



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

AMANDO P. CORTES,

Petitioner,

G.R. Nos. 187896-97

Present:

-versus-

BRION,* J.,
Acting Chairperson,
DEL CASTILLO,
PEREZ,
PERLAS-BERNABE, and
LEONEN,** JJ.

OFFICE OF THE OMBUDSMAN
(VISAYAS), VICTORY M.
FERNANDEZ, JULIO E. SUCGANG
and NILO IGTANLOC,

Respondents.

Promulgated:

JUN 10 2013 *Handwritten signature*

X -----

RESOLUTION

PEREZ, J.:

The subject of this petition for review is the dismissal of the criminal and administrative complaints filed by petitioner Amando P. Cortes with the Office of the Ombudsman (Visayas) against respondents Victory M. Fernandez (Fernandez), Julio E. Sugcang (Sugcang) and Nilo Igtanloc (Igtanloc), who were sued in their capacity as Provincial Engineer, *Barangay* Captain of *Barangay* Soncolan and Grader Operator, respectively, of the Province of Aklan.

In his Complaint-Affidavit filed on 28 November 2006, petitioner charged respondents with violation of Section 3(e) of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act, and Misconduct. Petitioner alleged that during the period of 29 March 2006 to 1 April 2006, respondents utilized a heavy equipment grader owned by the Province of Aklan in levelling a portion of his land. Petitioner claimed that the portion of the land destroyed has an area of 1,125 square meters and that several fruit trees were destroyed. Petitioner impleaded Fernandez for the latter's failure to ascertain from the *Barangay* Captain whether the roads sought to be levelled were *barangay* roads, and for issuing a driver's trip ticket to the Grader Operator.¹

* Per Special Order No. 1460 dated 29 May 2013.

** Per Special Order No. 1461 dated 29 May 2013.

¹ Rollo, p. 37.

In a Consolidated Evaluation Report dated 14 December 2006, the Office of the Ombudsman (Visayas) recommended the dismissal of the cases due to the fact that two (2) other cases involving the same parties and issues had already been filed by petitioner.

Petitioner moved for the reconsideration of the Consolidated Evaluation Report. On 7 February 2008, the Office of the Ombudsman (Visayas) denied the motion for reconsideration.

Petitioner takes the appeal directly to this Court, *via* a petition for review on *certiorari*, pursuant to Section 27 of the Ombudsman Act, assailing the denial of his motion for reconsideration by the Office of the Ombudsman (Visayas).

Petitioner cites the following errors as grounds for the allowance of the petition:

- (1) Respondent Ombudsman Office gravely erred when it dismissed the complaint-affidavit of herein petitioner on the ground that two cases involving the same issues as in the complaint-affidavit were previously filed by petitioner, as complainant therein.
- (2) Respondent Ombudsman Office gravely erred in finding that a mere Inventory of *Barangay* Roads and Bridges as of 1999 could prevail over an Original Certificate of Title registered on 28 May 1985.
- (3) Respondent Ombudsman Office gravely erred in allowing respondents Fernandez, Igtanloc and Sugang, to grossly violate the constitutional mandate provided for in the Bill of Rights, 1987 Constitution of the Philippines.
- (4) Respondent Ombudsman Office gravely erred in not expressing clearly and distinctly in its Order dated February 7, 2008 and Consolidated Evaluation Report dated December 14, 2006, the law on which it is based in careless disregard of a constitutional mandate.²

² Id. at 14-15.

Petitioner refutes the finding of the Office of the Ombudsman (Visayas) that he had filed a similar administrative and criminal complaint against respondents. Petitioner claims that the complaints adverted to were filed by one Hernando Cortes and they pertained to another parcel of land that was also graded and levelled by respondents. Petitioner maintains that the affected portion of his land is covered by an original certificate of title and that a document such as the inventory of *barangay* roads upon which the authority to scrape and level *barangay* roads is based should have been first annotated as *lien* to petitioner's certificate of title. Petitioner stresses that respondents' actions violated his constitutional right to due process and that his property was taken without just compensation. Finally, petitioner assails the Consolidated Evaluation Report and Order of the Office of the Ombudsman (Visayas) for having been issued in violation of the constitutional requirement that decisions must state the factual and legal basis thereof.

In their Comment, the Office of the Solicitor General seeks the dismissal of the petition because petitioner availed of the wrong remedy. Moreover, the Office of the Solicitor General supports the dismissal of petitioner's complaint due to identity of issues and respondents in the previous and the present complaint.

Respondents also filed their respective Comments. Igtanloc denied levelling and grading a portion of petitioner's land. According to Igtanloc, he only followed the contours of the existing *barangay* road and did not widen or create a new one. Fernandez asserts that he was merely acting in his official capacity and exercising his duty in issuing a driver's trip ticket to Igtanloc. Sugang characterizes the complaint as a case of the "second brother (Amando P. Cortes)" filing cases against the same respondents, raising the same issue that was previously disposed of by the same office, in the cases filed by his brother (Hernando P. Cortes).³

Petitioner, in filing this petition for review, committed a procedural misstep which warrants an outright dismissal.

³

Id. at 176.

Petitioner misconstrued Section 27 of Republic Act No. 6770 or the Ombudsman Act of 1989 and disregarded prevailing jurisprudence. Section 27 provides, in part, that:

In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for *certiorari* within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.

This provision, insofar as it provided for appeal by *certiorari* under Rule 45 from the decisions or orders of the Ombudsman in administrative cases, had been declared unconstitutional by this Court as early as in the case of *Fabian v. Desierto*.⁴ We ruled in *Fabian* that appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under the provisions of Rule 43, in line with the regulatory philosophy adopted in appeals from quasi-judicial agencies in the 1997 Revised Rules of Civil Procedure.⁵

Jurisprudence accords a different treatment with respect to an appeal in a criminal case filed with the Office of the Ombudsman. We made the pronouncement in *Acuña v. Deputy Ombudsman for Luzon*⁶ that the remedy of an aggrieved party in criminal complaints before the Ombudsman is to file with this Court a petition for *certiorari* under Rule 65.

Considering that the case at bar was a consolidation of an administrative and a criminal complaint, petitioner had the option to either file a petition for review under Rule 43 with the Court of Appeals or directly file a *certiorari* petition under Rule 65 before this Court. Neither of these two remedies was resorted to by petitioner.

By availing of a wrong remedy, this petition merits an outright dismissal.

A review of the substantial merit of this petition would likewise yield to the same conclusion.

⁴ G.R. No. 129742, 16 September 1998, 295 SCRA 470.

⁵ Id. at 481-482.

⁶ 490 Phil. 640, 649 (2005).

It appears that prior to the filing of the instant complaint, Atty. Hernando P. Cortes (Hernando) had filed both criminal and administrative complaints against respondents Igtanloc and Sugang, who were the Provincial Engineer and *Barangay* Captain, respectively. These complaints involved the alleged grading and levelling of a portion of Hernando's property. On 15 August 2006, the Office of the Ombudsman issued a Decision on the administrative case docketed as OMB-V-A-06-0344-F and a Resolution on the criminal case docketed as OMB-V-C-06-0315-F, dismissing both complaints for lack of merit. Three months later, petitioner filed an administrative and criminal complaint bearing the same facts and issues. The cases, docketed as OMB-V-C-06-0577-K and OMB-V-A-06-0639-K, were consolidated by the Office of the Ombudsman. Petitioner additionally impleaded Fernandez as respondent. The Office of the Ombudsman (Visayas) dismissed the case on the ground that a similar complaint involving the same facts and issues had already been filed against the same respondents. The Office of the Ombudsman (Visayas) was referring to the Hernando complaint.

Records disclosed that Hernando and petitioner are not only brothers but are also registered as owners of the property allegedly levelled and graded by Igtanloc. In his complaints, Hernando alleged that he, together with Amando P. Cortes, is the registered owner of a land denominated as Lot 427, Psc 35, of Batan Cadastre, which is covered by Transfer Certificate of Title (TCT) No. T-34885.⁷ However, TCT No. T-34885⁸ could be traced back to the mother title, Original Certificate of Title (OCT) No. P-15197,⁹ registered under the name of petitioner. The same OCT was attached to the complaints filed by petitioner, wherein he also asserted ownership over the subject property.

The facts point to the result that the previous and the present complaints, bearing complainants who are owners of the same affected property, same respondents, same issues and same arguments, in reality are one and the same. The Office of the Ombudsman (Visayas) explained:

To reiterate, the issues are identical and were in fact already resolved and decided upon by the assigned investigator handling the complaints which were filed earlier. To allow a similar complaint to proceed before the same forum using the same arguments and counter-arguments already raised and discussed in a previous complaint would cause endless litigations which is frowned upon by the courts. It is

⁷ *Rollo*, p. 102.

⁸ *Id.* at 132.

⁹ *Id.* at 131.


observed that there is identity of the rights asserted and reliefs prayed for which are being founded on the same facts. It also bears stressing that there is also identity with respect to the two preceding particulars in the two cases, such that any findings that may be rendered in the pending case, regardless of which party is successful, would amount to be a rehash of the other.

This Office cannot allow the simple changing of complainants just to side step its earlier findings. Neither should it deviate or come out with a different view with what was already ruled upon by allowing the filing of another complaint.¹⁰

For failing to overcome the procedural hurdle and for lack of merit, the petition must be denied.

FOR THE FOREGOING CONSIDERATIONS, the petition is **DENIED**. The Order of the Office of the Ombudsman (Visayas) dated 7 February 2008 in OMB-V-C-06-0577-K and OMB-V-A-06-0639-K is **AFFIRMED**.

SO ORDERED.



JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:



ARTURO D. BRION
Associate Justice
Acting Chairperson

¹⁰

Id. at 26-27.



MARIANO C. DEL CASTILLO
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

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



ARTURO D. BRION
Associate Justice
Second Division, Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Resolution 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