



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

OSCAR R. AMPIL,
Petitioner,

G.R. No. 192685

- versus -

THE HON. OFFICE OF THE
OMBUDSMAN, POLICARPIO L.
ESPENESIN, Registrar, Register of Deeds,
Pasig City, FRANCIS SERRANO,
YVONNE S. YUCHENGCO, and GEMA
O. CHENG,
Respondents.

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OSCAR R. AMPIL,
Petitioner,

G.R. No. 199115

Present:

- versus -

CARPIO, J.,
Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, JJ.

POLICARPIO L. ESPENESIN,
Respondent.

Promulgated:

JUL 31 2013

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DECISION

PEREZ, J.:

No less than the Constitution maps out the wide grant of investigatory powers to the Ombudsman.¹ Hand in hand with this bestowal, the Ombudsman is mandated to investigate and prosecute, for and in behalf of the people, criminal and administrative offenses committed by government officers and employees, as well as private persons in conspiracy with the former.² There can be no equivocation about this power-and-duty function of the Ombudsman.

Before us are consolidated petitions separately filed by Oscar R. Ampil (Ampil): (1) one is for *certiorari* under Rule 65 of the Rules of Court docketed as G.R. No. 192685; and (2) the other is for review on *certiorari* under Rule 45 of the Rules of Court docketed as G.R. No. 199115.

Challenged in the petition for *certiorari* is the Resolution³ of the Ombudsman in OMB-C-C-07-0444-J, dismissing the criminal complaint filed by Ampil against respondents Policarpio L. Espenesin (Espenesin), Francis Serrano (Serrano), Yvonne S. Yuchengco (Yuchengco) and Gema O. Cheng (Cheng), and the Order⁴ denying Ampil's motion for reconsideration thereof. Ampil's complaint charged respondents with Falsification of Public Documents under Article 171(6) of the Revised Penal Code and violation of Sections 3(a) and (e) of Republic Act No. 3019, The Anti-Graft and Corrupt Practices Act, as amended.

The appeal by *certiorari*, on the other hand, assails the Decision of the Court of Appeals in CA G.R. SP No. 113171, which affirmed the Order dated 13 July 2009 of the Ombudsman in OMB-C-A-07-0474-J on the administrative aspect of the mentioned criminal complaint for Falsification and violation of Republic Act No. 3019 against the Registrar of Deeds, respondent Espenesin. Initially, the Ombudsman issued a Decision dated 30 April 2008, finding Espenesin guilty of Simple Misconduct and meting on Espenesin the penalty of one (1) month suspension. On motion for reconsideration of Ampil, the Ombudsman favored Espenesin's arguments

¹ Constitution, Art. XI, Secs. 12-13.

² Id.; The Ombudsman Act of 1989, Secs. 13 and 15.

³ *Rollo* (G.R. No. 192685), pp. 31-41.

⁴ Id. at 50-55.

in his Opposition, and recalled the one-month suspension the Ombudsman had imposed on the latter.

These consolidated cases arose from the following facts.

On 9 November 1995, ASB Realty Corporation (ASB) and Malayan Insurance Company (MICO) entered into a Joint Project Development Agreement (JPDA) for the construction of a condominium building to be known as “The Malayan Tower.” Under the JPDA, MICO shall provide the real property located at the heart of the Ortigas Business District, Pasig City, while ASB would construct, and shoulder the cost of construction and development of the condominium building.

A year thereafter, on 20 November 1996, MICO and ASB entered into another contract, with MICO selling to ASB the land it was contributing under the JPDA. Under the Contract to Sell, ownership of the land will vest on ASB only upon full payment of the purchase price.

Sometime in 2000, ASB, as part of the ASB Group of Companies, filed a Petition for Rehabilitation with Prayer for Suspension of Actions and Proceedings before the Securities and Exchange Commission (SEC). As a result, the SEC issued a sixty (60) day Suspension Order (a) suspending all actions for claims against the ASB Group of Companies pending or still to be filed with any court, office, board, body, or tribunal; (b) enjoining the ASB Group of Companies from disposing of their properties in any manner, except in the ordinary course of business, and from paying their liabilities outstanding as of the date of the filing of the petition; and (c) appointing Atty. Monico V. Jacob as interim receiver of the ASB Group of Companies.⁵ Subsequently, the SEC, over the objections of creditors, approved the Rehabilitation Plan submitted by the ASB Group of Companies, thus:

PREMISES CONSIDERED, the objections to the rehabilitation plan raised by the creditors are hereby considered **unreasonable**.

Accordingly, the Rehabilitation Plan submitted by petitioners is hereby APPROVED, except those pertaining to Mr. Roxas’ advances, and the ASB-Malayan Towers. Finally, Interim Receiver Mr. Fortunato Cruz is appointed as Rehabilitation Receiver.⁶ (Emphasis supplied).

Because of the obvious financial difficulties, ASB was unable to perform its obligations to MICO under the JPDA and the Contract to Sell.

⁵ *Metropolitan Bank and Trust Co. v. ASB Holdings, Inc.*, 545 Phil. 604, 610 (2007).

⁶ *Id.* at 612.

Thus, on 30 April 2002, MICO and ASB executed their Third contract, a Memorandum of Agreement (MOA),⁷ allowing MICO to assume the entire responsibility for the development and completion of The Malayan Tower. At the time of the execution of the MOA, ASB had already paid MICO ₱427,231,952.32 out of the ₱640,847,928.48 purchase price of the realty.⁸

The MOA specifies the entitlement of both ASB and MICO to net saleable areas of The Malayan Tower representing their investments. It provides, in pertinent part:

Section 4. *Distribution and Disposition of Units.* (a) As a return of its capital investment in the Project, each party shall be entitled to such portion of all the net saleable area of the Building that their respective contributions to the Project bear to the actual construction cost. As of the date of the execution hereof, and on the basis of the total costs incurred to date in relation to the Remaining Construction Costs (as defined in Section 9(a) hereof), the parties shall respectively be entitled to the following (which entitlement shall be conditioned on, and subject to, adjustments as provided in sub-paragraph (b) of Section 4 in the event that the actual remaining cost of construction exceeds the Remaining Construction Cost):

(i) [MICO] – the net saleable area particularly described in Schedule 2 hereof.

(ii) ASB – the following net saleable area:

(A) the net saleable area which ASB had pre-sold for an aggregate purchase price of P640,085,267.30 as set forth in Schedule 1 (including all paid and unpaid proceeds of said pre-sales);

(B) the net saleable area particularly described in Schedule 3 hereof which shall be delivered to ASB upon completion of the Project; and,

(C) provided that the actual remaining construction costs do not exceed the Remaining Construction Cost, the net saleable area particularly described in Schedule 4 hereof which shall be delivered to ASB upon completion of the Project and determination of its actual construction costs. If the actual remaining construction costs exceed the Remaining Construction Cost, sub-paragraph (b) of this Section 4 shall apply.

⁷ *Rollo* (G.R. No. 192685), pp. 66-75.

⁸ 3RD Recital, paragraph C of the MOA. *Id.* at 66.

(b) In the event that the actual remaining construction costs exceed the Remaining Construction Cost as represented and warranted by ASB to [MICO] under Section 9(a) hereof, and [MICO] pays for such excess, the pro-rata sharing in the net saleable area of the Building, as provided in sub-paragraph (a) of this Section 4 shall be adjusted accordingly. In such event, [MICO] shall be entitled to such net saleable area in Schedule 4 that corresponds to the excess of the actual remaining cost over the Remaining Construction Cost.

(c) To ensure the viability of the Project, the parties agree on a single pricing system, which [MICO] shall have the exclusive right to fix and periodically adjust based on prevailing market conditions in consultation with, but without need of consent of, ASB, for each party's primary sale or other disposition of its share in the net saleable area of the Building. In accordance with the immediately preceding provision, [MICO] hereby adopts the selling prices set forth in Schedule 5 hereof. Each party or its officers, employees, agents or representatives shall not sell or otherwise dispose any share of said party in the net saleable area of the Building below the prices fixed by [MICO] in accordance with this Section 4 (c). [MICO] shall have the exclusive right to adopt financing and discounting schemes to enhance marketing and sales of units in the Project and such right of [MICO] shall not be restricted or otherwise limited by the foregoing single pricing system provision.

(d) Each party shall bear the profits earned and losses incurred as well as any and all taxes and other expenses in connection with the allocation or sale of, or other transaction relating to, the units allotted to each party.⁹

On 11 March 2005, Condominium Certificates of Title (CCTs) for 38 units¹⁰ and the allotted parking spaces were issued in the name of ASB. On even date but prior to its release, another set of CCTs covering the same subject units but with MICO as registered owner thereof, was signed by Espenesin in his capacity as Registrar of Deeds of Pasig City. Notably, Espenesin had likewise signed the CCTs which were originally issued in ASB's name.

On 2 April 2006, counsel for ASB wrote Espenesin calling his attention to the supposed amendment in the CCTs which he had originally issued in ASB's name.¹¹ Counsel for ASB demanded that Espenesin effect in the second set of CCTs, the registration of the subject units in The Malayan Tower back to ASB's name.

⁹ Id. at 67-68.

¹⁰ Unit Nos.: 706, 902, 907, 911, 912, 914, 918, 1805, 1807, 1809, 1810, 1811, 1814, 1815, 1816, 1818, 2204, 2207, 2208, 2209, 2210, 2211, 2212, 2214, 2215, 2217, 2302, 2303, 2304, 2306, 2309, 2311, 2312, 2314, 2315, 2318, P5 and 2316. Id. at 34.

¹¹ Id. at 200-202.

On 17 May 2006, Espenesin replied and explained, thus:

The registration of the Malayan-ASB Realty transaction[,] from its inception up to the issuance of titles[,] were all handled by [respondent] Atty. Francis Serrano. He therefore appeared and we have considered him the legitimate representative of both parties (*sic*). His representation, we gathered, covers the interest of both [MICO] and [ASB] in as far as the titling of the condominium unit[s] are concerned.

Sometime ago [Serrano] requested that condominium titles over specified unit[s] be issued in consonance with the sharing in the joint venture [MOA]. Titles were correspondingly issued as per request, some in the name of [MICO] and some in the name of [ASB]. Before its release to the parties, Atty. Serrano came back and requested that some titles issued in the name of [ASB] be change[d] to [MICO] because allegedly there was error in the issuance.

Believing it was a simple error and on representation of the person we came to know and considered the representative of both parties, we erased the name ASB Realty Corporation on those specified titles and placed instead the name Malayan Insurance Company.

To our mind[,] the purpose was not to transfer ownership but merely to rectify an error committed in the issuance of titles. And since they were well within our capacity to do, the titles not having been released yet to its owner, we did what we believed was a simple act of rectifying a simple mistake.¹²

After learning of the amendment in the CCTs issued in ASB's name, Ampil, on 23 January 2007, wrote respondents Yuchengco and Cheng, President and Chief Financial Officer of MICO, respectively, introducing himself as an unsecured creditor of ASB Holdings, Inc., one of the corporations forming part of the ASB Group of Companies.¹³ Ampil averred that MICO had illegally registered in its name the subject units at The Malayan Tower which were reserved for ASB under the MOA, and actually, already registered in ASB's name with the Register of Deeds of Pasig City. Ampil pointed out that the "condominium units should have benefited [him and other] unsecured creditors [of ASB because the latter had] categorically informed [them] previously that the same would be contributed to the Asset Pool created under the Rehabilitation Plan of the ASB Group of Companies." Ultimately, Ampil demanded that Yuchengco and Cheng rectify the resulting error in the CCTs, and facilitate the registration of the subject units back to ASB's name.

Respondents paid no heed to ASB's and Ampil's demands.

¹² Id. at 203.

¹³ Id. at 204.

As previously adverted to, Ampil charged respondents with Falsification of Public Documents under Article 171(6) of the Revised Penal Code and violation of Sections 3(a) and (e) of Republic Act No. 3019 before the Office of the Ombudsman, alleging the following:

1. Respondents, in conspiracy, erased the name of ASB, and intercalated and substituted the name of MICO under the entry of registered owner in the questioned CCTs covering the subject units of The Malayan Tower;

2. The alterations were done without the necessary order from the proper court, in direct violation of Section 108¹⁴ of Presidential Decree No. 1529;

3. Respondents violated Article 171(6) of the Revised Penal Code by:

3.1 Altering the CCTs which are public documents;

3.2 Effecting the alterations on genuine documents;

¹⁴ Entitled, "Property Registration Decree."

Section 108. *Amendment and alteration of certificates.* No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same be Register of Deeds, except by order of the proper Court of First Instance. A registered owner or other person having an interest in registered property, or, in proper cases, the Register of Deeds with the approval of the Commissioner of Land Registration, may apply by petition to the court upon the ground that the registered interests of any description, whether vested, contingent, expectant or inchoate appearing on the certificate, have terminated and ceased; or that new interest not appearing upon the certificate have arisen or been created; or that an omission or error was made in entering a certificate or any memorandum thereon, or, on any duplicate certificate; or that the same or any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated and no right or interests of heirs or creditors will thereby be affected; or that a corporation which owned registered land and has been dissolved has not convened the same within three years after its dissolution; or upon any other reasonable ground; and the court may hear and determine the petition after notice to all parties in interest, and may order the entry or cancellation of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security or bond if necessary, as it may consider proper; Provided, however, That this section shall not be construed to give the court authority to reopen the judgment or decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs and assigns, without his or their written consent. Where the owner's duplicate certificate is not presented, a similar petition may be filed as provided in the preceding section.

All petitions or motions filed under this Section as well as under any other provision of this Decree after original registration shall be filed and entitled in the original case in which the decree or registration was entered.

- 3.3 Changing the meaning of the CCTs with MICO now appearing as registered owner of the subject units in Malayan Tower; and
- 3.4 Effectively, making the documents speak something false when ASB is the true owner of the subject units, and not MICO.

4. Ampil, as unsecured creditor of ASB, was unjustly prejudiced by the felonious acts of respondents;

5. Respondents violated Sections 3(a) and (e) of Republic Act No. 3019:

5.1 Respondent Espenesin, as Registrar of the Pasig City Registry of Deeds, committed an offense in connection with his official duties by allowing himself to be persuaded, induced or influenced by respondent Serrano into altering the questioned CCTs; and

5.2 The actions of respondent Espenesin demonstrate manifest partiality, evident bad faith and/or, at the least, gross inexcusable negligence.

6. Respondents Yuchengco and Cheng, being responsible officers of MICO, as principals by inducement and conspirators of Espenesin and Serrano, are likewise liable for falsification of the CCTs and violation of Sections 3(a) and (e) of Republic Act No. 3019.¹⁵

As required by the Ombudsman, respondents filed their counter-affidavits: Espenesin and Serrano filed individually, while Yuchengco and Cheng filed jointly. Respondents' respective counter-affidavits uniformly denied petitioner's charges and explicated as follows:

Respondent Espenesin countered, among others, **(i)** that their intention was only to cause the necessary rectification on certain errors made on the CCTs in issue; **(ii)** that since the CCTs were not yet issued and released to the parties, it is still within his authority, as part of the registration process, to make the necessary amendments or corrections thereon; **(iii)** that no court order would be necessary to effect such changes, the CCTs still being within the control of the Register of Deeds and have not yet been released to the respective owners; **(iv)** that the

¹⁵

Rollo (G.R. No. 192685), pp. 56-65.

amendments were made not for the purpose of falsifying the CCTs in issue but to make the same reflect and declare the truth; and (v) that he merely made the corrections in accordance with the representations of respondent Serrano who he believed to be guarding and representing both the interests of MICO and ASB.

Respondent Serrano, on the other hand, argued: (i) that the units in issue are not yet owned by ASB; (ii) that these units were specifically segregated and reserved for MICO in order to answer for any excess in the estimated cost that it will expend in the completion of the [Malayan Tower]; (iii) that ASB is only entitled to these reserved units only after the [Malayan Tower] is completed and that the units are not utilized to cover for the increase in the cost expended by MICO pursuant to Section 4(c) of the MOA; (iv) that the [Malayan Tower] was still incomplete at the time when the alterations were made on the CCT, hence, the claim of ownership of ASB over the reserved units is premature and totally baseless; (v) that prior to the fulfillment of the resolutive condition, that is, after the completion of the [Malayan Tower] and there remains a balance in the Remaining Construction Cost, the units still rightfully belongs to MICO; and (vi) that the alteration was made merely for the purpose of correcting an error.

Respondents Cheng and Yuchengco, while [adopting the foregoing arguments of Espenesin and Serrano, further averred that]: (i) [Ampil] has no legal personality to file this suit, he being merely an unsecured creditor of ASB whose interest was not definitively shown to have been damaged by the subject controversy; (ii) that their participation as respondents and alleged co-conspirators of Serrano and Espenesin was not clearly shown and defined in the complaint; (iii) the CCTs issued in the name of ASB have not yet been entered in the Registration Book at the time when the alterations were effected, hence, the same could still be made subject of appropriate amendments; (iv) that the CCTs in issue named in favor of ASB were mere drafts and cannot legally be considered documents within the strict definition of the law; (v) that court order authorizing to amend a title is necessary only if the deed or document sought to be registered has already been entered in the registration book; and (vi) that MICO is the duly registered owner of the land on which [Malayan Tower] stands and ASB was merely referred to as the developer.¹⁶

Thereafter, the Ombudsman issued the assailed Resolution in G.R. No. 192685 dismissing Ampil's complaint. For the Ombudsman, the resolution of whether respondents falsified the CCTs must be prefaced by a determination of who, between MICO and ASB, is the rightful owner of the subject units. The Ombudsman held that it had no authority to interpret the provisions of the MOA and, thus, refrained from resolving the preliminary question of ownership. Given the foregoing, the Ombudsman was hard pressed to make a categorical finding that the CCTs were altered to speak

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Id. at 35-37.

something false. In short, the Ombudsman did not have probable cause to indict respondents for falsification of the CCTs because the last element of the crime, *i.e.*, that the change made the document speak something false, had not been established.

Significantly, the Ombudsman did not dispose of whether probable cause exists to indict respondents for violation of Sections 3(a) and (e) of Republic Act No. 3019.

Ampil filed a Motion for Reconsideration. However, in yet another setback, the Ombudsman denied Ampil's motion and affirmed the dismissal of his complaint.

On the administrative litigation front and as previously narrated, the Ombudsman found Espenesin liable for Simple Misconduct. However, on motion for reconsideration of Ampil praying for a finding of guilt against Espenesin for Grave Misconduct and Dishonesty, the Ombudsman reconsidered its earlier resolution and recalled the one-month suspension meted on Espenesin.

Thereafter, Ampil filed a petition for review under Rule 43 of the Rules of Court before the appellate court. And as already stated, the appellate court affirmed the Ombudsman's resolution absolving Espenesin of not just Grave Misconduct and Dishonesty, but also of Simple Misconduct.

Hence, this dual recourse by Ampil: first, alleging grave abuse of discretion in the Ombudsman's failure to find probable cause to indict respondents for Falsification of Public Documents under Article 171(6) of the Revised Penal Code, and for their commission of corrupt practices under Sections 3(a) and (e) of Republic Act No. 3019; and second, raising grievous error of the Court of Appeals in affirming the Ombudsman's absolution of Espenesin from administrative liability.

To obviate confusion, we shall dispose of the first issue, *i.e.*, whether probable cause exists to indict respondents for Falsification of Public Documents under Article 171(6) of the Revised Penal Code and for their commission of corrupt practices under Sections 3(a) and (e) of Republic Act No. 3019.

Despite the Ombudsman's categorical dismissal of his complaint, Ampil is adamant on the existence of probable cause to bring respondents to trial for falsification of the CCTs, and for violation of Sections 3(a) and (e) of Republic Act No. 3019. In fact, he argues that Espenesin has been held administratively liable by the Ombudsman for altering the CCTs. At the time of the filing of G.R. No. 192685, the Ombudsman had not yet reversed its previous resolution finding Espenesin liable for simple misconduct. He insists that the admission by respondents Espenesin and Serrano that they altered the CCTs should foreclose all questions on all respondents' (Espenesin's, Serrano's, Yuchengco's and Cheng's) liability for falsification and their commission of corrupt practices, under the Revised Penal Code and Republic Act No. 3019, respectively. In all, Ampil maintains that the Ombudsman's absolution of respondents is tainted with grave abuse of discretion.

G.R. No. 192685 is partially impressed with merit. Accordingly, we find grave abuse of discretion in the Ombudsman's incomplete disposition of Ampil's complaint.

That the Ombudsman is a constitutional officer duty bound to "investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient"¹⁷ brooks no objection. The Ombudsman's conduct of preliminary investigation is both power and duty. Thus, the Ombudsman and his Deputies, are constitutionalized as protectors of the people, who "shall act promptly on complaints filed in any form or manner against public officials or employees of the government x x x, and shall, x x x notify the complainants of the action taken and the result thereof."¹⁸

The *raison d'être* for its creation and endowment of broad investigative authority is to insulate the Office of the Ombudsman from the long tentacles of officialdom that are able to penetrate judges' and fiscals' offices, and others involved in the prosecution of erring public officials, and through the execution of official pressure and influence, quash, delay, or dismiss investigations into malfeasances and misfeasances committed by public officers.¹⁹

¹⁷ Constitution, Art. XI, Sec. 13.

¹⁸ Constitution, Art. XI, Sec. 12.

¹⁹ *ABS-CBN Broadcasting Corporation v. Office of the Ombudsman*, G.R. No. 133347, 15 October 2008, 569 SCRA 59, 75.

Plainly, the Ombudsman has “full discretion,” based on the attendant facts and circumstances, to determine the existence of probable cause or the lack thereof.²⁰ On this score, we have consistently hewed to the policy of non-interference with the Ombudsman’s exercise of its constitutionally mandated powers.²¹ The Ombudsman’s finding to proceed or desist in the prosecution of a criminal case can only be assailed through *certiorari* proceedings before this Court on the ground that such determination is tainted with grave abuse of discretion which contemplates an abuse so grave and so patent equivalent to lack or excess of jurisdiction.²²

However, on several occasions, we have interfered with the Ombudsman’s discretion in determining probable cause:

- (a) To afford protection to the constitutional rights of the accused;
- (b) When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;
- (c) When there is a prejudicial question which is *sub judice*;
- (d) When the acts of the officer are without or in excess of authority;**
- (e) Where the prosecution is under an invalid law, ordinance or regulation;
- (f) When double jeopardy is clearly apparent;
- (g) Where the court has no jurisdiction over the offense;
- (h) Where it is a case of persecution rather than prosecution;
- (i) Where the charges are manifestly false and motivated by the lust for vengeance.²³ (Emphasis supplied).

The fourth circumstance is present in G.R. No. 192685.

While we agree with the Ombudsman’s disquisition that there is no probable cause to indict respondents for Falsification of Public Documents under Article 171(6) of the Revised Penal Code, we are puzzled why the Ombudsman completely glossed over Ampil’s charge that respondents committed prohibited acts listed in Sections 3(a) and (e) of Republic Act No. 3019. Nowhere in the Resolution or in the Order denying reconsideration thereof did the Ombudsman tackle and resolve the issue of whether respondents violated the particular provisions of Republic Act No. 3019.

Curiously, the Ombudsman docketed Ampil’s complaint-affidavit as one “for: Falsification of Public Documents and Violation of Section[s] 3(a)

²⁰ *Vergara v. Ombudsman*, G.R. No. 174567, 12 March 2009, 580 SCRA 693, 708; *Presidential Commission on Good Government v. Desierto*, 563 Phil. 517, 525-526 (2007).

²¹ *ABS-CBN Broadcasting Corporation v. Office of the Ombudsman*, supra note 19 at 75-76.

²² *Baviera v. Zoleta*, 535 Phil. 292, 314 (2006).

²³ *Vergara v. Ombudsman*, supra note 20 at 709.

[and] (e) of [Republic Act] No. 3019, as amended.”²⁴ The Ombudsman even prefaced the Resolution, thus: “[t]his has reference to the complaint filed by Oscar Ampil on [17 September 2007] against [respondents], for Falsification of Public Documents and Violation of Sections 3, paragraphs (a) and (e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended.”²⁵

The Ombudsman’s silence on the component anti-graft charges is pointed up by the specific allegations in Ampil’s complaint-affidavit that:

18. The acts of ATTY. ESPENESIN and his co-conspirators are clear violations of Section 3 paragraph (a) and/or (e) of Republic Act No. 3019 otherwise known as the Anti-Graft and Corrupt Practices Act x x x;

x x x x

19. On the basis of the evidence x x x and the admissions of the conspirators themselves, ATTY. ESPENESIN is liable under both pars. (a) and (e) thereof or either of the two. By maliciously and feloniously altering the subject CCT’s (sic), contrary to law and to the prejudice of ASB and [Ampil], ATTY. ESPENESIN committed an offense in connection with his official duties and he admitted having done so in conspiracy with his co-respondents. x x x ATTY. ESPENESIN allowed himself to be persuaded, induced or influenced into committing such violation or offense which is the substance of par. (a) of RA 3019;

20. In committing such unauthorized and unlawful alterations on the subject CCT’s (sic), ATTY. ESPENESIN caused undue injury to ASB and to [AMPIL as an] unsecured creditor, who is ultimately one of the beneficiaries of said CCT from the ASSET POOL created by the SEC, and gave MICO unwarranted benefits, advantage or preference in the discharge of his official duties as Register of Deeds of Pasig City. Such acts were admitted by ATTY. ESPENESIN in his letter to ASB x x x. Such acts[,] taken together with his admission[,] indubitably show ATTY. ESPENESIN’s manifest partiality, evident bad faith and/or[,] at the least, his gross inexcusable negligence in doing the same;

21. ATTY. ESPENESIN is liable under Section 3 pars. (a) and/or (e) of RA 3019[,] as well as under Article 171 par. 6 of the RPC. ATTY. SERRANO, YVONNE S. YUCHENGCO and (sic) GEMMA O. CHENG are also liable for violation of the said provisions of law in conspiracy with ATTY. ESPENESIN, the latter as a principal via direct participation, ATTY. SERRANO, as principal by inducement and YUCHENGCO and CHENG, also by inducement[,] [who] being responsible officers of MICO ultimately benefited from said unlawful act[.]²⁶

²⁴ *Rollo* (G.R. No. 192685), p. 31.

²⁵ *Id.* at 31-32.

²⁶ *Id.* at 62-63.

and the pith of the Resolution which carefully and meticulously dissected the presence of the first three definitive elements of the crime of falsification under Article 171(6) of the Revised Penal Code:

The first three definitive elements of the crime, albeit present, are defeated by the absence of the fourth.

The respondents readily admitted that an alteration was indeed made on the CCTs in issue allegedly for the purpose of correcting a mistake in the name of the registered owner of the condominium units involved. Said alteration had obviously changed the tenor of the CCTs considering that ASB, the initially named owner, was changed into MICO. The first and third elements are undeniably present.

Anent the second element, the respondents argued that the CCTs in issue were mere drafts and are not legally considered “genuine documents” within the strict definition of the law. Albeit the contention is partially true, no proof has been shown to prove that the CCTs issued in favor of ASB were mere drafts.

The CCTs of ASB are obviously complete. If we are to compare it with the appearance and contents of the CCTs issued in favor of MICO, one will notice no definitive difference between the two except that one set was named in favor of ASB and the other set, in favor of MICO. Nothing is shown that will clearly prove that the former were mere drafts and the latter are the final copies. As far as the appearance of the CCTs of ASB is concerned, all appear to be complete and genuine. Proof to the contrary must be shown to prove otherwise.

Delivery of the titles to the named owners is not a pre-requisite before all these CCTs can be legally categorized as genuine documents. The fact that the same had already been signed by respondent Espenesin in his capacity as Registrar of Deeds of Pasig City and the notations imprinted thereon appeared to have been entered on March 11, 2005 at 11:55 a.m. at the Registry Books of Pasig City, the CCTs in issue are bound to be treated as genuine documents drafted and signed in the regular performance of duties of the officer whose signature appears thereon.²⁷

On the whole, the Ombudsman’s discussion was straightforward and categorical, and ultimately established that Espenesin, at the urging of Serrano, altered the CCTs issued in ASB’s name resulting in these CCTs ostensibly declaring MICO as registered owner of the subject units at The Malayan Tower.

Despite the admission by Espenesin that he had altered the CCTs and the Ombudsman's findings thereon, the Ombudsman abruptly dismissed Ampil's complaint-affidavit, resolving only one of the charges contained therein with nary a link regarding the other charge of violation of Sections 3(a) and (e) of Republic Act No. 3019. Indeed, as found by the Ombudsman, the 4th element of the crime of Falsification of Public Documents is lacking, as the actual ownership of the subject units at The Malayan Tower has yet to be resolved. Nonetheless, this circumstance does not detract from, much less diminish, Ampil's charge, and the evidence pointing to the possible commission, of offenses under Sections 3(a) and (e) of the Anti-Graft and Corrupt Practices Act.

Sections 3(a) and (e) of Republic Act No. 3019 reads:

Section 3. Corrupt practices of public officers. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

(a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

The elements of Section 3(a) of Republic Act No. 3019 are:

- (1) the offender is a public officer;
- (2) the offender persuades, induces, or influences **another** public officer to perform an act **or** the offender allows himself to be persuaded, induced, or influenced to commit an act;
- (3) the act performed by the other public officer or committed by the offender constitutes a violation of rules and regulations duly

promulgated by competent authority **or** an offense in connection with the official duty of the latter. (Emphasis supplied).

Whereas, paragraph (e) of the same section lists the following elements:

- (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, evident 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.²⁸

As Registrar of the Registry of Deeds of Pasig City, Espenesin is tasked, among others, to review deeds and other documents for conformance with the legal requirements of registration.²⁹ Section 10 of Presidential Decree No. 1529, Amending and Codifying the Laws Relative to Registration of Property and for Other Purposes provides:

Section 10. *General functions of Registers of Deeds.* – The office of the Register of Deeds constitutes a public repository of records of instruments affecting registered or unregistered lands and chattel mortgages in the province or city wherein such office is situated.

It shall be the duty of the Register of Deeds to immediately register an instrument presented for registration dealing with real or personal property which complies with all the requisites for registration. He shall see to it that said instrument bears the proper documentary and science stamps and that the same are properly cancelled. If the instrument is not registerable, he shall forthwith deny registration thereof and inform the presenter of such denial in writing, stating the ground or reason therefore, and advising him of his right to appeal by consulta in accordance with Section 117 of the Decree.

Most importantly, a Registrar of the Registry of Deeds is charged with knowledge of Presidential Decree No. 1529, specifically Sections 57³⁰ and 108.³¹

²⁸ *Sison v. People*, G.R. Nos. 170339 and 170398-403, 9 March 2010, 614 SCRA 670, 679.

²⁹ *Office of the Ombudsman (Mindanao) v. Cruzabra*, G.R. No. 183507, 24 February 2010, 613 SCRA 549, 552.

³⁰ **Section 57.** *Procedure in registration of conveyances.* An owner desiring to convey his registered land in fee simple shall execute and register a deed of conveyance in a form sufficient in law. The Register of Deeds shall thereafter make out in the registration book a new certificate of title to the grantee and shall prepare and deliver to him an owner's duplicate certificate. The

In the instant case, the elements of the offenses under Sections 3(a) and (e) of Republic Act No. 3019, juxtaposed against the functions of a Registrar of the Registry of Deeds establish a *prima facie* graft case against Espenesin and Serrano only. Under Section 3(a) of Republic Act No. 3019, there is a *prima facie* case that Espenesin, at the urging of Serrano, allowed himself to be persuaded to alter the CCTs originally issued in ASB's name, against the procedure provided by law for the issuance of CCTs and registration of property. In addition, under Section 3(e) of the same law, there is likewise a *prima facie* case that Espenesin, through gross inexcusable negligence, by simply relying on the fact that all throughout the transaction to register the subject units at The Malayan Tower he liaised with Serrano, gave MICO an unwarranted benefit, advantage or preference in the registration of the subject units.

In *Sison v. People of the Philippines*, we expounded on Section 3(e) of Republic Act No. 3019:

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Register of Deeds shall note upon the original and duplicate certificate the date of transfer, the volume and page of the registration book in which the new certificate is registered and a reference by number to the last preceding certificate. The original and the owner's duplicate of the grantor's certificate shall be stamped "cancelled." The deed of conveyance shall be filled and indorsed with the number and the place of registration of the certificate of title of the land conveyed. Entitled, "Property Registration Decree."

Section 108. Amendment and alteration of certificates. No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same be Register of Deeds, except by order of the proper Court of First Instance. A registered owner or other person having an interest in registered property, or, in proper cases, the Register of Deeds with the approval of the Commissioner of Land Registration, may apply by petition to the court upon the ground that the registered interests of any description, whether vested, contingent, expectant or inchoate appearing on the certificate, have terminated and ceased; or that new interest not appearing upon the certificate have arisen or been created; or that an omission or error was made in entering a certificate or any memorandum thereon, or, on any duplicate certificate; or that the same or any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated and no right or interests of heirs or creditors will thereby be affected; or that a corporation which owned registered land and has been dissolved has not convened the same within three years after its dissolution; or upon any other reasonable ground; and the court may hear and determine the petition after notice to all parties in interest, and may order the entry or cancellation of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security or bond if necessary, as it may consider proper; Provided, however, That this section shall not be construed to give the court authority to reopen the judgment or decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs and assigns, without his or their written consent. Where the owner's duplicate certificate is not presented, a similar petition may be filed as provided in the preceding section.

All petitions or motions filed under this Section as well as under any other provision of this Decree after original registration shall be filed and entitled in the original case in which the decree or registration was entered.

The third element of Section 3 (e) of RA 3019 may be committed in three ways, *i.e.*, through manifest partiality, evident bad faith or gross inexcusable negligence. Proof of *any* of these three in connection with the prohibited acts mentioned in Section 3(e) of RA 3019 is enough to convict.

Explaining what "partiality," "bad faith" and "gross negligence" mean, we held:

"Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." **"Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property."**

In the instant case, petitioner was grossly negligent in all the purchases that were made under his watch. Petitioner's admission that the canvass sheets sent out by de Jesus to the suppliers already contained his signatures because he pre-signed these forms only proved his utter disregard of the consequences of his actions. Petitioner also admitted that he knew the provisions of RA 7160 on personal canvass but he did not follow the law because he was merely following the practice of his predecessors. This was an admission of a mindless disregard for the law in a tradition of illegality. This is totally unacceptable, considering that as municipal mayor, petitioner ought to implement the law to the letter. As local chief executive, he should have been the first to follow the law and see to it that it was followed by his constituency. Sadly, however, he was the first to break it.

Petitioner should have complied with the requirements laid down by RA 7160 on personal canvass, no matter how strict they may have been. *Dura lex sed lex*. The law is difficult but it is the law. These requirements are not empty words but were specifically crafted to ensure transparency in the acquisition of government supplies, especially since no public bidding is involved in personal canvass. Truly, the requirement that the canvass and awarding of supplies be made by a collegial body assures the general public that despotic, irregular or unlawful transactions do not occur. It also guarantees that no personal preference is given to any supplier and that the government is given the best possible price for its procurements.

The fourth element is likewise present. **While it is true that the prosecution was not able to prove any undue injury to the government as a result of the purchases, it should be noted that there are two ways by which Section 3(e) of RA 3019 may be violated—the first, by causing undue injury to any party, including the government, or the second, by giving any private party any unwarranted benefit, advantage or preference. Although neither mode constitutes a distinct offense, an accused may be charged under *either mode or both*. The use of the disjunctive “or” connotes that the two modes need not be present at the same time. In other words, the presence of one would suffice for conviction.**

Aside from the allegation of undue injury to the government, petitioner was also charged with having given unwarranted benefit, advantage or preference to private suppliers. Under the second mode, damage is not required.

The word “unwarranted” means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. “Advantage” means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. “Preference” signifies priority or higher evaluation or desirability; choice or estimation above another.

In order to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions. Petitioner did just that. The fact that he repeatedly failed to follow the requirements of RA 7160 on personal canvass proves that unwarranted benefit, advantage or preference was given to the winning suppliers. These suppliers were awarded the procurement contract without the benefit of a fair system in determining the best possible price for the government. The private suppliers, which were all personally chosen by respondent, were able to profit from the transactions without showing proof that their prices were the most beneficial to the government. For that, petitioner must now face the consequences of his acts.³² (Emphasis supplied).

We stress that the Ombudsman did not find probable cause to indict respondents for falsification simply because the Ombudsman could not categorically declare that the alteration made the CCT speak falsely as the ownership of the subject units at The Malayan Tower had yet to be determined. However, its initial factual findings on the administrative complaint categorically declared, thus:

x x x [Espenesin] justified his action by asseverating that since the CCTs were still under the possession and control of the Register of Deeds

³²

Supra note 28 at 679-682.

and have not yet been distributed to the owners, amendments can still be made thereon.

It is worthy to note that the CCTs of ASB, at the time when the amendment was made, were obviously complete. From its face, we can infer that all have attained the character of a binding public document. The signature of [Espenesin] is already affixed thereon, and on its face, it was explicitly declared that the titles have already been entered in the Registration Book of the Register of Deeds of Pasig City on March 11, 2005 at 11:55 a.m. Allegations to the contrary must be convincingly and positively proven, otherwise, the presumption holds that the CCTs issued in the name of ASB were regular and the contents thereon binding.

Stated in a different light, delivery of the titles to the named owners is not a pre-requisite before all these CCTs can be legally categorized as genuine documents. The fact that the same had already been signed by x x x Espenesin in his capacity as Register of Deeds of Pasig City and the notations imprinted thereon appeared to have been entered on March 11, 2005 at 11:55 a.m. at the Registry Books of Pasig City, the CCTs in issue are bound to be treated as genuine documents drafted and signed in the regular performance of duties of the officer whose signature appears thereon. The law has made it so clear that it is the entry of the title in the Registration Book that controls the discretion of the Register of Deeds to effect the necessary amendments and not the actual delivery of the titles to the named owners.

This being the case, strict compliance with the mandates of **Section 108 of P.D. 1529** is strictly called for. The provision is clear that upon entry of a certificate of title (which definitely includes Condominium Certificate of Title) attested to by the Register of Deeds, no amendment shall be effected thereon except upon lawful order of the court.

In the instant case, it became obvious that after the CCTs of ASB were entered in the Registration Book on March 11, 2005 at exactly 11:55 a.m., the notations thereon were thereafter amended by [Espenesin] when Atty. Serrano purportedly informed him of the alleged error inscribed therein. The proper remedy that should have been undertaken by [Espenesin] soon after he was informed of the error is to either initiate the appropriate petition himself or to suggest to the parties to the MOA to file said petition in court for the amendment of the CCTs. An amendment by way of a shortcut is not allowed after entry of the title in the Registration Book.

x x x x

If the Regional Trial Court sitting as a land registration court is not legally authorized to determine the respective rights of the parties to the MOA when deciding on the petition for amendment and cancellation of title, all the more with the Registrar of Deeds who is legally not empowered to make such determination and to cause an automatic

amendment of entries in the Registration Book on the basis of his unauthorized determination.

[Espenesin's] liability is grounded on the untimely and unauthorized amendment of the CCTs in issue. This is regardless of whether the amendment had made the CCTs speak of either a lie or the truth. What defines his error is his inability to comply with the proper procedure set by law.³³ (Emphasis supplied).

We likewise stress that the determination of probable cause does not require certainty of guilt for a crime. As the term itself implies, probable cause is concerned merely with probability and not absolute or even moral certainty;³⁴ it is merely based on opinion and reasonable belief.³⁵ It is sufficient that based on the preliminary investigation conducted, it is believed that the act or omission complained of constitutes the offense charged. Well-settled in jurisprudence, as in *Raro v. Sandiganbayan*,³⁶ that:

x x x [P]robable cause has been defined as the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.³⁷

Probable cause is a reasonable ground for presuming that a matter is or may be well-founded on such state of facts in the prosecutor's mind as would lead a person of ordinary caution and prudence to believe — or entertain an honest or strong suspicion — that it is so.³⁸

A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt.³⁹

A finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense

³³ *Rollo* (G.R. No. 199115), pp. 174-176.

³⁴ *Metropolitan Bank and Trust Company v. Tobias III*, G.R. No. 177780, 25 January 2012, 664 SCRA 165, 177-178.

³⁵ *Balangauan v. Court of Appeals, Special Nineteenth Division, Cebu City*, G.R. No. 174350, 13 August 2008, 562 SCRA 184, 207.

³⁶ 390 Phil. 912 (2000).

³⁷ *Id.* at 945-946.

³⁸ *Fuentes, Jr. v. Office of the Ombudsman*, 511 Phil. 402, 415 (2005).

Galario v. Office of the Ombudsman (Mindanao), G.R. No. 166797, 10 July 2007, 527 SCRA 190, 204.

charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.⁴⁰

A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.

*The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. x x x Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction.*⁴¹ (Emphasis and italics supplied).

In this instance, Espenesin explains and categorically admits that he altered, nay corrected, 38 certificates of title which we again reproduce for easy reference:

Sometime ago [Serrano] requested that condominium titles over specified unit[s] be issued in consonance with the sharing in the joint venture [MOA]. Titles were correspondingly issued as per request, some in the name of [MICO] and some in the name of [ASB]. Before its release to the parties, Atty. Serrano came back and requested that some titles issued in the name of [ASB] be change[d] to [MICO] because allegedly there was error in the issuance.

Believing it was a simple error and on representation of the person we came to know and considered the representative of both parties, we erased the name ASB Realty Corporation on those specified titles and placed instead the name Malayan Insurance Company.

To our mind[,] the purpose was not to transfer ownership but merely to rectify an error committed in the issuance of titles. And since they were well within our capacity to do, the titles not having been released yet to its owner, we did what we believed was a simple act of rectifying a simple mistake.⁴²

The letter of Espenesin itself underscores the existence of a *prima facie* case of gross negligence:

1. Serrano transacted the registration of the units in The Malayan Tower with the Office of the Register of Deeds, Pasig City;

⁴⁰ *Casing v. Ombudsman*, G.R. No. 192334, 13 June 2012, 672 SCRA 500, 509 citing *Metropolitan Bank and Trust Company v. Gonzales*, G.R. No. 180165, 7 April 2009, 584 SCRA 631, 641.

⁴¹ *Pilapil v. Sandiganbayan*, G.R. No. 101978, 7 April 1993, 221 SCRA 349, 360.

2. Serrano had previously presented a joint venture agreement, the MOA, which Espenesin followed in the initial preparation and issuance of the titles;

3. Before some CCTs initially issued in ASB's name were released, Serrano returned and requested that some titles issued in the name of ASB be changed to MICO because those titles were supposedly erroneously registered to ASB; and

4. Just on Serrano's utterance and declaration which Espenesin readily believed because he considered Serrano the representative of both parties, and without any other documentation to base the amendment on, Espenesin **erased** the name of ASB on those specified titles and replaced it with the name of MICO.

Espenesin, a Registrar of Deeds, relied on Serrano's word alone that a supposed error has been committed. Even if ownership of the units covered by the amended CCTs has not been categorically declared as ASB's given the ongoing dispute between the parties, the MOA which Espenesin had previously referred to, allocates those units to ASB:

Section 4. *Distribution and Disposition of Units.* (a) As a return of its capital investment in the Project, each party shall be entitled to such portion of all the net saleable area of the Building that their respective contributions to the Project bear to the actual construction cost. As of the date of the execution hereof, and on the basis of the total costs incurred to date in relation to the Remaining Construction Costs (as defined in Section 9(a) hereof), the parties shall respectively be entitled to the following (which entitlement shall be conditioned on, and subject to, adjustments as provided in sub-paragraph (b) of Section 4 in the event that the actual remaining cost of construction exceeds the Remaining Construction Cost):

(i) [MICO] – the net saleable area particularly described in Schedule 2 hereof.

(ii) ASB – the following net saleable area:

(A) the net saleable area which ASB had pre-sold for an aggregate purchase price of P640,085,267.30 as set forth in Schedule 1 (including all paid and unpaid proceeds of said pre-sales);

(B) the net saleable area particularly described in Schedule 3 hereof which shall be delivered to ASB upon completion of the Project; and,

(C) provided that the actual remaining construction costs do not exceed the Remaining Construction Cost, the net saleable area particularly described in Schedule 4 hereof which shall be delivered to ASB upon completion of the Project and determination of its actual construction costs. If the actual remaining construction costs exceed the Remaining Construction Cost, sub-paragraph (b) of this Section 4 shall apply.⁴³

The MOA even recognizes and specifies that:

E. ASB has pre-sold a number of condominium units in the Project to certain buyers as set forth in Schedule 1 hereof, and in order to protect the interests of these buyers and preserve the interest in the Project, the goodwill and business reputation of Malayan, Malayan has proposed to complete the Project, and ASB has accepted such proposal, subject to the terms and conditions contained herein, including the contribution to the Project (a) by Malayan of the Lot and (b) by ASB of its interest as buyer under the Contract to Sell.

X X X X

Section 3. *Recognition of ASB's Investment.* The parties confirm that as of the date hereof, ASB invested in the Project an amount equivalent to its entitlement to the net saleable area of the Building under Section 4 below, including ASB's interest as buyer under the Contract to Sell.⁴⁴

One fact deserves emphasis. The ownership of the condominium units remains in dispute and, by necessary inference, does not lie as well in MICO. By his baseless reliance on Serrano's word and representation, Espenesin allowed MICO to gain an unwarranted advantage and benefit in the titling of the 38 units in The Malayan Tower.

That a *prima facie* case for gross negligence amounting to violation of Sections 3(a) and (e) of Republic Act No. 3019 exists is amply supported by the fact that Espenesin disregarded the well-established practice necessitating submission of required documents for registration of property in the Philippines:

⁴³ *Rollo* (G.R. No. 199115), pp. 79-80.
⁴⁴ *Id.* at 79.

Documents Required for Registration of Real Property with the Register of Deeds:

1. Common Requirements

- Original copy of the Deed or Instrument (Original Copy + 2 duplicate copies) If the original copy cannot be produced, the duplicate original or certified true copy shall be presented accompanied with a sworn affidavit executed by the interested party why the original copy cannot be presented.
- Owner's copy of the Certificate of Title or Co-owner's copy if one has been issued. (Original Copy + 2 duplicate copies)
- Latest Tax Declaration if the property is an unregistered land. (Original Copy + 2 duplicate copies)

2. Specific Requirements

1. Deed of Sale/Transfer

x x x x

▪ For Corporation

1. Secretary's Certificate or Board Resolution to Sell or Purchase (Original Copy + Duplicate Copy)
2. Articles of Incorporation (for transferee corporation) (1 Certified Copy of the Original)
3. Certificate of the Securities and Exchange Commission (SEC) that the Articles of Incorporation had been registered . (1 Certified Copy of the Original)
4. For Condominium or Condominium Certificate of Transfer, affidavit/certificate of the Condominium Corporation that the sale/transfer does not violate the 60-40 rule.(Original Copy + 1 Duplicate Copy)
5. Subsequent transfer of CCT requires Certificate of the Condominium Management. (Original Copy)
6. Sale by a Corporation Sole, court order is required.(Original copy of the Court Order)

Additional Requirements

x x x x

11. Condominium Projects

- Master Deed (Original Copy + 1 Duplicate Copy)
 - Declaration of Restriction (Original Copy + 1 Duplicate Copy)
 - Diagrammatic Floor Plan (Original Copy + 1 Duplicate Copy)
- If the Condominium Certificate of Title is issued for the first time in the name of the registered owner, require the following:
- Certificate of Registration with the Housing and Land Use Regulatory Board (Original Copy + 1 Duplicate Copy)
 - Development Permit (Original Copy + 1 Duplicate Copy)

- License to Sell (Original Copy + 1 Duplicate Copy)⁴⁵

Espenesin, by his own explanation, relied on nothing more than Serrano, who he “came to know and considered as representative of both parties,” and Serrano’s interpretation of the MOA that Serrano had brought with him.

On the whole, there is sufficient ground to engender a well-founded belief that respondents Espenesin and Serrano committed prohibited acts listed in Sections 3(a) and (e) of Republic Act No. 3019.

As regards Yuchengco and Cheng, apart from Ampil’s general assertions that the two, as officers of MICO, benefited from the alteration of the CCTs, there is a dearth of evidence pointing to their collective responsibility therefor. While the fact of alteration was admitted by respondents and was affirmed in the Ombudsman’s finding of fact, there is nothing that directly links Yuchengco and Cheng to the act.

We are aware that the calibration of evidence to assess whether a *prima facie* graft case exists against respondents is a question of fact. We have consistently held that the Supreme Court is not a trier of facts, more so in the consideration of the extraordinary writ of *certiorari* where neither questions of fact nor law are entertained, but only questions of lack or excess of jurisdiction or grave abuse of discretion.⁴⁶ In this case, however, *certiorari* will lie, given that the Ombudsman made no finding at all on respondents possible liability for violation of Sections 3(a) and (e) of Republic Act No. 3019.

We hasten to reiterate that we are only dealing herein with the preliminary investigation aspect of this case. We do not adjudge respondents’ guilt or the lack thereof. The assertions of Espenesin and Serrano on the former’s good faith in effecting the alteration and the pending arbitration case before the Construction Industry Arbitration Commission involving the correct division of MICO’s and ASB’s net saleable areas in The Malayan Tower are matters of defense which they should raise during trial of the criminal case.

⁴⁵ See <http://nrephilippines.com/question-on-philippine-real-estate/land-registration-procedure/> last visited 21 July 2013.

⁴⁶ See Sec. 1, Rule 45 in relation to Sec. 1, Rule 65 of the Rules of Court; *Angeles v. Gutierrez*, G.R. Nos. 189161 and 189173, 21 March 2012, 668 SCRA 803.

As regards the administrative liability of Espenesin, the basic principle in the law of public officers is the *three-fold liability rule*, which states that the wrongful acts or omissions of a public officer, Espenesin in these cases, may give rise to civil, criminal and administrative liability. An action for each can proceed independently of the others.⁴⁷

On this point, we find that the appellate court erred when it affirmed the Ombudsman's last ruling that Espenesin is not administratively liable.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer.⁴⁸

In Grave Misconduct, as distinguished from Simple Misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rules, must be manifest⁴⁹ and established by substantial evidence. Grave Misconduct necessarily includes the lesser offense of Simple Misconduct.⁵⁰ Thus, a person charged with Grave Misconduct may be held liable for Simple Misconduct if the misconduct does not involve any of the elements to qualify the misconduct as grave.⁵¹

In (G.R. No. 199115), the elements particular to Grave Misconduct are, by the Ombudsman's own finding, present. Corruption, as an element of Grave Misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.⁵² This has already been demonstrated as discussed above. And, there is here a manifest disregard for established rules on land registration by a Register of Deeds himself. As he himself admits in his letter, Espenesin erased the name of ASB on the specified CCTs because he believed that Serrano's request for the re-issuance thereof in MICO's name constituted simple error.

⁴⁷ *Domingo v. Rayala*, G.R. Nos. 155831, 155840 and 158700, 18 February 2008, 546 SCRA 90, 112.

⁴⁸ *Estarija v. Ranada*, 525 Phil. 718, 728 (2006); *Bureau of Internal Revenue v. Organo*, 468 Phil. 111, 118 (2004).

⁴⁹ *Villanueva v. Court of Appeals*, 528 Phil. 432, 442 (2006); *Civil Service Commission v. Lucas*, 361 Phil. 486, 490-491 (1999).

⁵⁰ *Santos v. Rasalan*, 544 Phil. 35, 43 (2007); *Civil Service Commission v. Ledesma*, 508 Phil. 569, 580 (2005).

⁵¹ *Santos v. Rasalan*, *id.*

Section 108 of Presidential Decree No. 1529 provides:

Section 108. *Amendment and alteration of certificates.* No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same be Register of Deeds, except by order of the proper Court of First Instance. A registered owner of other person having an interest in registered property, or, in proper cases, the Register of Deeds with the approval of the Commissioner of Land Registration, may apply by petition to the court upon the ground that the registered interests of any description, whether vested, contingent, expectant or inchoate appearing on the certificate, have terminated and ceased; or that new interest not appearing upon the certificate have arisen or been created; or that an omission or error was made in entering a certificate or any memorandum thereon, or, on any duplicate certificate; or that the same or any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated and no right or interests of heirs or creditors will thereby be affected; or that a corporation which owned registered land and has been dissolved has not convened the same within three years after its dissolution; or upon any other reasonable ground; and the court may hear and determine the petition after notice to all parties in interest, and may order the entry or cancellation of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security or bond if necessary, as it may consider proper; Provided, however, That this section shall not be construed to give the court authority to reopen the judgment or decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs and assigns, without his or their written consent. Where the owner's duplicate certificate is not presented, a similar petition may be filed as provided in the preceding section.

The foregoing clearly speaks of a court order prior to any erasure, alteration or amendment upon a certificate of title.

In reversing its prior ruling, the Ombudsman cavalierly dismisses the fact of Espenesin already signing the CCTs issued in ASB's name as "only a part of the issuance process because the final step in the titling procedure is indeed the release of the certificate of title."⁵³ The Ombudsman further ruled:

Considering that prior to the release of titles, [Espenesin] merely rectified what was represented to this office as error in the preparation of typing or the certificates, hence, it is wrong to subject him to an administrative

⁵² *Office of the Ombudsman v. Miedes, Sr.*, G.R. No. 176409, 27 February 2008, 547 SCRA 148, 157.

⁵³ *Rollo* (G.R. No. 199115), p. 184.

sanction. This is bolstered by the fact that, at the time of release (and perhaps even up to the present time), **there was no final determination yet from the land registration court as to who has a better right to the property in question.**⁵⁴ (Emphasis supplied).

This statement of the Ombudsman is virtually a declaration of Espenesin's misconduct. It highlights Espenesin's awareness and knowledge that ASB and MICO are two different and separate entities, albeit having entered into a joint venture for the building of "The Malayan Tower."

As Registrar of Deeds, Espenesin was duty bound to inquire and ascertain the reason for Serrano's new instruction on those specific set of CCTs and **not just heed Serrano's bidding.** He heads the Office of Register of Deeds which is constituted by law as "a public repository of records of instruments affecting registered or unregistered lands x x x in the province or city wherein such office is situated." He should not have so easily taken Serrano's word that the amendment Serrano sought was to correct simple and innocuous error. Espenesin could have then easily asked, as he is obliged to, for a contract or an authenticated writing to ascertain which units and parking slots were really allotted for ASB and MICO. His actions would then be based on what is documented and not merely by a lame claim of *bona fides* mistake.

Moreover, Espenesin was previously presented a MOA, and consulted this same MOA, in the initial preparation and issuance of the 38 CCTs in ASB's name. Certainly, a Registrar of Deeds who is required by law to be a member of the legal profession,⁵⁵ possesses common sense and prudence to ask for documents on which to base his corrections. Reliance on the mere word of even the point person for the transaction, smacks of gross negligence when all transactions with the Office of the Register of Deeds, involving as it does registration of property, ought to be properly recorded and documented.

That the Office of the Register of Deeds requires documentation in the registration of property, whether as an original or a subsequent registration, brooks no argument. Again, and it cannot be overlooked that, Espenesin initially referred to a MOA albeit Serrano worked on the registration transaction for both ASB and MICO. Subsequently, Serrano returns, bearing ostensible authority to transact even for ASB, and Espenesin fails to ask for

⁵⁴ Id.

⁵⁵ Sec. 9, Presidential Decree No. 1529.

documentation for the correction Serrano sought to be made, and simply relies on Serrano's word.

We are baffled by the Registrar of Deeds' failure to require documentation which would serve as his basis for the correction. The amendment sought by Serrano was not a mere clerical change of registered name; it was a substantial one, changing ownership of 38 units in The Malayan Tower from one entity, ASB, to another, MICO. Even just at Serrano's initial request for correction of the CCTs, a red flag should have gone up for a Registrar of Deeds.

Espenesin splits hairs when he claims that it is "in the [R]egistration [B]ook where the prohibition to erase, alter, or amend, without court order, applies." We disagree with Espenesin. Chapter IV on Certificate of Title of Presidential Decree No. 1529,⁵⁶ specifically Sections 40, 42 and 43 belie the claim of Espenesin:

Section 40. *Entry of Original Certificate of Title.* Upon receipt by the Register of Deeds of the original and duplicate copies of the original certificate of title the same shall be entered in his record book and shall be numbered, dated, signed and sealed by the Register of Deeds with the seal of his office. Said certificate of title shall take effect upon the date of entry thereof. The Register of Deeds shall forthwith send notice by mail to the

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Section 39. *Preparation of decree and Certificate of Title.* After the judgment directing the registration of title to land has become final, the court shall, within fifteen days from entry of judgment, issue an order directing the Commissioner to issue the corresponding decree of registration and certificate of title. The clerk of court shall send, within fifteen days from entry of judgment, certified copies of the judgment and of the order of the court directing the Commissioner to issue the corresponding decree of registration and certificate of title, and a certificate stating that the decision has not been amended, reconsidered, nor appealed, and has become final. Thereupon, the Commissioner shall cause to be prepared the decree of registration as well as the original and duplicate of the corresponding original certificate of title. The original certificate of title shall be a true copy of the decree of registration. The decree of registration shall be signed by the Commissioner, entered and filed in the Land Registration Commission. The original of the original certificate of title shall also be signed by the Commissioner and shall be sent, together with the owner's duplicate certificate, to the Register of Deeds of the city or province where the property is situated for entry in his registration book.

Section 40. *Entry of Original Certificate of Title.* x x x.

Section 41. *Owner's duplicate certificate of title.* The owner's duplicate certificate of title shall be delivered to the registered owner or to his duly authorized representative. If two or more persons are registered owners, one owner's duplicate certificate may be issued for the whole land, or if the co-owners so desire, a separate duplicate may be issued to each of them in like form, but all outstanding certificates of title so issued shall be surrendered whenever the Register of Deeds shall register any subsequent voluntary transaction affecting the whole land or part thereof or any interest therein. The Register of Deeds shall note on each certificate of title a statement as to whom a copy thereof was issued.

Section 42. *Registration Books.* x x x.

Section 43. *Transfer Certificate of Title.* x x x.

registered owner that his owner's duplicate is ready for delivery to him upon payment of legal fees.

Section 42. *Registration Books*. The original copy of the original certificate of title shall be filed in the Registry of Deeds. The same shall be bound in consecutive order together with similar certificates of title and shall constitute the registration book for titled properties.

Section 43. *Transfer Certificate of Title*. The subsequent certificate of title that may be issued by the Register of Deeds pursuant to any voluntary or involuntary instrument relating to the same land shall be in like form, entitled "Transfer Certificate of Title", and likewise issued in duplicate. The certificate shall show the number of the next previous certificate covering the same land and also the fact that it was originally registered, giving the record number, the number of the original certificate of title, and the volume and page of the registration book in which the latter is found.

Recording or entry of the titles, whether an original or a subsequent transfer certificate of title in the record, is simultaneous with the signing by the Register of Deeds. The signature on the certificate by the Registrar of Deeds is accompanied by the dating, numbering and sealing of the certificate. All these are part of a single registration process. Where there has been a completed entry in the Record Book, as in this case where the Ombudsman found that "the signature of [Espenesin] is already affixed [on the CCTs], and on its face, it was explicitly declared that the titles have already been entered in the Registration Book of the Register of Deeds of Pasig City on March 11, 2005 at 11:55 a.m.," the Register of Deeds can no longer tamper with entries, specially the very name of the titleholder. The law says that the certificate of title shall take effect upon the date of entry thereof.

To further drive home the point, as Registrar of Deeds, Espenesin knew full well that "there [is] no final determination yet from the land registration court as to who has a better right to the property in question." Espenesin's attempt to minimize the significance of a Registrar of Deed's signature on a CCT only aggravates the lack of prudence in his action. The change in the titleholder in the CCTs from ASB to MICO was an official documentation of a change of ownership. It definitely cannot be characterized as simple error.

Grave misconduct, of which Espenesin has been charged, consists in a public officer's deliberate violation of a rule of law or standard of behavior. It is regarded as grave when the elements of corruption, clear intent to

violate the law, *or flagrant disregard of established rules are present*.⁵⁷ In particular, corruption as an element of grave misconduct consists in the official's unlawful and wrongful use of his station or character to procure some benefit for himself *or for another person*, contrary to duty and the rights of others.⁵⁸

In sum, the actions of Espenesin clearly demonstrate a *disregard of well-known legal rules*.⁵⁹ The penalty for Grave Misconduct is dismissal from service with the accessory penalties of forfeiture of retirement benefits, cancellation of eligibility, and perpetual disqualification from re-employment in the government service, including government-owned or controlled corporation.⁶⁰

WHEREFORE, the petition in G.R. No. 192685 is **PARTIALLY GRANTED**. The Resolution of the Ombudsman dated 30 April 2008 in OMB-C-C-07-0444-J is **REVERSED and SET ASIDE**. The Ombudsman is hereby directed to file the necessary Information for violation of Sections 3(a) and (e) of Republic Act No. 3019 against public respondent Policarpio L. Espenesin and private respondent Francis Serrano.

The petition in G.R. No. 199115 is **GRANTED**. The Decision of the Court of Appeals dated 28 September 2011 in CA-G.R. SP No. 113171 and the Order dated 13 July 2009 of the Ombudsman in OMB-C-A-07-0474-J

⁵⁷ *Imperial, Jr. v. Government Service Insurance System*, G.R. No. 191224, 4 October 2011, 658 SCRA 497, 506.


⁵⁸ *National Power Corporation v. Civil Service Commission*, G.R. No. 152093, 24 January 2012, 663 SCRA 492, 495.

⁵⁹ *National Power Corporation v. Civil Service Commission*, id.; *Jamsani-Rodriguez v. Justices Ong, Hernandez, Ponferrada*, A.M. 8-19-SBJ, 24 August 2010.

⁶⁰ Section 22, Rule XIV of the Omnibus Rules Implementing Book V of the Administrative Code of 1987.


are **REVERSED** and **SET ASIDE**. Respondent Policarpio L. Espenesin is **GUILTY** of Grave Misconduct and we, thus, impose the penalty of **DIMISSAL** from service. However, due to his retirement from the service, we order forfeiture of all his retirement pay and benefits.

SO ORDERED.



JOSE PORTUGAL IEREZ
Associate Justice

WE CONCUR:




ANTONIO T. CARPIO
Associate Justice
Chairperson



ARTURO D. BRION
Associate Justice




MARIANO C. DEL CASTILLO
Associate Justice



ESTELA M. PERLAS-BERNABE
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.



ANTONIO T. CARPIO
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.



MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY:

MA. LOURDES C. PERFECTO
Division Clerk of Court
Second Division