Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

RODOLFO M. AGDEPPA,
Petitioner,

- *versus* -

HONORABLE OFFICE OF THE OMBUDSMAN, ACTING THROUGH THE OFFICE OF THE DEPUTY OMBUDSMAN FOR THE MILITARY, MARYDEL B. JARLOS-MARTIN, EMMANUEL M. LAUREZO and ILUMINADO L. JUNIA, JR.,
Respondents.

G.R. No. 146376

Present:

SERENO, *C.J.,*
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ.*

Promulgated:

APR 2 3 2014

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DECISION

LEONARDO-DE CASTRO, *J.*:

This is a Petition for *Certiorari* under Rule 65 of the Rules of Court filed by petitioner Rodolfo M. Agdeppa (Agdeppa) assailing the Resolution[1] dated July 31, 2000 and Order[2] dated September 28, 2000 of respondent Office of the Ombudsman. The Office of the Ombudsman dismissed OMB-MIL-CRIM-00-0470, the administrative complaint initiated by Agdeppa against respondents Marydel B. Jarlos-Martin (Jarlos-Martin), Emmanuel M. Laurezo (Laurezo), and Iluminado L. Junia, Jr. (Junia).

OMB-MIL-CRIM-00-0470 arose from OMB-0-99-1015, another administrative complaint before the Office of the Ombudsman.

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[1] *Rollo*, pp. 61-64; penned by Atty. Alan R. Cañares, Ombudsman Investigator with the concurrence of Atty. Rudiger G. Falcis II, Director, Criminal Investigation, Prosecution and Administrative Adjudication Bureau; recommending approval of Atty. Orlando C. Casimiro, Deputy Ombudsman for the Military; and approval of Hon. Aniano A. Desierto, Ombudsman.

[2] Id. at 65-67.

Junia, then Group Manager for the Project Technical Services Group of the National Housing Authority (NHA), filed on May 25, 1999 a Complaint[3] before the Office of the Ombudsman against several NHA officials, together with Agdeppa and Ricardo Castillo (Castillo), resident auditors of the Commission on Audit (COA) at the NHA. Junia's Complaint was docketed as **OMB-0-99-1015**. Junia alleged that Supra Construction (SupraCon), the contractor for the NHA project denominated as Phase IX, Packages 7 and 7-A in Tala, Caloocan City (NHA Project), was overpaid in the total amount of ₱2,044,488.71. The overpayment was allegedly facilitated through the dubious and confusing audit reports prepared by Agdeppa and endorsed by Castillo, to the detriment, damage, and prejudice of the Government.

Junia also mentioned in his Complaint that Agdeppa had initiated several cases, arising from the same NHA project, against Junia and other NHA officials. While the other cases had already been dismissed for lack of merit, the Office of the Ombudsman endorsed OMB-0-94-2543 to the Office of the City Prosecutor of Quezon City where it was docketed as **I.S. No. 99-1979**.

Notably, the Complaint in OMB-0-99-1015 was signed by Junia, and certified and verified by him, but not under oath.[4]

On June 10, 1999, Jarlos-Martin, then Graft Investigation Officer II of the Office of the Ombudsman, issued an Order[5] in OMB-0-99-1015 giving the following directives: (1) for Agdeppa and Castillo to file their respective counter-affidavits, witnesses' affidavits, and other supporting evidence in answer to Junia's Complaint within 10 days from notice; and (2) for Junia to file his reply within five days from receipt of copies of Agdeppa's and Castillo's counter-affidavits.

Agdeppa filed his Answer[6] on July 26, 1999, denying Junia's allegations against him and praying for the dismissal of the Complaint in OMB-0-99-1015 for utter lack of merit. According to Agdeppa, Junia's claims that Agdeppa had manipulated audit reports of overpayments to SupraCon to create confusion and defraud the Government, were unfortunate, irresponsible, and malicious. Agdeppa also clarified that I.S. No. 99-1979, against Junia and other NHA officials, was now **Criminal Case No. Q-99-81636** before the Quezon City Regional Trial Court (RTC), Branch 86, and a Warrant of Arrest[7] had already been issued on March 15, 1999 for Junia and Evaristo B. Macalino.

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3 Id. at 125-135.
4 Id. at 135.
5 Id. at 137.
6 Id. at 138-150.
7 Id. at 80.

Junia immediately filed his Reply[8] to Agdeppa's Answer on July 30, 1999.

On September 6, 1999, Castillo filed his Answer[9] likewise denying the allegations in Junia's complaint in OMB-0-99-1015. Castillo contended that Junia's claims of overpayment were the result of the latter's erroneous appreciation of existing documents; that the computations by the COA audit team assigned at the NHA were issued with complete transparency and after undergoing the process of check and countercheck; and that he had no participation in the computation and payment made to SupraCon after his reassignment on July 6, 1987.

Junia filed a Reply[10] to Castillo's Answer on September 20, 1999.

At around the same time the foregoing events were unfolding, Agdeppa wrote a letter[11] dated March 3, 1999 addressed to Senator Renato S. Cayetano (Sen. Cayetano), who was then the Chairperson of the Senate Committee on Justice and Human Rights. Agdeppa requested Sen. Cayetano to conduct an investigation of incumbent officials of the Civil Service Commission (CSC) and COA who purportedly committed irregularities in the resolution of the administrative case against the government officials and employees involved in the reconsideration of the disallowed money claims of SupraCon in the NHA Project. Agdeppa attached to said letter his Sworn Statement[12] dated March 3, 1999, detailing under oath his accusations against the COA and CSC officials. In a 1st Indorsement[13] dated April 23, 1999, Atty. Raul M. Luna, Sen. Cayetano's Chief of Staff, referred Agdeppa's letter dated March 3, 1999 to Ombudsman Aniano A. Desierto (Desierto) for appropriate action.

Agdeppa then wrote a letter[14] dated July 12, 1999 addressed to Ombudsman Desierto inquiring as to the status of the 1st Indorsement from Sen. Cayetano's office. Failing to receive any reply, Agdeppa wrote another letter[15] dated August 19, 1999 addressed to Ombudsman Desierto, pertinent parts of which are reproduced below:

> This is to inform you Sir, that I have not yet receive[d] any kind of communication from you or from your good office concerning my letter dated July 12, 1999 (Annex "A" hereof) which was received by your Dibisyon ng Rekords Sentral on July 14, 1999 inquiring on the status of my letter with its accompanying Sworn Statement, dated March 3, 1999, to Senator Renato L. Cayetano, which was instead endorsed to you by his

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8 Id. at 154-169.
9 Id. at 174-183.
10 Id. at 208-216.
11 Id. at 81-82.
12 Id. at 83-90.
13 Id. at 113.
14 Id. at 136.
15 Id. at 170-171.

Chief of Staff, Atty. Raul M. Luna, in a 1st Indorsement dated April 23, 1999 for appropriate action.

x x x x

One of the reasons why I am writing to you again, Sir, is to be sure that I will not be remiss in reminding you that your good office has still to act on my letter of July 12, 1999.

I also want you to know, Sir, that I am now being harassed by certain elements in your honorable office. This is manifest in the hasty evaluation of the counter-complaint (Annex "E" hereof) (now OMB-0-99-1015) filed by one of the respondents in OMB-0-94-2543 (now Criminal Case No. Q-99-81636 before QC RTC Branch 86), which complaint was received by your Dibisyon ng Rekords Sentral on May 23, 1999, and which was given due course by MARYDEL B. JARLOS-MARTIN, Graft Investigation Officer II, through her ORDER dated 10 June 1999 (Annex "F" hereof) directing me to answer OMB-0-99-1015.

Please note, Sir, that the ORDER of June 10, 1999 was served only on July 15, 1999 or the day after your office had received my letter of July 12, 1999, giving the impression that the said order was issued as an after-thought and meant as a leverage, if not a veiled warning, to stop me from pursuing the endorsement of my letter of March 3, 1999 to you.

Please be informed too that the above-mentioned counter-complaint could not be the basis of the Order dated June 10, 1999 because the said complaint was not an affidavit-complaint, contrary to what was indicated in the said order. Hence, there must be compliance first with Section 4 and 4(A) of Administrative Order No. 07 dated April 10, 1990 (Rules of Procedure of the Office of the Ombudsman) before Atty. Jarlos-Martin could issue her order of June 10, 1999, x x x:

x x x x

Notwithstanding a clear violation of my substantive right, I had nevertheless opted to answer OMB-0-99-1015 on July 26, 1999 without raising the issue on procedural due process and without disturbing the deadline set by Atty. Jarlos-Martin because I wanted the said case to be resolved for lack of merit.

The fact, therefore, that there was great haste in the commencement of the preliminary investigation of OMB-0-99-1015 while my letter of July 12, 1999 remains un-answered until now could not but evoke my suspicion that your honorable office is being used for other purposes.

x x x x

x x x I would like to request that you require Atty. Jarlos-Martin to resolve OMB-0-99-1015 with the same dispatch by which she had given due course to the counter-complaint of Mr. Iluminado L. Junia, Jr., on one hand, and to direct the graft investigation officer handling the endorsement of my letter of March 3, 1999 to inform me about the status of the said endorsement.

Realizing from Agdeppa's letter dated August 19, 1999 that Junia's Complaint in OMB-0-99-1015 was not under oath, Jarlos-Martin issued an Order[16] on September 23, 1999 with the following directive for Junia:

> You are hereby ordered to appear before the undersigned at the Office of the Ombudsman, Room 210, located at the 2nd Floor, Evaluation and Preliminary Investigation Bureau, immediately upon receipt hereof, in order to swear to your complaint dated May 18, 1999, pursuant to Section 4(a), Rule II, Administrative Order No. 07, otherwise known as the Rules of Procedure of the Office of the Ombudsman.

Pursuant to the aforequoted Order, Junia personally appeared before Laurezo on October 6, 1999 to swear to his Complaint.[17]

Also on October 6, 1999, Jarlos-Martin issued another Order[18] addressed to Agdeppa and Castillo that reads:

> You are hereby directed to file your counter-affidavit, the affidavit/s of your witness/es and other supporting evidences, if any, in answer to the hereto attached copy of the Complaint-Affidavit dated May 18, 1999, **which is now under oath**, within TEN (10) DAYS from receipt hereof, with proof of service upon the complainant who may file a reply thereto within FIVE (5) DAYS from receipt, if he so desire/s.
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> Your failure to do so within the aforesaid period shall be deemed a waiver of your right to submit controverting evidence and this preliminary investigation shall proceed accordingly. Thereafter, this case shall be deemed submitted for resolution on the basis of the evidence presented by the parties whose presence may be dispensed with, unless otherwise required for clarificatory hearing.

Agdeppa, in a Motion to Resolve[19] submitted on November 8, 1999, opposed Jarlos-Martin's Order dated October 6, 1999, asserting as follows:

> 25. With due respect, [Agdeppa] finds the order of October 6, 1999 directing him to answer OMB-0-99-1015 anew and for [Junia] to reply if he so desires as a blatant disregarding of Section 4, Rule II of the Rules of Procedure of the Office of the Ombudsman **(Annex "18" hereof)** or of Section 3, Rule 112 of the Rules of Court **(Annex "18-A" hereof)**;
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> 26. From either of the above-mentioned rules relative to the procedure in the preliminary investigation of criminal cases, x x x the next step after the filing of the respondent's counter-affidavit is the setting of a hearing for clarificatory questioning by the investigating officer if there are matters that need to be clarified, and/or the investigating officer shall forward the records of the case together with his/her resolution to the designated authorities for their appropriate action thereon;

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16 Id. at 186.
17 Id. at 197.
18 Id. at 198.
19 Id. at 201-207.

x x x x

27. With due respect, the new order is no longer a means to carry out the so-called due process of law in the preliminary investigation of the above-entitled case, which is a criminal case falling within the jurisdiction of the Sandiganbayan and/or Regional Trial Court;

28. Rather, the new order became a tool to enhance or modify the substantive rights of [Junia] to the injury of [Agdeppa] for giving the former unwarranted benefits, advantage or preference in the discharge of official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence;

29. This is manifest because of the records of OMB-0-99-1015 (the above-entitled case) is already complete as of September 6, 1999, which was the date of receipt of the answer of [Castillo] by this honorable office, a copy of its first and last page are hereto attached as **Annex "19" hereof** and it would be, therefore, anomalous to further delay the evaluation of the said case by directing [Agdeppa] to answer OMB-0-99-1015;

30. To reiterate with stress, [Agdeppa] already answered OMB-0-99-1015 through his answer which was executed on July 26, 1999 and filed with this honorable office'[s] DIBISYON NG REKORDS SENTRAL on even date;

31. It is likewise reiterated that [Junia] had even furnished [Agdeppa] with his reply dated July 30, 1999 (Annex "O");

32. What will happen to the priceless effort and money that went with the preparation and submission of the aforementioned pleadings vis-à-vis the service of the order dated October 6, 1999 to [Agdeppa] only?

33. It appears that it was only [Agdeppa] who was targeted by the Order dated October 6, 1999 because [Castillo], who lives a block from [Agdeppa's] residence at Roque Drive, declared in his Affidavit executed on November 4, 1999 **(Annex "20" hereof)** that he had received only one order relative to OMB-0-99-1015 and that was the Order dated June 10, 1999 and nothing more;

34. For another, was the reply of [Junia] not enough to find probable cause to warrant the filing of a criminal information against [Agdeppa] that is why he was given another chance, through the Order dated October 6, 1999, to do a clinching one;

35. Furthermore, it is not difficult to deduce from the complete records of OMB-0-99-1015 that [Junia] is on a fishing for evidence expedition because he included [Castillo] as a respondent in the above-entitled case even if the latter was no longer the auditor of COA at NHA when the 14-page Memorandum dated February 19, 1988 (Annex "M" – Complaint) came into being, as his (Castillo) tenure as chief auditor of the said government agency ended on August 7, 1987 as per Reassignment Order No. 87-3210 dated July 6, 1987;

x x x x

> 44. It is not difficult to see that the actual primary purpose of [Junia] in filing OMB-0-99-1015 is for him to get a relief from this honorable office in order that he could stop his arraignment in Crim. Case No. Q-99-81636 before Judge Teodoro A. Bay of the QC RTC Branch 86 arising from OMB-0-94-2543 by spicing Crim. Case No. 16240, which is still pending with the Sandiganbayan's Second Division, with [Junia's] so-called "evidence" against [Agdeppa and Castillo] in their alleged participation in, and/or allowing, the illegal payment of PHP1,861,945.28[.]

At the end of his Motion, Agdeppa prayed:

> WHEREFORE, premises considered, it is respectfully prayed that the Order dated 6 October 1999 be set aside and that the above-entitled case be now resolved and dismissed on the basis of the records which were already complete as of September 6, 1999, with the same dispatch as the giving of due course to the complaint dated May 18, 1999 by the Order dated June 10, 1999.[20]

On November 25, 1999, Castillo filed a Manifestation and Compliance with Submission,[21] acknowledging that the Complaints and Annexes, subject of the Orders dated June 10, 1999 and October 6, 1999 were one and the same; adopting and incorporating by reference his Answer dated September 1, 1999 previously filed in the case; and praying that his latest pleading be considered sufficient compliance with the Order dated October 6, 1999. On December 6, 1999, Junia, in turn, filed a Manifestation[22] in which he adopted his Reply dated September 20, 1999 to Castillo's Answer dated September 1, 1999, including Annexes.

Eventually, on June 14, 2000, Jarlos-Martin issued a Resolution[23] in OMB-0-99-1015, concluding as follows:

> WHEREFORE, premises considered, finding probable cause to indict respondents RODOLFO M. AGDEPPA and RICARDO B. CASTILLO for violation of section 3(e) of the Anti-Graft and Corrupt Practices Act relative to the overpayment of the amount of ₱182,543.43 to SUPRA Construction, let, therefore, an information be filed against them in the proper court.
>
> The charge of overpayment to [SupraCon] of the amount of ₱1,861,945.28, representing the additional escalation cost for the subject contract is hereby DISMISSED, for insufficiency of evidence.

Pursuant to Jarlos-Martin's foregoing Resolution, an Information[24] dated June 14, 2000 was filed before the Quezon City RTC-Branch 91, docketed as **Crim. Case No. 01-100552**, charging Agdeppa and Castillo

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20 Id. at 207.
21 Id. at 217-219.
22 Id. at 220-221.
23 Id. at 748-759.
24 Id. at 760-761.

with violation of Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act. The Quezon City RTC-Branch 91 issued a Warrant of Arrest[25] for Agdeppa and Castilllo on May 10, 2001.

Meanwhile, as his Motion to Resolve in OMB-0-99-1015 was still unacted upon by April 7, 2000, Agdeppa filed before the Office of the Ombudsman an Affidavit-Complaint against Jarlos-Martin, Laurezo, and Junia, docketed as **OMB-MIL-CRIM-00-0470**. Agdeppa accused Jarlos-Martin, Laurezo, and Junia of violating Section 3(a), (e), (f), and (j) of Republic Act No. 3019; and Rule II, Section 4(a), (b), and (g) of Supreme Court Administrative Order No. 07, dated April 10, 1990, otherwise known as the Rules of Procedure of the Office of the Ombudsman (Ombudsman Rules of Procedure), based on the following averments:

> 20. That the act of respondent Jarlos-Martin in issuing the Order dated 6 October 1999 when she was supposed to have already resolved OMB-0-99-1015 a long time ago, thus giving unwarranted benefits, advantage or preference to respondent Junia to the damage and injury of [petitioner Agdeppa], constitutes a violation of Section 3(e) of Rep. Act 3019, as amended – **"causing any undue injury to any party xxx, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial function through manifest partiality, evident bad faith or gross unexcusable negligence."**
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> 21. That respondent Jarlos-Martin caused damage and injury to [Agdeppa] because she set aside the records of OMB-0-99-1015, which was already complete when she issued her Order, dated 6 October 1999 and, thus, re-started the preliminary investigation of the case all over again.
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> 22. That the re-starting of the preliminary investigation on OMB-0-99-1015 gave unwarranted benefits, advantage or preference to respondent Junia because, in the Order dated 6 October 1999, [Junia] was given another chance to file his reply to any answer or counter-affidavit submitted after 6 October 1999, on one hand, or gave respondent Jarlos-Martin a basis to resolve the said case in favor of respondent Junia in case of non-compliance of [Agdeppa] to the said Order.
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> 23. That the act of respondent Laurezo on 6 October 1999 of subscribing to OMB-0-99-1015 was to provide respondent Jarlos-Martin with a basis, albeit unlawful, to issue her Order dated 6 October 1999 (of even date) which act constitute corrupt practices act of any public officer under Section 3(a) of Rep. Act 3019, as amended – **"persuading, inducing or influencing another public office 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."**
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> 24. That the rules and regulations duly promulgated by competent authority that was violated by respondent Jarlos-Martin are

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25 Id. at 766.

Section 4(a)(b) and (g), Rule II, Administrative Order No. 07 dated April 10, 1990 (Section 3, Rule 112 of the Rules of Court). x x x.

25. That respondent Laurezo could have not escaped noticing that the complaint dated May 17, 1999 he was about to subscribe on 6 October 1999 was already docketed as OMB-0-99-1015 as indicated by the big bold letters at the bottom of the first page of the said complaint.

26. That when respondent Laurezo subscribed to OMB-0-99-1015 after it was already docketed as such, he had, therefore, knowingly granted a privilege or benefit in favor of respondent Junia who was not qualified for or not entitled to such a privilege or advantage on 6 October 1999, which act is a violation of Sec. 3(j) of R.A. 3019, as amended – "**knowingly x x x granting any x x x privilege or benefit in favor of any person not qualified for or not entitled to such x x x privilege or advantage x x x**."

27. That the failure of respondent Jarlos-Martin to resolve OMB-0-99-1015 notwithstanding the Motion to Resolve dated November 8, 1999 on the basis of the Order dated 10 June 1999 constitutes a violation of Section 3(f) of R.A. 3019, as amended – **"Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party."**

28. That respondent Jarlos-Martin refused to resolve OMB-0-99-1015 even after due demand or request because she will obtain pecuniary benefit from doing so from respondent Junia as it would delay the arraignment of the latter, who is a respondent in Crim. Case No. Q-81636 before Quezon City Regional Trial Court Branch 86, with Judge Teodoro A. Bay presiding.

29. That her obtaining of some pecuniary benefit from respondent Junia, as well as for the purpose of discriminating against [Agdeppa] are manifest because the un-resolved OMB-0-99-1015 is practically the same as the Motion for Reconsideration dated May 17, 1999 filed by respondent Junia before QC RTC Branch 86 to stay his arraignment in Crim. Case No. Q-81636 and that she has only to blame herself for being accused of such corrupt practices acts because [Agdeppa] had categorically manifested to her the un-holy symbiotic connection of OMB-0-99-1015 with the Motion for Reinvestigation on Crim. Case No. Q-816[3]6 through the Manifestation dated August 9, 1999. x x x.

30. That as a consequence of respondent Jarlos-Martin's refusal to resolve the preliminary investigation of OMB-0-99-1015, which refusal is manifest through her Order dated 6 October 1999, respondent Junia's arraignment in Crim. Case No. Q-81636 is being reset for many times already, the latest of which is on May 10, 2000.

31. That this is so, and will remain to be so, because the resolution of the above-mentioned Motion for Reinvestigation filed by

> respondent Junia, who is one of the accused in Crim. Case No. Q-[8]1636, is waiting for the resolution of OMB-0-99-1015.[26]

Acting on Agdeppa's Affidavit-Complaint in OMB-MIL-CRIM-00-0470, Director Rudiger G. Falcis II (Falcis) of the Criminal Investigation, Prosecution & Administrative Adjudication Bureau, Office of the Ombudsman, issued an Order[27] dated June 6, 2000, directing only Jarlos-Martin and Laurezo to file their counter-affidavits and other evidence within 10 days from notice.

Laurezo, in his Counter-Affidavit[28] dated June 22, 2000, asseverated that:

> 7. Any Lawyer-Investigator in the Office of the Ombudsman, worthy of his salt knows that in administering oath and subscribing affidavit-complaint, merely assures himself that the person to be sworn by him is the same person who executes the complaint-affidavit and that the contents thereof are true of his own knowledge. He is not oblige[d] to inquire into the merit and/or status of his complaint.
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> 8. It is clear from the aforestated facts and provisions of law, rules and regulations that my official action in administering oath and subscribing the complaint of Iluminado Junia on October 6, 1999, is in accordance with law, done in good faith and without any unlawful motive.
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> 9. It must be stated that Section 3(a) of R.A. 3019 is premised on a public officer['s] act of persuading, inducing or influencing another public officer to violate the rules and regulations with the unlawful intent of deriving personal gain and advantage. As the facts established in the instant case has shown, there is no opportunity for me whatsoever to derive any personal gain or pecuniary advantage from the mere act of administering and subscribing the complaint-affidavit of Iluminado Junia. Neither was there any evidence presented to demonstrate that I intended to derive any benefit from administering and subscribing the affidavit-complaint of Junia. Neither did I act for consideration. There is no evidence presented to demonstrate that I received any pecuniary advantage in consideration of my administering oath and subscribing the affidavit-complaint of Junia.
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> 10. Moreover, there was no damage caused to complainant herein. The authentication of the complaint-affidavit is in compliance with the procedural requirement which the parties to the case at bar have to comply.
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> 11. I did not persuade, induce nor influence any public officer to violate any rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter. When the provision speaks of "persuading, inducing, or influencing", it means that there must be an active persuasion, inducement, or influence on the part of the public official sought to be held liable. Active persuasion, inducement, or influence cannot be presumed, much less

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26 Id. at 233-235.
27 Id. at 236.
28 Id. at 273-279.

established, by the mere subscribing of an affidavit which is required by law. It must be noted that there has been no evidence whatsoever presented by [Agdeppa] to show that I actually and personally persuaded, induced or influenced other public officers, specifically [Atty. Jarlos-Martin] to disobey any law.

12. Complainant Agdeppa was in the state of hallucination in alleging that when I subscribed the complaint in OMB-0-99-1015, after it was already docketed, I knowingly granted a privilege or benefit in favor of [Junia] who was not qualified for or not entitled to such privilege or advantage on October 6, 1999. A complaint-affidavit is not a license, permit, privilege or benefit.[29]

Agdeppa retorted in his Reply-Affidavit[30] filed on July 12, 2000:

9. That Par. no. 5, in so far as it concerns [Laurezo's] reference to Section 15 of Rep. Act No. 6770 as the authority from which he derived his administration of an oath to Mr. Junia's [complaint] dated May 18, 1999, is denied as: **(a)** he was a usurper of the authority reserved to his co-respondent Graft Investigation Officer Atty. Jarlos-Martin in OMB-0-99-1015, **(b)** it was already too late in the day, so to speak, for him to administer an oath to OMB-0-99-1015 as the said case was already submitted for resolution as of September 20, 1999 which date is the last day of the preliminary investigation of the said case on the basis of [Jarlos-Martin's] Order dated 10 June 1999, and **(c)** he should have asked questions why Mr. Junia is asking him to administer an oath to his aforesaid complaint which was already more than four (4) months old on 6 October 1999, to say the least.

10. That Par. no. 5, in so far as it pertains to [Laurezo's] claim that he merely assured himself of the true/correct identity of Mr. Junia and that the contents thereof are true of his own knowledge, is admitted but with the qualification that he, as a graft investigation officer of this Honorable Office, to reiterate, should have at least inquired why the document he was about to subscribe already bear the big bold marking "**0 99 1015**."

11. That Par. no. 6, in so far as it relates to [Laurezo's] quoting of paragraph (a) of Section 4 of A.O. No. 07 (Procedure in the Preliminary Investigation of cases falling under the jurisdiction of the Sandiganbayan and Regional Trial Courts) as his authority in administering the oath to OMB-0-99-1015, is denied because [Laurezo] is not the "investigating officer" referred to in the aforesaid paragraph of Section 4. This is so because, OMB-0-99-1015 is under his co-respondent Atty. Jarlos-Martin and that on 6 October 1999, the preliminary investigation of the said case was already completed. Thusly, [Laurezo] had no lawful authority under Sec. 4, Rule II, A.O. No. 07 to intervene in OMB-0-99-1015.

x x x x

16. That Par. no. 9, in so far as it relates to the claim of [Laurezo] that there must first be a showing of an intent of deriving personal gain or benefit in order that Section 3(a) of Rep. Act No. 3019

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29 Id. at 276-278.

30 Id. at 280-284.

applies, is denied as the said provision of the said law (Anti-Graft and Corrupt Practices Act) merely states

> "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."

Nothing more. Nothing less. Hence, [Laurezo] should not add anything to it.

17. That Par. no. 10 is denied because, when [Laurezo] administered an oath to Mr. Junia on 6 October 1999, it triggered the second preliminary investigation of OMB-0-99-1015. It is to be noted that the preliminary investigation of the said case was already completed on September 20, 1999 so there was no more basis for [Laurezo's] co-respondent Atty. Jarlos-[M]artin to issue another Order dated September 23, 1999 to enable her to subscribe to the complaint dated May 18, 1999. It follows, therefore, that, when [Laurezo] subscribed to the said complaint, he caused the suspension of the resolution of OMB-0-99-1015 as he "legitimized" the illegal second preliminary investigation of the said case, thereby prolonging the agony of the respondents concerned in terms of prolonged anxiety, aggravation, humiliation and expense inherent in a criminal investigation. If there is no damage to [Agdeppa], as claimed by [Laurezo], then what will [Laurezo] call the prolonged anxiety, aggravation, humiliation and expense which [Agdeppa] is being made to bear until now in OMB-0-99-1015?

x x x x

19. That [Laurezo's] contention in Par. no. 12 that [Agdeppa] was in a state of hallucination in charging [Laurezo] for violation of Section 3(a) of Rep. Act No. 3019 allegedly because he could not be liable thereof as he did not grant any license, privilege or benefit when he subscribe to the stale Complaint-Affidavit dated May 18, 1999, deserves no consideration. This is so because, in *Mejorada v. Sandiganbayan*, G.R. No. L-51065-72, June 30, 1987, the Honorable Supreme Court, ruling on the issue raised by the petitioner that "inasmuch as he is not charged with the duty of granting licenses or permits or other concessions, then he is not an officer contemplated by Section 3(e)," held that:

> "Section 3 cited above enumerates in eleven subsections the corrupt practices of any public officers declared unlawful. **We agree** with the view adopted by the Solicitor General that the last sentence of paragraph (e) is intended **to make clear the inclusion of officers and employees of offices or government corporations which, under the ordinary concept of "public officers" may not come within the term**. It is a strained construction of the provision to read it is applying exclusively to public officers charged with the duty of granting licenses or permits or other concession.

> It follows, therefore, that the only determination left for this Honorable Office is to find out if [Laurezo] is a public officer or not in order for him to be held liable under Rep. Act No. 3019.[31]

Jarlos-Martin, for her part, avowed in her Counter-Affidavit,[32] dated June 23, 2000, thus:

> 4. I vehemently deny the said accusations, the truth of the matter being as follows:
>
> a. On June 7, 1999, OMB Case No. 0-99-1015 entitled "Iluminado L. Junia, Jr. vs. Rodolfo M. Agdeppa and Ricardo Castillo, For: Violation of R.A. No. 3019", was assigned to me.
>
> b. Upon receipt thereof, I made an evaluation report on the said case. I requested for an authority to conduct a preliminary investigation, which was granted on June 10, 1999. On even date, an order was issued directing the respondents (of OMB 0-99-1015) to file their counter-affidavits.
>
> c. On July 26, 1999, Rodolfo M. Agdeppa filed his answer. Thereafter, on August 2, 1999, Iluminado L. Junia, Jr. filed his reply to the said answer. Upon the other hand, Ricardo Castillo filed several motions for extension of time until he finally filed his answer on September 6, 1999. The reply on Castillo's answer was filed by Junia on September 20, 1999.
>
> d. On September 23, 1999, I made a study of the records of the subject case to determine if there is a need for clarificatory hearing or other documents to be presented, since the issues in the subject case are complicated and involve technical matters.
>
> e. It appears from the records that a letter was sent by Rodolfo Agdeppa, manifesting before this Office that there must be compliance first with section 4 and 4(a) of Administrative Order No. 7 dated April 10, 1999 before an order to file counter-affidavit could issue, copy of the said letter is hereto attached as Annex "1".
>
> f. Upon confirmation, I noticed that although the complaint looks like as if it was sworn to, since it was signed by Iluminado Junia, Jr. and that there is verification and certification written thereat, still, the same was not under oath.
>
> g. While it is my honest belief that I have performed my duty in accordance with the provision of law which provides that "The Ombudsman and his Deputies, as

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31 Id. at 281-284.

32 Id. at 237-246.

> protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government" (see section 13, R.A. 6770), yet, to put things in order, the matter can be best rectified by complying with the provisions of section 4(a) and (b) of A.O. No. 7. Thus, on the same date, or on September 23, 1999, I immediately issued an order directing Iluminado Junia, Jr. to appear before the Office of the Ombudsman to swear to his complaint pursuant to section 4 and 4(a) of A.O. No. 7, copy of the said order is hereto attached as Annex "2".
>
> [h.] On October 6, 1999, Junia personally appeared before the Office and his complaint was sworn to before Atty. Emmanuel M. Laurezo, an officer authorized to administer oath under section 31 of R.A. No. 6770. Subsequently, an order to file counter-affidavit was issued in accordance with section 4(b) of A.O. No.7.

5. Under the circumstances, it is very clear that there is absolutely no basis in filing this case:

> 5.1. [Agdeppa's] claim that my act of issuing the Order dated October 6, 1999 when I was supposed to have already resolved OMB 0-99-1015 a long time ago, finds no place. How could I resolve a case, which is not yet ripe for resolution? At the time the said order was issued, preliminary investigation was still ongoing.
>
> 5.2. The charge that I caused damage and injury to [Agdeppa] because I set aside the records of OMB-0-99-1015, which was complete when I issued the order dated October 6, 1999, is likewise devoid of merit.
>
> 5.3. I did not set aside the records of the case. I was evidently inspired by utmost good faith to comply with procedural matters, of which I was authorized.
>
> 5.4. There is no basis on complainant Agdeppa's allegations that the records of the case [were] already complete when I issued the October 6, 1999 order. The last pleading that I received before I issued the aforesaid order was the reply to Castillo's answer filed on September 20, 1999 by Junia before the Records Divisions of the office. I was not aware when Castillo personally received the said reply, since the proof of sending is by registered mail. What if he files a rejoinder? It is to be noted that the purpose of preliminary investigation is to give opportunities to the parties to expound their respective sides.
>
> 5.5. Even assuming, arguendo, that the parties have already submitted their respective pleadings, this cannot be made as basis to terminate the preliminary investigation and jump into the conclusion that the records [were] already complete. It bears emphasis that, during the study of the case, if the investigating officer finds that there

> are matters which need to be clarified, he/she may set a clarificatory hearing, or if there are documents which need to be produced, subpoena duces tecum will issue.
>
> 5.6. The allegation that the "re-starting of preliminary investigation on OMB-0-99-1015 gave unwarranted benefits, advantage or preference to respondent Junia because, in the Order dated 6 October 1999, the said respondent was given another chance to file his reply to any answer or counter-affidavit submitted after 6 October 1999" (see par. 22, Complaint) was unfounded.
>
> 5.7. The said order was intended to both parties and not only to Junia. Granting that the preliminary investigation restarted by reason of compliance with A.O. No. 7, this will not put into waste the efforts already exerted by the parties. The complaint that was attached to the second order to file answer is the very same complaint that was attached to the first order, only that it was put under oath. This means there is nothing new in the subject matter of the complaint, which the respondent therein had already studied. Needless to say, respondents must adopt their previous answers and the complainant, his reply thereto, which is exactly what Ricardo Castillo and Iluminado Junia, Jr. did, copies of their respective Manifestations dated November 24, 1999 and December 6, 1999 are hereto attached as Annexes "3" and "4".
>
> 5.8. The allegation that the order dated October 6, 1999 will give me basis to resolve the case in favor of Junia in case of non-compliance of Agdeppa to the said Order (see par. 22, Complaint) is totally absurd and malicious.
>
> 5.9. It is significant to note that in any case, it does not follow that if there is failure on the part of [Agdeppa] to file his answer, the case will be resolved in favor of [Junia]. The resolution of the case is based on the evidence on record. Thus, in the subject case, OMB 0-9-1015, though Agdeppa did not submit a responsive pleading to the Order dated October 6, 1999 and instead filed a Motion to Resolve, his counter-affidavit which had already form[ed] part of the records of the case, will be treated as his answer. [33]

In his Reply-Affidavit[34] filed on July 12, 2000, Agdeppa countered:

> 11. That Par. no. 4(g), in so far as it relates to the claim of [Jarlos-Martin] that the "matter" (a case that was already subjected for preliminary investigation) is rectifiable by the application of Section 4(a) and (b) of A.O. No. 07 is denied because that is putting the cart before the horse, so to speak. This is so because, in A.O. No. 07, only verified complaints undergo preliminary investigations. Hence, when the un-

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33 Id. at 238-242.

34 Id. at 247-272.

> sworn complaint dated May 18, 1999 underwent preliminary investigation up to the time when the last pleading thereof was filed on September 20, 1999, Section 4(b) of A.O. No. 07 is no longer applicable because, without anymore clarificatory questioning, what follows next is its resolution, pursuant to Section 4(g) thereof x x x.
>
> x x x x
>
> 12. That Par. no. 4(g), in so far as it concerns the claim of [Jarlos-Martin] that she resorted to the issuance of her aforesaid Order dated September 23, 1999 to put things in order, is denied because, to reiterate, she no longer has the authority to issue such an Order after September 20, 1999 as there was already a last pleading filed to OMB-0-99-1015 on the basis of her Order dated 10 June 1999 and, thusly, she was already mandated, by her very own Order dated 10 June 1999, to resolve the said case pursuant to Section 4(g) of A.O. No. 07.
>
> 13. That the first Par. no. 5 (as there are two) is admitted but with the qualification that the appearance of Mr. Junia before the Office (EPIB) was on the basis of [Jarlos-Martin's] Order dated September 23, 1999. If this is the case, then [Jarlos-Martin] should have been the one who should have administered the oath on the complaint dated May 18, 1999 as she is also authorized to do so pursuant to Section 31 of RA No. 6770 x x x.
>
> x x x x
>
> 14. That the second Par. no. 5 is denied as the record of OMB-0-99-1015 indicates to the contrary the claim of [Jarlos-Martin] that there is absolutely no basis for the filing of the above-entitled case. It is to be noted that no less than Director Rudiger G. Falcis II, of the Criminal Investigation, Prosecution and Administrative Adjudication Bureau, this Honorable Office, had declared in his Order dated June 6, 2000 requiring [Jarlos-Martin] to file [her] counter-affidavit to the above-entitled case because "The Affidavit-Complaint filed by [Junia] dated April 6, 2000 xxx is sufficient in form and substance", thus, entirely belying [Jarlos-Martin's] claim of absolute want of basis in the filing of the instant case.
>
> x x x x
>
> 17. That Par. no. 5.2 is denied because it is precisely the Order dated October 6, 1999 which gave [Jarlos-Martin] a veiled legal basis in postponing, albeit illegally, the resolution of OMB-0-99-1015. This is so because the said Order changed the proceedings already put and held in place by the Order dated 10 June 1999. Thusly, the preliminary investigation of OMB-0-99-1015 went beyond the ambit of the Order dated 10 June 1999. x x x.[35]

The Office of the Ombudsman issued a Resolution dated July 31, 2000 dismissing Agdeppa's complaint in OMB-MIL-CRIM-00-0470 for the following reasons:

> We find for [Jarlos-Martin, Laurezo, and Junia].

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35 Id. at 249-251.

We shall explain the pertinent provisions of Republic Act No. 3019 which are clearly inapplicable to the instant case:

1. To warrant the indictment of [Jarlos-Martin, Laurezo, and Junia] for violation of Section 3(e) of RA 3019, it is not enough that the act of [Jarlos-Martin and Laurezo] in the discharge of their official function caused undue injury to [Agdeppa]. It behooves [Agdeppa] to prove that the assailed act must have been done with manifest partiality, evident bad faith, or gross inexcusable negligence (Alejandro vs. People, 170 SCRA 400). Moreover, unlike in actions for torts, undue injury in Section 3(e) of RA 3019 cannot be presumed even after a wrong or a violation of right has been established, its existence must be proven as one of the elements of the crime, and that the injury be specified, quantified, and proven to the point of moral certainty. They cannot be based on flimsy and non-substantial evidence or upon speculation, conjecture or guesswork; mere inconvenience is not constitutive of undue injury (Llorente vs. Sandiganbayan, 287 SCRA 382).

2. Mere neglect or refusal, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before the office of [Jarlos-Martin and Laurezo] is not punishable under Section 3(f) of RA 3019. It is necessary that such neglect or refusal must be for any of the following purposes: a) obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, b) favoring respondent's own interest, or c) giving undue advantage in favor of or discriminating against any other interested party. That respondent Jarlos-Martin will obtain pecuniary benefit from her act or omission is an allegation that must be proven to the point of moral certainty and cannot be presumed or based on surmises.

3. Section 3(a) of RA 3019 punishes a public officer who persuades, induces, or influences another to perform an act constituting a violation of rules and regulations or an offense in connection with the official duties of the latter, as well as the public officer who allowed himself to be persuaded, induced, or influenced to commit such violation or offense. Evidence on record, however, is bereft that respondents Junia and Laurezo had a meeting of minds to commit a violation. Besides, [Agdeppa] miserably failed to show which particular law, rule or regulation was violated by respondent Laurezo in affixing his signature to the complaint.

4. Section 3(j) of RA 3019 penalizes a public officer who knowingly approved or granted any license, permit, privilege, or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege or advantage. However, the terms "benefit" and "advantage" (if at all, the act of respondent Laurezo in subscribing the complaint of respondent [Junia] gave the latter a bonanza in the form of delay in the latter's arraignment in another criminal case) should be construed as analogous to the other terms which precede them, following noscitur a sociis, a rule of statutory construction. For some obvious reasons, whatever benefit or advantage, if any, was extended to respondent Junia, the same does not come within the purview of Section 3(j) of the Anti-

> Graft Law, it not being a license, permit or privilege under the circumstances.
>
> The dismissal of the instant complaint, is therefore, in order.[36]

The aforequoted Resolution was penned by Ombudsman Investigator Alan R. Cañares (Cañares), with the concurrence of Director Falcis, recommending approval of Deputy Ombudsman for the Military Orlando C. Casimiro (Casimiro), and approval of Ombudsman Desierto.

Agdeppa filed a Motion for Reconsideration of the Resolution dated July 31, 2000 but said Motion was denied for lack of merit by the Office of the Ombudsman in an Order dated September 28, 2000.[37] The Office of the Ombudsman ruled in said Order that:

> [Agdeppa] circuitously argued that something obvious transpired between respondents Laurezo and Junia on one hand and between Laurezo and Jarlos-Martin on the other hand. We do not agree. [Agdeppa] miserably failed to adduce any evidence, direct or circumstantial, to prove any concert of voluntary action among [Jarlos-Martin, Laurezo, and Junia] other than surmises and conjectures. We cannot engage in a mental calisthenics and stretch our imagination to the possibility that [Jarlos-Martin, Laurezo, and Junia], with criminal design, hatched a conspiracy to cause undue injury to [Agdeppa]. We would be committing injustice of cosmic proportions if [Jarlos-Martin, Laurezo, and Junia] are suddenly swept into a grand conspiracy through presumptions which do not have any basis in law and in fact.

Dissatisfied, Agdeppa filed the instant Petition before this Court averring grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Office of the Ombudsman in rendering the Resolution dated July 31, 2000 and Order dated September 28, 2000 in OMB-MIL-CRIM-00-0470, committed as follows:

> (A) PUBLIC RESPONDENT OFFICE OF THE OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT RENDERED A RESOLUTION DISMISSING A CRIMINAL COMPLAINT FOR VIOLATION OF THE ANTI-GRAFT AND CORRUPT PRACTICES ACT AGAINST ITS OWN INVESTIGATORS AND A PRIVATE RESPONDENT BY ADOPTING THE RESULT OF THE PRELIMINARY INVESTIGATION OBTAINED UPON AN ORDER WHICH DID NOT INCLUDE THE PRIVATE RESPONDENT CONCERNED IN THE JOINT INVESTIGATION IN SHEER CONTRAVENTION OF THE RULES OF COURT WHICH APPLY SUPPLETORILY TO THE RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN.
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> (B) PUBLIC RESPONDENT OFFICE OF THE OMBUDSMAN ACTED IN EXCESS OF ITS JURISDICTION WHEN IT

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36 Id. at 62-64.

37 Id. at 67.

ALLOWED ANOTHER INVESTIGATING OFFICER TO RENDER THE RESOLUTION OF A CRIMINAL COMPLAINT AGAINST ITS OWN INVESTIGATORS IN CONSPIRACY WITH A PRIVATE INDIVIDUAL OTHER THAN THE INVESTIGATING OFFICER WHO ISSUED THE ORDER TO SUBMIT COUNTER-AFFIDAVIT IN UTTER VIOLATION OF THE RULES OF COURT WHICH APPLY SUPPLETORILY TO THE RULES OF PROCEDURE OF THE OFFICE OF OMBUDSMAN.

(C) PUBLIC RESPONDENT OFFICE OF THE OMBUDSMAN ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT RENDERED A RESOLUTION DISMISSING OMB-MIL-CRIM-00-0470 WHICH ALLOWED THE REALIGNMENT OF THE RULES OF COURT AND THE RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN IN THE PRELIMINARY INVESTIGATION OF A CRIMINAL CASE TO JUSTIFY ITS DISMISSAL.

(D) PUBLIC RESPONDENT OFFICE OF THE OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT RENDERED A RESOLUTION DISMISSING OMB-MIL-CRIM-00-0470 BY TOLERATING THE POSTPONEMENT OF THE RESOLUTION OF OMB-0-99-1015 WHICH TOLERANCE WAS AT THE EXPENSE OF THE CONSTITUTIONAL RIGHT OF THE PETITIONER TO "SPEEDY DISPOSITION OF CASES."

(E) PUBLIC RESPONDENT OFFICE OF THE OMBUDSMAN ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT CONSIDERED AS GOSPEL TRUTH THE ALLEGATION IN THE COUNTER-AFFIDAVIT OF RESPONDENT LAUREZO THAT PRIVATE RESPONDENT JUNIA APPEARED BEFORE HIM ON OCTOBER 6, 1999 TO HAVE HIS AFFIDAVIT COMPLAINT PLACED UNDER OATH EVEN IF THERE IS NO EVIDENCE OF THE TRUTH OF SUCH AN ALLEGATION COMING FROM THE SAID PRIVATE RESPONDENT HIMSELF.[38]

However, in his Memorandum, Agdeppa identified and argued the following issues:

A. THE HONORABLE PUBLIC RESPONDENTS OMBUDSMAN AND THE DEPUTY OMBUDSMAN FOR THE MILITARY COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS IN JURISDICTION WHEN THEY RENDERED A RESOLUTION DISMISSING THE COMPLAINT ENTITLED "RODOLFO M. AGDEPPA –VERSUS- MARYDEL B. JARLOS-MARTIN, EMMANUEL M. LAUREZO, ILUMINADO L. JUNIA, JR." UPON A PRELIMINARY INVESTIGATION ON THE CASE DENOMINATED AS OMB-MIL-CRIM-00-0470 ENTITLED "RODOLFO M. AGDEPPA -VERSUS- ATTY. MARYDEL B. JARLOS-MARTIN, ATTY. EMMANUEL M.

[38] Id. at 18-20.

LAUREZO" IN VIOLATION OF THE CONSTITUTION, THE LAW, AND THE RULES IN THE PRELIMINARY INVESTIGATION OF CRIMINAL COMPLAINTS

B. THE SPLITTING OF THE SINGLE CAUSE OF ACTION IN OMB-0-99-1015 OF CAUSING AN OVERPAYMENT OF ₱2,044,488.71 INTO OVERPAYMENTS OF ₱182,543.43 AND ₱1,861,945.28 HAS NO BASIS IN FACT AND IN LAW

C. MARTIN, LAUREZO AND JUNIA ARE GUILTY OF FORUM SHOPPING UPON THEIR UNIFIED STAND THAT JUNIA APPEARED BEFORE LAUREZO AND HAD EFFECTIVELY SUBSCRIBED TO OMB-0-99-1015[39]

Agdeppa enumerated and discussed more issues in his Supplemental Memorandum, to wit:

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THE HONORABLE PUBLIC RESPONDENTS OMBUDSMAN, ACTING THROUGH THE OFFICE OF THE DEPUTY OMBUDSMAN FOR THE MILITARY, COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS IN JURISDICTION WHEN HE APPROVED THE RESOLUTION DISMISSING THE COMPLAINT "RODOLFO M. AGDEPPA - VERSUS- MARYDEL B. JARLOS-MARTIN, EMMANUEL M. LAUREZO, ILUMINADO L. JUNIA, JR., WHICH IS A COMPLAINT RESPONSIVE IN BOTH FORM AND SUBSTANCE, WITHOUT FIRST REQUIRING ILUMINADO L. JUNIA, JR. WHO IS A PRIVATE RESPONDENT TO FILE HIS COUNTER-AFFIDAVIT THERETO

E

THE FILING OF OMB-0-99-1015 BEFORE THE HONORABLE OFFICE OF THE OMBUDSMAN VIOLATED SUPREME COURT CIRCULAR NO. 28-91 DATED SEPTEMBER 4, 1991 AND THE FAILURE OF THE SAID HONORABLE OFFICE TO SUMMARILY DISMISS THE SAID CASE ON THAT GROUND IS GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION

F

THE FILING OF THE INFORMATION DATED JUNE 14, 2000 IN OMB-0-99-1015 BEFORE THE HONORABLE REGIONAL TRIAL COURT OF QUEZON CITY ONLY ON APRIL 3, 2001 CONSTITUTES VIOLATION OF PETITIONER'S CONSTITUTIONAL RIGHT TO "SPEEDY DISPOSITION OF CASES"

G

THE INFORMATION IN OMB-0-99-1015 CHARGING PETITIONER OF VIOLATION OF SEC. 3(E) OF REP. ACT NO. 3019 FOR

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39 Id. at 1258-1259.

> CAUSING INJURY TO THE GOVERNMENT IN THE AMOUNT OF ₱182,543.43 IN OVERPAYMENT ON WORK ACCOMPLISHMENTS OF SUPRA CONSTRUCTION IN PHASE IX, PACKAGE 7 AND 7-A IS A DISGUISED RE-LITIGATION OF THE AMOUNT OF ₱169,577.97 YIELDING PRICE ESCALATION OF ₱3,088,941.42 WHICH WAS ALREADY PASSED WITH FINALITY IN COA DECISION NO. 739 DATED JANUARY 10, 1989
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> H
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> COA DECISION NO. 2799 RENDERED BY THE HONORABLE COMMISSION ON AUDIT ON APRIL 15, 1993 LACKED TRANSPARENCY AS IT SUPPRESSED THE EXISTENCE OF COA DECISION NO. 739 DATED JANUARY 10, 1989 WHICH PREVENTED PETITIONER FROM MAKING A PROPER REASONABLE MOTION BEFORE IT OR A DECISIVE TIMELY APPEAL BEFORE THE HONORABLE SUPREME COURT[40]

After an exhaustive review of the records, the Court finds no merit in the Petition at bar.

The Court's power of review in the present Petition is limited to OMB-MIL-CRIM-00-0470 and the grounds/issues timely raised and discussed by the parties.

The exchange of accusations between Agdeppa, *et al.*, on one hand, and Junia, *et al.*, on the other hand, regarding the NHA Project, had given rise to a number of administrative and criminal cases that are still pending before several administrative agencies and trial courts.

At the outset, the Court makes it clear that its review herein shall be strictly limited to OMB-MIL-CRIM-00-0470. To recall, OMB-MIL-CRIM-00-0470 involves Agdeppa's complaint against Jarlos-Martin, Laurezo, and Junia before the Office of the Ombudsman for corrupt practices under Section 3(a), (e), (f), and (j) of Republic Act No. 3019, allegedly committed by the latter three in the course of the preliminary investigation in OMB-0-99-1015. The Office of the Ombudsman, in the Resolution dated July 31, 2000 and Order dated September 28, 2000, dismissed Agdeppa's charges for lack of basis in fact and in law.

The Court underscores that it cannot touch upon the merits of the other cases which, although related and/or arising from the same set of facts, are proceeding independently from and simultaneously with OMB-MIL-CRIM-00-0470. The present Petition is not the proper remedy and, thus, the Court is without jurisdiction to review and annul the Resolution dated June 14, 2000 of the Office of the Ombudsman in OMB-0-99-1015, which recommended the filing of an Information against Agdeppa and Castillo for

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[40] Id. at 1137-1138.

violation of Section 3(e) of Republic Act No. 3019; or enjoin and dismiss the resultant criminal case, Crim. Case No. 01-100552, against Agdeppa and Castillo, which is now pending before the Quezon City RTC-Branch 91; or reopen a COA case decided long before in 1993.

The Court will also not rule upon issues which were raised by Agdeppa only in his Memorandum and Supplemental Memorandum, specifically, issues [B], [C], [E], [G], and [H] thereof. These are issues which the Office of the Ombudsman, Jarlos-Martin, Laurezo, and Junia did not have an opportunity to address or argue. The parties were properly instructed by the Court in the Resolution dated October 22, 2001 that "**[n]o new issues may be raised by a party in his/its Memorandum** and the issues raised in his/its pleadings but not included in the Memorandum shall be deemed waived or abandoned."[41] Relevant herein is the ruling of the Court in *Heirs of Ramon Garayes v. Pacific Asia Overseas Shipping Corp.*[42]:

> We likewise reviewed petitioners' Reply and we note that the discussion therein referred only to the denial of the motion for extension. No discussion whatsoever was made as regards the substantial merits of the case. In fact, as we have mentioned before, it was only in petitioners' Memorandum where they raised for the first time the issue that their appeal is meritorious.
>
> **This is not only unfair to the respondents who were deprived of the opportunity to propound their arguments on the issue. It is likewise not allowed by the rules.** In the June 23, 2008 Resolution, the Court reminded the parties that "[n]o new issues may be raised by a party in the memorandum." The rationale for this was explained by the Court in *Heirs of Cesar Marasigan v. Marasigan*, thus:
>
> > This Court significantly notes that the first three issues, alleging lack of jurisdiction and cause of action, are raised by petitioners for the first time in their Memorandum. No amount of interpretation or argumentation can place them within the scope of the assignment of errors they raised in their Petition.
> >
> > The parties were duly informed by the Court in its Resolution dated September 17, 2003 that ***no new issues may be raised by a party in his/its Memorandum and the issues raised in his/its pleadings but not included in the Memorandum shall be deemed waived or abandoned.*** The raising of additional issues in a memorandum before the Supreme Court is irregular, because said memorandum is supposed to be in support merely of the position taken by the party concerned in his petition, and the raising of new issues amounts to the filing of a petition beyond the reglementary period. The purpose of this rule is to provide all parties to a case a fair opportunity to be heard. No new points of law, theories, issues or arguments may be raised by a party in the Memorandum for the reason that to permit

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41 Id. at 1118A.

42 G.R. No. 178477, July 16, 2012, 676 SCRA 450, 461-462.

> these would be offensive to the basic rules of fair play, justice and due process.
>
> Petitioners failed to heed the Court's prohibition on the raising of new issues in the Memorandum.
>
> Based on the foregoing, we find no necessity to discuss the second issue which was raised by the petitioners for the first time only in their Memorandum. (Emphasis supplied, citations omitted.)

The Court adheres to a policy of non-interference with the investigatory and prosecutorial powers of the Office of the Ombudsman.

In general, the Court follows a policy of non-interference with the exercise by the Office of the Ombudsman of its investigatory and prosecutorial powers, in respect of the initiative and independence inherent in the said Office, which, "beholden to no one, acts as the champion of the people and the preserver of the integrity of the public service."[43] The Court expounded on such policy in *M.A. Jimenez Enterprises, Inc. v. Ombudsman,*[44] thus:

> It is well-settled that the determination of probable cause against those in public office during a preliminary investigation is a function that belongs to the Ombudsman. The Ombudsman is vested with the sole power to investigate and prosecute, *motu proprio* or upon the complaint of any person, any act or omission which appears to be illegal, unjust, improper, or inefficient. It has the discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not. As explained in *Esquivel v. Ombudsman*:
>
> > The Ombudsman is empowered to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts. Settled is the rule that the Supreme Court will not ordinarily interfere with the Ombudsman's exercise of his investigatory and prosecutory powers without good and compelling reasons to indicate otherwise. Said exercise of powers is based upon his constitutional mandate and the courts will not interfere in its exercise. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman, but upon practicality as well. Otherwise, innumerable petitions seeking dismissal of investigatory proceedings conducted by the Ombudsman will grievously hamper the functions of the office and the courts, in much the same way that courts will be swamped if they had to review the exercise of

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43 *Casing v. Ombudsman,* G.R. No. 192334, June 13, 2012, 672 SCRA 500, 507.

44 G.R. No. 155307, June 6, 2011, 650 SCRA 381, 392-394.

> discretion on the part of public prosecutors each time they decided to file an information or dismiss a complaint by a private complainant.
>
> The Court respects the relative autonomy of the Ombudsman to investigate and prosecute, and refrains from interfering when the latter exercises such powers either directly or through the Deputy Ombudsman, except when there is grave abuse of discretion. Indeed, the Ombudsman's determination of probable cause may only be assailed through *certiorari* proceedings before this Court on the ground that such determination is tainted with grave abuse of discretion defined as such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. For there to be a finding of grave abuse of discretion, it must be shown that the discretionary power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and the abuse of discretion must be 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 contemplation of law. (Citations omitted.)

Petitioner failed to clearly demonstrate grave abuse of discretion by the Office of the Ombudsman that would have justified the issuance of a writ of certiorari by the Court.

It falls upon Agdeppa, as petitioner for the writ of *certiorari*, to discharge the burden of proving grave abuse of discretion on the part of the Office of the Ombudsman, in accordance with the definition and standards set by law and jurisprudence.

"Grave abuse of discretion" is well-defined and not an amorphous concept that may easily be manipulated to suit one's purpose.[45] The Court gave the following comprehensive definition of said term in *Yu v. Reyes-Carpio*[46]:

> The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." Furthermore, the use of a petition for *certiorari* is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void." From the foregoing definition, it is clear that the special civil action of *certiorari* under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross. x x x. (Citations omitted.)

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45 *Dycoco v. Court of Appeals*, G.R. No. 147257, July 31, 2013, 702 SCRA 566, 580.

46 G.R. No. 189207, June 15, 2011, 652 SCRA 341, 348.

Not every error in the proceedings, or every erroneous conclusion of law or fact, constitutes grave abuse of discretion.[47] While the prosecutor, or in this case, the investigating officers of the Office of the Ombudsman, may err or even abuse the discretion lodged in them by law, such error or abuse alone does not render their act amenable to correction and annulment by the extraordinary remedy of *certiorari*.[48] The requirement for judicial intrusion is still for the petitioner to demonstrate clearly that the Office of the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction. Unless such a clear demonstration is made, the intervention is disallowed in deference to the doctrine of non-interference.[49]

Throughout his Petition, Agdeppa presents a grand conspiracy between the Office of the Ombudsman and Junia, with the Office of the Ombudsman deliberately acting upon and deciding OMB-MIL-CRIM-00-0470 (as well as OMB-0-99-1015) contrary to Agdeppa's interest and favorable to Junia's. Agdeppa sees every act or decision of the Office of the Ombudsman adverse to his interest tainted with capriciousness and arbitrariness. However, other than his own allegations, suspicions, and surmises, Agdeppa did not submit independent or corroborating evidence in support of the purported conspiracy. The basic rule is that mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence. When the complainant relies on mere conjectures and suppositions, and fails to substantiate his allegations, the complaint must be dismissed for lack of merit.[50]

Taking away Agdeppa's conspiracy theory, the grounds for his Petition no longer have a leg to stand on. As the succeeding discussion will show, the Resolution dated July 31, 2000 and Order dated September 28, 2000 in OMB-MIL-CRIM-00-0470 were rendered by the Office of the Ombudsman in the valid exercise of its discretion.

The exclusion of Junia in the Order dated June 6, 2000 is effectively an outright dismissal of the complaint as against him.

In the Order dated June 6, 2000 in OMB-MIL-CRIM-00-0470, the Office of the Ombudsman required only Jarlos-Martin and Laurezo to file their counter-affidavits and evidence.

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47 *Alberto v. Court of Appeals*, G.R. No. 182130, June 19, 2013, 699 SCRA 104, 129.
48 *Elma v. Jacobi*, G.R. No. 155996, June 27, 2012, 675 SCRA 20, 57.
49 *See Callo-Claridad v. Esteban*, G.R. No. 191567, March 20, 2013, 694 SCRA 185, 197.
50 *De Jesus v. Guerrero III*, 614 Phil. 520, 529 (2009).

Agdeppa asserts that the Office of the Ombudsman has jurisdiction over Junia, a private individual, who conspired with Jarlos-Martin and Laurezo, public officers, in the commission of acts violative of Republic Act No. 3019. The exclusion of Junia in the Order dated June 6, 2000 was in contravention of procedural due process as Junia was an indispensable party in OMB-MIL-CRIM-00-0470 and without his counter-affidavit, there could be no complete preliminary investigation in said case.

Section 22 of Republic Act No. 6770, otherwise known as The Ombudsman Act of 1989, explicitly provides:

> Section 22. *Investigatory Power*. – x x x.
>
> In all cases of conspiracy between an officer or employee of the government and a private person, the Ombudsman and his Deputies shall have jurisdiction to include such private person in the investigation and proceed against such private person as the evidence may warrant. The officer or employee and the private person shall be tried jointly and shall be subject to the same penalties and liabilities.

There is therefore no question that the Office of the Ombudsman has the power to investigate and prosecute a private person who conspired with a public officer or employee in the performance of an illegal, unjust, improper, or inefficient act or omission. In this case, though, the Office of the Ombudsman excluded Junia from the Order dated June 6, 2000, not because it did not have jurisdiction over a private individual, rather, because it found no merit in Agdeppa's accusations against Junia in OMB-MIL-CRIM-00-0470.

The Office of the Solicitor General (OSG) – as counsel for the Office of the Ombudsman, Jarlos-Martin, and Laurezo – explains that the allegations in Agdeppa's Affidavit-Complaint "basically focused on the purported violations of the provisions of RA 3019 by public respondents MARTIN and LAUREZO as graft investigating officers" and "[a] reading of the complaint shows that JUNIA's alleged participation, if ever, was peripheral and secondary[,]" thus, "the investigating officer, after evaluation, considered the complaint against [Junia] as not warranting further proceedings."[51] In effect, the exclusion of Junia from the Order dated June 6, 2000 was an outright dismissal by the Office of the Ombudsman of Agdeppa's Affidavit-Complaint insofar as said Affidavit-Complaint involved Junia.

The Court recognized in *Angeles v. Gutierrez*[52] that the Ombudsman has the discretionary power to dismiss a complaint outright or proceed with the conduct of a preliminary investigation:

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51 *Rollo*, pp. 695-697.

52 G.R. Nos. 189161 & 189173, March 21, 2012, 668 SCRA 803, 816-817.

> The determination by the Ombudsman of probable cause or of whether there exists a reasonable ground to believe that a crime has been committed, and that the accused is probably guilty thereof, is usually done after the conduct of a preliminary investigation. **However, a preliminary investigation is by no means mandatory.**
>
> The Rules of Procedure of the Office of the Ombudsman (Ombudsman Rules of Procedure), specifically Section 2 of Rule II, states:
>
> > *Evaluation.* – Upon evaluating the complaint, the investigating officer shall recommend whether it may be: a) dismissed outright for want of palpable merit; b) referred to respondent for comment; c) indorsed to the proper government office or agency which has jurisdiction over the case; d) forwarded to the appropriate officer or official for fact-finding investigation; e) referred for administrative adjudication; or f) subjected to a preliminary investigation.
>
> Thus, **the Ombudsman need not conduct a preliminary investigation upon receipt of a complaint**. Indeed, we have said in *Knecht v. Desierto* and later in *Mamburao, Inc. v. Office of the Ombudsman* and *Karaan v. Office of the Ombudsman* that should investigating officers find a complaint utterly devoid of merit, they may recommend its outright dismissal. Moreover, it is also within their discretion to determine whether or not preliminary investigation should be conducted.
>
> The Court has undoubtedly acknowledged the powers of the Ombudsman to dismiss a complaint outright without a preliminary investigation in *The Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*.
>
> We reiterate that the Ombudsman has full discretion to determine whether a criminal case should be filed, including whether a preliminary investigation is warranted. The Court therefore gives due deference to the Ombudsman's decision to no longer conduct a preliminary investigation in this case on the criminal charges levelled against respondent Velasco. (Emphases supplied, citations omitted.)

While the Office of the Ombudsman dismissed outright the Affidavit-Complaint as against Junia in OMB-MIL-CRIM-00-0470, it decided to conduct a preliminary investigation of the charges against Jarlos-Martin and Laurezo contained in the same Affidavit-Complaint. After the preliminary investigation, the Office of the Ombudsman likewise dismissed the Affidavit-Complaint as against Jarlos-Martin and Laurezo for reasons that are notably not dependent upon Junia's non-participation in the preliminary investigation. The reasons for the dismissal of Agdeppa's complaint against Jarlos-Martin and Laurezo, as well as Junia, were collectively discussed by the Office of the Ombudsman in its Resolution dated July 31, 2000.

Now as to whether or not the Office of the Ombudsman was correct in not at all investigating Junia is not for the Court to decide in this Petition. Errors of judgment, as distinguished from errors of jurisdiction, are not

within the province of a special civil action for *certiorari*, which is merely confined to issues of jurisdiction or grave abuse of discretion.[53] And, as had been previously discussed herein, without evidence that the Office of the Ombudsman exercised its discretion capriciously and whimsically or arbitrarily and despotically in excluding Junia from the Order dated June 6, 2000, there can be no grave abuse of discretion.

Agdeppa's assertion that he had been denied due process is misplaced, bearing in mind that the rights to be informed of the charges, to file a comment to the complaint, and to participate in the preliminary investigation, belong to Junia, as the following pronouncements on the nature of a preliminary investigation in *Uy v. Office of the Ombudsman*[54] show:

> A preliminary investigation is held before an accused is placed on trial **to secure the innocent against hasty, malicious, and oppressive prosecution; to protect him from an open and public accusation of a crime, as well as from the trouble, expenses, and anxiety of a public trial**. It is also intended to protect the state from having to conduct useless and expensive trials. While the right is statutory rather than constitutional, it is a component of due process in administering criminal justice. The right to have a preliminary investigation conducted before being bound for trial and before being exposed to the risk of incarceration and penalty is not a mere formal or technical right; **it is a substantive right. To deny the accused's claim to a preliminary investigation is to deprive him of the full measure of his right to due process**. (Emphases supplied, citation omitted.)

In *Cabahug v. People*,[55] the Court even directly addressed agencies tasked with preliminary investigation and prosecution of crimes, which includes the Office of the Ombudsman, reminding them as follows:

> We cannot overemphasize the admonition to agencies tasked with the preliminary investigation and prosecution of crimes that the very purpose of a preliminary investigation is to shield the innocent from precipitate, spiteful and burdensome prosecution. They are duty-bound to avoid, unless absolutely necessary, open and public accusation of crime not only to spare the innocent the trouble, expense and torment of a public trial, but also to prevent unnecessary expense on the part of the State for useless and expensive trials. Thus, **when at the outset the evidence cannot sustain a *prima facie* case or that the existence of probable cause to form a sufficient belief as to the guilt of the accused cannot be ascertained, the prosecution must desist from inflicting on any person the trauma of going through a trial.** (Emphasis supplied, citation omitted.)

Clearly, the right to preliminary investigation is a component of the right of the respondent/accused to substantive due process. A complainant

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53 *Lirio v. Genovia*, G.R. No. 169757, November 23, 2011, 661 SCRA 126, 136.
54 578 Phil. 635, 655 (2008).
55 426 Phil. 490, 510-511 (2002).

cannot insist that a preliminary investigation be held when the complaint was dismissed outright because of palpable lack of merit. It goes against the very nature and purpose of preliminary investigation to still drag the respondent/accused through the rigors of such an investigation so as to aid the complainant in substantiating an accusation/charge that is evidently baseless from the very beginning.

The Resolution dated July 31, 2000 in OMB-MIL-CRIM-00-0470 was issued in accordance with the Rules of Procedure of the Office of the Ombudsman.

Agdeppa questions the fact that it was Director Falcis who issued the Order dated June 6, 2000 in OMB-MIL-CRIM-00-0470 requiring Jarlos-Martin and Laurezo to file their counter-affidavits and evidence, but the preliminary investigation was actually conducted and the Resolution dated July 31, 2000 was penned by Investigator Cañares. According to Agdeppa, this violates the same-investigating-officer rule under Rule II, Section 4 of the Ombudsman Rules of Procedure.

Rule II, Section 4 of the Ombudsman Rules of Procedure reads in full:

> Sec. 4. *PROCEDURE*. — The preliminary investigation of cases falling under the jurisdiction of the Sandiganbayan and Regional Trial Courts shall be conducted in the manner prescribed in Section 3, Rule 112 of the Rules of Court, subject to the following provisions:
>
> a) If the complaint is not under oath or is based only on official reports, the investigating officer shall require the complainant or supporting witnesses to execute affidavits to substantiate the complaints.
>
> b) After such affidavits have been secured, the investigating officer shall issue an order, attaching thereto a copy of the affidavits and other supporting documents, directing the respondent to submit, within ten (10) days from receipt thereof, his counter-affidavits and controverting evidence with proof of service thereof on the complainant. The complainant may file reply affidavits within ten (10) days after service of the counter-affidavits.
>
> c) If the respondent does not file a counter-affidavit, the investigating officer may consider the comment filed by him, if any, as his answer to the complaint. In any event, the respondent shall have access to the evidence on record.
>
> d) No motion to dismiss shall be allowed except for lack of jurisdiction. Neither may a motion for a bill of particulars be entertained. If respondent desires any matter in the complainant's affidavit to be clarified, the particularization thereof may be done at the time of clarificatory questioning in the manner provided in paragraph (f) of this section.

> e) If the respondent cannot be served with the order mentioned in paragraph 6 hereof, or having been served, does not comply therewith, the complaint shall be deemed submitted for resolution on the basis of the evidence on record.
>
> f) If, after the filing of the requisite affidavits and their supporting evidences, there are facts material to the case which the investigating officer may need to be clarified on, he may conduct a clarificatory hearing during which the parties shall be afforded the opportunity to be present but without the right to examine or cross-examine the witness being questioned. Where the appearance of the parties or witnesses is impracticable, the clarificatory questioning may be conducted in writing, whereby the questions desired to be asked by the investigating officer or a party shall be reduced into writing and served on the witness concerned who shall be required to answer the same in writing and under oath.
>
> g) Upon the termination of the preliminary investigation, the investigating officer shall forward the records of the case together with his resolution to the designated authorities for their appropriate action thereon.
>
> No information may be filed and no complaint may be dismissed without the written authority or approval of the Ombudsman in cases falling within the jurisdiction of the Sandiganbayan, or of the proper Deputy Ombudsman in all other cases.

The aforequoted provision lays down the procedure for a preliminary investigation conducted by the Office of the Ombudsman. While it consistently refers to the "investigating officer," it does not mandate that only one investigating officer shall conduct the entire preliminary investigation and resolve the same. It cannot be the basis for the same-investigating-officer rule that Agdeppa invokes.

While ideally the investigating officer who conducted the preliminary investigation shall be the same one to resolve the complaint, there may be unavoidable circumstances necessitating a change in investigating officers (*i.e.*, promotion, transfer, resignation, removal, retirement, or death of the previous investigating officer) during the course of the preliminary investigation. The position of the Court in instances when the judge who rendered the decision in a case was not the one who heard and received evidence may be applied by analogy:

> [I]t is also axiomatic that **the fact alone that the judge who heard the evidence was not the one who rendered the judgment but merely relied on the record of the case does not render his judgment erroneous or irregular.** This is so even if the judge did not have the fullest opportunity to weigh the testimonies not having heard all the witnesses speak nor observed their deportment and manner of testifying. Thus the Court generally will not find any misapprehension of facts as it can be fairly assumed under the principle of regularity of performance of duties of public officers that the transcripts of stenographic notes were thoroughly scrutinized and evaluated by the judge himself.

> Has sufficient reason then been laid before us by petitioner to engender doubt as to the factual findings of the court *a quo*? We find none. A painstaking review of the evidence on record convinces us not to disturb the judgment appealed from. The fact that the case was handled by different judges brooks no consideration at all, for preponderant evidence consistent with their claim for damages has been adduced by private respondents as to foreclose a reversal. Otherwise, every time a Judge who heard a case, wholly or partially, dies or *leaves* the service, the case cannot be decided and a new trial will have to be conducted. That would be absurd; inconceivable.[56] (Emphasis supplied.)

Similarly, the fact alone that the investigating officer of the Office of the Ombudsman who issued the resolution was not the one who conducted the preliminary investigation does not render said investigating officer's resolution erroneous or irregular. The investigating officer may rely on the pleadings and evidence on record and enjoy the presumption of regularity in the performance of his duties as a public officer, unless disputed by evidence to the contrary.

In this case, Director Falcis's involvement in the preliminary investigation ended with the issuance of the Order dated June 6, 2000 directing Jarlos-Martin and Laurezo to submit their counter-affidavits and evidence in OMB-MIL-CRIM-00-0470. Investigator Cañares was in charge of the preliminary investigation thereafter until the issuance of the Resolution dated July 31, 2000. Hence, Investigator Cañares was the one who conducted a substantial portion of the preliminary investigation.

Yet again, Agdeppa's allegation that Director Falcis's outright dismissal of the complaint against Junia and exclusion of Junia from the Order dated June 6, 2000 influenced Investigator Cañares into subsequently dismissing the charges against Jarlos-Martin and Laurezo too, is pure speculation and devoid of any substantiation. Besides, the Resolution dated July 31, 2000 completely passed through the gamut of the review process in the Office of the Ombudsman before its issuance. After being penned by Investigator Cañares, said Resolution was reviewed not only by Director Falcis, but also by Deputy Ombudsman Casimiro and Ombudsman Desierto. If Deputy Casimiro and/or Ombudsman Desierto had noticed any error or irregularity in the Resolution, they could withhold their approval, make their own findings, and rule differently; but they did not, and they approved the Resolution as it was penned by Investigator Cañares. There is no reason for the Court to doubt the entire review process in the Office of the Ombudsman as regards the Resolution dated July 31, 2000 in OMB-MIL-CRIM-00-0470 and cast aside the presumption of regularity in the performance of official duties by Investigator Cañares, Director Falcis, Deputy Ombudsman Casimiro, and Ombudsman Desierto, without clear and convincing evidence of the alleged irregularity on the part of the aforementioned officials.

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[56] *Concepcion v. Court of Appeals*, 381 Phil. 90, 97 (2000).

Agdeppa's accusations were mere suspicions that do not support a finding of probable cause to criminally charge Jarlos-Martin, Laurezo, and Junia under Section 3(a), (e), (f), and (j) of Republic Act No. 3019.

Agdeppa's criminal complaint in OMB-MIL-CRIM-00-0470 is essentially rooted in two external acts by Jarlos-Martin and Laurezo in OMB-0-99-1015: (1) Jarlos-Martin's issuance of the Order dated September 23, 1999 requiring Junia to personally appear before the Office of the Ombudsman to swear to his Complaint in OMB-0-99-1015, followed by the Order dated October 6, 1999 directing Agdeppa and Castillo to file their counter-affidavits to Junia's Complaint which was then already under oath; and (2) Laurezo's certifying that Junia personally appeared before him on October 6, 1999 to swear to the Complaint in OMB-0-99-1015. Agdeppa alleged that these acts were committed by Jarlos-Martin, Laurezo, and Junia in conspiracy with one another to deliberately benefit Junia and prejudice Agdeppa and, thus, constituted corrupt acts under Section 3(a), (e), (f), (j) of Republic Act No. 3019.

Section 3 of Republic Act No. 3019 describes and penalizes the following as corrupt acts:

> **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.
>
> (f) Neglecting or refusing, after due demand or request, without sufficient justification to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or

> giving undue advantage in favor of or discriminating against any other interested party.
>
> x x x x
>
> (j) Knowingly approving or granting any license, permit, privilege or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege or advantage, or of a mere representative or dummy of one who is not so qualified or entitled.

The pivotal issue for the Office of the Ombudsman to determine in OMB-MIL-CRIM-00-0470 was whether there was probable cause to criminally charge Jarlos-Martin, Laurezo, and Junia with the foregoing corrupt acts. Probable cause, for purposes of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof.[57] The Court had set the standard to support a finding of probable cause in *Ramiscal, Jr. v. Sandiganbayan*[58]:

> It bears stressing that probable cause need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt and definitely not on evidence establishing absolute certainty of guilt. **It implies probability of guilt and requires more than bare suspicion but less than evidence which would justify conviction.** x x x. (Emphasis supplied, citation omitted.)

In its Resolution dated July 31, 2000 in OMB-MIL-CRIM-00-0470, the Office of the Ombudsman found no probable cause and dismissed Agdeppa's complaint against Jarlos-Martin, Laurezo, and Junia. The Office of the Ombudsman determined that one or more element/s for each corrupt act in Agdeppa's complaint is/are missing and/or lacked factual basis. Agdeppa's accusations were nothing more than his bare suspicions. As the Office of the Ombudsman frankly declared in its Order dated September 28, 2000, denying Agdeppa's Motion for Reconsideration of the dismissal of OMB-MIL-CRIM-00-0470, "[Agdeppa] miserably failed to adduce any evidence, direct or circumstantial, to prove any concert of voluntary action among [Jarlos-Martin, Laurezo, and Junia] other than surmises and conjectures."

There is no merit to Agdeppa's contention that by dismissing his Affidavit-Complaint in OMB-MIL-CRIM-00-0470, the Office of the Ombudsman tolerated the realignment of the Ombudsman Rules of Procedure and violation of Agdeppa's right to the speedy disposition of his case. There is utter lack of evidence presented by Agdeppa that Jarlos-Martin, Laurezo, and Junia conspired to maliciously and deliberately conduct the preliminary investigation in OMB-0-99-1015 to Agdeppa's prejudice.

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57 *Sarigumba v. Sandiganbayan*, 491 Phil. 704, 719 (2005).

58 530 Phil. 773, 794 (2006).

On the basis of Laurezo's certification, Junia personally swore to his Complaint in OMB-0-99-1015 before Laurezo on October 6, 1999.

Agdeppa faults the Office of the Ombudsman for giving full faith and credence to Laurezo's allegation in his Counter-Affidavit in OMB-MIL-CRIM-00-0470 that Junia personally appeared before him on October 6, 1999 to verify and swear to the Complaint in OMB-0-99-1015. Agdeppa further challenges the authority of Laurezo to administer the oath to Junia, when it was Jarlos-Martin, the investigating officer in OMB-0-99-1015, who issued the Order dated September 23, 1999 directing Junia to appear before her at her office to swear to the Complaint.

According to Laurezo's certification, Junia personally appeared before him on October 6, 1999 to swear to his Complaint in OMB-0-99-1015. There is no question that Laurezo, as an investigating officer of the Office of the Ombudsman, has the power to administer oaths.[59] Since Laurezo administered the oath to Junia on October 6, 1999 in the performance of an official duty, his conduct of the same enjoys the presumption of regularity and, hence, already satisfactory when not contradicted and overcome by evidence. The Court observed that other than raising the question, Agdeppa did not present an iota of proof that Junia was actually not present before Laurezo on the date and place as the latter certified.

Moreover, whether certain items of evidence should be accorded probative value or weight, and whether or not certain documents presented by one side should be accorded full faith and credit in the face of protests as to their spurious character by the other side, are issues of fact.[60] Agdeppa wants the Court to look into the propriety of or error in the appreciation of facts by the Office of the Ombudsman. Petitioner cannot be unaware that the Court is not a trier of facts, more so in the consideration of the extraordinary writ of *certiorari* where neither questions of fact nor even of law are entertained, but only questions of lack or excess of jurisdiction or grave abuse of discretion.[61]

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59 Section 15(8), in relation to Section 15(10) of Republic Act No. 6770, which read:

> Section 15. *Powers, Functions and Duties*. — The Office of the Ombudsman shall have the following powers, functions and duties:
>
> x x x x
>
> (8) Administer oaths, issue *subpoena* and *subpoena duces tecum*, and take testimony in any investigation or inquiry, including the power to examine and have access to bank accounts and records;
>
> x x x x
>
> (10) Delegate to the Deputies, or its investigators or representatives such authority or duty as shall ensure the effective exercise or performance of the powers, functions, and duties herein or hereinafter provided[.]

60 *Maglana Rice and Corn Mill, Inc. v. Tan*, G.R. No. 159051, September 21, 2011, 658 SCRA 58, 63.

61 *Cruz, Jr. v. People*, G.R. No. 110436, June 27, 1994, 233 SCRA 439, 459.

Lastly, Agdeppa's argument that Junia should have appeared, verified, and swore to his Complaint only before Jarlos-Martin, who issued the Order dated September 23, 1999, is specious. Rule II, Section 4 of the Ombudsman Rules of Procedure only provides that, "[i]f the complaint is not under oath or is based on official reports, the investigating officer shall require the complainant or supporting witnesses to execute affidavits to substantiate the complaints." Said provision did not expressly state that in such a situation, the complainant or supporting witnesses are to execute the affidavits only before the investigating officer assigned to the case.

Despite the Order dated September 23, 1999 issued by Jarlos-Martin, there is no explicit rule that only she, to the exclusion of all other authorized officials, can administer the oath to Junia. Insisting on such exclusivity will serve no purpose. Junia is only required to subscribe and swear to his Complaint before an official authorized to administer oath. To *subscribe* literally means to write underneath, as one's name; to sign at the end of a document. To *swear* means to put on oath; to declare on oath the truth of a pleading, *etc.*[62] The identity of the authorized official administering the oath, whether Jarlos-Martin or Laurezo, is not relevant and would have had no significant legal effect on the Complaint in OMB-0-99-1015. In the end, the Complaint became a sworn affidavit just the same.

Absent a clear showing of grave abuse of discretion amounting to lack or excess of jurisdiction by the Office of the Ombudsman in the issuance of its Resolution dated July 31, 2000 and Order dated September 28, 2000 in OMB-MIL-CRIM-00-0470, the Court cannot depart from the policy of non-interference.

WHEREFORE, the Petition is hereby **DISMISSED**.

Costs against petitioner.

SO ORDERED.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

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62 *Gamido v. New Bilibid Prisons Officials,* 312 Phil. 100, 104 (1995).

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
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