



Republic of the Philippines  
**SANDIGANBAYAN**  
Quezon City

**SPECIAL SIXTH DIVISION**

**PEOPLE OF THE PHILIPPINES,**

Plaintiff,

SB-17-CRM-0059 - 0062

For: Violation of Article 183 of the Revised Penal Code

-versus-

PRESENT:

**ELDRED TUMBOCON,**

**PALADA**

Accused,

FERNANDEZ, SJ, J.,<sup>1</sup> Chairperson

MIRANDA, J.,

MUSNGI, J.,<sup>2</sup>

CALDONA, J.,<sup>3</sup> &

JACINTO, J.<sup>4</sup>

Promulgated:

**NOV 10 2017**

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**RESOLUTION**

**MIRANDA, J.:**

This resolves: 1) Accused Eldred Palada Tumbocon's Motion for Reconsideration (On the August 10, 2017 Resolution of the Honorable Court) dated August 30, 2017; and 2) The plaintiff's Comment/Opposition (On the Motion for Reconsideration dated August 30, 2017) dated September 14, 2017.

<sup>1</sup> J. Ponferrada, Chairperson of the 6<sup>th</sup> 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 6<sup>th</sup> 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).

<sup>2</sup> Special Member in view of the vacancy in the 6<sup>th</sup> Division as per Administrative Order No. 124-2017 dated April 4, 2017 when the incident was submitted for resolution.

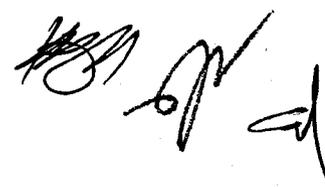
<sup>3</sup> Participated as a Special Member in a Division of Five Justices in the Resolution dated August 10, 2017 due to the dissent of J. Musngi, as per Administrative Order No. 7-C-2017 dated July 31, 2017.

<sup>4</sup> Participated as a Special Member in a Division of Five Justices in the Resolution dated August 10, 2017 due to the dissent of J. Musngi, as per Administrative Order No. 7-C-2017 dated July 31, 2017.

In his motion for reconsideration, the accused alleges that: 1) The period from April 6, 2010 to May 23, 2012, or *two (2) years, one (1) month and seventeen (17) days*, should be attributed to the Office of the Ombudsman because it should have submitted the case against the accused for resolution without the latter's counter-affidavit and further notice; 2) The Decisions in the administrative and criminal cases were drafted, reviewed, and recommended for approval on the same dates despite the fact that all pleadings were submitted much earlier in the administrative case; 3) The additional level of review by the Office of the Special Prosecutor (OSP) was arbitrary, capricious, and unreasonable because the accused was neither notified thereof nor received any review resolution before the filing of the informations in Court; 4) He did not benefit from the filing of the four (4) informations, instead of eight (8), because of his quandary and fear as to when the other four (4) cases would be filed and the corresponding warrant of arrest would be issued against him; 5) The period of *one (1) year, three (3) months and eighteen (18) days* should be included in the delay because the Field Investigation Office (FIO) sat down and just waited for the compliance documents to arrive and did not comply with its constitutional mandate to act promptly on the case; and 6) He suffered grave injustice and irreparable injury because he cannot any more accurately recall the details of the registration of a real property in 1995, registration of a business interest in 2000, and purchase of a motor vehicle in 2000.

In the plaintiff's comment/opposition, the OSP asserts that: 1) The invocation by the accused of the right to remain silent was merely an afterthought to justify the delay that resulted from his non-compliance with the order to file his counter-affidavit; 2) The delay in the approval of the resolution is not unreasonable considering the heavy workload and administrative functions of Ombudsman Conchita Carpio-Morales (Carpio-Morales), and the disparity of the charges between the FIO complaint and resolution finding probable cause; 3) The review by the OSP is an internal process which the accused is not entitled to participate; 4) The fact-finding investigation is not part of preliminary investigation because there is neither an accused nor a case to speak of; and 5) The accused waived his right to the speedy disposition of his cases when he failed to invoke it at the first instance or at the first reasonable opportunity.

After a restudy, the Court finds no valid reason to reconsider its Resolution dated August 10, 2017 denying the motion to dismiss of the accused on the ground of violation of his right to speedy disposition of cases. The issues and arguments raised by the accused in his motion for reconsideration are a mere rehash and a repetition of the same issues and arguments raised in his Motion to Dismiss (On the Ground of Inordinate

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Delay) dated February 23, 2017. These issues and arguments have already been discussed and considered by the Court in issuing the assailed Resolution dated August 10, 2017. There being no new matters or issues raised to warrant a reversal thereof, the Court is not inclined to grant the motion for reconsideration of the accused.

*To reiterate, each case must be decided upon the **facts peculiar** to it.<sup>5</sup> A mere mathematical reckoning of time involved would not be sufficient.<sup>6</sup>*

The negligence and failure of the accused to file his counter-affidavit in the criminal case contributed to whatever delay that may have resulted in the termination of the preliminary investigation and the filing of the corresponding informations against him. The Office of the Deputy Ombudsman for Luzon's actions were put on hold pending the compliance of the accused with the order directing him to file his counter-affidavit in the criminal case.

The compliance period of the different government agencies on the *subpoena duces tecum* is beyond the control of the Office of the Deputy Ombudsman for Luzon because some of the certifications, particularly those from the district offices of the Bureau of Internal Revenue (BIR) and Land Transportation Office (LTO), were simply follow-ups of earlier requests from their main offices. The BIR Main Office stated in its Certification dated February 5, 2008 that the Income Tax Return of the accused for 1996 was already forwarded to the Regional Office. This prompted another *subpoena* from the Office of the Deputy Ombudsman for Luzon for a copy of the said Income Tax Return from the BIR Revenue District Office No. 6 in Urdaneta City, Pangasinan on May 5, 2008. The district office of the BIR complied with the said *subpoena* on May 21, 2008.

Similarly, the LTO Main Office merely enumerated the list of motor vehicles registered in the names of the accused and his family. It also advised the Office of the Deputy Ombudsman for Luzon to get the copies of the certificates of registration and official receipts of the vehicles from its district offices. This prompted another *subpoena* from the Office of the Deputy Ombudsman for Luzon for copies of the said certificates of registration and official receipts from the LTO district offices on May 5, 2008. The LTO Rosales District Office and San Juan District Office

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<sup>5</sup> *Benares v. Lim*, G.R. No. 173421, December 14, 2006.

<sup>6</sup> *Bernat v. Sandiganbayan*, G.R. No. 158018, May 20, 2004.



complied with the said *subpoena* on June 4, 2008 and February 11, 2009, respectively.

The Constitution and Republic Act (R.A.) No. 6770<sup>7</sup> 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.**<sup>8</sup>

The Court does not interfere with the Office of the Ombudsman's exercise of its investigative and prosecutorial powers, and respects the initiative and independence inherent in the Office of the Ombudsman which, beholden to no one, acts as the champion of the people and the preserver of the integrity of the public service.<sup>9</sup>

Section 4 (g), Rule II of Administrative Order No. 07 dated April 10, 1990, as amended, or the Rules of Procedure of the Office of the Ombudsman, states:

g) Upon the termination of the preliminary investigation, the investigating officer shall forward the records of the case together with his resolution to the designated authorities for their appropriate action thereon. No information may be filed and no complaint may be dismissed without the written authority or approval of the Ombudsman in cases falling within the jurisdiction of the Sandiganbayan, or of the proper Deputy Ombudsman in all other cases.

Thus, the filing of four (4) informations for Perjury, instead of eight (8), is the call of the Office of the Ombudsman even if the resolution found probable cause against the accused for eight (8) counts of Perjury. The Court cannot and will not dictate on the Office of the Ombudsman what cases to file. The Court will act only on cases filed before it.

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<sup>7</sup> An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for other Purposes.

<sup>8</sup> *Casing v. Ombudsman*, G.R. No. 192334, June 13, 2012.

<sup>9</sup> *PCGG v. Desierto*, G.R. No. 139296, November 23, 2007.

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The Court also does not see any problem if Ombudsman Carpio-Morales directs the OSP to again review the resolution finding probable cause against the accused. Ombudsman Carpio-Morales is allowed to take any appropriate action she deems it necessary before approving the filing of the informations in these cases pursuant to the Rules of Procedure of the Office of the Ombudsman. The said rules do not provide that the accused needs to be notified of the same or furnished with a copy of the review resolution, if any.

The accused was not prejudiced because the cases against him involved documents pertaining to his Statements of Assets, Liabilities, and Net Worth, motor vehicle registrations, certificates of land titles, and businesses. Certainly, the accused had copies of these documents, could readily present them during trial, and recall the important events and circumstances of the acquisition or establishment of his properties or businesses.

Finally, although the accused filed a motion for early resolution with the Office of the Deputy Ombudsman for Luzon, the total period of *five (5) years, six (6) months, and twenty-nine (29) days* spent by the Office of the Ombudsman and the OSP to complete the fact-finding investigation, preliminary investigation, and filing of informations against the accused can hardly be considered an unreasonable and arbitrary delay as to deprive the accused of his constitutional right to the speedy disposition of his cases

The protection under the right to a speedy disposition of a 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 be afforded a fair opportunity to present their side.<sup>10</sup>

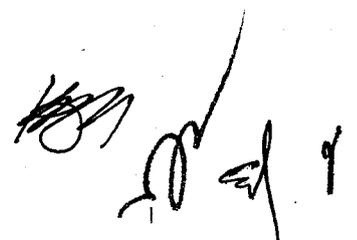
This Court is not unmindful of the duty of the Ombudsman under the Constitution and R.A. No. 6770 to act promptly on complaints brought before it. Such duty, however, should not be mistaken with a hasty resolution of cases at the expense of thoroughness and correctness.<sup>11</sup> Judicial notice should 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

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<sup>10</sup> *Dansal v. Fernandez*, G.R. No. 126814, March 2, 2000.

<sup>11</sup> *Id.*

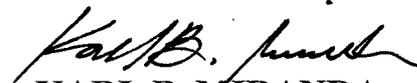
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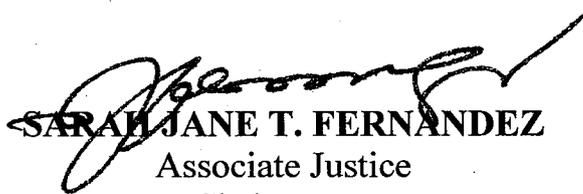
personnel. A steady stream of cases reaching the Ombudsman inevitably results. Naturally, disposition of those cases would take some time.<sup>12</sup>

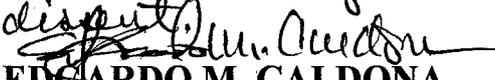
**WHEREFORE**, the Prosecution's Motion for Reconsideration dated August 30, 2017 is **DENIED**. The Resolution of the Court promulgated on August 10, 2017 is **AFFIRMED**.

**SO ORDERED.**

  
**KARL B. MIRANDA**  
Associate Justice

WE CONCUR:

  
**SARAH JANE T. FERNANDEZ**  
Associate Justice  
Chairperson

*I join Hon. J. Marangio in his dissent.*  
  
**EDGARDO M. CALDONA**  
Associate Justice

*I reiterate my dissent.*  
  
**MICHAEL FREDERICK L. MUSNCI**  
Associate Justice

  
**BAYANI H. JACINTO**  
Associate Justice

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<sup>12</sup> *Mendoza-Ong v. Sandiganbayan and People*, G.R. No. 146368-69, October 23, 2003.

## DISSENTING OPINION

**MUSNGI, J.:**

I dissent from the Resolution denying the *Motion for Reconsideration (On the August 10, 2017 Resolution of the Honorable Court)* dated 30 August 2017 filed by accused Eldred Palada Tumbocon, and maintain the position expressed in my Dissenting Opinion to the 10 August 2017 Resolution.

To reiterate, '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.'<sup>1</sup>

The extraordinary delay of almost ten (10) years reckoned from the receipt of the anonymous Complaint sometime in 2007 until the filing of the *Information* before the Court on 23 July 2017 has already extremely prejudiced the accused. The inordinate delay attendant in these cases has already caused tactical disadvantage in the preparation of accused Tumbocon's defense.

Again, it is worthy to note that these cases only involve four (4) counts of Perjury penalized under Article 183 of the Revised Penal Code. The issues presented are not complicated and there are no voluminous records to review as it only involves the Statement of Assets, Liabilities, and Net Worth of the accused.

It cannot be overemphasized that the prosecution is constitutionally mandated to resolve cases with utmost dispatch, thus:

"Verily, the Office of the Ombudsman was created under the mantle of the Constitution, mandated to be the 'protector of the people' and as such, required to 'act promptly on complaints filed in any form or manner against officers and employees of the Government, or of any subdivision, agency or instrumentality thereof, in order to promote efficient service.' This great responsibility cannot be simply brushed aside by ineptitude. Precisely, the Office of the Ombudsman has the inherent duty not only to carefully go through the particulars of case but also to resolve the same within the proper length of time. Its dutiful performance should not only be gauged by the quality of the assessment but also by the reasonable promptness of its dispensation.'

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'Lest it be misunderstood, the right to speedy disposition of cases is not merely hinged towards the objective of spurring dispatch in the administration of justice but also to prevent the oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite time. Akin to the right to speedy trial, its "salutary objective" is to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time

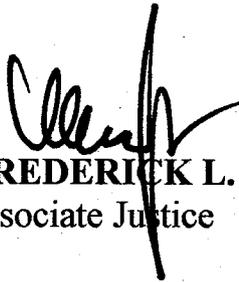
<sup>1</sup> Corpuz v. Sandiganbayan, G.R. No. L-37007, 20 July 1987.



compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. This looming unrest as well as the tactical disadvantages carried by the passage of time should be weighed against the State and in favor of the individual.”<sup>2</sup>

Its vigilance toward this mandate as protector of the people, including the accused, should not be constrained by any unreasonable factor.

**ACCORDINGLY**, I vote to **GRANT** the *Motion for Reconsideration (On the August 10, 2017 Resolution of the Honorable Court)* dated 30 August 2017 filed by accused Eldred Palada Tumbocon. Likewise, I reiterate my vote to **GRANT** the *Motion to Dismiss (On the Ground of Inordinate Delay)* dated 23 February 2017 filed by the accused.



**MICHAEL FREDERICK L. MUSNGI**  
Associate Justice

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<sup>2</sup> *Coscolluela vs. Sandiganbayan*, G.R. No. 191411, July 15, 2013.