



**Republic of the Philippines
Supreme Court
Manila**

SECOND DIVISION

OFFICE OF THE OMBUDSMAN (VISAYAS), **G.R. No. 189801**

Petitioner, Present:

- versus -

**COURT OF APPEALS and
BERMELA A. GABUYA,**

Respondents.

CARPIO, J., Chairperson,
VELASCO, JR., *
BRION,
REYES,** and
PERLAS-BERNABE, JJ.

Promulgated:

OCT 23 2013

H.W. Cabalag, Jr. Perfecto

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DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for *certiorari*¹ are the Decision² dated March 19, 2009 and Resolution³ dated July 31, 2009 of the Court of Appeals, Cebu City (CA) in CA-G.R. SP. No. 03874 which granted respondent Bermela A. Gabuya's (Gabuya) application for the issuance of a writ of preliminary injunction against the implementation of the Decision⁴ dated February 28, 2006 rendered by the Office of the Ombudsman - Visayas (Ombudsman) in OMB-V-A-03-0736-L ordering Gabuya's dismissal from government service.

The Facts

Sometime in December 2003, Angelita Perez-Nengasca (Nengasca) and Teresita Candar-Bracero (Bracero), representing themselves as real

* Designated Acting Member per Special Order No. 1567 dated October 11, 2013.

** Designated Acting Member per Special Order No. 1564 dated October 11, 2013.

¹ *Rollo*, pp. 7-22.

² Id. at 24-32. Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Francisco P. Acosta and Rodil V. Zalameda, concurring.

³ Id. at 33-39.

⁴ Id. at 64-77. Penned by Cynthia C. Maturan Sibi of the Graft Investigation & Prosecution Office.

estate agents, offered to mortgage to Vicente R. Teo (Teo) for the amount of ₱500,000.00 a parcel of land purportedly owned by the heirs of Melquiades S. Silva (Silva), covered by Transfer Certificate of Title (TCT) No. T-29438.⁵ However, upon verification with the Registry of Deeds of the Province of Cebu, Teo learned that the said TCT was already cancelled, prompting him to seek the assistance of the National Bureau of Investigation (NBI).⁶

On December 10, 2003, the NBI set an entrapment operation at Teo's residence. In the process, Mario Padigos (Padigos) who posed as one of the heirs of Silva, and one Gwendolyn A. Bascon (Bascon) were arrested in the act of counting the marked money representing the proceeds of the mortgage. The NBI also accosted Nengasca and Bracero who were stationed outside Teo's house.⁷

During the investigation, Padigos, Bascon, Nengasca and Bracero confessed that they acted under the instructions of Gabuya. Thus, the NBI hatched a second entrapment operation at the La Fortuna Bakery whereat Gabuya, after receiving from Nengasca a plastic bag with the marked money, was arrested.⁸ At that time, Gabuya was a government employee, holding the position of Administrative Officer II in the Cebu Provincial Detention and Rehabilitation Center. Hence, following her arrest, the NBI filed an administrative complaint against Gabuya for grave misconduct before the Ombudsman, docketed as OMB-V-A-03-0736-L.⁹

For her part, Gabuya maintained her innocence claiming that: (a) she did not conspire to defraud Teo; (b) Teo never mentioned her in his affidavit;¹⁰ (c) she was found negative of yellow fluorescent powder;¹¹ (d) Padigos attested that she (Gabuya) had no participation in the conspiracy;¹² and (e) she cannot be held administratively liable for the subject acts since they are not related to the functions of her office and her apprehension occurred during lunch break.¹³

The Ombudsman Ruling

In a Decision¹⁴ dated February 28, 2006 (February 28, 2006 Decision), the Ombudsman found Gabuya guilty of grave misconduct and ordered her dismissal from service with the accessory penalties of

⁵ Id. at 64.

⁶ Id. at 65.

⁷ Id. at 25 and 65-66.

⁸ Id. at 25-26.

⁹ Id. at 24.

¹⁰ Id. at 69.

¹¹ Id.

¹² Id. at 69-70.

¹³ Id. at 70.

¹⁴ Id. at 64-77.

cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification from re-employment in the government service.¹⁵

On July 18, 2008, Gabuya filed a motion for reconsideration with the Ombudsman.¹⁶ Pending its resolution, she filed a petition for review with prayer for the issuance of a writ of preliminary injunction¹⁷ before the CA (CA Petition), docketed as CA-G.R. SP. No. 03874.

The CA Ruling and Subsequent Proceedings

In a Decision¹⁸ dated March 19, 2009, the CA found that Gabuya has a pending motion for reconsideration of the Ombudsman's February 28, 2006 Decision which was not disclosed in the certificate of non-forum shopping attached to the CA Petition. As such, the CA remanded the case to the Ombudsman so that it may decide the motion with dispatch.¹⁹

Nevertheless, the CA granted Gabuya's application for the issuance of a writ preliminary injunction, temporarily enjoining the immediate implementation of her dismissal from service. It cited as basis the Court's Decision dated September 11, 2008 in G.R. No. 175573, entitled *Office of the Ombudsman v. Samaniego*²⁰ (2008 *Samaniego* ruling), where it was held that the mere filing of an appeal is sufficient to stay the execution of the Ombudsman's adverse decision involving disciplinary cases.²¹

Dissatisfied, the Ombudsman filed an Omnibus Motion²² dated April 1, 2009 seeking the: (a) reconsideration of the Decision dated March 19, 2009; and (b) lifting of the writ of preliminary injunction. However, said motion was denied by the CA in a Resolution²³ dated July 31, 2009. Hence, the instant petition.

Meanwhile, acting on a second motion for partial reconsideration in G.R. No. 175573, the Court modified its 2008 *Samaniego* ruling in a Resolution dated October 5, 2010 (2010 *Samaniego* ruling), "particularly [its] pronouncement with respect to the stay of the decision of the Ombudsman during the pendency of an appeal."²⁴ The dispositive portion of the 2010 *Samaniego* ruling thus reads:²⁵

¹⁵ Id. at 75-76.

¹⁶ Id. at 28.

¹⁷ Id. at 50-63.

¹⁸ Id. at 24-32.

¹⁹ Id. at 28-29.

²⁰ G.R. No. 175573, September 11, 2008, 564 SCRA 567.

²¹ *Rollo*, pp. 29-30.

²² Id. at 40-49.

²³ Id. at 33-39.

²⁴ G.R. No. 175573, October 5, 2010, 632 SCRA 140, 142.

²⁵ Id. at 145.

WHEREFORE, the second motion for partial reconsideration is hereby GRANTED. **Our decision dated September 11, 2008 is MODIFIED** insofar as it declared that the imposition of the penalty is stayed by the filing and pendency of CA-G.R. SP No. 89999. **The decision of the Ombudsman is immediately executory pending appeal and may not be stayed by the filing of the appeal or the issuance of an injunctive writ.**

SO ORDERED. (Emphases and underscoring supplied)

The Issue Before the Court

The essential issue in this case is whether or not the CA gravely abused its discretion in: (a) remanding the case to the Ombudsman; and (b) issuing a writ of preliminary injunction notwithstanding such remand.

The Court's Ruling

The petition is partly granted.

The factual circumstances of the case reveal that Gabuya committed forum shopping when she filed a petition for review before the CA, *i.e.*, the CA Petition, seeking to reverse and set aside the Ombudsman's February 28, 2006 Decision dismissing her from service, notwithstanding the pendency before the Ombudsman of her motion for reconsideration of the **same decision** praying for the **same relief**. In relation thereto, she also failed to comply with the requirements of a certificate against forum shopping under Section 5, Rule 7 of the Rules of Court²⁶ (certification requirement) since the certificate she attached to the CA Petition did not include a "complete statement of the present status" of the aforesaid motion for reconsideration pending before the Ombudsman. Notably, the act of forum shopping and the violation of the certification requirement – while considered as peculiar procedural infractions – similarly constitute grounds for the dismissal of the case. As explained in *Abbott Laboratories Phils. v. Alcaraz*:²⁷

x x x The distinction between the prohibition against forum shopping and the certification requirement should by now be too elementary to be misunderstood. To reiterate, compliance with the

²⁶ Section 5, Rule 7 of the Rules of Court (Rules) provides:
Section 5. *Certification against forum shopping*. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) **if there is such other pending action or claim, a complete statement of the present status thereof**; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

x x x x.

²⁷ G.R. No. 192571, July 23, 2013; citations omitted.

certification against forum shopping is separate from and independent of the avoidance of the act of forum shopping itself. There is a difference in the treatment between failure to comply with the certification requirement and violation of the prohibition against forum shopping not only in terms of imposable sanctions but also in the manner of enforcing them. **The former constitutes sufficient cause for the dismissal without prejudice** [to the filing] of the complaint or initiatory pleading upon motion and after hearing, **while the latter is a ground for summary dismissal thereof** and for direct contempt. x x x. (Emphases supplied)

Despite the foregoing violations, the Court observes that the CA, instead of dismissing the case as would have been warranted under the Rules, opted to remand the same to the Ombudsman for the latter to resolve Gabuya's motion for reconsideration. It must, however, be borne in mind that a remand and a dismissal are distinct procedural concepts and hence should not be confused with one another, else the Rules be subverted. On the one hand, a remand means an order "to send back"; or the "sending of the case back to the same court out where it came for the purpose of having some action on it there";²⁸ and, on the other hand, a dismissal refers to an order or judgment finally disposing of an action, suit, motion, etc. which may either be with prejudice or without.²⁹ The dismissal is deemed "with prejudice" when the adjudication is based on the merits and bars the right to bring an action on the same claim or cause³⁰ and "without prejudice" when the case can be refiled despite its having been previously dismissed.³¹

Be that as it may, the Court finds no grave abuse of discretion on the part of the CA in remanding the case to the Ombudsman for resolution of petitioner's motion for reconsideration, absent any showing that it exercised its discretion in a whimsical, capricious, and arbitrary manner.³² In this respect, the instant petition for *certiorari* lacks merit³³ and the remand of the case must stand. This is in addition to the fact that the nullification of the remand would only serve to unduly delay the proceedings in this case.

The petition, however, is partly granted insofar as it prays for the lifting of the writ of preliminary injunction.

²⁸ Federico B. Moreno, *Philippine Law Dictionary* 3rd Ed., 810; citations omitted.

²⁹ *Black's Law Dictionary*, 5th ed. p. 421 [1979].

³⁰ *Id.*

³¹ Moreno, *supra* note 28, at 278.

³² *Aguilar v. Department of Justice*, G.R. No. 197522, September 11, 2013.


³³ As held in *Toh v. CA*, G.R. No. 140274, November 15, 2000, 344 SCRA 831:

We have set a clear demarcation line between an error of judgment and an error of jurisdiction. An error of judgment is one in which the court may commit in the exercise of its jurisdiction, and which error is reviewable only by an appeal, while an error of jurisdiction is one where the act complained of was issued by the court, officer or a quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack or in excess of jurisdiction, and which error is correctable only by the extraordinary writ of *certiorari*. Thus, the Court of Appeals correctly ruled in dismissing the petition for *certiorari* of petitioner. The ruling is in accord with the settled principle that *certiorari* will not be issued to cure errors in proceedings or erroneous conclusions of law or fact, x x x.

Verily, it is a standing rule that a writ of preliminary injunction is merely provisional in nature and is integrally linked to the subsistence of the proceedings in the main case.³⁴ Stated differently, the ancillary remedy of preliminary injunction cannot exist except only as part or an incident of an independent action or proceeding.³⁵ Thus, since the CA already remanded the case to the Ombudsman for the purpose of resolving Gabuya's pending motion for reconsideration, the writ of preliminary injunction issued by it, absent any countervailing justification therefor, must be dissolved. In this relation, it is observed that the CA's issuance of the aforesaid writ was essentially hinged on the 2008 *Samaniego* ruling which, however, did not contain any pronouncement on the legal status of the writ issued in that case. The Court only remarked that the injunctive writ issued in *Samaniego* was a "mere superfluity" and, in fact, ordered the same to be "lifted" since the appeal of the Ombudsman's decision already had the effect of staying its execution.³⁶ In any case, the treatment of appeals of Ombudsman decisions had already been modified by the Court in the 2010 *Samaniego* ruling as above-explained. As such, the general postulate on writs of preliminary injunction, as above-discussed, must be applied.

WHEREFORE, the petition is **GRANTED**. The Decision dated March 19, 2009 and Resolution dated July 31, 2009 of the Court of Appeals, Cebu City in CA-G.R. SP. No. 03874 are hereby **MODIFIED** in that the writ of preliminary injunction is **LIFTED** and **DISSOLVED**.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

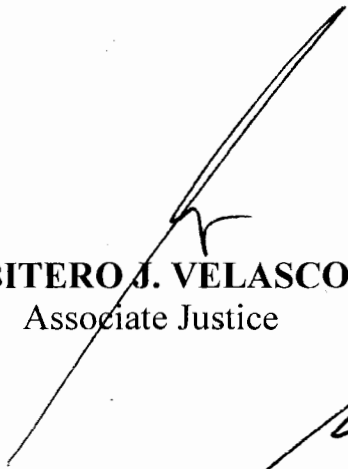
WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson

³⁴ *BP Philippines, Inc. v. Clark Trading Corporation*, G.R. No. 175284, September 19, 2012, 681 SCRA 365, 374-376.

³⁵ *Manila Banking Corporation v. CA*, G.R. No. L-45961, July 3, 1990, 187 SCRA 138, 145.

³⁶ See *Office of the Ombudsman v. Samaniego*, supra note 24.



PRESBITERO J. VELASCO, JR.
Associate Justice




ARTURO D. BRION
Associate Justice



BIENVENIDO L. REYES
Associate Justice

ATTESTATION

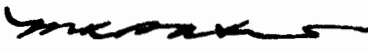
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



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