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## RESOLUTION

*People. vs. Abundo*

*Criminal Case No. SB-15-CRM-0128*

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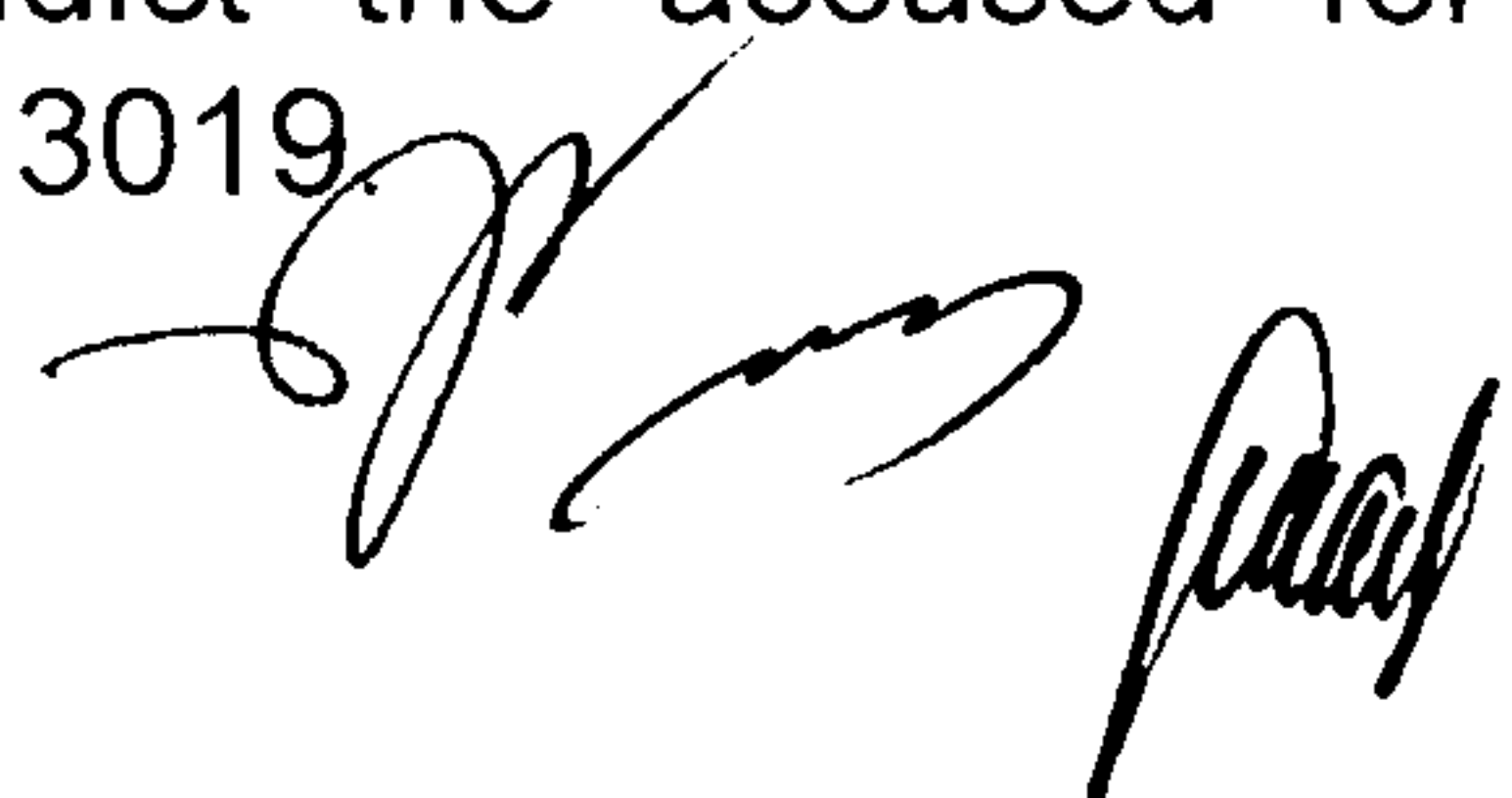
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of Deeds and the supporting documents, all of which appeared to be genuine and valid.

3. The notice of disallowance upon which the complaint was based is grounded on erroneous findings, and is devoid of factual basis.
4. He is not responsible for the discrepancy in the voucher intended for payment because he had no involvement whatsoever in the preparation of the pertinent documents, and the issuance of the certificate of availability of funds.
5. All documents involved in the transaction had been previously evaluated, reviewed and processed by other responsible officers. His act of affixing his signature was ministerial in nature and done in good faith.
6. Excluding from the criminal charge the other officers responsible for the preparation of the aforementioned documents constitutes grave abuse of discretion as it partakes the nature of "selective justice."

In its *Comment and/or Opposition (To the Accused's Verified Motion for Reconsideration [Re: Resolution dated 22 January 2016] dated 18 February 2016)*,<sup>3</sup> the prosecution counters:

1. The motion of the accused is a mere rehash or reiteration of his arguments in his *Verified Motion to Quash and Alter Date of Arraignment*<sup>4</sup> and *Reply to Opposition (Re: Motion To Quash)*,<sup>5</sup> which have already been passed upon and resolved by the Court in the *Resolution* dated January 22, 2016.
2. There is probable cause to indict the accused for violation of Sec. 3(e) of R.A. No. 3019.



<sup>3</sup> Dated February 24, 2016; pp. 360-366, Record

<sup>4</sup> Dated October 12, 2015; pp. 277-290, Record

<sup>5</sup> Dated November 18, 2015; pp. 304-318, Record

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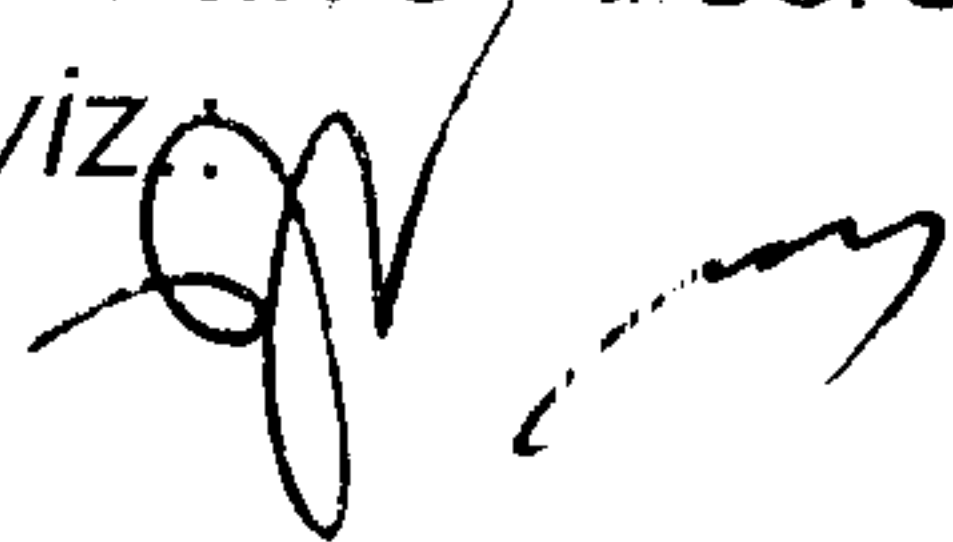
- 3. The accused acted with manifest partiality and evident bad faith by causing and/or facilitating the partial payment of the right of way claim despite having knowledge of the defect in the Special Allotment Release Order (SARO).
- 4. Because the accused proceeded with the payment, instead of having the SARO corrected, undue injury was caused to the government.
- 5. The payment of the second installment to the owners of the Lot Nos. 41 and 43 was made before the payment of the first installment. As a result of the premature payment, unwarranted benefit, advantage or preference was given to the said owners.
- 6. Indeed an exception to the rule of non-interference with the discretion of the Ombudsman to determine the existence of probable cause is where there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied. However, that exception may be invoked only in extremely meritorious cases clearly showing lack of probable cause.

The accused, in his *Reply to Opposition to Motion for Reconsideration (Re: Resolution dated 22 January 2016)*,<sup>6</sup> reiterates his arguments in his motion for reconsideration.

THE COURT'S RULING

The accused' motion is bereft of merit and should be denied.

In *People v. Borje*,<sup>7</sup> the Supreme Court held that insofar as crimes cognizable by the Sandiganbayan are concerned, the determination of probable cause is a function that belongs to the Office of the Ombudsman. As a rule, courts will not interfere with the Ombudsman's discretion to determine the existence of probable cause, viz:



<sup>6</sup> Dated March 10, 2016; pp. 371-384, Record

<sup>7</sup> G.R. No. 170046, December 10, 2014



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Verily, as far as crimes cognizable by the Sandiganbayan are concerned, the determination of probable cause during the preliminary investigation, or reinvestigation for that matter, is a function that belongs to the Office of the Ombudsman, which is empowered to determine, in the exercise of its discretion, whether probable cause exists, and to charge the person believed to have committed the crime as defined by law.

It is well settled that courts do not interfere with the discretion of the Ombudsman to determine the presence or absence of probable cause believing that a crime has been committed and that the accused is probably guilty thereof necessitating the filing of the corresponding information with the appropriate courts. This rule is based not only on respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. If it were otherwise, the functions of the Court will be seriously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped with cases if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.

x x x. Thus, unless it is shown that the Ombudsman's finding of probable cause was done in a capricious and whimsical exercise of judgment evidencing a clear case of grave abuse of discretion amounting to lack or excess of jurisdiction, this Court will not interfere with the same.

(underscoring supplied)

As this Court held in its *Resolution* dated January 22, 2016, citing *Estrada v. Desierto*<sup>8</sup> and *M.A. Jimenez Enterprises, Inc. v. Ombudsman*,<sup>9</sup> in assailing the Ombudsman's determination of probable cause, the proper remedy is a special civil action for certiorari filed before the Supreme Court, and not a motion to dismiss filed before this Court.

Furthermore, the accused raises no new arguments in his motion for reconsideration. Aside from now claiming that the Office of the Ombudsman acted with grave abuse of discretion, his arguments are a reiteration and rehash of his arguments in his *Verified Motion to*

<sup>8</sup> G.R. No. 156160, December 9, 2004

<sup>9</sup> G.R. No. 155307, June 6, 2011 (cited in *Agdeppa v. Ombudsman*, G.R. No. 146376, April 23, 2014)

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Quash and Alter Date of Arraignment and Reply to Opposition (Re: Motion To Quash), which had already been judiciously considered by the Court in its Resolution dated January 22, 2016. Hence, there is no more need to discuss the same anew.

In *Komatsu Industries (Phils.) Inc. v. Court of Appeals*,<sup>10</sup> the Supreme Court held:

In the same manner, we readily found that, despite the lengthy and repetitious submissions of petitioner in its pleadings filed with this Court as earlier enumerated, all the arguments therein are also mere rehashed versions of what it posited before respondent court. We have patiently given petitioner's postulates the corresponding thorough and objective review but, on the *real and proper issues* so completely and competently discussed and resolved by respondent court, petitioner's obvious convolutions of the same arguments are evidently unavailing. x x x

And in *Government of the United States of America v. Purganan*,<sup>11</sup> it was held:

AT BOTTOM, private respondent's Motion for Reconsideration presents no new or substantial arguments which have not been presented in his prior pleadings and which have not been taken up in our Decision. His present allegations and asseverations are mere rehashes of arguments previously presented to us or are mere restatements of the Separate and Dissenting Opinions which were already adequately discussed in our decision. In short, private respondent has not given any compelling reason to warrant a reversal or modification of our earlier rulings.

In any event, the accused has failed to convince this Court that his motion for reconsideration is impressed with merit.

**WHEREFORE**, accused Oscar D. Abundo's *Verified Motion for Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED

<sup>10</sup> G.R. No. 127682, April 24, 1998

<sup>11</sup> G.R. No. 148571, December 17, 2002

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**SARAH JANE T. FERNANDEZ**  
Associate Justice

**WE CONCUR:**

  
**AMPARO M. CABOTAJESTANG**  
Presiding Justice  
Chairperson

  
**SAMUEL R. MARTIRES**  
Associate Justice