

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

SPECIAL THIRD DIVISION

PEOPLE OF THE
PHILIPPINES,

Plaintiff,

- versus -

Criminal Case No. SB-16-
CRM-0558-0571

For: Violation of Sec. 8 in relation
to Sec. 11 of Republic Act No.
6713

Present:

FROILAN
KAMPITAN,

REGUENDIN

Accused.

CABOTAJE-TANG, P.J.,
Chairperson,
FERNANDEZ, J. and
TRESPESES,¹ J.

Promulgated:

NOVENA R. PANGALAN

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RESOLUTION

CABOTAJE-TANG, P.J.:

For resolution is accused Froilan Reguendin Kampitan's
Motion to Quash Information dated September 23, 2016.²

¹ Sitting as a special member per Administrative Order No. 227-2016 dated July 26, 2016
² pp. 143-152, Record

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In his *motion*, accused-movant Kampitan prays that the *Informations*³ against him be quashed on the ground that the prosecution deprived him of due process of law and his constitutional right to a “*speedy disposition of cases*” has been violated.⁴

To support his prayer, the accused-movant avers that there was a vexatious, capricious and oppressive delay in the filing of the *Informations* against him by the Office of the Ombudsman.⁵ Accused Kampitan narrates the following facts immediately preceding the filing of the *Informations* before the Sandiganbayan, to wit:

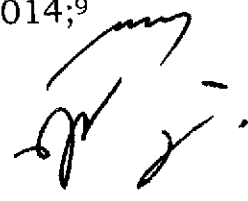
A criminal complaint was filed by a private complainant, **FIO Office of the Ombudsman** on 26 November 2010 against herein accused-movant pertaining to his failure to declare in his SALNs certain business interests in violation of Section 8 in relation to Section 11 of R.A. No. 6713;⁶

On 21 July 2011, an *Order* was issued by the Office of the Ombudsman requiring the accused-movant to submit his *counter-affidavit*;⁷

On 19 September 2011, accused-movant filed his *counter-affidavit*;⁸

On 13 November 2014, a *Resolution* was issued by Graft Investigator Joseph O. Menzon finding probable cause to indict accused-movant for 14 counts of violation of Section 8 of R.A. No. 6713. Said *Resolution* was reviewed by Director Moreno F. Generoso (PAIB-B) on 13 November 2014 and was subsequently approved by the Honorable Ombudsman on 20 November 2014;⁹

³ pp. 1-3, Record
⁴ p. 143, Record
⁵ p. 144, Record
⁶ p. 145, Record
⁷ *id, id*
⁸ *id, id*
⁹ *id, id*



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On 10 December 2014, accused-movant received a copy of the said *Resolution* dated 13 November 2014. On 15 December 2014, accused-movant filed a *Motion for Extension of Time of fifteen (15) days* within which to file his *Motion for Reconsideration*, or until 5 January 2015 which is the next working day after 30 December 2014, considering that 30 December 2014 is a non-working holiday. On 5 January 2015, accused-movant filed his *Motion for Reconsideration*;¹⁰

On 16 February 2015, an *Order* was issued by the Office of the Ombudsman denying the accused-movant's *Motion for Extension of time* at the same time dismissing the *Motion for Reconsideration* stating as reason that the *Motion* was filed out of time;¹¹

On 24 August 2016 the fourteen [14] *Informations* subject of the instant case were filed before the Sandiganbayan, and;¹²

Accused movant voluntarily surrendered and posted bail on 7 September 2016. His arraignment was set on 28 September 2016 at 1:30 in the afternoon. ¹³

Accused Kampitan asserts that by mere mathematical computation, there is a considerable length of delay in resolving the complaint filed before the Office of the Ombudsman which violated his constitutional right to a "*speedy disposition of cases.*"¹⁴ According to the accused, the preliminary investigation proceedings against him was terminated only when the *Informations* were filed before the Court on August 24, 2016, or five (5) years and nine (9) months from the filing of the complaint before the Office of the Ombudsman on November 26, 2010.¹⁵

¹⁰ p. 145, Record

¹¹ *id, id*

¹² p. 146, Record

¹³ *id, id*

¹⁴ p. 147, Record

¹⁵ *id, id*

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The accused-movant cites the case of **Tatad v. Sandiganbayan**,¹⁶ wherein the Supreme Court dismissed a case due to the long delay in the termination of the preliminary investigation by the Tanodbayan and held that such delay is in violation of the constitutional right of the accused to due process and speedy disposition of cases.¹⁷

Accused Kampitan likewise invokes the cases of **Cervantes v. Sandiganbayan**,¹⁸ **Angchangco Jr. v. Office of the Ombudsman**,¹⁹ **Roque v. Office of the Ombudsman**,²⁰ **Coscolluela v. Sandiganbayan**,²¹ and **People v. Sandiganbayan**,²² wherein the Supreme Court ruled that a delay of three (3),²³ five (5),²⁴ six (6)²⁵ or eight (8)²⁶ years in the termination of the preliminary investigation of the case amounts to a violation of the constitutional right of the accused to due process and to a speedy disposition of the cases against them.²⁷

Moreover, the accused asserts that there is no justification on the part of the Office of the Ombudsman for the delay in resolving the complaint and filing the *Informations* before the Sandiganbayan.²⁸

In its *Opposition to the Motion to Quash Information*²⁹ dated October 10, 2016, the prosecution explains that insofar as the delay in the termination of the preliminary investigation and the filing of the *Informations* before the Sandiganbayan are concerned, jurisprudence dictates that a mere mathematical reckoning of the time involved is not sufficient in determining whether the constitutional right to speedy disposition of a case

¹⁶ 159 SCRA 70 (1988)

¹⁷ pp. 147-148, Record

¹⁸ 307 SCRA 149 (1999)

¹⁹ 268 SCRA 301 (1997)

²⁰ 307 SCRA 106 (1999)

²¹ 701 SCRA 188 (2013)

²² 712 SCRA 359 (2013)

²³ **Tatad v. Sandiganbayan** 159 SCRA 70 (1988)

²⁴ **People v. Sandiganbayan** 712 SCRA 359 (2013)

²⁵ **Cervantes v. Sandiganbayan** 307 SCRA 149 (1999), **Angchangco Jr. v. Office of the Ombudsman** 268 SCRA 301 (1997), **Roque v. Office of the Ombudsman** 307 SCRA 106 (1999)

²⁶ **Coscolluela v. Sandiganbayan** 701 SCRA 188 (2013)

²⁷ p. 148, Record

²⁸ p. 149, Record

²⁹ pp. 302-317, Record

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has been violated.³⁰ The right to a speedy trial is deemed violated only when the proceedings are attended by vexatious, capricious and oppressive delays.³¹

The prosecution cites the case of ***Binay v. Sandiganbayan***,³² where it was held that particular regard must be given to the facts and circumstances peculiar to each case and that the conduct of both the prosecution and the defendant must be weighed; hence, according to the prosecution, the following factors must be considered and balanced: (a) the length of delay, (b) the reasons for such delay, (c) the assertion or failure to assert such right by the accused and (d) the prejudice caused by the delay.³³

In its *Opposition*, the prosecution enumerates the following facts and circumstances³⁴ surrounding the preliminary investigation of the case before the Office of the Ombudsman to demonstrate that the proceedings therein were not attended by unreasonable, arbitrary and oppressive delays, *viz*:

- a. An anonymous complaint of a concerned female employee was filed against accused Kampitan on September 27, 2006;
- b. The anonymous complaint was then referred to the Field Investigation Officer (FIO) of the Office of the Ombudsman for fact-finding investigation.

At this juncture, it bears emphasizing that a fact-finding investigation by the FIO is akin to the investigation conducted by the National Bureau of Investigation. It is a case build-up process which is just preliminary to the institution of a criminal action by way of a formal complaint. Compared to a preliminary investigation where the respondents are

³⁰ p. 304, Record

³¹ p. 305, Record

³² 316 SCRA 65 (1999)

³³ p. 304, Record

³⁴ pp. 305-308, Record

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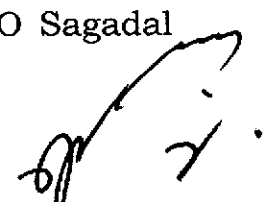
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given an opportunity to submit their counter-affidavits and controverting evidence, the fact-finding investigation adopts a "no-contact" policy whereby no contact at all is made with the subject of the investigation while the pieces of evidence are being gathered in order to determine whether a criminal action may be instituted.

In this light, the subject of investigation at the fact-finding stage is not yet in jeopardy of being held for trial and punishment. Thus, the period of time in which the fact-finding investigation was conducted is rightly not taken into consideration in determining whether the right to speedy disposition of cases has been violated;

- c. After the fact-finding investigation, a formal **Complaint** was filed by the FIO on June 22, 2011 with the Office of the Ombudsman's Central Records Division;
- d. The *Complaint* was then raffled for preliminary investigation before the Preliminary Investigation Administrative Adjudication and Monitoring Office (PAMO) of the Office of the Ombudsman. The case was subsequently assigned to the Graft Investigation Prosecution Officer (GIPO) Darius L. Sagadal of the Preliminary Investigation Administrative Adjudication Bureau-B (PIAB-B) of PAMO on July 19, 2011;
- e. Finding enough basis to proceed with the preliminary investigation, PIAB-B Director Moreno F. Generoso issued an **Order** on July 21, 2011 directing accused Kampitan to file his counter-affidavit;
- f. On August 26, 2011, accused Kampitan filed with the Central Records Division a **Motion for Extension of Time to file Counter Affidavit** which was received by GIPO Sagadal on August 31, 2011;
- g. On September 19, 2011, accused Kampitan filed with the Central Records Division his **Counter-Affidavit** which was then received by GIPO Sagadal



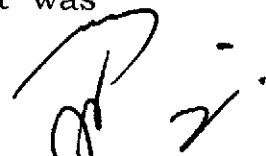
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- on September 21, 2011;
- h. In view of the approval of GIPO Sagadal's request for transfer, Assistant Ombudsman Weomark Ryan G. Layson, Chairman-Raffle Committee, directed that the case be re-raffled on October 31, 2012. It was eventually assigned to GIPO Joseph O. Menzon on November 12, 2012;
 - i. On January 31, 2013, GIPO Menzon submitted a draft *Resolution* to Director Generoso for his review;
 - j. The draft *Resolution* was returned to GIPO Menzon on March 14, 2013 for further corrections;
 - k. On March 26, 2013, the draft *Resolution* was once again submitted to Director Generoso for his review. It then went up to the Office of the Assistant Ombudsman Marilou B. Ancheta-Mejica on April 11, 2013 for her review;
 - l. On June 24, 2013, the draft *Resolution* and information were returned to GIPO Menzon for corrections. After making the necessary corrections, GIPO Menzon submitted the draft *Resolution* and *Information* to Director Generoso on July 1, 2013;
 - m. On July 23, 2013, the draft *Information* was returned to GIPO Menzon for corrections. The corrected *Information* was then returned to Director Generoso on July 24, 2013;
 - n. On August 1, 2013, Assistant Ombudsman Mejica indorsed the draft *Resolution* dated July 1, 2013, the fourteen (14) draft *Informations* and the complete case records to the Office of the Ombudsman for review by the Honorable Ombudsman. Photocopies of the Memorandum dated August 1, 2013 and the transmittal slip are attached for the Honorable Court's reference;
 - o. After the draft *Resolution* dated July 1, 2013 was reviewed at the Office of the Ombudsman, it was



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finalized and signed by GIPO Menzon and Director Generoso on November 13, 2014;

- p. The final **Resolution** dated November 13, 2014 was then approved by the Honorable Ombudsman on November 20, 2014;

On December 15, 2014, accused Kampitan filed before the Central Records Division a **Motion for Extension of time to file Motion for Reconsideration**;

- q. On January 5, 2015, accused Kampitan filed a **Partial Motion for Reconsideration** which was denied in the **Order** dated February 16, 2015 for having been filed out of time;

- r. Subsequently, in April 2016, the fourteen (14) draft *Informations* were indorsed by the Office of the Ombudsman to the Office of the Special Prosecutor (OSP) for further review. After being reviewed by the undersigned prosecutor, the draft *Informations* went up the hierarchy of review in the OSP;

- s. On July 13, 2016, the Honorable Ombudsman approved the fourteen (14) **Informations** dated June 8, 2016, which incorporated the charges recommended by the officials of the OSP;

- t. Thereafter, the **Informations** dated June 8, 2016 were filed with the Honorable Sandiganbayan on August 24, 2016.³⁵

The prosecution contends that the aforesaid facts and circumstances show that the preliminary investigation before the Office of the Ombudsman was not attended by vexatious, capricious and oppressive delays.³⁶ In fact, the prosecution claims that the number of times the case was reviewed, the

³⁵ pp. 305-308, Record

³⁶ p. 308, Record

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levels of review it went through and the number of times the draft *Resolutions* and *Informations* were reviewed and corrected were essential so that the rights of the accused are not compromised or sacrificed at the altar of expediency.³⁷

Lastly, the prosecution submits that the cited rulings of the Supreme Court in accused-movant Kampitan's *motion* are inapplicable to the present cases.³⁸

THE COURT'S RULING

After an assiduous assessment of the arguments raised by the parties, this Court finds the *Motion to Quash* filed by the accused bereft of merit.

Jurisprudence teaches that courts must carefully weigh the circumstances attending each case and must not hastily dismiss criminal cases based on the right of the accused to speedy disposition of cases. Indeed, no less than the Constitution guarantees the right of a person to a speedy disposition of a case against him but there must also be a balance between the right of the accused and the right of the State to punish people who violate its penal laws.³⁹ Both the State and the accused are entitled to due process.⁴⁰

In *Ombudsman v. Jurado*,⁴¹ the Supreme Court clarified that although the Constitution guarantees the right to the speedy disposition of cases, such speedy disposition is a flexible concept. To properly define that concept, the facts and circumstances surrounding each case must be evaluated

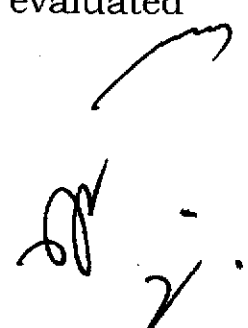
³⁷ p. 308, Record

³⁸ p. 309, Record

³⁹ *People v. Tampal*, 204 SCRA 202 (1995)

⁴⁰ *id*

⁴¹ 561 SCRA 135 (2008)



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and taken into account. There occurs a violation of the right to a speedy disposition of a case only when the proceedings are attended by vexatious, capricious, and oppressive delays, or when unjustified postponements of the trial are sought and secured, or when, without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried.

In the recent case of **Dacudao v. Gonzales**,⁴² the Supreme Court ruled that it is cogent to mention that a mere mathematical reckoning of the time involved is not determinant of the concept.

At any rate, the rulings in the cases cited by accused-movant in his *motion* are inapplicable to the cases at bar because of the material differences in their factual milieu. To stress, the Supreme Court has consistently held that in the application of the constitutional guarantee of the right to a speedy disposition of cases, particular regard must also be taken of the facts and circumstances peculiar to each case.⁴³

In the cases of **Tatad** and **Roque**, the Supreme Court applied the "radical relief" of dismissing the *Information/complaint* on the ground of "inordinate delay in terminating the preliminary investigation and filing the information" which was tantamount to a violation of the accused's rights to due process and to a speedy disposition of his cases.

It must be emphasized, however, that in **Tatad**, there were peculiar circumstances attendant to the three-year delay in terminating the preliminary investigation against him. According to the Supreme Court, "*political motivations played a vital role in activating and propelling the prosecutorial process;*"⁴⁴ and, there was a departure from the established procedure in conducting the preliminary investigation and the issues involved were simple.

⁴² 688 SCRA 109 (2013)

⁴³ **Tello vs. People**, 588 SCRA 519 (2009) See also **Ombudsman v. Jurado** 561 SCRA 135 (2008), **Ty-Dazo v. Sandiganbayan** 334 SCRA 200 (2002), **Binay v. Sandiganbayan** 316 SCRA 65 (1999)

⁴⁴ p. 81, **Tatad v. Sandiganbayan**, 159 SCRA 70 (1988)



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Unlike in **Tatad**, the present cases involve no imputation of any political motivation in the filing of the present *Informations* against accused-movant.

Likewise, in **Roque**, the High Tribunal declared as violative of therein petitioner's right to due process and speedy disposition of cases the delay of almost six (6) years on the part of the Ombudsman in resolving the complaints against the petitioner. The Supreme Court so ruled because "no explanation was given why it took almost six years for the [Ombudsman] to resolve the complaints."⁴⁵ Similarly, in **People v. Sandiganbayan**,⁴⁶ the Supreme Court held that there was inordinate delay on the part of the Office of the Ombudsman when it resolved a complaint-affidavit only on April 15, 2008, notwithstanding the fact that it was filed on December 23, 2002.

In contrast to the abovementioned cases, the attendant circumstances in these cases do not show a deliberate attempt to delay the proceedings. As pointed out by the prosecution, the draft *Resolutions* and *Informations* underwent repeated and thorough evaluation. This was done actually to insure that "the rights of the accused are not compromised or sacrificed at the altar of expediency."

In **Angchangco, Jr.**, the Supreme Court also dismissed the *Information* and held that the delay of more than six (6) years in resolving the complaints against therein petitioner amounted to a violation of the accused's constitutional right to due process and speedy disposition of cases for two (2) reasons, namely: [1] the administrative aspect of the case had already been dismissed; and [2] petitioner's several motions for early resolution and motion to dismiss remained unacted even at the time of filing of the petition for mandamus before the Supreme Court.

However, the factual circumstances of the aforementioned case differ substantially from the cases at bar. Here, the accused did not file any *motion* or letter seeking the

⁴⁵ p. 111, **Roque v. Office of the Ombudsman**, 307 SCRA 106 (1999)

⁴⁶ 712 SCRA 359 (2013)

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early resolution of the case against him and signifying that he was not waiving his right to its speedy disposition.⁴⁷

In **Coscolluela**, the Supreme Court ruled in favor of the dismissal of the *Information* since the circumstances of the case showed that the petitioners therein were unaware that preliminary investigations against them were on-going; hence, the Court ruled that they could not be faulted for their alleged failure to assert their right to speedy disposition of cases.

Conversely, in these cases, as correctly pointed out by the prosecution, accused Kampitan was very much aware that there was a pending preliminary investigation against him.⁴⁸ In fact, he did not only file a Counter-Affidavit and a *Partial Motion for Reconsideration* of the adverse *Resolution* dated November 13, 2014. He also filed separate *Motions for Extension* to file such affidavit and *motion*.⁴⁹ Surely, this contributed to the delay; hence, he should not be allowed to complain concerning a circumstance to which he had a contributory part.

Lastly, the **Cervantes** ruling is also not applicable to the cases at bar. In the said case, the Supreme Court ruled that therein petitioner was deprived of his right to a speedy disposition of his case when it took the Special Prosecutor "six (6) years from the filing of the initiatory complaint before he decided to file an *Information* for the offense with the Sandiganbayan."

Here, the length of time which the Office of the Ombudsman took to resolve fourteen (14) *Informations* could hardly be considered unreasonable or capricious. Moreover, in **Cervantes**, the lapse of more than six (6) years from the filing of the initiatory complaint to the filing of the *Information* before this Court remained unexplained. This is not so in these cases.



⁴⁷ p. 315, Record

⁴⁸ *id, id*

⁴⁹ *id, id*

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In ***Corpuz v. Sandiganbayan***,⁵⁰ the Supreme Court teaches that the essential ingredient in the administration of justice is that it must be orderly and expeditious and not mere speed, thus:

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 the delays and depends upon the circumstances. It secures rights of public 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 weapon; 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.

Here, the prosecution explained the circumstances that surrounded the drafting of the fourteen (14) *Informations* against the accused-movant. Based thereon, this Court does not find that the proceedings before the Office of the Ombudsman were attended by any vexatious, capricious and oppressive delays.

To reiterate, although the Constitution guarantees the right to speedy disposition of cases, it is a flexible concept. Due regard must be given to the facts and circumstances surrounding each case.⁵¹ The right to a speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays, or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse

⁵⁰ 442 SCRA 294 (2004)

⁵¹ ***Corpuz v. Sandiganbayan***, 442 SCRA 294 (2004)

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without the party having his case tried. Just like the constitutional guarantee of “*speedy trial*,” “*speedy disposition of cases*” is a flexible concept.⁵² It is consistent with delays and depends upon the circumstances. What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which renders rights nugatory.⁵³

WHEREFORE, accused-movant Froilan Reguendin Kampitan’s *Motion to Quash Information* dated September 23, 2016 is DENIED for lack of merit.

SO ORDERED

Quezon City, Metro Manila


AMPARO M. CABOTAJE-TANG

Presiding Justice
Chairperson

WE CONCUR:


SARAH JANE T. FERNANDEZ

Associate Justice


ZALDY V. TRESPESES

Associate Justice

⁵² *Ombudsman v. Jurado*, 561 SCRA 135 (2008)

⁵³ *Lumanog et al. v. People*, 630 SCRA 42 (2010)