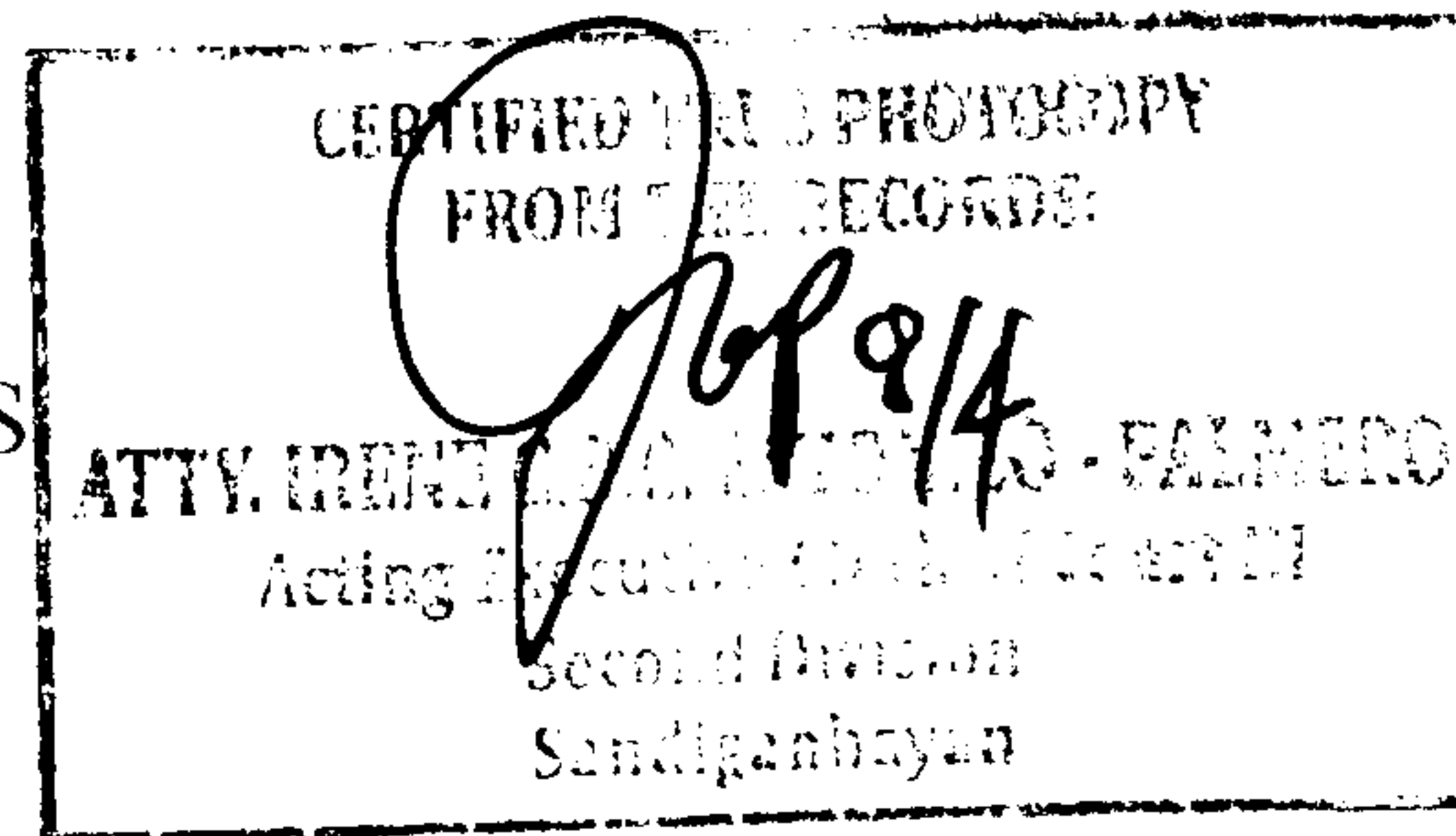


REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City



SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim. Case No. SB-15-CRM-0290
*For: Violation of Sec. 3 (e) of R.A.
No. 3019*

- versus -

PERCIANITA G. RACHO,
SVETTE S. QUIMZON,
RICARDO M. BAGASBAS,
FRANCISCO P. RACHO JR.,
MARIBETH M. ANCAJAS,
LEONARDO A. USI, EMELITA
A. ESPINA, and DORIA P.
VAPOR,

Accused.

Present:

DIAZ-BALDOS, Chairperson
INOTURAN, Associate Justice
MUSNGI, Associate Justice

July 21, 2016 *Imp*
Promulgated

RESOLUTION

MUSNGI, J.:

Before the Court is an *Omnibus Motion (to Quash Information and to Defer Arraignment)*¹ filed by the accused, Percianita G. Racho, Ricardo M. Bagasbas, Francisco P. Racho, Maribeth M. Ancajas, Leonardo A. Usi, Emelita A. Espina, and Doria P. Vapor. Accused Svette S. Quimson moved to join the other accused in the motion.²

The prosecution filed their *Opposition*³ on 26 February 2016. Consequently, the accused filed their *Reply*⁴ on 31 March 2016.

The accused base their motion to quash on the following grounds:

1. The Ombudsman misappreciated the facts in finding probable cause.

¹ *Sandiganbayan Records*, for Civil Case No. SB-15-CRM-0290, p. 201.

² *Ibid*, p. 267.

³ *Ibid*, p. 271.

⁴ *Ibid*, p. 283.

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2. There is absence of proof showing conspiracy.
3. There is inordinate delay from the filing of the *Complaint* to the *Resolution* of the Ombudsman.

Conversely, the prosecution argues that the grounds relied upon by the accused are matters of defense which are not proper grounds of a motion to quash. The prosecution countered the arguments raised by the accused in the following manner:

1. There is probable cause to charge all the accused with violation of Section 3 (e) of R.A. 3019.
2. Conspiracy exists as the acts of the accused show the planning, preparation and perpetration of the crime.
3. There was no delay from the filing of the *Complaint* to the *Resolution* of the Ombudsman because the case did not remain idle for the entire period.

Thus, the issues to be resolved in this case are (1) whether or not the accused can raise the grounds of lack of probable cause and absence of conspiracy in a motion to quash, and (2) whether or not inordinate delay exists.

*On the grounds of lack of probable cause
and absence of conspiracy*

In the case of *Gozos v. Tac-An*,⁵ the Supreme Court held that it is improper to raise an alleged lack of probable cause in a motion to quash because the same is limited to defects in the Information, to wit:

“Lack of probable cause is not one of the grounds for a motion to quash under Rule 117, §3 of the Rules of Criminal Procedure. **A motion to quash should be based on a defect in the Information which is evident on its face.** The guilt or innocence of the accused, their degree of participation, and the mitigating, aggravating, or alternative circumstances which should be appreciated are properly the subject of trial on the merits rather than a motion to quash.”⁶ (Emphasis added)

On the other hand, the absence or presence of conspiracy is a matter of defense that may only be passed upon after trial on the merits. In *Milo vs. Salanga*,⁷ the Supreme Court explained:

“We have repeatedly held that Courts, in resolving a motion to quash, cannot consider facts contrary to those alleged in the information or which do not appear on the face of the information. This is because a motion to quash is a hypothetical admission of the facts alleged in the information. **Matters of defense cannot be proved during the hearing of such a**

⁵ *Gozos vs. Tac-an*, G.R. No. 123191, 17 December 1998.

⁶ *Ibid.*

⁷ G.R. No. L-37007, 20 July 1987.

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motion, except where the Rules expressly permit, such as extinction of criminal liability, prescription, and former jeopardy.⁸ (Emphasis added)

In this case, the accused raised the following factual issues: (1) whether they had sufficient knowledge in the conduct of public bidding when they caused the award of contract to Karl-Rey Merchandise, and (2) whether they conspired and confederated with one another. Based on the above-quoted pronouncements of the Supreme Court, these factual issues should not be raised in a motion to quash. To reiterate, the subject matter of a motion to quash is limited to the validity and the sufficiency of the Information.

On the ground of inordinate delay

Accused argues that there is a violation of their right to speedy disposition of their case because there is an unexplained delay from the filing of the *Complaint* to the *Resolution* of the Office of the Ombudsman (Ombudsman). Based on the records of the case, the following dates are uncontroverted:

19 July 2004	Commission on Audit Audit Order Memorandum No. 2004-11;
19 Jan 2005	Laura Acuña filed a complaint with the Presidential Anti-Graft Commission;
20 Jan 2010	Affidavit of Marco Anacleto P. Buena, Graft Investigation and Prosecution Officer II/Chief-Complaints Unit of the Office of the Ombudsman in Mindanao (OMB-Min) that initiated the formal preliminary investigation of the OMB-Min against the accused;
24 Aug 2010	Accused Svette S. Quimzon (Quimzon) filed a Counter-Affidavit with the OMB-Min;
01 Sept 2010	Accused Ricardo M. Bagasbas filed a Counter-Affidavit with the OMB-Min;
21 Sept 2010	All other accused except for Quimzon filed a verified Joint Counter-Affidavit with the OMB-Min;
3 Feb 2015	Joint Resolution finding probable cause against the accused; and
25 Nov 2015	Information is filed with the Sandiganbayan.

⁸ *Supra* note 5.



The Audit Order Memorandum (AOM) issued by the Commission on Audit in July 2004 already disclosed the alleged irregularities in the bidding and awarding of the project. This AOM was the subject of the *Complaint* filed by Laura Acuña but it was only on 20 January 2010 when the case was formally filed with the Ombudsman. Thereafter, it took the Ombudsman another five (5) years to issue a Joint Resolution finding probable cause against the accused.

In their *Opposition*, the prosecution contends that there was no violation of the right to speedy disposition because the case did not remain idle during the entire period. The prosecution attributes the delay to the fact-finding investigation conducted by the Office of the Ombudsman in Mindanao OMB-Min prior to the preliminary investigation. It also blames the accused in contributing to the delay for their failure to file their position papers during the preliminary investigation. Lastly, it justifies the delay on the basis of Section 6, Rule III of the Ombudsman Rules, which requires among others that the Directors, Assistant Ombudsmen and the Deputy Ombudsmen must review the proposed decision of the hearing officer.

In reply, the accused assert that the Ombudsman should not fault them for their failure to file their position papers because the same is not a mandatory requirement in the preliminary investigation. The accused argue that based on the Ombudsman Rules of Procedure, the case should have already been deemed submitted for resolution after they filed their Joint Counter-Affidavits on September 2010.

In the case of *Corpuz vs. Sandiganbayan*,⁹ the Supreme Court discussed the right of the accused to speedy disposition of cases and the correlative obligation of the Court to protect such right as follows:

“The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts to proceed with reasonable dispatch in the trial of criminal cases. Such right to a speedy trial and a speedy disposition of a case is violated only when the proceeding is attended by vexatious, capricious and oppressive delays. The inquiry as to whether or not an accused has been denied such right is not susceptible by precise qualification. The concept of a speedy disposition is a relative term and must necessarily be a flexible concept.

While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public

⁹ G.R. No. 162214, 11 November 2004.

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justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.

A balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an *ad hoc* basis.

In determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, **four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant.** Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.

Delay is a two-edge sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden. The Constitution and the Rules do not require impossibilities or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such right shall deprive the State of a reasonable opportunity of fairly prosecuting criminals. As held in *Williams v. United States*, for the government to sustain its right to try the accused despite a delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice.

Closely related to the length of delay is the reason or justification of the State for such delay. Different weights should be assigned to different reasons or justifications invoked by the State. For instance, a deliberate attempt to delay the trial in order to hamper or prejudice the defense should be weighted heavily against the State. Also, it is improper for the prosecutor to intentionally delay to gain some tactical advantage over the defendant or to harass or prejudice him. On the other hand, the heavy case load of the prosecution or a missing witness should be weighted less heavily against the State. Corollarily, Section 4, Rule 119 of the Revised Rules of Criminal Procedure enumerates the factors for granting a continuance."¹⁰ (Emphasis supplied and citations omitted)

Hence, in determining whether the defendant has been denied his right to a speedy disposition of a case, the following factors should be taken into

¹⁰ *Supra* note 7.

account: (1) length of delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) prejudice to the defendant.

Applying the aforesaid factors of delay to this case, the Court holds that the rights of all the accused to a speedy disposition of their criminal case have been violated.

First is the length of delay. From the time the *Complaint* was filed with the Ombudsman in 2005, it took the Ombudsman five (5) years to conduct the fact-finding investigation before it formally filed the formal criminal and administrative charges. From the filing of these charges, the Ombudsman took another five (5) years and ten (10) months to conduct the preliminary investigation before the *Information* was filed with the Sandiganbayan. Thus, it took the Ombudsman a period of ten (10) years and ten (10) months from the filing of the *Complaint* to the filing of the *Information*.

Second is the reason for the delay. As discussed above, two periods of delay are present in this case – during the fact-finding investigation, and during the preliminary investigation.

The Ombudsman did not offer any explanation why it took the fact-finding investigation five (5) years from the filing of the complaint to decide to file the formal charges. The Ombudsman impresses upon this court that only the time spent in the preliminary investigation, excluding the fact-finding investigation, should be counted in determining the length of delay.

However, in the case of *People vs. Sandiganbayan, Hernando Perez, et al.*,¹¹ the Supreme Court already ruled that the fact-finding investigation is included in the determination of the duration of delay, to wit:

“The guarantee of speedy disposition under Section 16, Article III of the Constitution applies to all cases pending before all judicial, quasi-judicial or administrative bodies. Thus, the fact-finding investigation should not be deemed separate from the preliminary investigation conducted by the Office of the Ombudsman if the aggregate time spent for both constitutes inordinate and oppressive delay in the disposition of any case.”¹²

As to the preliminary investigation, the Ombudsman explains that the case was not idle for the entire period. The accused allegedly contributed to the delay because they were required to file position papers but failed to do so.

A position paper is not mandatory in the preliminary investigation of criminal cases. The Rules of Procedure of the Office of the Ombudsman¹³

¹¹ G.R. Nos. 188165 and 189063, December 11, 2013.

¹² *Ibid.*

¹³ Section 4, Rule II of the Rules of Procedure of the Office of the Ombudsman, Administrative Order No. 7.

provides that the Ombudsman is also governed by the Revised Rules of Criminal Procedure under the Rules of Court. Thus, if there is no hearing, the investigating officer should resolve the complaint either after submission of the counter-affidavits and other documents, or from the expiration of the period for their submission. Thus, the delay should be counted from the time the accused filed their respective counter-affidavits, *i.e.* from 21 September 2010 or five (5) years and (2) months.

The prosecution also failed to show any special circumstance in this case that would justify the delay in the resolution of the complaint. It bears stressing that all the accused were residents of the same municipality. Likewise, this case involves a single transaction on the project of purchase and installation of fire hydrants in the municipality.

Taking into consideration the above discussion, the total unexplained delay of the Office of the Ombudsman in resolving the complaint is ten (10) years and two (2) months.

Third is the assertion by the accused of their right to speedy disposition of cases. In this case, the accused raised the issue of delay for the first time in their *Joint Motion for Reconsideration* on the finding of probable cause by the Ombudsman. This assertion of their right to speedy disposition is timely because the accused could not have done it at an earlier time.

In the case of *Coscolluela vs. Sandiganbayan*,¹⁴ the Supreme Court, citing *Barker v. Wingo*,¹⁵ ruled that the respondents in a preliminary investigation are not required to follow up on the prosecution of their case, thus:

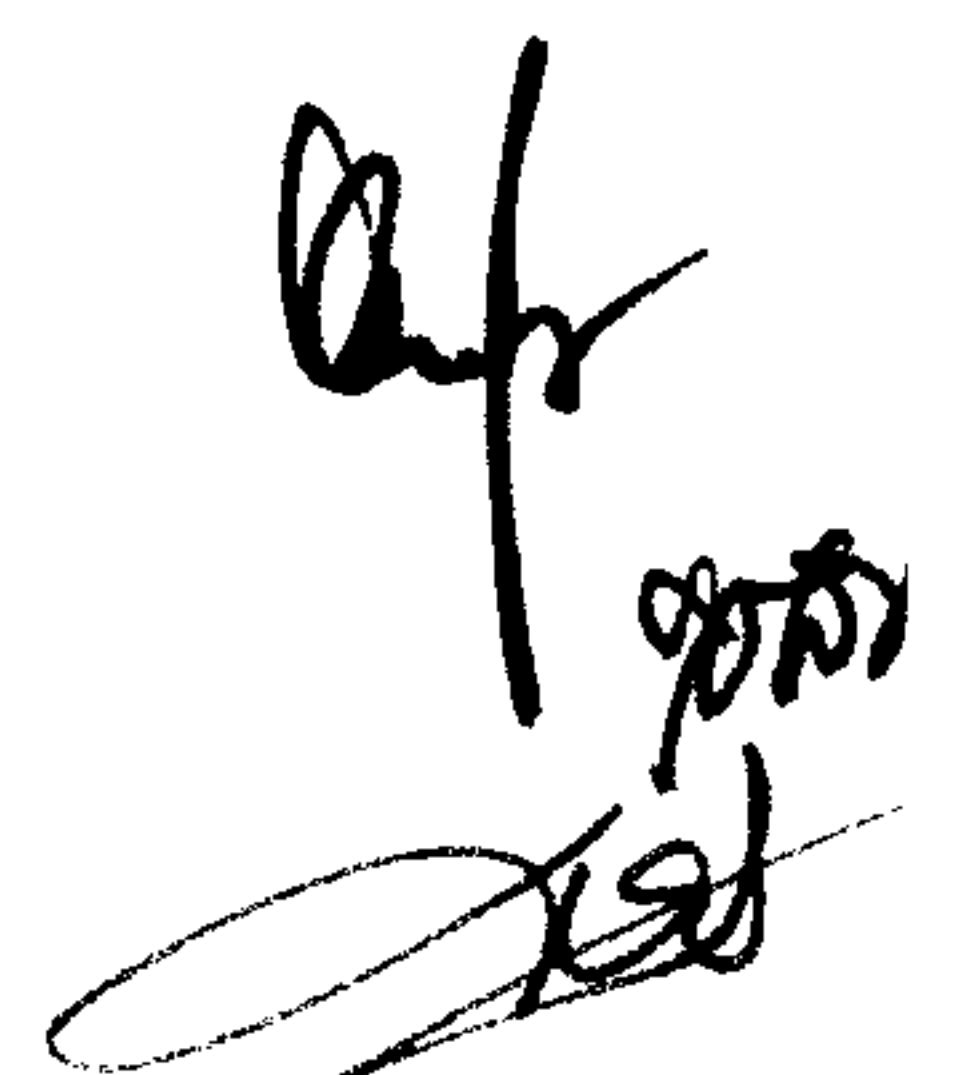
“Being the respondents in the preliminary investigation proceedings, it was not the petitioners’ duty to follow up on the prosecution of their case. Conversely, it was the Office of the Ombudsman’s responsibility to expedite the same within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it. As pronounced in the case of *Barker v. Wingo*:

A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process.” (citation omitted).

Fourth is the prejudice caused to the accused. The passage of time in the conduct of the investigations weakens the defenses of the accused. Possible witnesses may not be able to recall accurately the specific events of the past. There is also an increase in the risk of losing important pieces of evidence.

¹⁴ G.R. No. 191411, July 15, 2013.

¹⁵ 407 U.S. 514 (1972).

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Generally, a pending and prolonged investigation against the accused causes anxiety, hostility, additional expenses, and restriction on their person and well-being.

As held *Coscolluela*,¹⁶ it is the duty of the Ombudsman to act with reasonable dispatch on the cases entrusted to it, thus:

“Verily, the Office of the Ombudsman was created under the mantle of the Constitution, mandated to be the ‘protector of the people’ and as such, required to ‘act promptly on complaints filed in any form or manner against officers and employees of the Government, or of any subdivision, agency or instrumentality thereof, in order to promote efficient service.’ This great responsibility cannot be simply brushed aside by ineptitude. Precisely, the Office of the Ombudsman has the inherent duty not only to carefully go through the particulars of case but also to resolve the same within the proper length of time. Its dutiful performance should not only be gauged by the quality of the assessment but also by the reasonable promptness of its dispensation.

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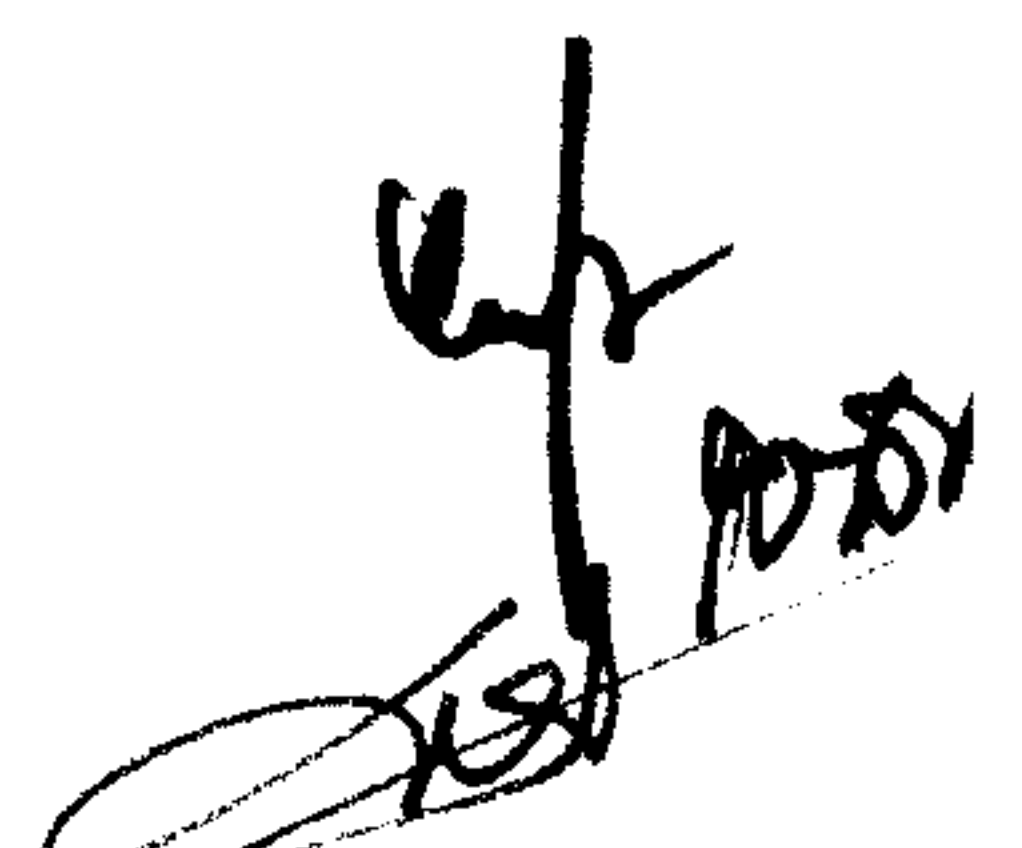
Lest it be misunderstood, the right to speedy disposition of cases is not merely hinged towards the objective of spurring dispatch in the administration of justice but also to prevent the oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite time. Akin to the right to speedy trial, its "salutary objective" is to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. This looming unrest as well as the tactical disadvantages carried by the passage of time should be weighed against the State and in favor of the individual.”

Based on the foregoing, it is evident that the constitutional rights of the accused to speedy disposition of cases has been violated due to the delay in the investigations conducted by the Ombudsman. The long period of time that the Ombudsman allowed to elapse before the Information was filed in this Court is unjustified.

Nevertheless, the dismissal of the criminal case against the accused does not necessarily mean that they are entirely free from any civil liability. Applying the ruling in *Coscolluela*, since this case is dismissed prior to the presentation of the evidence of either the prosecution or the defense, the Municipality of Buena Vista, Agusan del Norte is not precluded from instituting a subsequent civil case to recover the possible damages it obtained from the acts or omissions complained of.

WHEREFORE, in light of the foregoing, the Court hereby **GRANTS** the prayer in the *Omnibus Motion* filed by the accused for the dismissal of this

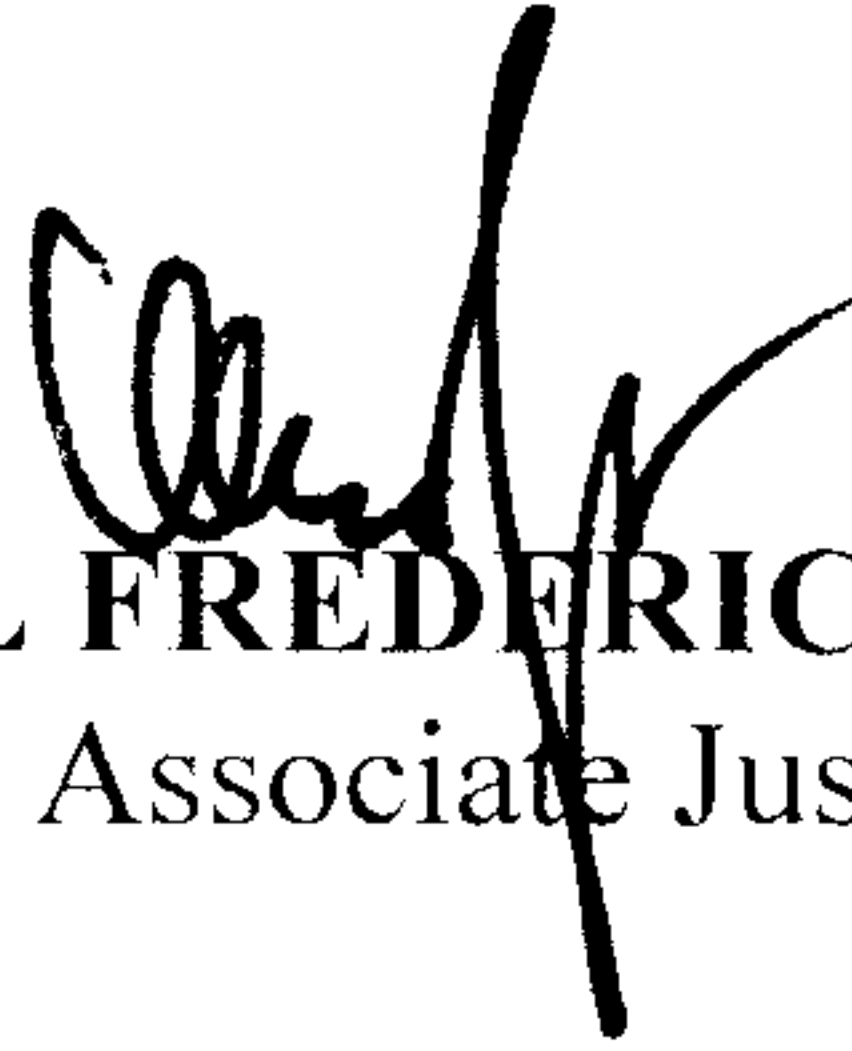
¹⁶ *Supra* note 9.



case on the ground of violation of the Constitutional right to speedy disposition of cases. Accordingly, this case is **DISMISSED**.

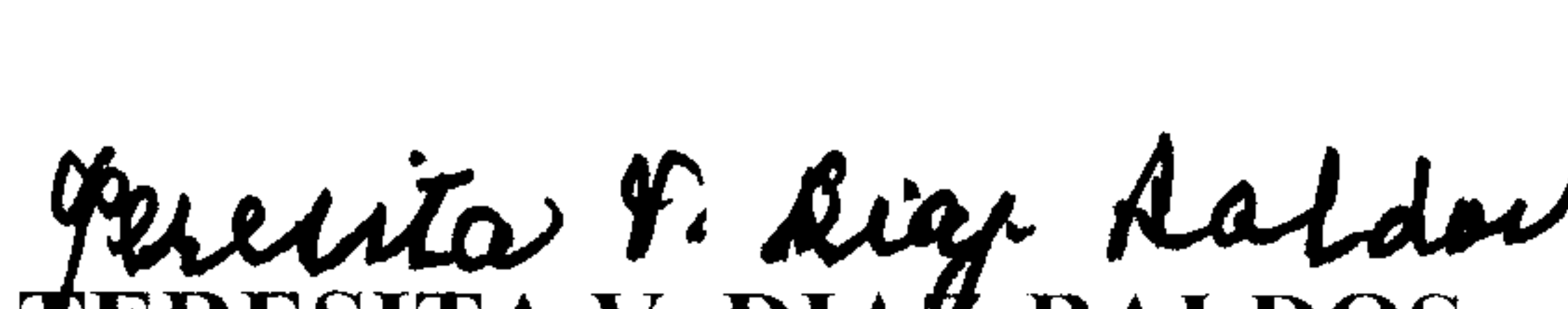
SO ORDERED.

Quezon City, Philippines.

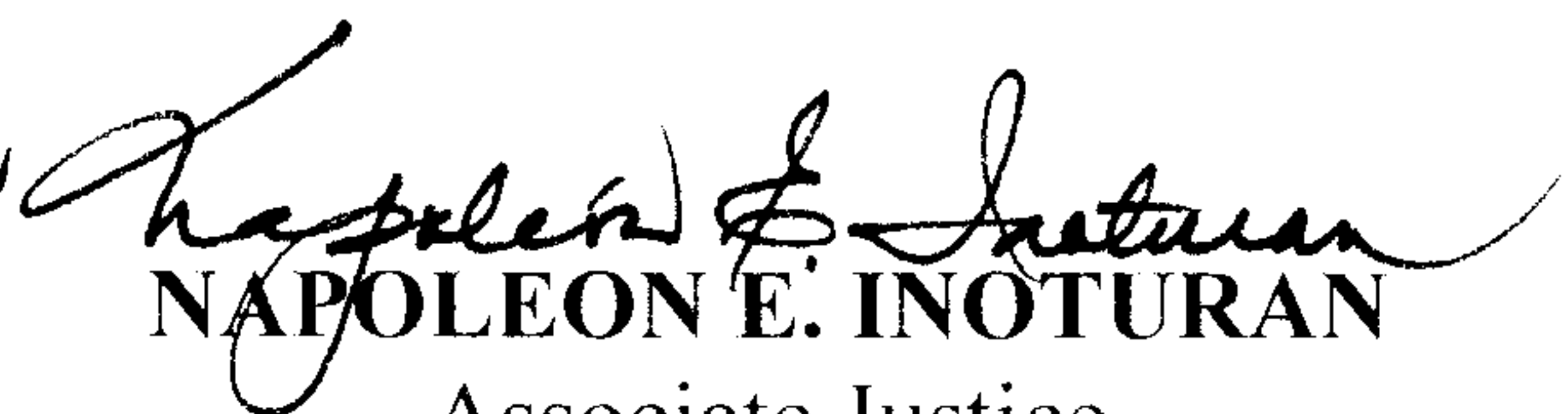


MICHAEL FREDERICK L. MUSNGI
Associate Justice

WE CONCUR:



TERESITA V. DIAZ-BALDOS
Associate Justice
Chairperson



NAPOLEON E. INOTURAN
Associate Justice