



**Republic of the Philippines  
Supreme Court  
Manila**

**FIRST DIVISION**

**OFFICE OF THE G.R. No. 205433**  
**OMBUDSMAN,**

Petitioner, Present:

- versus -

**AVELINO DE ZOSA and  
BARTOLOME DELA CRUZ,**  
Respondents.

SERENO, C.J., Chairperson,  
LEONARDO-DE CASTRO,  
BERSAMIN,  
PEREZ, and  
PERLAS-BERNABE, JJ.

Promulgated:

**JAN 21 2015**

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**DECISION**

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>1</sup> are the Decision<sup>2</sup> dated September 25, 2012 and the Resolution<sup>3</sup> dated January 22, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 117355, which reversed and set aside the Decision<sup>4</sup> dated October 26, 2009 and the Order<sup>5</sup> dated October 27, 2010 of the Office of the Deputy Ombudsman for Luzon (OMB-Luzon) in OMB-L-A-07-0113-A finding respondents Avelino De Zosa and Bartolome Dela Cruz (respondents), then incumbent Municipal Assessor and Municipal Engineer, respectively, of the Municipality of Kawit, Cavite, administratively liable for Grave Misconduct.

<sup>1</sup> *Rollo*, pp. 7-18.

<sup>2</sup> *Id.* at 21-35. Penned by Associate Justice Amelita G. Tolentino with Associate Justices Ramon R. Garcia and Danton Q. Bueser, concurring.

<sup>3</sup> *Id.* at 36-37.

<sup>4</sup> *Id.* at 113-125. Signed by Graft Investigation & Prosecution Officer II Gaudencio Rafael M. Mañalac with Acting Director Rolando B. Zoleta, concurring.

<sup>5</sup> *Id.* at 126-131. Signed by Graft Investigation & Prosecution Officer II Teresita P. Butardo-Tacata with Acting Director Rolando B. Zoleta, concurring.

## The Facts

On January 17, 1997, the Sangguniang Bayan of Kawit, Cavite issued Resolution No. 3-97, series of 1997,<sup>6</sup> authorizing the mayor to sell the municipal properties, particularly those under Tax Declaration (TD) Nos. 9761-A, 9762-A, and 9763-A (subject lands), and to perform such other acts necessary and related to such sales. Pursuant thereto, the Municipal Appraisal Board (MAB) of Kawit, Cavite issued MAB-Resolution No. 3-97,<sup>7</sup> whereby it decreased the assessed fair market value of the subject lands from ₱700.00 per square meter (sq. m.) to ₱500.00 per sq. m. Thereafter, the Municipality of Kawit, Cavite auctioned Lot No. 4431, a 243,562-sq. m. parcel of land covered by TD No. 9763-A, at a minimum bid price set at ₱121,781,000.00, pegged at ₱500.00 per sq. m. Consequently, Lot No. 4431 was awarded to FJI Property Developers, Inc. (FJI), which gave the highest bid of ₱123,123,123.00,<sup>8</sup> or approximately ₱505.51 per sq. m.<sup>9</sup>

However, in the Appraisal Review/Evaluation Report<sup>10</sup> dated June 23, 2000 of the Commission on Audit (COA Report), it was found that the proper fair market value for Lot No. 4431 should have been ₱878.26 per sq. m. Hence, the COA Report concluded that the Municipality of Kawit, Cavite suffered undue injury when it was deprived of income in the amount of ₱378.26 per sq. m., or a total of ₱92,129,762.12, from the sale of Lot No. 4431, resulting in unwarranted benefits in favor of FJI.<sup>11</sup>

Resultantly, the Field Investigation Office of the Office of the Ombudsman (FIO) filed a Complaint<sup>12</sup> dated January 16, 2007 against the members of the MAB of Kawit, Cavite, including respondents, criminally charging them of violating Section 3 (e)<sup>13</sup> of Republic Act No. (RA) 3019<sup>14</sup> and administratively charging them of Grave Misconduct, for passing and approving MAB-Resolution No. 3-97. The criminal aspect was docketed before the Office of the Ombudsman as Criminal Case No. OMB-1-01-

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<sup>6</sup> Id. at 132.

<sup>7</sup> Dated July 4, 1997. (Id. at 38.)

<sup>8</sup> ₱23,123,123.00 in some parts of the records.

<sup>9</sup> See *rollo*, pp. 22-23 and 115.

<sup>10</sup> See id. at 39-107.

<sup>11</sup> See id. at 23-24, 39, and 115-116.

<sup>12</sup> Id. at 108-111.

<sup>13</sup> 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:

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.

x x x x

<sup>14</sup> Entitled “ANTI-GRAFT AND CORRUPT PRACTICES ACT” (August 17, 1960).

0304-C, while the administrative aspect subject of the instant case was docketed before OMB-Luzon as OMB-L-A-07-0113-A. The complaint alleged that respondents' reappraisal was done sans any basis or computation.<sup>15</sup>

In their defense, respondents maintained that the re-appraisal and revaluation of Lot No. 4431 was based on the MAB's aim of maintaining a uniform assessment of lots with similar attributes in the Municipality of Kawit, *i.e.*, lands which are around "30 meters away from [the national] road and classified as agricultural being fishpond or marsh land with similar desirability, neighborhood and important need for the acquisition of a real property."<sup>16</sup> They likewise added that none of the members of the MAB benefited from such revaluation and that they were unaware of any losses incurred by the municipality in view of the sale of Lot No. 4431 to FJI as the MAB was not the entity that executed such sale.<sup>17</sup>

### **The OMB-Luzon Ruling**

In a Decision<sup>18</sup> dated October 26, 2009, the OMB-Luzon found respondents guilty of Grave Misconduct and accordingly, meted out the penalty of dismissal from service with cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for re-employment in the government service. The case, however, was dismissed as to the other members of the MAB either for being moot and academic due to the expiration of their term of office or on account of their death.<sup>19</sup>

In ruling against respondents, the OMB-Luzon cited the Office of the Ombudsman's ruling<sup>20</sup> in OMB-1-01-0304-C, whereby it was found that respondents' acts had "caused undue injury to the government [in terms of monetary loss] because lowering [Lot No. 4431's] value to ₱500.00 [per] sq. m. was not fitting and suitable for a property that commanded a value of ₱1,100.00 [per] sq. m. as per BIR records x x x and a fair market value of ₱878.27 [per] sq. m. as per COA valuation."<sup>21</sup> In view of such findings, the OMB-Luzon concluded that respondents are liable for Grave Misconduct for their flagrant disregard of established rules in arriving at the questioned valuation of the subject lands, including Lot No. 4431.<sup>22</sup>

Respondents moved for reconsideration which was, however, denied in an Order<sup>23</sup> dated October 27, 2010. Aggrieved, they appealed to the CA.

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<sup>15</sup> See *Rollo*, pp. 24 and 108.

<sup>16</sup> *Id.* at 38.

<sup>17</sup> See *id.* at 25-26.

<sup>18</sup> *Id.* at 113-125.

<sup>19</sup> See *id.* at 121-122.

<sup>20</sup> Not attached to the *rollo*. See *id.* at 120.

<sup>21</sup> *Id.* at 120-121.

<sup>22</sup> *Id.* at 121.

<sup>23</sup> *Id.* at 126-131.

### **The CA Ruling**

In a Decision<sup>24</sup> dated September 25, 2012, the CA reversed and set aside the OMB-Luzon Ruling, and thereby exonerated respondents from administrative liability for Grave Misconduct and restored their entitlement to their earned benefits.<sup>25</sup> Contrary to the findings of the OMB-Luzon, the CA held that there is no substantial evidence to support the finding that corruption, willful intent to violate the law, or disregard of established procedures may be ascribed to respondents. It ratiocinated that aside from respondents and the other members' avowed intention to maintain a standard and uniform valuation and appraisal of properties, MAB-Resolution No. 3-97 merely reflected the valuation previously approved by the Cavite Provincial Assessment Board in its Resolution No. 10-96. Finally, the CA noted that while the OMB-Luzon mentioned that respondents flagrantly violated established rules, it did not mention what exactly was the rule violated and how respondents committed such violation.<sup>26</sup> Hence, the CA concluded that in approving MAB-Resolution No. 3-97, respondents did not willfully violate nor disregard existing rules in the appraisal and revaluation of the subject lands.<sup>27</sup>

Dissatisfied, the FIO moved for reconsideration, which was, however, denied in a Resolution<sup>28</sup> dated January 22, 2013, hence, this petition.

### **The Issue Before the Court**

The primordial issue for the Court's resolution is whether or not the CA correctly absolved respondents from administrative liability for Grave Misconduct.

### **The Court's Ruling**

The petition has no merit.

At the outset, it must be stressed that in administrative cases, substantial evidence is required to support any findings. Substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. The requirement is satisfied where there is reasonable ground to believe that one is guilty of the act or omission complained of, even if the evidence might not be overwhelming.<sup>29</sup> In cases before the Office

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<sup>24</sup> Id. at 21-35.

<sup>25</sup> Id. at 33-34.

<sup>26</sup> See id. at 31-32.

<sup>27</sup> See id. at 33.

<sup>28</sup> Id. at 36-37.

<sup>29</sup> *Office of the Ombudsman v. Dechavez*, G.R. No. 176702, November 13, 2013, 709 SCRA 375, 382-383, citing *Orbase v. Office of the Ombudsman*, 623 Phil. 764, 779 (2009).

of the Ombudsman, jurisprudence instructs that “the fundamental rule in administrative proceedings is that the complainant has the burden of proving, by substantial evidence, the allegations in his complaint. Section 27 of the Ombudsman Act is unequivocal: Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Conversely, therefore, when the findings of fact by the Ombudsman are not adequately supported by substantial evidence, they shall not be binding upon the courts.”<sup>30</sup> Thus, the Court must make its own factual review of the case when the Ombudsman’s findings are contradictory to that of the CA,<sup>31</sup> as in this case.

After a judicial review of the records, the Court agrees with the CA that there is no substantial evidence to hold respondents administratively liable for Grave Misconduct.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer’s official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former.<sup>32</sup>

In this case, records are bereft of any showing that respondents wrongfully intended to transgress some established and definite rule of action which is attended by corruption, clear intent to violate the law, or flagrant disregard of the rules when they, along with the other members of the MAB of the Municipality of Kawit, Cavite, approved MAB-Resolution No. 3-97 causing the re-appraisal and revaluation of the subject lands. On the contrary and as correctly pointed out by the CA, the passage of MAB-Resolution No. 3-97 was merely done so that lands within the municipality which have the same attributes – those which are around “30 meters away from [the national] road, and classified as agricultural being fishpond or marsh land with similar desirability, neighborhood and important need for the acquisition of a real property” – will be assessed uniformly, pursuant to Resolution No. 10-96 of the Cavite Provincial Assessment Board.<sup>33</sup> As there are ample bases for the passage of MAB-Resolution No. 3-97, the Court finds that the evidence on record supports the conclusion that respondents

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<sup>30</sup> *Hon. Ombudsman Marcelo v. Bungubung*, 575 Phil. 538, 557 (2008).

<sup>31</sup> See *Miro v. Mendoza Vda. de Erederos*, G.R. Nos. 172532 and 172544-45, November 20, 2013, 710 SCRA 371, 386-387; citations omitted.


<sup>32</sup> See *Re: Anonymous Letter v. Soluren*, A.M. No. P-14-3217, October 8, 2014.

<sup>33</sup> See Whereas Clauses of MAB-Resolution No. 3-97; *rollo*, p. 38.


did not commit Grave Misconduct, much less Simple Misconduct. Perforce, the CA correctly exonerated them from administrative liability.

**WHEREFORE**, the petition is **DENIED**. Accordingly, the Decision dated September 25, 2012 and the Resolution dated January 22, 2013 of the Court of Appeals in CA-G.R. SP No. 117355 are hereby **AFFIRMED**.

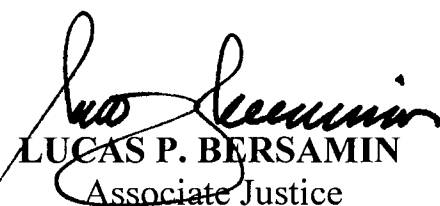
**SO ORDERED.**

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

**WE CONCUR:**

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

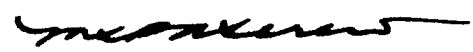
  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**LUCAS P. BERSAMIN**  
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