



Republic of the Philippines
SANDIGANBAYAN
Quezon City

SIXTH DIVISION

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff,

SB-15-CRM-0128

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

-versus-

PRESENT:

FERNANDEZ, SJ, J.,¹ *Chairperson*
MIRANDA, J., &
MUSNGI, J.²

OSCAR D. ABUNDO,
Accused,

Promulgated:

NOV 29 2017 *[Signature]*

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RESOLUTION

MIRANDA, J.:

This resolves: 1) Accused Oscar D. Abundo's Motion to Dismiss with Leave of Court dated June 16, 2017; and 2) The Prosecution's Consolidated Comment and/or Opposition (To Accused's Motion to Dismiss with Leave of Court dated 16 June 2017 and Motion to Alter Date of Initial Hearing dated 8 August 2017) dated August 9, 2017.

¹ J. Ponferrada, Chairperson of the 6th Division when the present incident was submitted for resolution, retired on September 13, 2017. J. Fernandez, SJ will participate in the resolution of the present incident in view of her assumption as Chairperson of the 6th Division on the same date. (As per Administrative Order (A.O.) No. 314-2017 dated September 13, 2017; Revised Internal Rules of the Sandiganbayan, Rule XII, Section 3).

² J. Musngi was designated as a Special Member in view of the vacancy therein when the present incident was submitted for resolution (Per Administrative Order No. 124-2017 dated April 4, 2017; Revised Internal Rules of the Sandiganbayan, Rule XII, Sec. 3).

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In his motion to dismiss, the accused alleges that: 1) His rights to speedy trial and speedy disposition of the case were violated; 2) The Office of the Ombudsman employed selective justice in the filing of the information against him only in violation of his right to the equal protection of the law; and 3) There is no injury or damage to the government or any private party.

In its comment/opposition on the motion to dismiss, the Prosecution, through the Office of the Special Prosecutor (OSP), alleges that: 1) The time it took the Office of the Ombudsman to resolve the case and file the information in Court is not vexatious, capricious, oppressive or unjustified; 2) The resolution of the case had to undergo a hierarchy of review before its approval by Ombudsman Conchita Carpio-Morales (Carpio-Morales); 3) The motions for extension of time to submit counter-affidavit and suspension of proceedings contributed to the delay in resolving the case; 4) The accused asserted his right to speedy disposition of the case when the case was already set for initial presentation of evidence by the Prosecution; 5) The Resolution dated October 24, 2014 of the Office of the Ombudsman discussed the existence of probable cause against the accused only; and 6) The other matters raised by the accused are a mere rehash and reiteration of the arguments in his Verified Motion to Quash and Alter Date of Arraignment dated February 18, 2016 which was already passed upon and resolved by the Court in its Resolution dated January 22, 2016 and Resolution dated June 3, 2016.

After a thorough review of the case records, the Court resolves to **deny** the motion to dismiss with leave of court for lack of merit and in violation of the Rules of Court.

To recall, the accused already filed his first motion to quash and alter date of arraignment on October 13, 2015 on the following grounds: 1) his signature on the voucher was ministerial in nature and made in good faith as the other responsible officers have previously evaluated, processed, and reviewed all documents relative to the subject transaction; 2) the government or any private party did not suffer any injury as the notice of disallowance was based on erroneous findings of facts; and 3) selective justice violated his constitutional right to equal protection of the law.

In the Resolution dated January 22, 2016, the Court treated the motion to quash of the accused as a motion to dismiss on the ground of lack of probable cause, and resolved to deny it. The Court reasoned that it should not interfere with the Ombudsman's investigatory power and finding of probable cause. It can only do so when there is grave abuse of discretion

Carpio *SP* ~~*[Signature]*~~

amounting to lack or excess of jurisdiction, which is lacking in this case. The Court also denied the motion for reconsideration filed by the accused in its Resolution dated June 3, 2016.

The Constitution and R.A. No. 6770³ endowed the Office of the Ombudsman with wide latitude, in the exercise of its investigatory and prosecutory powers, to pass upon criminal complaints involving public officials and employees. The determination of whether probable cause exists is a function that belongs to the Office of the Ombudsman. **Whether a criminal case, given its attendant facts and circumstances, should be filed or not is basically its call.**⁴

The finding of probable cause and filing of information for Violation of Section 3 (e) of R.A. No. 3019 against the accused only is the call of the Office of the Ombudsman even if the Field Investigation Office (FIO) complaint charged other persons. The Court cannot and will not dictate on the Office of the Ombudsman what cases to file and against whom. The Court will act only on cases filed before it.

The accused, however, filed a second motion to dismiss with leave of court now pending with the Court. In *Romualdez v. Sandiganbayan*,⁵ the petitioner therein filed his first motion to dismiss and to defer arraignment on the ground that there was no valid preliminary investigation. The Sandiganbayan allowed the petitioner to file a motion for reinvestigation with the OSP. After the OSP concluded its reinvestigation, then Ombudsman Aniano A. Desierto directed the prosecutors to let the petitioner present his evidence in Court. Thereafter, the petitioner filed his second motion to quash and to defer arraignment which was denied by the Sandiganbayan. Undeterred, the petitioner filed his third motion for leave to file motion to dismiss on the following grounds: 1) His right to due process during the preliminary investigation was violated; 2) His right to be informed of the nature and cause of the accusation against him was violated; 3) He is immune from criminal prosecution; and 4) The criminal action or liability has prescribed.

The Supreme Court in the said case ruled that there is no substantial distinction between a motion to quash and a motion to dismiss. Both pray for an identical relief, which is the dismissal of the case. The said motions are used to raise preliminary objections to avoid the necessity of proceeding to

³ An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for other Purposes.

⁴ *Casing v. Ombudsman*, G.R. No. 192334, June 13, 2012.

⁵ G.R. No. 152259, July 29, 2004.



trial. A motion to quash is generally used in criminal proceedings to annul a defective indictment. A motion to dismiss is used in civil proceedings to summarily defeat a complaint. Both the motion to quash and motion to dismiss are anchored on the same grounds and pray for the same relief.⁶

By filing a motion to dismiss, the petitioner in the said case submitted in effect a prohibited second motion to quash. A party is not permitted to raise issues, whether similar or different, by installment. The Rules abhor repetitive motions. Otherwise, there would be no end to preliminary objections, and trial would never commence. A second motion to quash delays the administration of justice and unduly burdens the courts.⁷ Moreover, Section 9, Rule 117 provides that grounds not raised in the first motion to quash are generally deemed waived, except on the grounds that the facts do not constitute an offense, lack of jurisdiction over the offense charged, extinction of the offense or penalty, and double jeopardy.⁸

The incident pending before the Court is already the second motion to dismiss of the accused. In fact, two of the grounds in the second motion to dismiss were raised in the first motion to dismiss which were already resolved and denied by the Court. The failure of the accused to include the ground of violation of his rights to speedy trial and speedy disposition of the case in the first motion to dismiss constitutes a waiver of the said objections considering that these are not among the exceptions enumerated in Section 9, Rule 117 of the Rules of Court. The second motion to dismiss is thus prohibited.

Section 1, Rule 117 of the Rules of Court also provides that the accused may move to quash the complaint or information at any time before entering his plea. Here, the accused had already been arraigned on August 31, 2016⁹ and the presentation of the evidence for the Prosecution had already been previously set.¹⁰ Thus, the second motion to dismiss filed on June 19, 2017 was already out of time.

The fact that the second motion to dismiss is a prohibited motion is enough reason for the Court to deny it. The Court will no longer discuss the

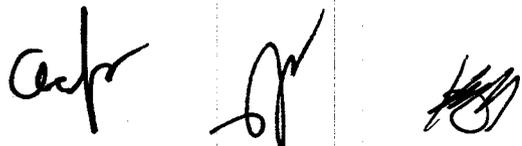
⁶ *Romualdez v. Sandiganbayan*, G.R. No. 152259, July 29, 2004.

⁷ *Id.*

⁸ Section 9, Rule 117 of the Rules of Court states: The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g) and (i) of section 3 of this Rule. The exceptions refer to the following grounds: the facts do not constitute an offense, lack of jurisdiction over the offense charged, extinction of the offense or penalty, and double jeopardy.

⁹ Order dated August 31, 2016, Records, pp. 423-424.

¹⁰ Order dated May 11, 2017, Records, pp. 478.



other arguments raised by the accused in the prohibited second motion to dismiss. Besides, some of the grounds raised therein are a matter of defense which are best determined after a full-blown trial on the merits. It is premature to discuss or resolve these arguments at this point.

Even after a study of the alleged violation of the right to the speedy disposition of the case, the motion to dismiss with leave of court must still be **denied**. The factual antecedents in this case are summarized as follows:

Incidents	Date
The Department of Public Works and Highways (DPWH) received Audit Observation Memorandum (AOM) No. NGS VIII-A-03-022 dated October 10, 2003 recommending the investigation of DPWH officials for right-of-way payments to Abdulbasit M. Piang (Piang) and Mojahida M. Ali (Ali) in the amount of Twenty-Four Million Two Hundred Ninety-Nine Thousand Four Hundred Fifty-Eight Pesos and Thirty-Four Centavos (PhP24,299,458.34) without legal basis. ¹¹	October 20, 2003
Director IV Khem N. Inok (Inok) of the Legal and Adjudication Office-National of the Commission on Audit (COA) issued Notice of Disallowance No. 2004-046. ¹²	March 18, 2004
Piang and Ali filed a petition for review with the COA praying for the reversal of the notice of disallowance, and release of the payment of just compensation. ¹³	March 28, 2004
The DPWH received the notice of disallowance. ¹⁴	April 13, 2004
The COA Legal Office received the 1 st Indorsement dated August 5, 2004 of former DPWH Undersecretary Antonio A. Inocentes (Inocentes) requesting the lifting of the notice of disallowance. ¹⁵	September 9, 2004
Former DPWH Secretary Simeon Datumanong (Datumanong) sought a reconsideration of the notice of disallowance and his exclusion from the persons being held liable in the notice of disallowance. ¹⁶	Undated

¹¹ Audit Observation Memorandum No. NGS VIII-A-03-022 dated October 10, 2003 (Annex X of the Complaint dated April 15, 2008, Records, pp. 93-96.

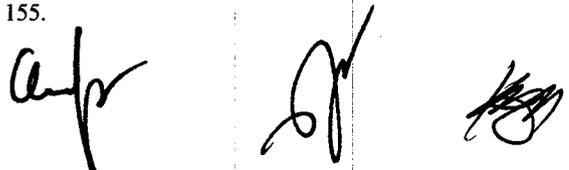
¹² Notice of Disallowance No. 2004-046 dated March 18, 2004, Records, pp. 151-152.

¹³ Petition for Review dated March 28, 2004, Records, pp. 164-182.

¹⁴ Notice of Disallowance No. 2004-046 dated March 18, 2004, Records, pp. 151-152.

¹⁵ With the conformity of DPWH Acting Secretary Florante Soriquez; 1st Indorsement dated August 5, 2004, Records, pp. 201-204.

¹⁶ Decision dated September 27, 2004, Records, pp. 153-159, 155.



Incidents	Date
Director IV Inok denied the DPWH's motion for reconsideration, but excluded former Secretary Datumanong from those being held liable under the notice of disallowance. ¹⁷	September 27, 2004
Graft Investigation and Prosecution Officer I Catherine G. Pascua (GIPO I Pascua) drafted a Complaint against the accused, former General Santos Sub-District Engineering Office District Engineer Tito M. Valdez (Valdez), Chief Accountant of the Office of the Assistant Secretary Teresita S. De Vera (De Vera), and Jovina Tama Mohamad (Mohamad), ¹⁸ a private individual, for violation of Section 3(e) and 3(g) of R.A. No. 3019; Acting Davao City Register of Deeds and concurrent Acting Regional Registrar Asteria E. Cruzabra (Cruzabra) for violation of Section 3(e) of R.A. No. 3019; and Gross Neglect of Duty and Conduct Prejudicial to the Best Interest of the Service against Cruzabra and De Vera. ¹⁹	April 15, 2008
Roy L. Ursal (Ursal), Director III and Officer-in-Charge, Legal and Adjudication Office-National of the COA wrote the Office of the Ombudsman requesting the status of the case pending with the latter in view of the motions for reconsideration of the accused and De Vera to lift the notice of disallowance. ²⁰	August 1, 2008
The complaint was indorsed to the Office of Ombudsman-Mindanao. ²¹	February 13, 2009
The Office of the Ombudsman-Mindanao received the complaint and records of the case. ²²	February 23, 2009
The Office of the Ombudsman-Mindanao served its Order dated March 17, 2009 requiring the accused and the other respondents to submit their counter-affidavits and controverting evidence. ²³	March 20, 2009
The Office of the Ombudsman-Mindanao received Cruzabra's motion for extension of time to file her answer. ²⁴	April 7, 2009
The Office of the Ombudsman-Mindanao received Valdez' motion for extension of time to file counter-affidavit. ²⁵	April 13, 2009

¹⁷ Decision dated September 27, 2004, Records, pp. 153-159.

¹⁸ Jovina Tama Mohamad or Jovina Mohamad Abdurasak, per Resolution dated October 24, 2014, Records, pp. 5-27, 5.

¹⁹ Complaint dated April 15, 2008, Records, pp. 35-48.

²⁰ Letter dated August 1, 2008, Records, p. 163.

²¹ OSP's Consolidated Comment and/or Opposition dated August 9, 2017, Records, pp. 523-529, 524.

²² *Id.*

²³ OSP's Consolidated Comment and/or Opposition dated August 9, 2017, Records, pp. 523-529, 524; Order dated February 26, 2015, Records, pp. 242-246, 243.

²⁴ OSP's Consolidated Comment and/or Opposition dated August 9, 2017, Records, pp. 523-529, 524.

²⁵ *Id.*



Incidents	Date
The Office of the Ombudsman-Mindanao received Cruzabra's counter-affidavit. ²⁶	April 15, 2009
The Office of the Ombudsman-Mindanao received the separate motions for extension of time to file counter-affidavit of the accused and De Vera. ²⁷	April 16, 2009
The Office of the Ombudsman-Mindanao received Valdez' counter-affidavit. ²⁸	April 24, 2009
The Office of the Ombudsman-Mindanao received the Motion to Stop or Suspend the Proceedings of this Case and the Submission of Counter-Affidavit(s) and Controverting Evidence dated April 21, 2009 of the accused. ²⁹	April 27, 2009
The Office of the Ombudsman-Mindanao received De Vera's counter-affidavit. ³⁰	April 30, 2009
The FIO sought an extension of time to submit its opposition to the accused's motion to suspend the proceedings of the case and the submission of counter-affidavits and controverting evidence. ³¹	May 18, 2009
The Office of the Ombudsman-Mindanao received the FIO's motion to admit opposition, opposition to the motion to suspend proceedings and submission of counter-affidavit, the accused's motion to admit reply, and reply. ³²	June 10, 2009
Assistant Ombudsman Jennifer Jardin-Manalili (Jardin-Manalili) drafted a resolution finding probable cause against the accused for violation of Section 3(e) of R.A. No. 3019. ³³	October 24, 2014
Assistant Special Prosecutor Anna Isabel G. Aurellano (Aurellano) drafted an information for violation of Section 3(e) of R.A. No. 3019 against the accused. ³⁴	November 11, 2014
Ombudsman Carpio-Morales approved the draft resolution ³⁵ and information. ³⁶	November 13, 2014
The accused sought a reconsideration of the resolution finding probable cause against him. ³⁷	December 29, 2014
Assistant Ombudsman Jardin-Manalili drafted an order denying the motion for reconsideration of the accused. ³⁸	February 26, 2015

²⁶ OSP's Consolidated Comment and/or Opposition dated August 9, 2017, Records, pp. 523-529, 524.

²⁷ *Id.*; Order dated February 26, 2015, Records, pp. 242-246, 243.

²⁸ OSP's Consolidated Comment and/or Opposition dated August 9, 2017, Records, pp. 523-529.

²⁹ Motion to Stop or Suspend the Proceedings of this Case and the Submission of Counter-Affidavits and Controverting Evidence dated April 21, 2009, Records, pp. 160-162.

³⁰ OSP's Consolidated Comment and/or Opposition dated August 9, 2017, Records, pp. 523-529, 524.

³¹ *Id.*

³² *Id.*

³³ Resolution dated October 24, 2014, Records, pp. 5-27.

³⁴ Information dated November 11, 2014, Records, pp. 1-2.

³⁵ Resolution dated October 24, 2014, Records, pp. 5-27.

³⁶ Information dated November 11, 2014, Records, pp. 1-2.

³⁷ Verified Motion for Reconsideration dated December 25, 2014, Records, pp. 218-229.

³⁸ Order dated February 26, 2015, Records, pp. 29-33.




Incidents	Date
Ombudsman Carpio-Morales approved the draft order. ³⁹	March 13, 2015
The accused filed another Verified Supplemental and Final Motion for Reconsideration dated April 15, 2015 with the Office of the Ombudsman. ⁴⁰	April 16, 2015
The OSP filed the information with the Sandiganbayan. ⁴¹	June 15, 2015
The accused filed a Verified Motion to Quash and Alter Date of Arraignment dated October 12, 2015 praying for the dismissal of the case on the ground of lack of probable cause. ⁴²	October 13, 2015
The OSP filed its comment/opposition. ⁴³	October 29, 2015
The accused filed his reply. ⁴⁴	November 19, 2015
The Court issued its resolution denying the motion to quash. ⁴⁵	January 22, 2016
The accused sought a reconsideration of the denial of his motion to quash. ⁴⁶	February 19, 2016
The Prosecution filed its comment/opposition. ⁴⁷	February 26, 2016
The accused filed his reply. ⁴⁸	March 11, 2016
The Court issued an order denying the motion for reconsideration. ⁴⁹	June 3, 2016
The accused filed a Motion to Dismiss with Leave of Court dated June 16, 2017 on the ground of violation of his rights to speedy disposition of the case and equal protection of the law, and lack of injury or damage to the government or any party. ⁵⁰	June 19, 2017
The Prosecution filed its consolidated comment and/or opposition. ⁵¹	August 11, 2017

³⁹ Order dated February 26, 2015, Records, pp. 29-33.

⁴⁰ Verified Supplemental and Final Motion for Reconsideration dated April 15, 2015, Records, pp. 247-261.

⁴¹ Information dated November 11, 2014, Records, pp. 1-2.

⁴² Verified Motion to Quash and Alter Date of Arraignment dated October 12, 2015, Records, pp. 277-290.

⁴³ Comment/Opposition (To the Accused's Verified Motion to Quash and Alter Date of Arraignment dated 12 October 2015) dated October 29, 2015, Records, pp. 295-303.

⁴⁴ Reply to Opposition (Re: Motion to Quash) dated November 18, 2015, Records, pp. 304-318.

⁴⁵ Resolution dated January 22, 2016, Records, pp. 333-336. The resolution was drafted by Justice Sarah Jane T. Fernandez when she was still a member of the Third Division of the Court, and when the case was still pending with the said division.

⁴⁶ Verified Motion for Reconsideration dated February 18, 2016, Records, pp. 346-359.

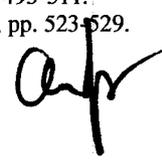
⁴⁷ Comment/Opposition dated February 24, 2016, Records, pp. 360-366.

⁴⁸ Reply to Opposition to Motion for Reconsideration dated March 10, 2016, Records, pp. 371-384.

⁴⁹ Resolution dated June 3, 2016, Records, pp. 401-406.

⁵⁰ Motion to Dismiss with Leave of Court dated June 16, 2017, Records, pp. 493-511.

⁵¹ Consolidated Comment and/or Opposition dated August 9, 2017, Records, pp. 523-529.




To reiterate, each case must be decided upon the **facts peculiar** to it.⁵² A mere mathematical reckoning of time involved would not be sufficient.⁵³

Article III, Section 16 of the Constitution provides that, *all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies*. 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. Hence, under the Constitution, any party to a case may demand expeditious action from all officials who are tasked with the administration of justice.⁵⁴

Due regard must be given to the facts and circumstances surrounding each case. 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 time is allowed to elapse without the party having his case tried. Just like the constitutional guarantee of speedy trial, speedy disposition of cases is a flexible concept. It is consistent with delays and depends upon the circumstances. What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory.⁵⁵

The conduct of both the prosecution and the defense, the length of the delay, the reasons for such delay, the assertion or failure to assert such right by the accused, and the prejudice caused by the delay are the factors to consider and balance.⁵⁶

Hence, the doctrinal rule is that in the determination of whether that right has been violated, the following factors **may** be considered and balanced: (1) the **length** of delay; (2) the **reasons** for the delay; (3) the **assertion or failure** to assert such right by the accused; and (4) the **prejudice** caused by the delay.⁵⁷

The period from the DPWH's receipt of AOM No. NGS VIII-A-03-022 dated October 10, 2003 on October 20, 2003 until the drafting of the complaint by GIPO I Pascua on April 15, 2008, or *four (4) years, five (5) months and twenty-three (23) days*, is neither attributed to the accused nor

⁵² *Benares v. Lim*, G.R. No. 173421, December 14, 2006.

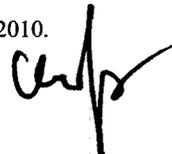
⁵³ *Bernat v. Sandiganbayan*, G.R. No. 158018, May 20, 2004.

⁵⁴ *The Ombudsman v. Jurado*, G.R. No. 154155, August 6, 2008.

⁵⁵ *Id.*

⁵⁶ *Ty-Dazo v. Sandiganbayan*, G.R. Nos. 143885-86, January 21, 2002.

⁵⁷ *Roquero v. Chancellor of UP Manila, et al.*, G.R. No. 181851, March 9, 2010.



the Office of the Ombudsman. At this point, there is no case to speak because the purpose of an audit observation memorandum is merely to seek an explanation on the subject matter, and that the DPWH is still pursuing the reconsideration of the notice of disallowance with the COA.

The preliminary investigation of the Office of the Ombudsman-Mindanao, which lasted from the filing of the complaint-affidavit by GIPO I Pascua on April 15, 2008 to the approval of the draft resolution finding probable cause against the accused on November 13, 2014, or *six (6) years, six (6) months and twenty-nine (29) days*, is not entirely attributable to the Office of the Ombudsman.

The period from April 15, 2008 to March 20, 2009, or *eleven (11) months and five (5) days*, is ascribed to the Office of the Ombudsman as this was the time it spent to indorse the complaint and the records of the case to the Office of the Ombudsman-Mindanao, and order the accused and the other respondents to submit their counter-affidavits and controverting evidence.

The period from March 20, 2009 to October 24, 2014, or *five (5) years, seven (7) months and four (4) days*, is credited to the accused and the other respondents. During this period, the accused sought an extension of time to file his counter-affidavit, and a motion seeking the suspension of the proceedings and the submission of counter-affidavits. The accused alleged therein that the resolution of the petition for review of the notice of disallowance before the COA is a condition *sine qua non* for the case to proceed. This is in addition to the extensions of time and the submission of the counter-affidavits by the other respondents and the failure of Mohamad to file her counter-affidavit.

The period from October 24, 2014 to November 13, 2014, or *twenty (20) days*, is visited upon the Office of the Ombudsman-Mindanao because this was the time it spent in the drafting of the resolution finding probable cause, the information, and the approval thereof by Ombudsman Carpio-Morales.

The period from November 13, 2014 to December 29, 2014, or *one (1) month and twenty (20) days*, is attributed to the accused because this was the time he used to exercise his right to due process and seek the reconsideration of the resolution finding probable cause against him.

The period from December 29, 2014 to March 13, 2015, or *two (2) months and fourteen (14) days*, is attributable to the Office of the



Ombudsman-Mindanao because this was the time spent by Assistant Ombudsman Jardin-Manalili in drafting the resolution denying the motion for reconsideration of the accused and the approval thereof by Ombudsman Carpio-Morales.

The period from March 13, 2015 to April 16, 2015, or *one (1) month and four (4) days*, is ascribed to the accused because of the filing of his second motion for reconsideration.

The period from April 16, 2015 to June 15, 2015, or *two (2) months*, is credited to the Office of the Ombudsman, through the OSP, for the filing of the information with the Sandiganbayan.

In sum, the total period of *five (5) years, nine (9) months and twenty-eight (28) days* is attributed to the accused which should be excluded from the time spent by the Office of the Ombudsman-Mindanao to terminate the preliminary investigation, and for the OSP to file the corresponding information with the Sandiganbayan. This period is attributed to the accused because of his motion for extension of time to file his counter-affidavit, motion to suspend proceedings pending the resolution of the petition for review of the notice of disallowance, and the two (2) motions for reconsideration. This is also because of the extensions of time to file counter-affidavits by the other respondents, and the failure of one of the respondents to file her counter-affidavit.

Subtracting the periods attributable to the accused and those beyond the control of the Office of the Ombudsman, the total period it took the Office of the Ombudsman-Mindanao to finish its preliminary investigation, and for the OSP to file the corresponding information is only *one (1) year, four (4) months and nineteen (19) days*. This period is reasonable because the investigating prosecutor evaluated the records of the case to determine whether probable cause for violation of Section 3(e) of R.A. No 3019 existed against the accused. The OSP had to review the case again so that only the case that could stand the rigors of trial would be filed. Under these circumstances, the said period is justified, acceptable, and not capricious, oppressive and vexatious.

The accused cannot claim to be prejudiced by a delay he is partially responsible for. In *Gonzales v. Sandiganbayan*,⁵⁸ the Supreme Court held that if the long delay in the termination of the preliminary investigation was not solely the prosecution's fault, but was also due to incidents attributable

⁵⁸ G.R. No. 94750, July 16, 1991.



to the accused and his counsel, the right of the accused to speedy disposition of the case is not violated, as in this case.

The accused was not suspended from office and was given all the opportunity to present his defenses during the preliminary investigation. Despite the extension of time sought by the accused to file his counter-affidavit, he failed to do so. The accused even filed a motion to suspend the proceedings of the case which served to delay the proceedings. The accused neither objected to the delay in the termination of the preliminary investigation against him nor sought to expedite its resolution. More importantly, the Office of the Ombudsman's actions were put on hold because of the suspension of the proceedings sought by the accused.

Moreover, the accused had already waived his right to question the violation of his rights to speedy trial and speedy disposition of the case.

In *Barcelona v. Lim*,⁵⁹ the Supreme Court held that the petitioner therein was considered to have waived his right to the speedy disposition of his case because of his failure to assert it. The right to speedy trial, as well as other rights conferred by the Constitution or statute, may be waived except when otherwise expressly provided by law.

In *Tilendo v. Ombudsman and Sandiganbayan*,⁶⁰ the Supreme Court held that the right of the petitioner therein to speedy disposition of his cases was not violated because he slept on his right and did not take any step whatsoever to accelerate the disposition of his cases. The inaction of the petitioner gave an impression that he did not object to the supervening delay, hence, it was impliedly with his acquiescence. He did not make any overt act, like filing a motion for early resolution.

In *Bernat v. Sandiganbayan and People*,⁶¹ the petitioner therein raised the violation of his right to speedy disposition only when the trial court judge reset the case for rehearing. The Supreme Court held that it is fair to assume that the petitioner therein would have just continued to sleep on his right, a situation amounting to laches had the trial court judge not taken the initiative of determining the non-completion of the records and ordering the remedy precisely so he could dispose of the case. The matter could have taken a different dimension if during all those ten years between 1979 when accused filed his memorandum and 1989 when the case was re-raffled, the petitioner showed signs of asserting his right which was granted him in 1987

⁵⁹ G.R. No. 189171, June 3, 2014.

⁶⁰ G.R. No. 165975, September 13, 2007.

⁶¹ G.R. No. 158018, May 20, 2004.



when the new Constitution took effect, or at least made some overt act (like a motion for early disposition or a motion to compel the stenographer to transcribe stenographic notes) that he was not waiving it. As it is, his silence would have to be interpreted as a waiver of such right.

In the case before the Court, the accused failed to seasonably assert his right to the speedy disposition of his case. He neither filed any motion for early resolution with the Office of the Ombudsman nor made any overt acts questioning the alleged inordinate delay. His inaction shows acquiescence and waiver to question any violation of his right to the speedy disposition of his case.

To make matters worse, the accused failed to assert the same right at the first instance in this Court. To recall, the information was filed on June 15, 2015. Instead of filing a motion to dismiss on the ground of violation of his right to the speedy disposition of the case, the accused first filed a motion to quash on the ground of lack of probable cause, which the Court treated as a motion to dismiss on the said ground and resolved to deny it. The accused filed the prohibited second motion to dismiss on the ground of violation of his rights to speedy trial and speedy disposition of the case, among others, only on June 19, 2017, or *two (2) years and four (4) days* after the information was filed. This was also after the Court denied his motion to quash (treated by the Court as a motion to dismiss), after he was arraigned, and the trial was about to start.

Considering the number of times that the case had to be reviewed, the levels of review that the case had to undergo, the accused's contributory delay, waiver of the right to the speedy disposition of the case, and the lack of prejudice to the accused, the period that lapsed could not be considered vexatious, capricious and oppressive. Under the circumstances, this cannot be considered inordinate delay. The accused cannot now seek the protection of the law to benefit from the adverse effects of his own conduct in this case. The assertion of the accused that his right to speedy disposition of the case against him has been violated must necessarily fail.

The cases on inordinate delay cited by the accused in his motion to dismiss are not applicable in the case against him now pending before this Court.

In *Tatad v. Sandiganbayan*,⁶² the inordinate delay of almost three (3) years in the conduct of the preliminary investigation was due to political motivation and blatant departure from procedures prescribed by law in the

⁶² No. L-72335, March 21, 1988.



conduct of preliminary investigation. Also, the long delay in resolving the preliminary investigation was not justified by the records.

In *Coscolluela v. Sandiganbayan and People*,⁶³ the Supreme Court found the presence of inordinate delay because it took the Ombudsman eight (8) years to complete the preliminary investigation. Petitioners therein could not be faulted for failing to assert their right to speedy disposition of their cases because they were not aware that the preliminary investigation was still on-going. They were merely asked to comment and not to file any counter-affidavits. Thereafter, the Resolution finding probable cause and the Information were issued and filed, respectively, only after six (6) years. They could have reasonably assumed that the proceedings were already terminated.

In *Commodore Torres v. Sandiganbayan*,⁶⁴ petitioner therein asserted his right to speedy disposition of his cases at the earliest possible time. He claimed that he was prejudiced by the delay in the resolution of the cases against him because he had already retired from government service for fifteen (15) years when he was included in the preliminary investigation. This deprived him of the ability to adequately prepare his case as he no longer had any access to records or contact with any witnesses in support of his defense.

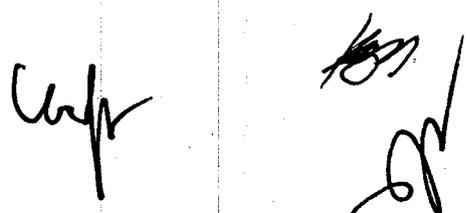
In *People v. Sandiganbayan*,⁶⁵ the Office of the Ombudsman failed to justify the delay of more than five (5) years considering that the case was for simple Robbery and that all the facts and circumstances upon which to anchor a dismissal or giving due course to a complaint were on hand.

The accused's motion to dismiss on the ground of inordinate delay must be resolved on the basis of the particular facts of the case which are different from the cases cited by him. The circumstances of inordinate delay in the foregoing cases are not present in the case now before this Court. There was neither political motivation nor blatant departure from prescribed procedures in the preliminary investigation. The accused was aware that a preliminary investigation was being conducted against him. He was served a copy of the complaint and given the opportunity to file his counter-affidavit. In fact, instead of filing his counter-affidavit, the accused filed a motion to suspend the proceedings of the case pending resolution of the petition for review of the notice of disallowance. The Prosecution gave sufficient justification for the time it took the Office of the Ombudsman to conduct its

⁶³ G.R. No. 191411, July 15, 2013.

⁶⁴ G.R. Nos. 221562-69, October 5, 2016.

⁶⁵ G.R. No. 188165, December 11, 2013.



preliminary investigation and to file the information with the Sandiganbayan.

The protection under the right to the speedy disposition of the case should not operate to deprive the government of its inherent prerogative in prosecuting criminal cases or in generally seeing to it that all who approach the bar of justice are afforded a fair opportunity to present their side.⁶⁶

This Court is not unmindful of the duty of the Ombudsman under the Constitution and R.A. No. 6770 to act promptly on complaints brought before it. Such duty, however, should not be mistaken with a hasty resolution of cases at the expense of thoroughness and correctness.⁶⁷ Judicial notice should be taken of the fact that the nature of the Office of the Ombudsman encourages individuals who clamor for efficient government service to freely lodge their complaints against wrongdoings of government personnel. A steady stream of cases reaching the Ombudsman inevitably results. Naturally, disposition of those cases would take some time.⁶⁸

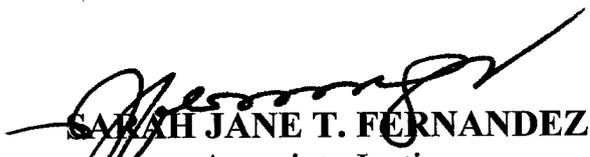
Lastly, the Court will not tolerate piece-meal reliefs or the filing of motions one after the other should the initial motion of the accused be denied. The accused and his counsel are **sternly warned** not to misuse the remedies provided in the Rules of Court.

WHEREFORE, the Motion to Dismiss with Leave of Court dated June 16, 2017 of accused Oscar D. Abundo is **DENIED** in violation of the Rules of Court and for lack of merit. Trial shall proceed as scheduled.

SO ORDERED.


KARL B. MIRANDA
Associate Justice

WE CONCUR:


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

on the result.

MICHAEL FREDERICK L. MUSNGI
Associate Justice

⁶⁶ Dansal v. Fernandez G.R. No. 126814, March 2, 2000.

⁶⁷ *Id.*

⁶⁸ Mendoza-Ong v. Sandiganbayan and People, G.R. Nos. 146368-69, October 23, 2003.