



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
 Quezon City

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, **CASE NO. SB-15-CRM-0123**
Plaintiff, **to SB-15-CRM-0125**
 For: Violation of Sec. 1 in relation
 to Sec. 5 of RA 9649

- versus -

Present:

EUGENIO A. INSIGNE, ET AL.,
Accused.

DE LA CRUZ, J., Chairperson
CRUZ, J.
MUSNGI*, JJ.

Promulgated on:

October 6, 2016 *[Signature]*

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RESOLUTION

DE LA CRUZ, J.

This resolves accused Noel K. Felongco's *Motion to Dismiss and/or Motion to Quash (The Information in the Crim. Case No. SB-15 CRM-0124; 0123 and 0125)*, dated August 8, 2016; the prosecution's *Comment/Opposition (to accused Noel K. Felongco's Motion to Dismiss and/or Motion to Quash dated 08 August 2016)*, dated August 25, 2016; accused Felongco's *Reply*, dated September 13, 2016 and his *Supplemental to Accused Reply*, dated September 22, 2016.

In his motion to dismiss/quash, accused Felongco contends, among others, that his "rights to due process and a speedy disposition of the cases against him have been violated by the vexatious, excessive and capricious delays, when it took the Office of the Ombudsman **four (4) years and eight (8) months** to complete the preliminary investigation proceedings. Such inordinate delay, according to him, warrants the dismissal of the same. The accused-movant also pointed out that the Court had already dismissed these cases against his other co-accused on

*Sitting as Special Member of the First Division as per Administrative Order No. 204-2016, dated June 29, 2016.

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the same ground. Considering that he and his other co-accused are similarly situated, the accused-movant prays that as to him, the cases should also be dismissed.

In its comment/opposition, the prosecution disputes that the accused-movant's right to speedy disposition of his case was violated, claiming that there was no inordinate delay in the conduct of the preliminary investigation, arguing that a mere mathematical reckoning of the time involved is not sufficient because other factors, such as the reason for the delay, the assertion or failure to assert the accused's right, and the prejudice caused by the delay, should also be considered. The prosecution avers that the accused-movant has failed to prove the aforesaid other factors.

In his reply and supplemental reply, the accused-movant avers that the arguments raised by the prosecution in its comment/opposition are the same arguments contained in its comment/opposition to the motion to dismiss filed by his other co-accused, which the Court already passed upon and considered when it dismissed these cases against them.

Accused Felongco's motion to dismiss/quash is impressed with merit.

It is a matter of record that on July 30, 2015, accused Jeanne Anne Moendeg Zoilo filed a *Motion to Dismiss and/or Motion to Quash*, dated July 28, 2015, while accused Eugenio Insigne, Janette Serrano Reiland and Jeanne Anne Moendeg Zoilo filed a *Joint Motion to Dismiss and/or Motion to Quash*, dated August 4, 2015, on August 5, 2015. Both motions prayed for the dismissal of these cases as to them on the ground, among others, that their rights to due process and speedy disposition of their cases have been violated by the vexatious, oppressive and capricious delays present in the proceedings before the Office of the Ombudsman. The prosecution filed its *Comment/Opposition*, dated September 16, 2015, to the said motions, among others, disputing the accused's contentions, arguing that a mere mathematical reckoning of the time involved is not sufficient as other factors, such as the reasons for the delay, the assertion or failure to assert by the accused of the right, and the prejudice caused by the delay, should likewise be considered. In its *Resolution*, dated October 15, 2015, this Court found meritorious the motions of the other accused and ordered the dismissal of these cases against them. The said resolution reads:

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This resolves the *Motion to Dismiss and/or Motion to Quash (The Informations All Dated 31 July 2013)* dated July 28, 2015, of accused Jeanne Anne Moendeg-Zoilo; the *Joint Motion to Dismiss and/or Motion to Quash (The Informations All Dated 31 July 2013)* dated August 4, 2015, of accused Eugenio A. Insigne, Janette Serrano-Reisland and Jeanne Anne Moendeg-Zoilo; the *Comment/Opposition (To Accused Insigne, Reisland and Zoilo's Joint Motion to Dismiss and/or Motion to Quash the Informations All Dated 31 July 2013)* dated September 16, 2015, of the prosecution; the *Reply* dated September 21, 2015, of accused Eugenio A. Insigne, Janette Serrano-Reisland and Jeanne Anne Moendeg-Zoilo; and the prosecution's *Rejoinder* dated September 21, 2015.

In support of their motions, accused-movants claim that the unjustified delay in the filing of the Informations in these cases on **May 28, 2015**, or **more than four (4) years and eight (8) months** after the complaints in these cases were filed on **November 25, 2010**, by City Mayor Darlene Magnolia R. Antonino-Custodio of General Santos City, exacerbated by the fact that the said filing was made **two years and one month** reckoned from **April 15, 2013**, when the Resolution of the City Prosecutor's Office of General Santos City recommending the filing of these cases was approved by Ombudsman Carpio Morales, their rights to due process and a speedy disposition of the cases against them have been violated. They assert that the unjustified length of time that it took the Office of the Ombudsman (OO) to resolve these cases and the concomitant prejudice that the delay has caused are clear violations of their constitutional right to due process and speedy disposition of their cases.

In its comment/opposition, the prosecution maintains that the right to speedy disposition of cases is deemed violated only when the proceedings are attended by vexatious, capricious and oppressive delays. Since it took the OO only **three (3) years and six (6) months** from the time it received the Resolution of the Department of Justice on **November 11, 2011**, to file these cases in Court on **May 28, 2015**, such delay can hardly be considered as capricious, vexatious or oppressive because, aside from the fact that OO is besieged with many cases, the resolution of each case goes through a very sensitive and arduous process to ensure that every case is judiciously reviewed. In support thereof, it invoked the ruling of the Supreme Court in *Dela Peña v. Sandiganbayan* (G.R. No. 144542, June 29, 2001, 360 SCRA 478) wherein it was ruled that "(t)he concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case. Hence, the doctrinal rule is that in the determination of whether that right has been violated, the

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factors that may be considered and balanced are as follows: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert by the accused; and (4) the prejudice caused by the delay."

Moreover, the prosecution claims that a mere mathematical computation of the time involved is insufficient to determine whether the right to speedy trial has been violated and that several factors, including the assertion of such right, must be weighed and balanced. In the present case, the accused-movants never asserted their right to speedy disposition of the cases and it is only now, after an adverse resolution and filing of these cases before the Court, that they invoked such right. This inaction on the part of the accused-movant constitutes a waiver of their right to speedy disposition of their cases. And even assuming that there is indeed delay in the disposition of these cases, such delay, however, does not weigh more than the right of the State to prosecute and pursue these criminal cases. Thus, the Supreme Court, in *Jacob v. Sandiganbayan* (*Jacob v. Sandiganbayan*, G.R. No. 162206, November 17, 2010), while recognizing the right of the accused to speedy trial and disposition of cases, likewise gave paramount importance to the right of the State to pursue criminal cases, and in the process, restore the people's confidence in the administration of justice.

DISCUSSION AND RULING

The records show that on **November 25, 2010**, then City Mayor Darlene R. Antonino-Custodio of General Santos City, filed before the City Prosecutor's Office three (3) separate complaints charging the herein accused-movants Commissioners of the National Commission on Indigenous People (NCIP) with violation of Section 1 of RA No. 9649 otherwise known as *The Charter of General Santos City* for issuing without prior notice to and concurrence of the City of General Santos, three (3) separate Certificates of Ancestral Land Titles or CALTs covering tracts of land to the Fotus Calon clan, Bansalao-Banisil family and Bandigan-Ubeda (Palacios) family.

On **September 14, 2011**, after preliminary investigation, the City Prosecutor's Office issued a Resolution recommending that "*upon approval of this resolution, an information for violation of Section 1 of R.A. 9649 be filed in the Sandiganbayan against ATTY. EUGENIO A. INSIGNE, ROLANDO M. RIVERA, RIZALINO G. SEGUNDO, ATTY. NOEL N. FELONGCO, JANNETTE SERRANO-REISLAND, FELECITO L. MASAGNAY, MIGUEL IMBING SIA APOSTOL, MS. JEANNE ANNE M. ZOILO.*" The records of these cases were forwarded to and received by the OO on **November 11, 2011**.

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And on **May 28, 2015**, the OO filed before the Court the three (3) Informations charging the accused-movants and their co-accused with three (3) counts of violation of Section 1, in relation to Section 5 of RA No. 9649, otherwise known as *The Charter of the City of General Santos*.

Based on the foregoing antecedent facts, and pursuant to the latest jurisprudence on the matter as hereinafter discussed, the Court finds that the period of **four (4) years and eight (8) months** after the complaints in these cases were filed on **November 25, 2010, to May 28, 2015**, that it took the OO to conduct and terminate the preliminary investigation of these cases constitutes inordinate delay which is in violation of the constitutional right of the accused-movants to a speedy disposition of the cases against them.

The prosecution, however, claims that while it took **four (4) years and eight (8) months** from the filing of the complaints in these cases on **November 25, 2010**, to the filing of the Informations on **May 28, 2015**, the OO took only **three (3) years and six (6) months** from **November 11, 2011**, when it received the Resolution of the City Prosecutor for review, to file these cases in Court on **May 28, 2015**. Hence, such delay, if any, can hardly be considered as capricious, vexatious or oppressive because, aside from the fact that OO is besieged with many cases, the resolution of each case goes through a very sensitive and arduous process to ensure that every case is judiciously reviewed.

The Court finds that the attempt of the prosecution to justify the delay is an indication, nay an admission, that accused-movants' right to speedy disposition of cases has been violated. In the hierarchy of rights, the Bill of Rights takes precedence over the right of the State to prosecute, and when weighed against each other, the scales of justice tilt towards the former (*Allado v. Diokno*, 232 SCRA 192, 210 [1994]). The preliminary investigation is only deemed terminated when the Resolution of the City Prosecutor's Office finding probable cause was finally approved by the OO and the informations were filed with this Court on **May 28, 2015**. Hence, regardless of the reason for the delay which was not shown to be due to any wrongdoing on the part of the accused-movants, there is sufficient basis to determine that there was inordinate delay in the disposition of these cases which prejudiced the constitutional right of the accused-movants.

Thus, in several cases decided by the Supreme Court, it was ruled that a delay of close to a period of three (3) years (*Tatad v. Sandiganbayan*, 159 SCRA 70 [1988]), or four (4) years (*Duterte v. Sandiganbayan*, 289 SCRA 723 [1998]), or six (6) years (*Angchangco, Jr. v. Ombudsman*, 268 SCRA 301 [1997]; *Cervantes v. Sandiganbayan*, 307 SCRA 149 [1999]; *Roque v. Office of the Ombudsman*, 307 SCRA

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104 [1999]), for the Office of the Ombudsman to conduct and terminate the preliminary investigation of cases filed before it, to be inordinate, unreasonable and unjustified, and hence, constitutes a violation of the constitutionally guaranteed right of the accused to a speedy disposition of cases.

The case of *Rafael L. Coscolluela v. Sandiganbayan (First Division)*, G.R. Nos. 191411 and 191871, July 15, 2013, is very instructive. Thus, the Supreme Court said –

“(V)erily, 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 ‘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 a 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. Thus, barring any extraordinary complication, such as the degree of difficulty of the questions involved in the case or any event external thereto that effectively stymied its normal work activity – any of which have not been adequately proven by the prosecution in the case at bar – there appears to be no justifiable basis as to why the Office of the Ombudsman could not have earlier resolved the preliminary investigation proceedings against the petitioners.”

Besides, the Court cannot see any valid or justifiable reason why the OO failed to resolve the preliminary investigation of these cases without unnecessary delay as there appears no difficult questions of law involved therein.

The Court likewise cannot give merit to the prosecution’s claim that because of the failure of the accused-movants to invoke their constitutional rights to speedy of disposition of cases during the preliminary investigation of these cases, and it is only now, after an adverse resolution and filing of these cases, that they invoke said right, the accused-movants are deemed to have waived such right.

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On this point, it bears stressing that it is not the duty or obligation of the accused-movants to follow-up their cases on the prosecution because it is the latter's responsibility to expedite the resolution of the cases within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it. Thus, in *Cascolluela v. Sandiganbayan* (G.R. Nos. 191411 & 191871, July 15, 2013), the Supreme Court stressed in no uncertain terms that

*"(B)eing 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 (407 U.S. 514 [1972])**:*

'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.'

The Court cannot also look with favor the prosecution's assertion that there is no inordinate delay because it took the OO a period of only **three (3) years and six (6) months** from **November 11, 2011**, when it received the Resolution of the City Prosecutor, to **May 28, 2015**, when it filed these cases in Court. On the contrary, such length of time to review and file these cases, notwithstanding the fact that there is no more hearing or presentation of evidence, only underscores the inordinate delay in the filing of the subject informations.

Moreover, with such lengthy delay in the conduct of the preliminary investigation proceedings against them, the Court cannot overlook the prejudice and tactical disadvantages that are carried by the passage of time upon the ability of the accused-movants to adequately prepare for their defense.

As further stated by the Supreme Court, *"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 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 anxiety and expense of litigation or, if otherwise, of having his guilt determined within shortest possible time compatible with the*

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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 (Id, citing Corpuz v. Sandiganbayan, 442 SCRA 296, 312 [2004]; Mari v. Gonzales, 657 414 [2011]).

Thus, the Court believes and so holds that the constitutional right of the accused-movants to a speedy disposition of their cases had been seriously infringed or encroached upon due to the unreasonable length of time that the prosecution took to complete its preliminary investigation in these cases. Hence, these cases should be dismissed for being in violation of the constitutional right of the accused-movants to a speedy disposition of their cases as provided under Section 16, Article III of the 1987 of the Constitution which provides as follows –

“SEC. 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.”

Be that as it may, while the dismissal of these criminal cases against the accused-movants results in their acquittal, this dismissal/resolution does not in any way rule on or affect the legality or illegality of the acts of the herein accused-movants Commissioners of the NCIP in issuing three (3) separate Certificates of Ancestral Land Titles or CALTs covering tracts of land to the Fodus Calon clan, Bansalao-Banisil family and Bandigan-Ubeda (Palacios) family, subject matters of these cases vis-à-vis the provisions of Section 1 in relation to Section 5 of RA No. 9649 otherwise known as *The Charter of General Santos City*.

Finally, the Court will not dwell anymore on the other issue/s raised and at this time on the *Urgent Motion to Withdraw Informations (SB-15-CRM-123 & SB-15-CRM-0125)* that was filed by the prosecution nor await comment by the private complainant thereon, as these matters have been rendered moot and academic against accused-movants by virtue of this Resolution.

WHEREFORE, the respective *Motions to Dismiss and/or to Quash (The Informations all dated 31 July 2015)* of accused-movants Eugenio A. Insigne, Jannette Serrano-Reisland, and Jeanne Anne Moendeg Zoilo, are **GRANTED** and these cases against them are **DISMISSED** for violation of their constitutional right to a speedy disposition of their cases. With respect to the other accused, namely, **ROLANDO M. RIVERA, RIZALINO G. SEGUNDO, NOEL K. FELONGCO, FELECITO L. MASAGNAY, and MIGUEL IMBING SIA-APOSTOL**, who are still at-large, these cases are ordered **ARCHIVED** without prejudice to

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their revival and/or whatever disposition this Court will render on the aforesaid Motion to Withdraw Informations of the prosecution.

The hold-departure order issued by the Court against the accused-movants in these cases are hereby **LIFTED** and **SET ASIDE**, and the respective cash bonds posted by them for their provisional liberty are ordered **RELEASED**, subject to the usual accounting and auditing procedures.

SO ORDERED.

Considering that accused Felongco, and accused Insigne, Serrano-Reisland and Moendeg-Zoilo, who are all accused in these cases and are similarly situated, the Court's ruling in its *Resolution*, dated October 15, 2015, which dismissed these cases as against the latter accused, should likewise apply to accused Felongco. In other words, these cases should also be dismissed as against accused Felongco, on the ground that he was deprived of his right against the speedy disposition of his case.

Although the criminal liability of accused Felongco may be considered extinguished with the dismissal of these cases against him, as ruled in *Coscolluela*,¹ the aggrieved party may still go after him with regard to any civil liability that may arise from the malfeasance. Thus:

While the foregoing pronouncement should, as a matter of course, result in the acquittal of the petitioners, it does not necessarily follow that petitioners are entirely exculpated from any civil liability, assuming that the same is proven in subsequent case which the Province may opt to pursue. Consequently, absent this pronouncement, the Province is not precluded from instituting a subsequent civil case based on the delict if only to recover the amount of P20,000.00 in public funds attributable to petitioner's alleged malfeasance.

This Court deems it unnecessary to resolve the other issues raised in the pleadings of the parties, and the prosecution's *Urgent Motion to Withdraw Informations* in Criminal Case No. SB-15-CRM-123 and No. SB-15-CRM-125, nor await the private complainant's comment thereon, as the same have been rendered moot and academic because of this resolution.

¹701 SCRA 189, cited in the Court's Resolution, dated October 15, 2015

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WHEREFORE, accused Felongco's *Motion to Dismiss and/or Motion to Quash (The Information in the Crim. Case No. SB-15 CRM-0124; 0123 and 0125)*, dated August 8, 2016, is hereby **GRANTED**, and these cases against him is **DISMISSED** for violation of his right to speedy disposition of his case.

The hold-departure order issued by the Court against accused Felongco by reason of these cases are hereby **LIFTED** and **SET ASIDE**, and the cash bond posted by him for his provisional liberty is ordered **RELEASED**, subject to the usual accounting and auditing procedures.

SO ORDERED.


EFREN N. DE LA CRUZ
Chairperson/Associate Justice

WE CONCUR:


REYNALDO P. CRUZ
Associate Justice


MICHAEL FREDERICK L. MUSNGI
Associate Justice