



Republic of the Philippines
Sandiganbayan
Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on September 11, 2017.

Present:

MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Chairperson
ZALDY V. TRESPESES ----- Associate Justice
BAYANI H. JACINTO* ----- Associate Justice

The following resolution was adopted:

Criminal Case No. SB-16-CRM-0336 – People v. Norbideiri Bederi Edding, et al.

This resolves the following:

1. Prosecution's "MOTION TO SUSPEND PENDENTE LITE"¹ dated July 26, 2017; and
2. Accused Norbideiri Bederi Edding, Absar Naing Caril, and Abbas Sulaiman Samson's "OPPOSITION"² dated August 15, 2017.

The Prosecution moves for the suspension *pendente lite* for ninety (90) days of accused Norbideiri Bederi Edding, Nasser Sahi Mahamod, Absar Naing Caril, and Abbas Sulaiman Samson ["the accused"]. All are incumbent public officials of Sibuco, Zamboanga del Norte. In support thereof, Section 13 of *Republic Act No. 3019 (R.A. 3019)* is cited, viz:

SEC. 13. Suspension and loss of benefits. – Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as a complex offense and in whatever stage of execution and mode of participation, is pending in court, shall be suspended from office.

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* Per Administrative Order No. 284-2017 dated August 18, 2017

¹ Records, Vol. 2, pp. 17-21

² The Opposition filed by the accused was erroneously dated August 15, 2016 (Records, Vol. 2, pp. 31-32)

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It is contended by the Prosecution that the elements for the suspension *pendente lite* of the accused concur, which are: (1) arraignment under a valid information; and (2) that the crime involves *R.A. 3019*, Title Seven, Book II of the *Revised Penal Code*, or any offense involving fraud upon government or public funds. The Prosecution cites jurisprudence³ to the effect that preventive suspension under Section 13 of *R.A. 3019* is *mandatory* in character upon a proper determination of the validity of the information.

For their part, while the accused do not contest the mandatory nature of preventive suspension under Section 13 of *R.A. 3019*, they nonetheless argue that their case merits a shorter suspension period of only *thirty (30) days* because they stand charged of a single offense.

The Motion should be granted. It is not for this Court to decide otherwise.

The accused were arraigned and pleaded not guilty under a valid information for violation of Section 3 (a) of *R.A. 3019*. Section 13 of *R.A. 3019* makes it mandatory for this Court to suspend any public officer against whom a valid information is filed charging a violation of said law, Title 7, Book II of the *Revised Penal Code*, or for any offense involving fraud upon government or public funds or property.⁴ Once the information is found to be sufficient in form and substance, then the Court must issue the order of suspension as a matter of course.⁵ There are no ifs and buts about it.⁶

The Court possesses no discretion to determine whether a preventive suspension is necessary to forestall the possibility that the accused may use his or her office to intimidate witnesses, or frustrate his prosecution, or continue committing malfeasance. The presumption is that unless the accused is suspended, he or she may frustrate the prosecution of the case, commit further acts of malfeasance, or do both.⁷

As to the issue of the duration of suspension, it is settled that the preventive suspension may not be of indefinite duration or for an unreasonable length of time; it would be constitutionally proscribed otherwise as it raises, at the very least, questions of denial of due process and equal protection of the laws. The Court has thus laid down the rule that preventive suspension may not exceed the maximum period of ninety (90) days in consonance with *Presidential Decree No. 807* (the *Civil Service Decree*), now Section 52 of the *Administrative Code of 1987*.⁸

³ *Socrates v. Sandiganbayan*, G.R. Nos. 116259-60, February 29, 1996; *Beroña v. Sandiganbayan*, G.R. No. 142456, July 27, 2004

⁴ *Flores v. Layosa*, G.R. No. 154714, August 12, 2004

⁵ *Ibid*

⁶ *Beroña v. Sandiganbayan*, G.R. No. 142456, July 27, 2004

⁷ *Dela Cruz v. Sandiganbayan*, G.R. No. 161929, December 8, 2009, citing *Socrates v. Sandiganbayan*, 324 Phil. 151, 179 (1996)

⁸ *Layus v. Sandiganbayan*, G.R. No. 134272, December 8, 1999 which cited *Segovia v. Sandiganbayan*, G.R. No. 124067, March 27, 1998

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Although the accused pray for a shorter 30-day period of preventive suspension, the same cannot be considered. This Court is guided by the pronouncement of the Supreme Court in *Bolastig v. Sandiganbayan*,⁹ viz:

It is indeed true that in some of our decisions the expression "the maximum period of ninety (90) days" is used. But that is only for the purpose of emphasizing that the preventive suspension therein involved, which were for more than ninety (90) days, were excessive and unreasonable. It is to be noted that the ninety-day period of preventive suspension is not found in sec. 13 of Republic Act No. 3019 but was adopted from sec. 42 of the Civil Service Decree (P.D. No. 807), which is not sec. 52 of the Administrative Code of 1987. This latter provision states:

Sec. 52. Lifting of Preventive Suspension Pending Administrative Investigation. — When the administrative case against the officer or employee under preventive suspension is not finally decided by the disciplining authority within the period of ninety (90) days after the date of suspension of the respondent who is not a presidential appointee, the respondent shall be automatically reinstated in the service: Provided, That when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay shall not be counted in computing the period of suspension herein provided.

The duration of preventive suspension is thus coeval with the period prescribed for deciding administrative disciplinary cases. If the case is decided before ninety days, then the suspension will last less than ninety days, but if the case is not decided within ninety days, then the preventive suspension must be up to ninety days only. Similarly, as applied to criminal prosecutions under Republic Act No. 3019, preventive suspension will last for less than ninety days only if the case is decided within that period: otherwise, it will continue for ninety days.

The duration of preventive suspension will, therefore, vary to the extent that it is contingent on the time it takes the court to decide the case but not on account of any discretion lodged in the court, taking into account the probability that the accused may use his office to hamper his prosecution.

Indeed, were the Sandiganbayan given the discretion to impose a shorter period of suspension, say, 80, 70 or 60 days, as petitioner asserts, it would lie in its power not to suspend the accused at all. That, of course, would be contrary to the command of sec. 13 of Republic Act No. 3019.

Since the case is still pending, this Court even has no discretion to shorten the 90-day period of preventive suspension for all the accused following *Bolastig v. Sandiganbayan*.

WHEREFORE, the Prosecution's *Motion to Suspend Pendente Lite* dated July 26, 2017 is **GRANTED**.

⁹ G.R. No. 110503, August 4, 1994

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Pursuant to Section 13 of *R.A. 3019*, the following accused are hereby suspended from their corresponding positions as public officials of the Local Government Unit of Sibuco, Zamboanga del Norte and from any public office which they may now or hereafter be holding for a period of ninety (90) days:

Name of accused	Position in LGU of Sibuco, Zamboanga del Norte
1. Norbideiri Bederi Edding	Municipal Mayor
2. Nasser Sahi Mahamod	Sangguniang Bayan Member
3. Absar Naing Caril	Sangguniang Bayan Member
4. Abbas Sulaiman Samson	Indigenous Peoples Representative to the Sangguniang Bayan

Let a copy of this Resolution be furnished the Secretary of the Department of Interior and Local Government for the implementation of the order of suspension on said accused. Said office is further requested to inform this Court of the date the accused started serving their suspension *pendente lite* and the date of its termination.

The suspension of the accused shall be automatically lifted upon expiration of the ninety-day period from the implementation of this Resolution.

SO ORDERED.

GOMEZ-ESTOESTA, J., Chairperson



TRESPESES, J.



JACINTO, J.


