



**Republic of the Philippines  
Supreme Court  
Manila**

**FIRST DIVISION**

**FELICIANO B. DUYON,**  
substituted by his children:  
**MAXIMA R. DUYON-ORSAME,**  
**EFREN R. DUYON, NOVILYN R.**  
**DUYON, ELIZABETH R.**  
**DUYON-SIBUMA, MODESTO R.**  
**DUYON, ERROL R. DUYON, and**  
**DIVINA R. DUYON-VINLUAN,**  
Petitioners,

- versus -

**G.R. No. 172218**

Present:

**SERENO, CJ.,**  
Chairperson,  
**LEONARDO-DE CASTRO,**  
**BERSAMIN,**  
**VILLARAMA, JR.,\*** and  
**PEREZ, JJ.**

**THE FORMER SPECIAL**  
**FOURTH DIVISION OF THE**  
**COURT OF APPEALS and**  
**ELEONOR P. BUNAG-**  
**CABACUNGAN,**  
Respondents.

Promulgated:

**NOV 26 2014**

X ----- X

**DECISION**

**LEONARDO-DE CASTRO, J.:**

Challenged in this petition for *certiorari* is the September 16, 2005 Decision<sup>1</sup> and April 6, 2006 Resolution<sup>2</sup> of the Court of Appeals in **CA-G.R. SP No. 86630**.

Herein petitioner Feliciano B. Duyon (Duyon), on August 27, 1979, was issued Certificate of Land Transfer (CLT) No. 0-005224<sup>3</sup> over the 6,358-square meter parcel of land (subject land) he had been tilling since 1957. The subject land was denominated as Lot 20 of Lot 797 under subdivision plan PSD-03-012599 dated January 7, 1987.<sup>4</sup>

Apparently, the same parcel of land was also covered by Transfer Certificate of Title (TCT) E.P. No. 44097<sup>5</sup> under Emancipation Patent No.

\* Per Special Order No. 1885 dated November 24, 2014.

<sup>1</sup> *Rollo*, pp. 19-30, penned by Associate Justice Delilah Vidallon-Magtolis with Associate Justices Jose C. Reyes, Jr. and Lucenito N. Tagle, concurring.

<sup>2</sup> *Id.* at 32-33.

<sup>3</sup> *CA rollo*, p. 42.

<sup>4</sup> *Rollo*, p. 20.

<sup>5</sup> *CA rollo*, p. 43.

*mm*

A-347307, which had been issued to herein private respondent Eleonor P. Bunag-Cabacungan (Bunag-Cabacungan) on June 6, 1989.

Sometime in November 2002, Duyon discovered the double registration and filed a complaint-affidavit<sup>6</sup> for misconduct or abuse of authority, docketed as OMB-L-A-03-0111-A (administrative aspect of the case) and for violation of Republic Act No. 3019 and Falsification of Public Documents under Article 171 of the Revised Penal Code, docketed as OMB-L-C-03-0125-A (criminal aspect of the case) against Bunag-Cabacungan, who was an employee of the Municipal Agriculture Office of Nueva Ecija under the Department of Agriculture, and her husband, Eutiquio Cabacungan (Cabacungan), who then worked at the Department of Agrarian Reform (DAR), for allegedly taking advantage of their official positions to cause the issuance of the TCT in favor of Bunag-Cabacungan. Duyon further asseverated that Bunag-Cabacungan misrepresented herself in her application with the DAR by stating therein that she was single despite having been married to Cabacungan since 1979.<sup>7</sup>

Explaining their side, Cabacungan and Bunag-Cabacungan, in their Joint Counter-Affidavit,<sup>8</sup> denied Duyon's accusations and alleged that he was never deprived possession of the subject land. They claimed that an error had been made in the issuance of the Emancipation Patent, such was not their fault, and that the DAR Office in Nueva Ecija had already requested for its correction. Moreover, they argued, the lot Bunag-Cabacungan applied for had a bigger land area at 18,257 square meters than the 6,358-square meter subject land of Duyon.

Finding that the Cabacungan spouses flaunted unlawful behavior and intentional neglect, the Office of the Deputy Ombudsman (OMB) for Luzon, on December 11, 2003, issued its Decision<sup>9</sup> in **OMB-L-A-03-0111-A**, finding the spouses guilty of simple misconduct, to wit:

**WHEREFORE**, premises considered, it is respectfully recommended that the respondents Eutiquio Cabacungan and Eleonor P. Bunag-Cabacungan be meted a penalty of suspension of **SIX (6) MONTHS WITHOUT PAY** for Simple Misconduct. Respondents are sternly warned that repetition of the same or similar acts in the future shall be dealt with more severely.<sup>10</sup>

The same OMB for Luzon recommended in **OMB-L-C-03-0125-A**, the filing of an Information for Violation of Section 3(e) of Republic Act No. 3019 against the Cabacungan spouses in its Resolution dated December 11, 2003 for causing undue injury to Duyon by evident bad faith.<sup>11</sup>

---

<sup>6</sup> Id. at 40.

<sup>7</sup> *Rollo*, p. 21.

<sup>8</sup> *CA rollo*, pp. 44-46.

<sup>9</sup> *Rollo*, pp. 74-78.

<sup>10</sup> Id. at 77.

<sup>11</sup> Id. at 69-73.

*AMC*

However, acting on the Motions for Reconsideration filed by the Cabacungan spouses and the Partial Motion for Reconsideration filed by Duyon, the OMB for Luzon, in a Joint Order<sup>12</sup> dated August 27, 2004, modified its December 11, 2003 Decision and Resolution by dismissing the charges filed against Cabacungan, and reducing the suspension imposed against Bunag-Cabacungan. The dispositive portion of the Joint Order reads as follows:

**WHEREFORE, PREMISES CONSIDERED,** it is most respectfully recommended that the Resolution and Decision both dated 11 [December] 2003 be MODIFIED as follows: The criminal as well as the administrative case filed against respondent Eutiquio Cabacungan are hereby DISMISSED for insufficiency and lack of substantial evidence, respectively. The recommendation for the filing of an information for violation of Section 3(e) of Republic Act No. 3019 against respondent Eleonor Bunag-Cabacungan is AFFIRMED. The penalty of six (6) months suspension imposed upon Eleonor Bunag[-Cabacungan] is hereby REDUCED to three (3) months suspension from office without pay.

The Provincial Prosecutor of Nueva Ecija is hereby ordered to file the hereto attached information against respondent Eleonor Bunag-Cabacungan before the proper court.<sup>13</sup>

Accordingly, Bunag-Cabacungan filed a Petition for Review on *Ceriorari*<sup>14</sup> before the Court of Appeals, docketed as CA-G.R. SP No. 86630, seeking the reversal of the December 11, 2003 Decision and August 27, 2004 Joint Order with respect to the administrative aspect of the case; while Duyon filed his own Petition for *Certiorari* before the Court of Appeals, docketed as CA-G.R. SP No. 87325, assailing the Joint Order dated August 27, 2004 and a motion to consolidate CA-G.R. SP No. 87325 with CA-G.R. SP No. 86630.

In a Resolution<sup>15</sup> dated January 27, 2005, the Court of Appeals resolved Duyon's petition for *certiorari* and his motion to consolidate the aforementioned cases, as follows:

WHEREFORE, premises considered, we hereby DISMISS the petition for petitioner's failure to avail of the proper mode of appeal (with respect to the administrative disciplinary aspect of the case) and for lack of jurisdiction (with respect to the criminal aspect of the case), and DENY as well petitioner's Motion for Consolidation.<sup>16</sup>

Laying down the grounds for its dismissal of the petition for *certiorari* and denial of the motion for consolidation, the Court of Appeals held:

---

<sup>12</sup> Id. at 79-86.

<sup>13</sup> Id. at 84-85.

<sup>14</sup> CA *rollo*, pp. 10-39.

<sup>15</sup> *Rollo*, pp. 33-36.

<sup>16</sup> Id. at 36.

*mm*

Our examination of the present petition shows that it is, on its face, fatally defective so that a consolidation with a pending related case is legally inappropriate.

The defect in the present petition is rooted in the petitioner's use of a petition for *certiorari* as a remedy against the assailed order. Under current case law, all appeals from decisions of the Ombudsman in administrative disciplinary cases shall be taken to this Court under Rule 43 of the Rules of Court; on the other hand, decisions of the Ombudsman in criminal cases are unappealable. However, where the findings of the Ombudsman on the existence of probable cause (in criminal cases) are tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, the aggrieved party may file before the Supreme Court a petition for *certiorari* under Rule 65 of the Rules of Court.<sup>17</sup> (Citations omitted.)

Duyon filed a Motion for Reconsideration of the Court of Appeals' Resolution, claiming that a Petition for *Certiorari* would best serve him.<sup>18</sup>

Verily, the Court of Appeals denied such motion for lack of merit on August 12, 2005.<sup>19</sup>

Emphasizing the grounds for such denial, the Court of Appeals held:

The petitioner completely misses our point. We dismissed the petition not because of strict adherence to the rules of court on matters of appeal but because of jurisdictional grounds.

Jurisprudence dictates that all appeals from decisions of the Ombudsman in administrative disciplinary cases shall be taken to this Court under Rule 43 of the Rules of Court. The Rules only allow fifteen (15) days from notice of the award, decision or order within which to file a petition for review. The petitioner filed this petition for *certiorari* sixty (60) days from receipt of the assailed order. Thus, the decision of the Office of the Ombudsman (as to the administrative aspect of the case) was already final at the time this petition was filed. As a final decision, the Ombudsman's decision on the administrative aspect of the case is no longer within the scope of the power of review of any court in the absence of grounds for review affecting jurisdiction. This ground for dismissal is a substantive ground rather than mere technicality. The Honorable Supreme Court in its Circular No. 2-90 specifically commands that, "*an appeal taken to the Court of Appeals by the wrong or inappropriate mode shall be dismissed.*"

We cannot entertain the criminal aspect of the case for lack of jurisdiction. By law, decisions of the Ombudsman in criminal cases are unappealable. However, where the findings of the Ombudsman on the existence of probable cause (in criminal cases) are tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, the remedy

---

<sup>17</sup> Id. at 34-35.

<sup>18</sup> Id. at 37-38.

<sup>19</sup> Id. at 37-39.

*Amín*

is a petition for certiorari under Rule 65 filed, not with us, but before the Honorable Supreme Court.<sup>20</sup> (Citations omitted.)

However, notwithstanding that the issue raised in Bunag-Cabacungan's petition in CA-G.R. SP No. 86630 was limited to the administrative aspect of the case, the Court of Appeals promulgated a contrary decision dated September 16, 2005, which reversed and set aside the assailed Decision and Joint Order and dismissed Duyon's complaint against Bunag-Cabacungan for violation of Section 3(e) of Republic Act No. 3019.

In resolving the criminal aspect of the case, the Court of Appeals found that the elements of Section 3(e) of Republic Act No. 3019 were not present in the case, given the evidence on record. Thus, it held that "no probable cause exists to warrant the filing of charges against [Bunag-Cabacungan]."<sup>21</sup> The Court of Appeals added that there was nothing to show that Bunag-Cabacungan, an employee of the Department of Agriculture, had acted in conspiracy with the officers or officials of the DAR, the office responsible for the issuance of the Emancipation Patent. Moreover, the Court of Appeals said, while Duyon alleged undue injury, he nevertheless failed to present proof of such on him or to the Government.<sup>22</sup>

The *fallo* of the Court of Appeals decision, reads:

**WHEREFORE**, the petition is **GRANTED**. The assailed decision dated December 11, 2003 and the joint order dated August 27, 2004 are hereby **REVERSED AND SET ASIDE**. The complaint of respondent Feliciano Duyon against petitioner Eleonor Bunag-Cabacungan for violation of Section 3(e), R.A. No. 3019 is accordingly **DISMISSED**.<sup>23</sup>

Duyon filed a Motion for Reconsideration<sup>24</sup> on October 10, 2005, which the Court of Appeals denied for lack of merit in its Resolution<sup>25</sup> dated April 6, 2005.<sup>26</sup>

---

<sup>20</sup> Id. at 38-39.

<sup>21</sup> Id. at 27.

<sup>22</sup> Id. at 28.

<sup>23</sup> Id. at 30.

<sup>24</sup> Id. at 87-95.

<sup>25</sup> Id. at 32.

<sup>26</sup> Later amended in a Resolution dated August 3, 2006 (*rollo*, p. 152), in response to Bunag-Cabacungan's Motion to Amend Resolution, as it was Duyon who filed the Motion for Reconsideration, and not her, as stated in the April 6, 2006 Resolution. The August 3, 2006 Resolution read:

Before Us is the Petitioner's Motion to Amend Resolution alleging therein that the respondent, and not the petitioner, was the one who filed the Motion for Reconsideration of the Decision of this Court dated September 16, 2005.

As prayed for, this Court hereby resolves to AMEND the Resolution of this Court dated April 6, 2006 to read as follows:

"After a careful perusal of the Motion for Reconsideration filed by respondent of the Decision of this Court dated September 16, 2005, as well as the Comment and/or Opposition filed by the petitioner, the Court finds no cogent reason to reconsider the Decision." (Citations omitted.)

*ymc*

*Issues*

Now before us is a petition for *certiorari*, filed by Duyon, questioning the aforementioned decision and resolution of the Court of Appeals in CA-G.R. SP No. 86630, which reversed and set aside the OMB for Luzon's December 11, 2003 Decision, which found Bunag-Cabacungan and her husband, Cabacungan, guilty of simple misconduct; and August 27, 2004 Joint Order, which modified the December 11, 2003 Decision (for Simple Misconduct) and December 11, 2003 Resolution (for violation of Section 3[e] of Republic Act No. 3019) by: 1) reducing the administrative penalty on Bunag-Cabacungan; 2) affirming the recommendation of filing an information for violation of Section 3(e) of Republic Act No. 3019 against her; and 3) dismissing both administrative and criminal charges against Bunag-Cabacungan's husband, Cabacungan.

The following are the issues presented for our resolution:

**WHETHER OR NOT THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION IN ACTING UPON AND DISMISSING THE CRIMINAL ASPECT OF THE CASE NOTWITHSTANDING THE CLEAR IMPORT OF THE FABIAN CASE THAT IT HAS NO JURISDICTION OVER THE DECISIONS OF THE OFFICE OF THE OMBUDSMAN WITH RESPECT TO CRIMINAL CASES.**

**WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN REVERSING THE OMBUDSMAN'S DECISION WITH RESPECT TO ITS FINDINGS OF PROBABLE CAUSE.<sup>27</sup>**

Duyon<sup>28</sup> argues that the Court of Appeals acted with grave abuse of discretion as it has no power to review the criminal aspect of Ombudsman cases, which was also the subject of the August 27, 2004 OMB for Luzon Joint Order. Duyon contends that although Bunag-Cabacungan correctly filed a Petition for Review before the Court of Appeals, such review should have been limited **only** to the administrative aspect covered by the OMB for Luzon's Decision of December 11, 2003.<sup>29</sup>

To reiterate his point, Duyon cited and attached the Resolutions of the Court of Appeals in CA-G.R. SP No. 87325, wherein the Court of Appeals, in resolving his petition for *certiorari*, elaborated on the remedies the parties to an Ombudsman case may take with regard to both its administrative and criminal aspects.

---

<sup>27</sup> Id. at 9.

<sup>28</sup> Duyon, during the pendency of this case, passed away and was substituted by his children Maxima R. Duyon-Orsame, Efren R. Duyon, Novilyn R. Duyon, Elizabeth R. Duyon-Sibuma, Modesto R. Duyon, Errol R. Duyon, and Divina R. Duyon-Vinluan. (*Rollo*, pp. 174-183; Resolution granting Motion for Substitution and Reply.)

<sup>29</sup> *Rollo*, p. 10.

Bunag-Cabacungan, in her Comment,<sup>30</sup> avers that the Court of Appeals has now appellate jurisdiction to review orders and decisions of the Ombudsman regardless of its nature by reason of Section 7 of Administrative Order No. 17, dated September 15, 2003, amending Section 7, Rule III, Administrative Order No. 07 dated April 10, 1990 of the implementing rules of the Office of the Ombudsman. Bunag-Cabacungan argues that the phrase “in all other cases” in the amendment does not categorically limit the cases that can be appealed to the Court of Appeals under Rule 43, in contrast to the explicit provision in the old rule, that only appropriate administrative cases can be appealed to the Supreme Court via a petition for *certiorari*.<sup>31</sup>

Hence, Bunag-Cabacungan contends that the Court of Appeals correctly reversed and set aside both the OMB for Luzon’s December 11, 2003 Decision on the administrative charge against Bunag-Cabacungan and her husband and the August 27, 2004 Joint Order on both the administrative and criminal charges against Bunag-Cabacungan.

***Court of Appeals’ Jurisdiction Over  
the Criminal Aspect of the Case***

Duyon was correct in his insistence that the Court of Appeals has no jurisdiction over the criminal aspect of an Ombudsman case. “The Court of Appeals has jurisdiction over orders, directives and decisions of the Office of the Ombudsman in administrative disciplinary cases only. It cannot, therefore, review the orders, directives or decisions of the Office of the Ombudsman in criminal or non-administrative cases.”<sup>32</sup>

In *Kuizon v. Hon. Desierto*<sup>33</sup> this Court clarified:

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

Bunag-Cabacungan’s argument that the Court of Appeals now has appellate jurisdiction to review both the administrative and criminal aspects of orders and decisions of the Ombudsman because of the September 15,

---

<sup>30</sup> Id. at 119-150.

<sup>31</sup> Id. at 131-132.

<sup>32</sup> *Office of the Ombudsman v. Heirs of Margarita Vda. de Ventura*, 620 Phil. 1, 8 (2009).

<sup>33</sup> 406 Phil. 611, 625-626 (2001).

2003 amendment to Rule III of Administrative Order No. 07 of the Office of the Ombudsman deserves no merit at all.

Section 7, Rule III of Administrative Order No. 07, as amended by Administrative Order No. 17, reads:

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

Bunag-Cabacungan's contention that the phrase "in all other cases" has removed the distinction between administrative and criminal cases of the Ombudsman is ludicrous. It must be stressed that the above-quoted Section 7 is provided under Rule III, which deals with the procedure in **administrative cases**. When Administrative Order No. 07 was amended by Administrative Order No. 17, Section 7 was retained in Rule III. It is another rule, Rule II, which provides for the procedure in criminal cases. Thus, the phrase "in all other cases" still refers to administrative cases, not criminal cases, where the sanctions imposed are different from those enumerated in Section 7.

It is important to note that the petition filed by Bunag-Cabacungan in CA-G.R. SP No. 86630 assailed only the "administrative decision" rendered against her by the OMB for Luzon. Quoted hereunder is the pertinent portion of her petition:

Believing that she is innocent of the **administrative charges** against her, your petitioner interposes this instant petition for the **review of the administrative decision** against her by the Office of the Ombudsman and the denial of her motion for reconsideration thereof.<sup>34</sup> (Emphases ours.)

Moreover, the lone issue she submitted to the Court of Appeals for its consideration reads:

**THE HONORABLE OFFICE OF THE OMBUDSMAN COMMITTED A GRAVE ERROR AND ABUSE OF AUTHORITY IN HOLDING COMPLAINANT GUILTY OF SIMPLE MISCONDUCT FOR THE MISTAKE COMMITTED BY ANOTHER [PERSON] IN THE ISSUANCE UNDER HER NAME OF EMANCIPATION PATENT No. A-347307.**<sup>35</sup>

<sup>34</sup> *Rollo*, pp. 51-52.

<sup>35</sup> *Id.* at 52.





Furthermore, her arguments all throughout her petition for review before the Court of Appeals centered on how she should not have been found guilty of simple misconduct by the OMB for Luzon. Even the jurisprudence she cited in support of her arguments pertained to “misconduct in office.” The same is true with Duyon’s Comment,<sup>36</sup> which focused on why Bunag-Cabacungan should be judged guilty of misconduct. Duyon actually argued for a more severe **administrative** punishment and prayed as follows:

WHEREFORE, in view of the foregoing premises, it is most respectfully prayed of the Honorable Court to MODIFY the Decision dated December 11, 2003 and the Joint Order dated August 27, 2004 imposing upon [Bunag-Cabacungan] and her husband the penalty of DISMISSAL from the government service for gross misconduct. Alternatively, should the Honorable Court find the punishment to be too harsh, it is humbly asked that they be punished for conduct grossly prejudicial to the best interest of the service punishable to a maximum period of one (1) year suspension, without pay, in accordance with Executive Order No. 292.<sup>37</sup>

In light of the foregoing, it is apparent that in the case before us, the Court of Appeals went beyond its jurisdiction by touching on the criminal aspect of the Decision and Joint Order of the OMB for Luzon in OMB-L-A-03-0111-A and OMB-L-C-03-0125-A. As such, the Court of Appeals’ ruling on the criminal aspect of the aforementioned cases is void.<sup>38</sup>

***On the Administrative Aspect of the  
Case at bar***

Considering that the petition for review filed by Bunag-Cabacungan in CA-G.R. SP No. 86630 deals with the administrative aspect of the decision of the Office of the Ombudsman and the herein **petition for certiorari** filed by Duyon seeks the dismissal of the said petition for review, and to expedite the decision in this case, this Court shall pass upon the aforesaid issue raised particularly as to whether or not the Court of Appeals committed grave abuse of discretion in reversing and setting aside the OMB for Luzon Decision dated December 11, 2003 and Joint Order dated August 27, 2004, both of which imposed, among others, administrative sanctions on respondent Bunag-Cabacungan.

A petition for *certiorari* is governed by Rule 65 of the Rules of Court, which reads:

Section 1. *Petition for certiorari.*- When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any

<sup>36</sup> CA rollo, pp. 106-111.

<sup>37</sup> Id. at 109.

<sup>38</sup> *Office of the Ombudsman v. Heirs of Margarita Vda. de Ventura*, supra note 32.

plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

For *certiorari* to prosper, the following requisites must concur: (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law.<sup>39</sup>

This Court has defined grave abuse of discretion as such “capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or [an] exercise of power in an arbitrary and despotic manner by reason of passion or personal hostility, or an exercise of judgment so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act in a manner not at all in contemplation of law.”<sup>40</sup>

The Court of Appeals granted Bunag-Cabacungan’s petition and reversed and set aside both the December 11, 2003 Decision and the August 27, 2004 Joint Order of the OMB for Luzon. Since the December 11, 2003 Decision strictly dealt with the administrative charge against Bunag-Cabacungan, and the August 27, 2004 Joint Order resolved also said administrative charge aside from the criminal charge against respondent Bunag-Cabacungan, the Court of Appeals in effect also dismissed the said administrative charge.

The Court, shall, resolve the issue raised by the petition in this case, specially Duyon’s prayer for this Court to order the denial of the petition for review filed by Bunag-Cabacungan before the Court of Appeals, relying upon the findings of fact of the Court of Appeals, which are pertinent to the resolution of the administrative charge against respondent Bunag-Cabacungan.

The Court of Appeals found the following facts to have been established:

As pointed out by [Bunag-Cabacungan], she is an employee of the Department of Agriculture and not the Department of Agrarian Reform (DAR) which office was responsible for the issuance of the subject emancipation patent. No evidence was presented to show that she acted in conspiracy with the officers or officials of the DAR or that they acted with manifest partiality, bad faith or inexcusable negligence. It must be noted that the charges against [Bunag-Cabacungan]’s husband Eutiquio

<sup>39</sup>

*Madrigal Transport, Inc. v. Lapanday Holdings Corp.*, 479 Phil. 768, 779 (2004).

<sup>40</sup>

*Office of the Ombudsman v. Heirs of Margarita Vda. de Ventura*, supra note 32 at 11.



Cabacungan, who could have provided some link between the DAR and [Bunag-Cabacungan], were dismissed by the Office of the Ombudsman for lack of evidence. **Other than the fact of misrepresenting herself as single in the application form and her alleged failure to rectify the error committed in the title, no specific allegations were made regarding her actual or direct participation in the erroneous issuance of the same. Neither was it specifically shown that she committed the alleged prohibited acts in the performance of her official duties or public functions.** Likewise, while undue injury was alleged by x x x Feliciano Duyon, he nevertheless failed to present proof of such actual injury or damage to him or to the government.<sup>41</sup> (Empahsis ours.)

Bunag-Cabacungan and her husband were charged with misconduct for allegedly taking advantage of their official positions to cause the issuance of the emancipation patent in the name of respondent Bunag-Cabacungan and failing to rectify the erroneous issuance of the said emancipation patent, as well as the wrongful use of respondent's maiden name in her application for such emancipation patent. Misconduct in office has a specific legal meaning in our jurisdiction. Misconduct is "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."<sup>42</sup> Moreover, "to be considered as 'misconduct,' the act must have a 'direct relation to and be connected with the performance of his official duties amounting either to maladministration or willful, intentional neglect or failure to discharge the duties of the office.'"<sup>43</sup>

As the Court of Appeals has determined, there were no specific allegations regarding Bunag-Cabacungan's actual or direct participation in the erroneous issuance of the emancipation patent, nor was it specifically shown that she committed prohibited acts in the performance of her official duties or public functions. The Court of Appeals also found no evidence to establish that she acted in conspiracy with the officials of the DAR, which was the government office responsible for the issuance of the emancipation patent. Thus, the charge for misconduct in office against respondent Bunag-Cabacungan has no merit.

**WHEREFORE, the petition is PARTIALLY GRANTED.**

1. The September 16, 2005 Decision and April 6, 2006 Resolution of the Court of Appeals in **CA-G.R. SP No. 86630** are hereby **SET ASIDE** in so far as the said Court of Appeals Decision and Resolution ordered the dismissal of the complaint filed by petitioner Feliciano B. Duyon against respondent Eleanor Bunag-Cabacungan in OMB-L-C-03-0125-A (for Violation of Section 3[e] of Republic Act No. 3019) for lack of jurisdiction; and

<sup>41</sup> Rollo, pp. 27-28.

<sup>42</sup> *Office of the Ombudsman v. Miedes, Sr.*, 570 Phil. 464, 472 (2008).

<sup>43</sup> *Government Service Insurance System (GSIS) v. Mayordomo*, G.R. No. 191218, May 31, 2011, 649 SCRA 667, 685, citing *Manuel v. Judge Calimag, Jr.*, 367 Phil. 162, 166 (1999).

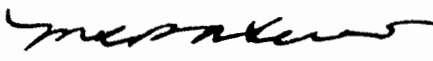


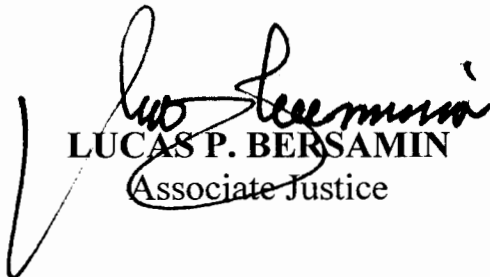
2. The September 16, 2005 Decision and April 6, 2006 Resolution of the Court of Appeals in **CA-G.R. SP No. 86630** are hereby **AFFIRMED** in so far as the said Court of Appeals Decision and Resolution reversed and set aside the Office of the Deputy Ombudsman for Luzon's December 11, 2003 Decision and August 27, 2004 Joint Order, which imposed the administrative penalty of suspension on respondent Eleanor Bunag-Cabacungan in OMB-L-A-03-0111-A for Simple Misconduct.

**SO ORDERED.**

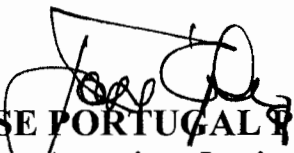
  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

WE CONCUR:

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson

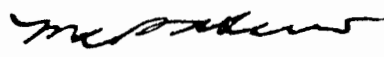
  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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