

Republic of the Philippines
SANDIGANBAYAN
Quezon City

Sixth Division

People of the Philippines,
Plaintiff,

Crim. Case No. SB-16-CRM-0769

For: Violation of Section 3(e) of
R.A. 3019

-versus-

Present:
Ponferrada, J. *Chairperson*
Herrera, Jr., J. &
Miranda, J.

Benjamin Abalos, Sr.
Accused.

Promulgated:
MAY 18 2017 *[Signature]*

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RESOLUTION

HERRERA, JR., J:

This resolves the ***Motion For Reconsideration (of the Resolution dated February 2, 2017)***¹ dated February 15, 2017, filed by accused Benjamin S. Abalos, Sr. (Movant for short), through counsel, seeking reconsideration of the Court's ***Resolution***² promulgated on February 2, 2017, denying movant's ***Motion To Quash Information, etc.***³ dated November 11, 2016. The plaintiff, through the Office of the Special Prosecutor, Office of the Ombudsman, filed a ***Comment/Opposition***⁴ dated March 27, 2017, praying that movant's ***Motion For Reconsideration, etc.*** be denied.

Movant is charged in this case with ***Violation of Section 3(e) of Republic Act (R.A.) No. 3019***, also known as the ***Anti-Graft and Corrupt Practices Act***, under an ***Information***⁵ dated August 1, 2016, which was filed with the Court on October 7, 2016. The ***Motion To Quash, etc.*** earlier filed by movant prayed for dismissal of the ***Information***, essentially on the ground of alleged inordinate delay on the part of the Office of the

¹ Record, pp. 135-145

² Id, pp. 119-129

³ Id, pp. 69-83

⁴ Id, pp. 175-179

⁵ Id, pp. 1-3

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Ombudsman which purportedly took eight (8) years to conclude the preliminary investigation in violation of movant's right to speedy disposition of cases under **Section 16, Article III of the 1987 Constitution**.

At the outset, movant's **Motion For Reconsideration, etc.** does not contain any notice of hearing. He did not specify therein the time and date of hearing which is incumbent upon him to set, and submit proof of service of a copy of the motion with notice of such date and time of hearing, as required in **Sections 4, 5 and 6, Rule 15 of the Rules of Court**, which respectively read:

"Sec. 4. Hearing of motion. — Except for motions which the court may act upon without prejudicing the rights of the adverse party, **every written motion shall be set for hearing by the applicant.**

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice."

"Sec. 5. Notice of hearing. — The notice of hearing shall be addressed to all parties concerned, and **shall specify the time and date of the hearing** which must not be later than ten (10) days after the filing of the motion."

"Sec. 6. Proof of service necessary. — No written motion set for hearing shall be acted upon by the court without proof of service thereof."

It is settled that without a notice of hearing, a motion should be considered a mere scrap of paper that does not merit the attention and consideration of the Court.⁶ At any rate, the Court will address the pertinent issues now raised by movant.

⁶ Bank of P.I. v. Far East Molasses, 198 SCRA 689; Fajardo v. CA, 354 SCRA 736; Gutierrez v. Cabrera, 452 SCRA 521

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In the instant ***Motion For Reconsideration, etc.***, movant essentially contends that the prosecution presented a timeline which inaccurately started on August 13, 2013 when the ***Complaint*** of the FIO-Ombudsman was filed; that the earliest recorded date of the Ombudsman's investigation involving this case is October 9, 2008 when the ***Complaint*** was dated and subscribed to by the FIO-Ombudsman; that the fact-finding investigation should not be deemed separate from the preliminary investigation; that he has been going through an unfair amount of stress and anxiety over the case since 2008; that he was aware that an investigation was on-going as early as 2008; that after a considerable amount of time has passed without any formal charges, he thought that the Ombudsman was no longer going to charge him; and that there is no just and reasonable explanation as to why it took the Ombudsman over eight (8) years to resolve the case.

After a careful study, the Court finds no merit in the ***Motion For Reconsideration, etc.***

Movant asserts that the Ombudsman investigation of this case must have started in October 9, 2008 because the FIO Complaint against him is dated October 9, 2008. Hence, he avers that:

"7. Thus, at the very least, the earliest admitted recorded date of the Ombudsman's investigation involving this case is 9 October 2008 when the Complaint was dated and subscribed to by the FIO-Ombudsman."⁷

Clearly, movant merely assumed that the investigation started in October 2008. No supporting document or paper was submitted to support such assumption. In fact, movant himself already acknowledged this in the ***Motion To Quash*** he earlier filed, where he categorically declared, *inter alia*, that:

"22.3 In this case, the Ombudsman spent **AT LEAST EIGHT YEARS** from its fact-finding investigation, ***in what one can safely assume started sometime on a date earlier than***

⁷ Record, p. 136

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October 9, 2008, up until it filed the Information before the Honorable Court on October 7, 2016.

22.4 Due the undeniable fact that the Ombudsman allowed the case to drag for at least eight years, in clear violation of Abalos' right to the speedy disposition of his case, the Information must be quashed."⁸

Over and above movant's mere assumption regarding the start of the investigation is the fact that the FIO Complaint was filed only August 13, 2013 for preliminary investigation and consequently docketed on August 26, 2013 under OMB-C-13-0250, as shown in the timeline provided by the plaintiff.⁹ This is also stated in the **Joint Resolution**¹⁰ dated July 30, 2015 of the Office of the Ombudsman.

The Court, in the **Resolution** dated February 2, 2017, thus declared, *inter alia*:

"The plaintiff, in its **Comment/Opposition**, asserts that there was no violation of the right to speedy disposition of cases because the whole duration of the preliminary investigation was just three (3) years, more or less. The plaintiff explains that its Field Investigation Office (FIO) filed a complaint against the accused only on August 13, 2013 for purposes of preliminary investigation. The preliminary investigation ended with the filing of the **Information** on October 7, 2016, just three (3) years after the filing of the complaint by the FIO on August 13, 2013.

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The case against accused Abalos for the crime charged in the **Information** dated August 1, 2016 started only when the FIO formally filed the Complaint, signed by Associate Graft Investigation Officer I Arianne Joie M. Garillo, on August 13, 2013. Although the Complaint is dated October 9, 2008, the fact is that it was filed only on August 13, 2013. This resulted to the docketing of a case against accused Abalos for preliminary investigation on August 26, 2013 under OMB-C-13-0250.

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⁸ Id, p. 75
⁹ Id, pp. 92-93
¹⁰ Id, pp. 5-17

The right to speedy disposition of cases is enshrined in **Section 16, Article III of the 1987 Constitution** which reads:

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

It has been held that the constitutional right to a speedy disposition of cases is not limited to the accused in criminal proceedings but extends to all parties in all cases, including civil and administrative cases, and in all proceedings, including judicial and quasi-judicial hearings.

Prior to the filing of the Complaint against accused Abalos by the FIO on August 13, 2013, which, as earlier pointed out, was docketed as a case against accused Abalos for preliminary investigation, there was no criminal case against him. Before said date, he was not a party to any judicial or quasi-judicial proceeding.”¹¹

In the instant ***Motion For Reconsideration, etc.***, movant likewise claims that he was aware that the investigation was on-going as early as 2008, and that he has since been experiencing stress and anxiety over the same.

He avers, *inter alia*:

“13. While the Ombudsman was taking its sweet time investigating this case, **Abalos was experiencing a medley of stress and anxiety over the same**. Being the former Chairman of the Commission on Elections (“COMELEC”), **Abalos was aware that an investigation was on-going as early as 2008**.

14. Assuming it to be true that the 2008 Complaint was filed in 2013, it does not mean Abalos was oblivious to the investigation being conducted against him, and that he did not suffer as a result thereof. His co-accused who was previously exonerated, Eduardo Mejos (“Mejos”), was still working at the COMELEC at the time the Ombudsman was performing its fact-finding investigation. **Thus, Abalos already knew of the investigation, and was already going through the anxiety and stress at the thought of going to court.”¹²**

¹¹ Id, pp. 122-126

¹² Id, pp. 137-138

The foregoing averments of movant are inconsistent with the allegations in the ***Motion To Quash*** that he earlier filed. There, he stated that he could not have asserted his right to speedy disposition of cases before he was directed to submit his counter-affidavit because he was not aware that the case existed. He declared:

“23.2 In fact, Abalos was shocked and dismayed to have received the 2nd Order from the Ombudsman in 2014, directing him to submit his Counter- Affidavit. He does not even remember, to the best of his ability, having received a 1st Order.

23.3 Having been away from public service for seven (7) years, he asked for an extension as he could not even recall the allegations stated in the 2008 Complaint, and thus needed more than ten (10) days to intelligently answer the same.

24. Third, **ABALOS DID NOT FAIL TO ASSERT HIS RIGHT** to the speedy disposition of his case.

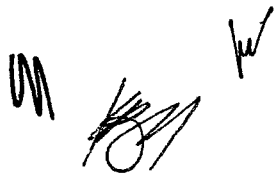
24.1 It is clear that Abalos could not have asked for the resolution of the case pending before the Ombudsman, as he did not even know that it existed.

24.2 As in the *Coscolluela* case, Abalos could not have urged for the speedy disposition of his case as he was even unaware that the investigation was still on-going.”¹³

The Court, in the ***Resolution*** dated February 2, 2017, thus made the following findings and conclusions, among others:

“In his ***Motion To Quash***, accused Abalos avers that he came to know about the case against him only when he received the second Order from the Ombudsman in 2014 directing him to submit his counter-affidavit, obviously referring to the Order dated September 23, 2014 issued by Director Nellie T. Boguen-Golez during the preliminary investigation of the case. He bewails that he was unable to earlier invoke his right to speedy disposition of the case because he did not even know that it existed.

¹³ Id, pp. 75-76



Indeed, accused Abalos could not have known that a case existed against him prior to the preliminary investigation because of the fact that there was yet no pending case against him then. To reiterate, the Complaint against accused Abalos for the crime charged in the *Information* dated August 1, 2016 was filed only on August 13, 2013.

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As indicated in the timeline provided by the plaintiff, and which is not disputed by accused Abalos, the **Complaint** filed by the FIO against accused Abalos on August 13, 2013 was docketed for preliminary investigation on August 23, 2013. It appears that an Order was issued on September 24, 2013 requiring the submission of counter-affidavits. Mr. Eduardo Mejos, who was charged together with accused Abalos but was later exonerated, submitted his counter-affidavit on November 14, 2013. Since there was no response from accused Abalos, who later claimed that he did not receive the Order of September 24, 2013, a second Order was issued on September 23, 2014. On November 11, 2014, after being given an extension of time to file his counter-affidavit, accused Abalos finally submitted his counter-affidavit. On July 30, 2015, a **Joint Resolution** was issued finding probable cause against accused Abalos and dismissing the case as against Mejos. Accused Abalos filed a **Motion For Reconsideration** on August 27, 2015, followed by a **Motion To Inhibit** one Graft Investigation Officer II Wendell C. Perez. On February 19, 2016, a **Resolution** was issued denying the **Motion For Reconsideration**. The **Resolution** was approved by the Ombudsman on March 11, 2016, and the **Information** dated August 1, 2016 was filed with the Sandiganbayan on October 7, 2016.

The Court finds that the proceedings in OMB-C-C-0254, relating to the preliminary investigation of the case against accused Abalos by the Office of the Ombudsman, cannot be characterized as one attended by vexatious, capricious and oppressive delays. The length of time consumed from the filing of the complaint to the issuance of the first **Resolution** finding probable cause, and thereafter the second **Resolution** denying the **Motion For Reconsideration**, up to the filing of the **Information**, appears to be reasonable and acceptable. More than anything else, the proceedings demonstrated that accused Abalos was duly accorded due process and given all the opportunity to be heard and to present his evidence for purposes of preliminary investigation. The length of the proceedings did not result in a violation of his constitutional right to speedy disposition of cases."¹⁴

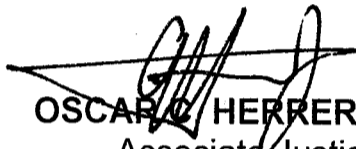
¹⁴ Id, pp. 126-128

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Under the circumstances, the Court rules that the findings and conclusions contained in the **Resolution** of February 2, 2017 stand. It finds no compelling reason to reverse or modify the same.

WHEREFORE, premises considered, the **Motion For Reconsideration (of the Resolution dated February 2, 2017)** dated February 15, 2017, filed by accused Benjamin S. Abalos, Sr., through counsel, is hereby denied.

SO ORDERED.


OSCAR C. HERRERA, JR.
Associate Justice

We concur:


RODOLFO A. PONFERRADA
Chairperson


KARL B. MIRANDA
Associate Justice