plan submitted by KKAMFI;

(e) **Javellana**, **Cacal**, **Guañizo** and **Mendoza** facilitated and processed the disbursement of the subject PDAF release by approving (**Javellana**) for payment of the expenditure of P1,164,000.00 covered by Disbursement Voucher (DV) No. 10010031 dated 08 January 2010 and certifying in the DV that the expenses or advances are necessary, lawful and incurred under his direct supervision (**Cacal**), and the supporting documents are complete and proper (**Guañizo**), as well as signing and causing the issuance (both **Javellana** and **Mendoza**) of the corresponding United Coconut Planters Bank (UCPB) Check No. 462958 for said amount to KKAMFI, without accused NABCOR officers and employees having carefully examined and verified the accreditation and qualification of KKAMFI and the transactions' supporting documents;

(f) **Vega** acting for and in behalf of KKAMFI, received the UCPB check and issued to NABCOR the corresponding Official Receipt No. 0159; and

(g) The above acts of the accused public officials thus allowed **Alberto** and themselves, through KKAMFI, to take possession of and thus misappropriate said PDAF-drawn public funds instead of implementing the PDAF-funded project, which turned out to be non-existent, to the damage and prejudice of the Republic of the Philippines.

CONTRARY TO LAW.[37]

In due course, the SBN affirmed the finding of probable cause against Clarete and Yap.[38] Thence, Yap's Motion for Partial Reconsideration with

---

37 *Id.* at 534–535. (Emphasis supplied)

38 *Rollo,* G.R. Nos. 238584–87, pp. 15–16, *see* Petition for *Certiorari.*

Motion to Quash Informations[39] and Motion for Reconsideration[40] were sequentially struck down by the SBN in separate Resolutions.[41] These two SBN issuances eventually became the subject of the Petition for *Certiorari* in **G.R. Nos. 238584–87** filed by Yap.

In ascribing grave abuse of discretion upon the anti-graft court, Yap brings to the fore the following grounds in support of his second Rule 65 Petition:

> **I.**
>
> **THE SANDIGANBAYAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DENIED PETITIONER'S MOTION TO QUASH THE INFORMATIONS FOR VIOLATION OF SECTION 3(E) OF R.A. NO. 3019, MALVERSATION OF PUBLIC FUNDS, AND MALVERSATION THROUGH FALSIFICATION.**
>
> **I.A**
>
> **The facts charged in the Informations do not constitute an offense.**
>
> **I.B**
>
> **The inordinate delay in the termination of the preliminary investigation ousted the Ombudsman of its authority to file the Informations.**
>
> **II.**
>
> **THE SANDIGANBAYAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DID NOT CONSIDER THE FACT THAT THE OMBUDSMAN HAD PREVIOUSLY DISMISSED CHARGES AGAINST THE PETITIONER FOR THE SIMILAR ACT OF EXECUTING A MOA TRANSFERRING PDAF ALLOTMENT IN FAVOR OF NABCOR.**[42]

Asserting the similarity of legal issues, parties, and interests, Yap moved to consolidate G.R. Nos. 238584–87 with G.R. No. 232974, which this Court granted in the Resolution dated March 6, 2019.[43]

Quite discernibly, the pivotal issues in the present cases are: 1) whether the OMB gravely abused its discretion in not dismissing the cases against

---

39 *Id.* at 295–316.

40 *Id.* at 407–422.

41 *Id.* at 55–82, *see* November 28, 2017 SBN Resolution; and at 85–95, *see* March 1, 2018 SBN Resolution.

42 *Id.* at 19, Petition for *Certiorari*.

43 *Id.* at 638–639; the Notice of Resolution dated March 6, 2019 was signed by Deputy Division Clerk of Court Misael Domingo C. Battung III.

Clarete and Yap for lack of probable cause; and 2) whether the SBN acted with grave abuse of discretion in denying Yap's Motion to Quash.

The Court's Ruling

The Petitions for Certiorari docketed as G.R. No. 232968 and G.R. No. 232974 ought to be dismissed on the ground of mootness.

In *Relampagos v. Sandiganbayan*,[44] citing *People v. Castillo*,[45] this Court distinguished the two kinds of determination of probable cause and shed light on the corresponding effect of an ensuing judicial determination of probable cause, *viz.*:

> The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. Whether or not that function has been correctly discharged by the public prosecutor, *i.e.*, whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.
>
> The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.
>
> **After the Sandiganbayan's own judicial determination that there was a necessity for placing herein petitioners under custody, and accordingly issued arrest warrants against them, the issue as to the Ombudsman's finding of probable cause to indict petitioners is rendered moot.**
>
> **In other words, because the proceedings before the Ombudsman are distinct from those before the Sandiganbayan, *as soon as probable cause is already judicially determined*, all matters raised on the executive determination of probable cause already becomes moot such as in this case where petitioners' arguments are leading to the propriety of Ombudsman's finding of probable cause to indict them.**[46]

---

44 G.R. No. 235480, January 27, 2021 [Per J. Inting, Third Division].

45 607 Phil. 754 (2009) [Per J. Quisumbing, Second Division].

46 *Relampagos v. Sandiganbayan*, G.R. No. 235480, (2021) [Per J. Inting, Third Division]. (Emphasis supplied)

Based on the foregoing case law, it cannot be gainsaid that the subsequent issuance by the SBN of its Resolution, affirming the finding of probable cause against Clarete and Yap, has rendered the issues raised in G.R. No. 232968 and G.R. No. 232974 moot. These two Petitions patently remonstrate against the *executive* determination of probable cause by the OMB, leaving the Court with no other recourse but to dismiss them.

Nevertheless, this does not hold true for G.R. Nos. 238584–87, where Yap bemoans the SBN's denial of his bid to quash the Informations filed against him in light of the: 1) failure of the Informations to allege facts that constitute an offense; 2) inordinate delay in the termination of the preliminary investigation; and 3) the previous dismissal by the OMB of similar charges involving the same act. To be sure, in G.R. Nos. 238584–87, Yap takes issue *not* with the OMB's finding of probable cause, but the SBN's refusal to void the Informations for violating his constitutionally guaranteed right to due process.

After a perspicacious review of the case, the Court resolves to grant Yap's Petition for Certiorari in G.R. Nos. 238584–87.

Prefatorily, it bears accentuating that as a rule, a denial by the SBN of a motion to quash is an improper subject of a petition for *certiorari*. On this score, *Radaza v. Sandiganbayan*[47] provides an illuminating discourse—

> Foremost in our rules of criminal procedure is that motions to quash are interlocutory orders that are generally unreviewable by appeal or by *certiorari*. If the motion to quash is denied, it means that the criminal Information remains pending with the court, which then must proceed with the trial to determine whether the accused is innocent or guilty of the crime charged against him. Only when the court promulgates a final judgment of conviction can the accused question the deficiencies of the Information by raising them as errors by the trial court and as an additional ground for his exoneration in his appeal.
>
> Jurisprudence explains the reason for the rule:
>
> > The reason of the law in permitting appeal only from a final order or judgment, and not from interlocutory or incidental one, is to avoid multiplicity of appeals in a single action, which must necessarily suspend the hearing and decision on the merits of the case during the pendency of the appeal. If such appeal were allowed, the trial on the merits of the case should necessarily be delayed for a considerable length of time, and compel the adverse party to incur unnecessary expenses; for one of the parties may interpose as many appeals as incidental questions may be raised by

[47] G.R. No. 201380, August 4, 2021 [Per J. Hernando, Second Division].

> him and interlocutory orders rendered or issued by the lower court.
>
> More importantly, *certiorari* is a remedy of last resort. The special civil action of certiorari will not lie unless its petitioner has no other plain, speedy, or adequate remedy in the ordinary course of law. The fact that another remedy – to proceed to trial – is ready, available, and at the full disposal of the accused herein post-denial of his motion to quash already bars his remedial refuge in *certiorari*.[48]

Be that as it may, the same case of *Radaza* teaches that several exceptional circumstances operate to remove a denial of a motion to quash from the rigid insusceptibility to a Rule 65 Petition. The following are the recognized exceptions:

1. when the court issued the order without or in excess of jurisdiction or with grave abuse of discretion;
2. when the interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief;
3. in the interest of a more enlightened and substantial justice;
4. to promote public welfare and public policy; and
5. when the cases have attracted nationwide attention, making it essential to proceed with dispatch in the consideration thereof.[49]

The Court finds the first and second circumstances to be extant in G.R. Nos. 238584–87.

The SBN gravely abused its discretion in holding that the Informations filed against Yap contained allegations sufficient to indict him for the offenses charged.

Grave abuse of discretion is "an act too patent and gross as to amount to an evasion of a duty, or to a virtual refusal to perform the duty enjoined or act in contemplation of law." In other words, the tribunal, board, or officer with judicial or quasi-judicial powers "exercised its power in an arbitrary and despotic manner by reason of passion or personal hostility."[50]

Yap asseverates that the SBN gravely abused its discretion by turning a blind eye to the failure of the OMB to state the material facts constituting

---

48 *Id.*

49 *Id.*

50 *See Cojuangco, Jr. v. Sandiganbayan*, G.R. No. 247982, April 28, 2021 [Per J. Delos Santos, Third Division].

his purported violations notwithstanding that they bore only the two following allegations against him:

> 1. "[…] ARTHUR CUA YAP (Yap), being then the Secretary of the Department of Agriculture […]"; and
> 2. "DA Secretary Yap then entered into a Memorandum of Agreement (1st MOA) with NABCOR, represented by Javellana, on the purported implementation of Clarete's PDAF-funded project;"[51]

For Yap, these hardly suffice to constitute an offense nor do they equate to an overt act in furtherance of an alleged conspiracy with his co-accused as to make him equally liable for their acts.

Yap's well-taken asseveration passes judicial muster.

In order to successfully prosecute an accused for violation of Section 3(e) of Republic Act No. 3019, the presence of the following elements must be established: 1) the offender is a public officer; 2) the act was done in the discharge of the public officer's official, administrative, or judicial functions; 3) the act was done through manifest partiality, evidence bad faith, or gross inexcusable negligence; and 4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.[52]

Meanwhile, the elements of malversation of public funds are as follows:

> 1) the offender is a public officer;
> 2) he has the custody or control of funds or property by reason of the duties of his office;
> 3) the funds or property involved are public funds or property for which he is accountable; and
> 4) he has appropriated, taken, or misappropriated, or has consented to, or through abandonment or negligence, permitted the taking by another person of such funds or property.[53]

Anent Criminal Case No. SB-17-CRM-1531 for malversation through falsification, the accused were alleged to have facilitated the misappropriation through falsifying "the corresponding physical report, disbursement and liquidation report, certificate of acceptance, list of beneficiaries, official receipt, delivery receipt, sales invoice(,) and disbursement voucher," thereby making it appear that KKAMFI "undertook and completed the livelihood

---

51 *Rollo*, G.R. Nos. 238584–87, p. 19.

52 *See Suba v. Sandiganbayan First Division*, G.R. No. 235418, March 3, 2021 [Per C.J. Peralta, First Division].

53 *See People v. Dapitan*, G.R. No. 253975, September 27, 2021 [Per J. Perlas-Bernabe, Second Division].

project" of Clarete in order to secure the release of the second tranche of PDAF payments.[54]

Juxtaposing the pertinent allegations in the subject Informations with the elements of the offenses charged, there can be no quibbling that they fall ineludibly short in establishing Yap's culpability, nay, participation in the purported conspiracy to misappropriate Clarete's PDAF allocations.

Yap unerringly pointed out that his act of signing the DA-NABCOR MOA was not shown to have been attended by manifest partiality, evident bad faith, or gross inexcusable negligence, or that it caused undue injury to the government and/or gave unwarranted benefits and advantage to his co-accused. Indeed, the mere signing of a MOA, which, in itself, does not present any iota of irregularity or illegality, does not prove that a person conspired with her co-accused public officials in violating Section 3(e) of Republic Act No. 3019.[55]

In the same vein, the absence of crucial averments in the Informations relating to Yap's purported malversation of public funds is perceivable even by the naked eye; it was not even established how he could be considered an accountable officer who exercised effective control over the public funds or property suspected to have been appropriated or misappropriated.

The Court likewise accords great weight and conviction to the contrary position taken by the Office of the Solicitor General (OSG), as tribune of the People, as regards the OMB's finding of probable cause against Yap in its Manifestation[56] in G.R. No. 232974. According to the OSG, the DA-NABCOR MOA was executed pursuant to the valid issuance by then DBM Secretary Rolando G. Andaya, Jr. of SARO No. ROCS-09-04240 in the amount of PHP 8 Million. Yap had no discretion to deny Clarete's request to transfer the PDAF allocation of PHP 8 Million to NABCOR as the fund was covered by the General Appropriations Act (GAA) and then made available via the SARO No. ROCS-09-04240. Moreover, the MOA contained safeguards to ensure compliance with applicable accounting and audit laws or rules, and any arrangement between NABCOR, as the IA identified by Clarete, and KKAMFI, as one of the NGOs/project partners also named by Clarete, are agreements wherein Yap was no longer privy to.[57] Furthermore, the OSG took exception to the OMB's finding of conspiracy involving Yap. It postulated that no valid inference can be deduced that Yap conspired with the other actors as there is a "dearth of proof that [Yap] is connected in any way to (a) the identification of any favored NGO, (b) the implementation of

---

54 *Rollo*, G.R. Nos. 238584–87, pp. 26–27.
55 *See Tan v. People*, 797 Phil. 411, 429–430 (2016) [Per J. Perez, Third Division].
56 *Rollo*, G.R. No. 232974, pp. 543–561.
57 *Id.* at 550–553.

the projects without bidding, or (c) the disbursement of the PDAF funds(,) including (the) alleged falsification of supporting documents…"[58]

The SBN acted with grave abuse of discretion in ruling that no inordinate delay attended the termination by the OMB of the preliminary investigation.

In the oft-cited case of *Cagang v. Sandiganbayan*,[59] this Court laid down the touchstones that courts must consider in determining the presence of inordinate delay whenever the right to speedy disposition of cases is invoked, *viz.*:

> First, the right to speedy disposition of cases is different from the right to speedy trial. While the rationale for both rights is the same, the right to speedy trial may only be invoked in criminal prosecutions against courts of law. The right to speedy disposition of cases, however, may be invoked before any tribunal, whether judicial or quasi-judicial. What is important is that the accused may already be prejudiced by the proceeding for the right to speedy disposition of cases to be invoked.
>
> Second, a case is deemed initiated upon the filing of a formal complaint prior to a conduct of a preliminary investigation. This Court acknowledges, however, that the Ombudsman should set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case. Delays beyond this period will be taken against the prosecution. The period taken for fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay.
>
> Third, courts must first determine which party carries the burden of proof. If the right is invoked within the given time periods contained in current Supreme Court resolutions and circulars, and the time periods that will be promulgated by the Office of the Ombudsman, the defense has the burden of proving that the right was justifiably invoked. If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay.
>
> If the defense has the burden of proof, it must prove first, whether the case is motivated by malice or clearly only politically motivated and is attended by utter lack of evidence, and second, that the defense did not contribute to the delay.
>
> Once the burden of proof shifts to the prosecution, the prosecution must prove first, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; second, that the complexity of the issues and the volume of evidence made the delay

---

58 *Id.* at 557.

59 837 Phil. 815 (2018) [Per J. Leonen, *En Banc*].

> inevitable; and third, that no prejudice was suffered by the accused as a result of the delay.
>
> Fourth, determination of the length of delay is never mechanical. Courts must consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised.
>
> An exception to this rule is if there is an allegation that the prosecution of the case was solely motivated by malice, such as when the case is politically motivated or when there is continued prosecution despite utter lack of evidence. Malicious intent may be gauged from the behavior of the prosecution throughout the proceedings. If malicious prosecution is properly alleged and substantially proven, the case would automatically be dismissed without need of further analysis of the delay.
>
> Another exception would be the waiver of the accused to the right to speedy disposition of cases or the right to speedy trial. If it can be proven that the accused acquiesced to the delay, the constitutional right can no longer be invoked.
>
> In all cases of dismissals due to inordinate delay, the causes of the delays must be properly laid out and discussed by the relevant court.
>
> Fifth, the right to speedy disposition of cases or the right to speedy trial must be timely raised. The respondent or the accused must file the appropriate motion upon the lapse of the statutory or procedural periods. Otherwise, they are deemed to have waived their right to speedy disposition of cases.[60]

Thus, the period for the determination of whether inordinate delay was committed shall commence from the filing of a formal complaint and the conduct of the preliminary investigation and the period taken for fact-finding investigations prior to the filing of a formal complaint shall not be included in the determination of whether there was an inordinate delay on the part of the Ombudsman. Ensuingly, the court must examine whether the Ombudsman followed the specified time periods for the conduct of the preliminary investigation.[61] However, as the Rules of the Ombudsman did not provide for specific time periods to conclude preliminary investigations at the time relevant to this case, the Rules of Court shall apply in a suppletory manner pursuant to Rule V, Section 3 of the Rules of Procedure of the Office of the Ombudsman.[62] Appositely, Sections 3(b) and 3(f) of Rule 112 of the Rules of Court provide that:

> Section 3. Procedure. — The preliminary investigation shall be conducted in the following manner:

---

60 *Id.* at 880–882.

61 *See Yap v. Sandiganbayan,* G.R. Nos. 246318–19, January 18, 2023 [Per J. Dimaampao, Third Division].

62 Section 3. Rules of Court, application. — 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.

....

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

....

(f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

In the case at bench, the subject Complaint[63] was filed on August 4, 2014 and the preliminary investigation was terminated on August 8, 2017 upon the filing of the Informations before the SBN. All in all, the OMB took **three years and five days** to conduct its preliminary investigation. In order to determine whether there was an inordinate delay in the OMB proceedings tantamount to a violation of Yap's right to speedy disposition of cases, the totality of circumstances, rather than just the mere duration of the preliminary investigation, must be tested against the crucible of the *Cagang* guidelines. *Cojuangco, Jr. v. Sandiganbayan*[64] ingeminated the four-fold aspects of inordinate delay, i.e., 1) length of the delay; 2) reason for the delay; 3) defendant's assertion or non-assertion of his right; and 4) prejudice to defendant resulting from the delay.[65]

Corollary thereto, it is doctrinal that the burden of proof to justify the delay shifts depending on when the right was invoked. The defense bears the burden if the right was invoked within the periods prescribed by this Court, the Rules of Court, or the OMB for the conduct of preliminary investigation; the prosecution bears the burden if the right was invoked beyond the set periods, and it must show that the delay was justifiable under the factors provided in *Cagang*.[66] In other words, if the OMB exceeded the prescribed period, the burden of proof shifts to the state.[67] *Catamco v. Sandiganbayan*[68] instructs that once the burden of proof shifts to prosecution, the prosecution must prove that: 1) it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case, 2) the complexity of the issues and the volume of evidence made the delay inevitable, and 3) no prejudice was suffered by the accused as a result of the delay.[69]

---

63 *Rollo*, G.R. Nos. 238584–87, pp. 112–185.

64 G.R. No. 247982, April 28, 2021 [Per J. Delos Santos, Third Division].

65 *Id.*

66 *See People v. Sandiganbayan*, G.R. No. 239878, February 28, 2022 [Per J. Hernando, Second Division].

67 *See Catamco v. Sandiganbayan, Sixth Division*, 878 Phil. 492, 500 (2020) [Per J. Caguioa, First Division].

68 *Id.*

69 *See id.* at 499.

Here, the OMB holds the burden of proof as Yap invoked his right to speedy disposition of cases beyond the prescribed period for the preliminary investigation and after the OMB exceeded the same, as earlier adumbrated.

One. The duration of three years and five days is ineffably beyond the abovementioned periods under Sections 3(b) and 3(f) of Rule 112 of the Rules of Court allowing the OMB to conduct its preliminary investigation. It is worth mentioning that the time taken by the OMB in this case already excludes the period it took for fact-finding investigations prior to the filing of the formal complaint.

Two. The OMB failed to proffer any valid justification for its delay. In upholding the reasonableness of the period taken by the OMB to conduct a preliminary investigation, the SBN ratiocinated, thusly:

> The delay was reasonable being part of the ordinary processes of justice. To be sure, the concept of speedy disposition is consistent with delays and depends upon the circumstances. What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory.
>
> The fact that it took the Office of the Ombudsman three (3) years from the filing of the complaint on August 4, 2014, until the filing of the Informations with the Court on August 8, 2017, does not, by itself, amount to a violation of accused Yap's right to speedy disposition of cases. To repeat, the concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case.
>
> These cases involved the investigation of forty-three (43) respondents initially, and, thereafter, the filing of forty-six (46) Informations for malversation, malversation through falsification and violation of Section 3(e) of R.A. No. 3019 against thirty-two (32) accused. As the prosecution points out, these cases involve the so-called "PDAF scam" which is an intricate scheme involving voluminous records which had to be carefully scrutinized.[70]

The anti-graft court fell into error.

Along this grain, the doctrinal pronouncement of the Court in *People v. Sandiganbayan*[71] is apropos—

> While the Court recognizes the reality of institutional delay in government agencies, including the OMB, this solely does not justify the office's failure to promptly resolve cases before it. The OMB cannot just claim institutional delay or the "steady stream" of cases reaching its office as an excuse for not resolving cases timely. After all, the Constitution itself,

---

70 *Rollo*, pp. 65–66; *see* SBN Resolution dated November 28, 2017.

71 G.R. No. 239878, February 28, 2022 [Per J. Hernando, Second Division].

> as enforced and bolstered by The Ombudsman Act of 1989, requires the OMB to promptly act on complaints filed before it against public officials and government employees. As further stated in jurisprudence, the allegation of heavy case load of a particular government agency should "still be subject to proof as to its effects on a particular case, bearing in mind the importance of the right to speedy disposition of cases as a fundamental right." The OMB should clearly show that delay is inevitable because of the peculiar circumstances of each specific case, which it failed to do so in this case. The OMB here failed to show that this specific procurement of fertilizer had peculiar circumstances to make delay inevitable.
>
> The Court understands that the instant case is part of the so (-)called "Fertilizer Fund Scam" cases. However, this does not mean that the case is highly complex that requires a serious amount of time. Records show that the instant case involves only one transaction: the procurement of fertilizer that was paid in two tranches. There is also no allegation that respondents here conspired with other government officials involved in the other Fertilizer Fund Scam cases elsewhere in the country. Further, there are only seven respondents. To add, the OMB was in effect assisted by the COA in the latter's issuance of the NOD. In fact, it was the primary basis of the Task Force's filing of the complaint. Likewise, there was no showing that the records of this case were voluminous that would necessitate a number of years for the conduct of review.
>
> In the cases of *Javier v. Sandiganbayan* and *Catamco v. Sandiganbayan* (*Catamco*), which also involve the "Fertilizer Fund Scam," the OMB also posited the same arguments of complexity and voluminous records. The Court, in ruling that there was inordinate delay, disregarded the OMB's arguments absent proof as regards the assertions. Similarly in the instant case, the OMB did not show proof of complexity and volume that would make the delay inevitable and justified.[72]

Guided by this jurisprudential polestar, the Court could not agree less with the SBN's finding that the delay was part of the ordinary processes of justice. In sooth, the OMB had the SAO Report No. 2012-03 prepared by the COA-SAO to jumpstart its investigation. To the mind of this Court, the OMB failed to provide sufficient justification for the length of time it took to terminate its preliminary investigation.

Three. It is beyond cavil that Yap invoked his right to speedy disposition of cases at the earliest opportunity. While the records bear out that Yap asserted his right for the first time before the SBN, the Court holds and so rules that this does not amount to waiver, or acquiescence to the OMB's delay. Verily, respondents in preliminary investigation proceedings do not have any duty to follow up on the prosecution of their case.[73] It was not Yap's duty to follow up on the prosecution of their case. Conversely, it was the Office of the Ombudsman's responsibility to expedite the same within the

---

72 *Id.* (Citations omitted)

73 *See Javier v. Sandiganbayan,* 873 Phil. 951, 966 (2020) [Per J. Caguioa, First Division].

bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it.[74]

Four. Yap sufficiently established that he was prejudiced by the inordinate delay. In support thereof, Yap avers that the inexcusable delay in the termination of the preliminary investigation brought him extreme prejudice as he suffered from mental unrest and piling legal expenses. Moreover, the passage of time caused "tactical disadvantages," making it difficult for him to gather evidence and witnesses to support his defenses.

Yaps' averments hold sway.

Case law evinces the Court's cognizance of the fact that the inordinate delay places the accused in a protracted period of uncertainty which may cause "anxiety, suspicion, or even hostility." Invariably, the lengthy delay would result in the accused's inability to adequately prepare for the case, leading to the deterioration or loss of evidence, and the eventual impairment of the accused's defense.[75] Whence, the SBN erringly adjudged that Yap "failed to point to any prejudice he has suffered because of the alleged delay."[76]

In light of the foregoing disquisitions, it is crystal clear that the court *a quo* acted with grave abuse of discretion amounting to lack or excess of jurisdiction in successively denying Yap's bids for: 1) the quashal of the Informations filed against him and 2) reconsideration of the SBN Resolution. With these considerations in mind, it strains credulity how the anti-graft court arrived at its conclusions, running roughshod over the basic tenets of due process, to the damage and prejudice of Yap. By the same token, the Court finds that the assailed interlocutory issuances in G.R. No. 238584–87 are patently erroneous and the remedy of appeal would not afford adequate and expeditious relief.

ACCORDINGLY, the Petitions for *Certiorari*, docketed as G.R. No. 232968 and G.R. No. 232974, are **DISMISSED** on the ground of mootness.

On the other hand, the Petition for *Certiorari* filed by Arthur Cua Yap in G.R. Nos. 238584-87 is **GRANTED**. Accordingly, the Resolutions dated November 28, 2017 and March 1, 2018 of the Sandiganbayan (SBN) in SB-17-CRM-1510-1545 are **REVERSED** and **SET ASIDE**. Yap's Motion for Partial Reconsideration (Re: Resolution dated 15 August 2017) with Motion to Quash Informations is **GRANTED** and the cases against him before the Sandiganbayan, docketed as SB-17-CRM-1526, SB-17-CRM-1527, SB-17-CRM-1531, and SB-17-CRM-1544, are hereby **DISMISSED**.

---

74 *Id.* at 966.

75 *See People v. Sandiganbayan,* G.R. No. 239878, February 28, 2022 [Per J. Hernando, Second Division].

76 *Rollo,* G.R. Nos. 238584–87, p. 67.

SO ORDERED.

JAPAR B. DIMAAMPAO
Associate Justice

WE CONCUR:

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

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

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Article VIII, Section 13 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 cases were assigned to the writer of the opinion of this Court.

ALEXANDER G. GESMUNDO
Chief Justice