

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

SPECIAL THIRD DIVISION

PEOPLE OF THE
PHILIPPINES,

Plaintiff,

Criminal Case No. SB-16-
CRM-0537

For: Violation of Section 3 (e) of
Republic Act No. 3019


- versus -

Present:

WALTER ORDINARIA ALBOS,
Accused.

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

Promulgated:

DECEMBER 21, 2016 

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RESOLUTION

CABOTAJE-TANG, P.J.:

For resolution is accused Walter Ordinaria Albos' "Notice of Appearance with subsumed Motion for Deferment or Suspension of Further Proceedings²" dated October 7, 2016.

¹ Sitting as a special member per Administrative Order No. 227-2016 dated July 26, 2016

² pp. 150-155, Record



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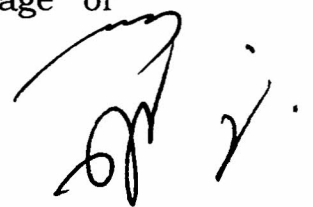
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Therein, the accused prays that further proceedings in this case, including arraignment, be deferred or suspended until the Court of Appeals shall have finally disposed of his *Petition for Review*. Accused Albos avers, among other things, that:

2. The whole preliminary investigation process in the above-entitled case was not yet completed when the information in the above-entitled case was filed by the Honorable Ombudsman with this Honorable Court. The reason that the preliminary investigation process was not yet completed is the fact that the accused has timely filed petition for review with the Honorable Court of Appeals, Mindanao Station, on January 18, 2016 as evidenced by the transmittal letter, of even date, addressed to the Clerk of Court, Court of Appeals, Mindanao Station, Cagayan de Oro City, made integral part hereof as **Annex "1"**;³
3. The Honorable Court of Appeals gave due course to said petition for review, docketed as CA-G.R. SP. No. 07197-MIN, seeking to reverse the Honorable Ombudsman's Resolution of Probable Cause because, in truth and in fact, there is no probable cause against the accused for alleged violation of Section 3(e) of Republic Act No. 3019 because the documented evidence on record proves that in the transaction in question, as already ruled by the Commission on Audit, the accused did not cause any undue injury to any party or the government nor given any private party any unwarranted benefits, advance or preference in the discharge of his official or administrative function. In truth and in fact, as likewise ruled already by the Commission on Audit in the transaction in question no party suffered any undue injury, the government did not suffer undue injury, and that no private party was given by the accused any unwarranted benefits, advantage or

³ p. 150, Record



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preference and the documented evidence on record clearly proves that herein accused did not act with manifest partiality, evident bad faith or gross excusable (sic) negligence in the transaction in question; ⁴

. . .

5. Upon being required by the Honorable Court of Appeals, the herein accused (as petitioner) filed with the Honorable Court of Appeals Memorandum, dated June 23, 2016, under CA-G.R. SP. No. 07197-MIN, copy of which is made integral part hereof as **Annex "2"**; ⁵
6. Said petition for review is already submitted for resolution/determination by the Honorable Court of Appeals; ⁶
7. The Honorable Court of Appeals had taken cognizance in the review of the Honorable Omdusman's Resolution of Probable Cause ahead of this Honorable Sandiganbayan in taking cognizance of the information based on the assailed Resolution of Probable Cause; ⁷
8. The pendency of the petition for review in the Honorable Court of Appeals is a prejudicial question to the above-entitled case; ⁸
9. It is in accord with the orderly administration of justice that during the pendency of said petition for review in the Honorable Court of Appeals further proceedings in the above-entitled case be suspended or deferred until final disposition by the Honorable Court of Appeals of said petition for review; ⁹

⁴ p. 150-151, Record

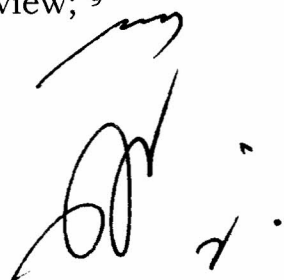
⁵ p. 151, Record

⁶ *id*

⁷ *id*

⁸ *id*

⁹ *id*



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In its *Comment/Opposition* dated November 4, 2016, the prosecution contends that the Rules of Court clearly provide that the *petition* shall not interrupt the course of the principal case, unless a temporary restraining order or a writ of preliminary injunction has been issued, enjoining the public respondent from further proceeding with the case.¹⁰

The prosecution further avers that the accused filed a wrong remedy with the Court of Appeals. The prosecution cited the case of ***Perez v. Office of the Ombudsman***¹¹ to support its argument.

Lastly, the prosecution argues that the allegation of the accused that the pendency of the *Petition for Review* before the Court of Appeals is a prejudicial question is erroneous. The prosecution cited the essential elements of a prejudicial question and reiterates that there must be a previously instituted civil action which involves an issue similar or intimately related to the issue raised in the subsequent criminal action.¹²

The subject *motion* is unmeritorious.

Considering that the accused relies on the pendency of his *Petition for Review* before the Court of Appeals for the suspension of the proceedings in this case, the Court finds it indispensable to pass upon the propriety of the recourse taken by him in assailing the Ombudsman's *resolution* finding probable cause to merit the filing of this case.

It is extant from the record of this case that the accused filed his *Petition for Review with a Motion for Preliminary Injunction* before the Court of Appeals under Rule 43 of the Rules of Court.¹³ Said petition, docketed as CA-G.R. SP. No. 07197-MIN, seeks to reverse, set aside and nullify the

¹⁰ p. 189, Record

¹¹ 429 SCRA 357 (2004)

¹² p. 189, Record

¹³ pp. 158-182, Record

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*Resolution*¹⁴ dated November 28, 2014 of the Office of the Ombudsman which found probable cause to indict the accused for violation of Section 3 (e) of Republic Act No. 3019, subject matter of this case.¹⁵ In the same *petition*, the accused prays for the issuance of a temporary restraining order and a preliminary injunction to restrain the Office of the Ombudsman from conducting further proceedings, and, if the case had been filed before the Court, the suspension of proceedings therein to be effective during the pendency of the said *Petition for Review*.¹⁶

In the 1998 case of ***Fabian v. Desierto***,¹⁷ the Supreme Court ruled that the Court of Appeals' jurisdiction over the decisions of the Office of the Ombudsman is limited only to administrative disciplinary cases and should be taken via Rule 43 of the Rules of Court.

Then, in ***Kuizon v. Desierto***,¹⁸ the Supreme Court clarified that petitions questioning *resolutions* or *orders* of the Office of the Ombudsman in criminal cases must be lodged before the High Tribunal in a petition for *certiorari* under Rule 65. This ruling was reiterated in ***Mendoza-Arce v. Office of the Ombudsman***¹⁹ and ***Perez v. Office of the Ombudsman***²⁰ wherein it was held:

It is the nature of the case that determines the proper remedy to be filed and the appellate court where such remedy should be filed by a party aggrieved by the decision or orders of the Office of the Ombudsman. If it is an administrative case, appeal should be taken to the Court of Appeals under Rule 43 of the Rules of Court. If it is a criminal case, the proper remedy is to file with the Supreme Court an original petition for *certiorari* under Rule 65.

¹⁴ pp. 4-12, Record

¹⁵ p. 10, Record

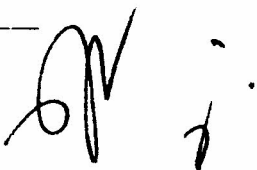
¹⁶ p. 179, Record

¹⁷ 295 SCRA 470 (1998)

¹⁸ 354 SCRA 158 (2001)

¹⁹ 380 SCRA 325 (2002)

²⁰ 429 SCRA 357 (2004)



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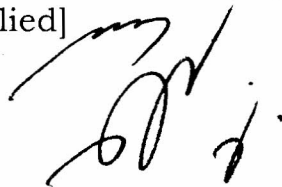
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Plainly, the accused should have challenged the Ombudsman's *Resolution* finding probable cause before the Supreme Court, and not before the Court of Appeals. Thus, he cannot correctly invoke the pendency of his *Petition for Review* with the Court of Appeals as a legal obstacle to the continuation of the proceedings in this case. To be sure, only the Supreme Court, either through a temporary restraining order or a writ of preliminary injunction, can enjoin this Court from proceeding with any case pending before it.

Moreover, Section 1 of Republic Act No. 8249 provides that the Court of Appeals and the Sandiganbayan are now courts of equal rank.²¹ This being so, the Supreme Court ruled in ***Barriga v. Sandiganbayan***,²² that the Court of Appeals cannot impose its findings or conclusions upon the Sandiganbayan, to wit:

Thus, to turn *Pajaro v. Sandiganbayan* on its head, the Court of Appeals, being merely of equal rank to the Sandiganbayan, the same may not review, revise, reverse or even control its findings. In fact, decisions and final orders of the Sandiganbayan are reviewable only by the Supreme Court. ***Neither can the Court of Appeals impose its findings and conclusions upon the Sandiganbayan, as accused Barriga implies, as only the rulings and decisions of the Supreme Court can serve as binding precedents to the determinations to be made by the Sandiganbayan.***
[emphasis supplied]



²¹ Republic Act. No. 8249, "An Act Further defining the Jurisdiction of the Sandiganbayan, amending for the purpose Presidential Decree No. 1606, as amended, providing funds therefore, and for other purpose," February 5, 1997

Sec. 1. Sandiganbayan; Composition, Qualifications; Tenure; Removal and Compensation. - A special court, of the same level as the Court of Appeals and possessing all the inherent powers of a court of justice, to be known as the Sandiganbayan is hereby created composed of a presiding justice and fourteen associate justices who shall be appointed by the President

²² 457 SCRA 301, (2005)

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In sum, this Court cannot be made to defer its proceedings based on the pendency of the accused's *Petition for Review with a Motion for Preliminary Injunction* before the Court of Appeals since this lacks bases both in law and jurisprudence.

WHEREFORE, accused Walter Ordinaria Albos' *Motion for Deferment or Suspension of Further Proceedings* dated October 7, 2016 is DENIED for lack of merit. Accordingly, set the arraignment of the accused on January 23, 2017 at 1:30 in the afternoon.


The *notices of appearance* of Edgar J. Baguio and Rodrigo B. Ladera as counsel for the accused are NOTED.

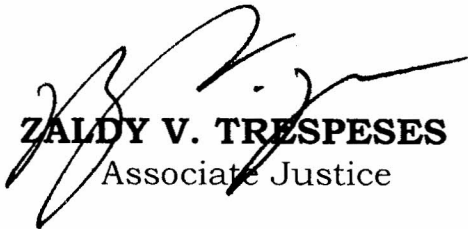
SO ORDERED.

Quezon City, Metro Manila


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson

WE CONCUR:


SARAH JANE T. FERNANDEZ
Associate Justice


ZALDY V. TRESPESES
Associate Justice