

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

**CRIM. CASES NOS. SB-17-CRM-
0164 to 0165**

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

- versus -

**CRIM. CASES NOS. SB-17-CRM-
0166 to 0167**

*For: Violation of Article 217 of the
Revised Penal Code (Malversation)*

**ROBERT LYNDON BARBERS,
ET AL.,**

Accused.

Present:

HERRERA, Jr., J., Chairperson

MUSNGI, J., Associate Justice

PAHIMNA, J., Associate Justice

November 9, 2017
Promulgated 

RESOLUTION

MUSNGI, J.:

The Court resolves the following:



- (1) *Omnibus Motion (To Quash Information and To Defer Arraignment)*¹ filed by accused Robert Lyndon Barbers (“**Barbers**”) on 16 February 2017;
- (2) *Comment/Opposition*² filed by the prosecution on 10 March 2017;
- (3) *Motion To Reduce Bail And Motion To Hold In Abeyance The Issuance Of The Warrant Of Arrest And If One Had Been Issued To Suspend Its Implementation*³ filed by accused Adolfo Buot Pantilo, Sr. (“**Pantilo**”) on 20 February 2017; and
- (4) *Comment/Opposition*⁴ filed by the prosecution on 10 March 2017.

¹ Records, Vol. 1, pp. 226-242.

² *Ibid.*, pp. 329-443.

³ *Ibid.*, pp. 243-245.

⁴ *Ibid.*, pp. 325-328.

In his *Omnibus Motion*, accused Barbers cites the following grounds for the quashal of the *Informations*:

- (1) There was an unexplained delay in the fact-finding investigation of the Office of the Ombudsman which resulted in violation of the accused's right to speedy disposition of cases;
- (2) There was an inordinate delay in the preliminary investigation by the Office of the Ombudsman which also resulted in violation of the accused's right to speedy disposition of cases; and
- (3) Accused Barbers invokes his right to equal protection to be accorded similar treatment as those who were charged with the same offenses.

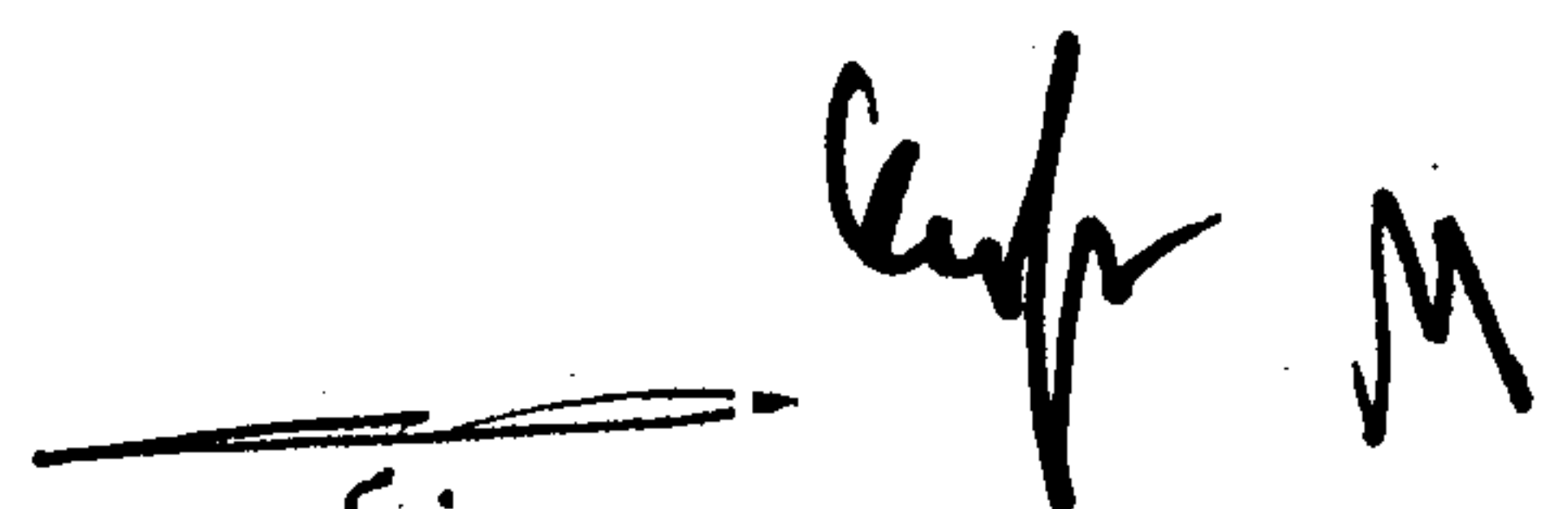
Accused Barbers claims that there was an unexplained hiatus of five (5) years from the time Task Force *Abono* conducted its fact-finding investigation counted from the issuance of the 2006 COA Regional Technical Service Office Memorandum on 02 May 2006 until the filing of the *Complaint* on 02 May 2011 before the Office of the Ombudsman. Even if the reckoning period was based on the Notice of Disallowance issued on June 2007, accused Barbers asserts that there is still an unexplained hiatus of three (3) years and eleven (11) months.

The accused likewise avers that there was inordinate delay in the preliminary investigation. According to him, there was another unexplained delay of five (5) years and three (3) months from the execution of the *Complaint* on 16 August 2010 until the issuance of the *Resolution* by the Office of the Ombudsman on 16 November 2015 indicting the accused of the crimes charged.

Accused Barbers argues, moreover, that he should be accorded similar treatment as those who were charged with the same offenses. He points out that the First Division and Special First Division of the Sandiganbayan quashed the *Informations* against accused Manuel Mercado Lapid ("**Lapid**") and Abraham Kahlil Blanco Mitra ("**Mitra**"), respectively, on the ground of violation of their right to speedy disposition of cases.

In the case of Lapid, four (4) years and six (6) months had elapsed from the time of the filing of the *Complaint* in 2011 until the time the *Information* was filed in 2015. The Office of the Ombudsman spent three (3) years and one (1) month during this period to conduct its preliminary investigation.

In the case of Mitra, on the other hand, it took the Office of the Ombudsman almost five (5) and one half (1/2) years to complete the

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preliminary investigation from the filing of the *Complaint* on 11 April 2011 until the filing of the *Information* on 23 September 2016.

By comparison, accused Barbers claims that the delay in his case is worse considering that it took the Office of the Ombudsman six **(6) years and three (3) months** to conduct its preliminary investigation reckoned from the filing of the *Complaint* until the filing of the *Information*. Moreover, if the period of fact-finding investigation is to be considered, then the delay would already amount to **more than ten (10) years**.



Thus, accused Barbers moves that the *Informations* filed against him be quashed for violation of his right to speedy disposition of cases.

In its *Comment/Opposition*, the prosecution counters that the allegation of delay is unwarranted. Based on the timeline, the prosecution maintains that the Office of the Ombudsman managed to resolve the cases within a justifiable period despite their complexity, the number of accused, and the controversy surrounding the case. It argues that it had to exercise diligence in investigating the cases instead of merely relying on the audit report of the Commission on Audit ("COA").

The prosecution asserts that the fact-finding inquiry is separate and distinct from a preliminary investigation. The Office of the Ombudsman conducted its own fact-finding investigation to verify the veracity of the information regarding the Fertilizer Scam. According to the prosecution, a person is not yet considered a respondent during this period, but merely considered as a "person-in-interest." Moreover, records show that accused Barbers received the *Order* to file his Counter-Affidavit sometime in July 2011, but he never raised the issue of the alleged inordinate delay until after his arraignment was set by the Court.

The prosecution also contends that the right to speedy disposition of cases, like the right to speedy trial, is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays. These were allegedly not proven by the accused.

Lastly, the prosecution claims that the fundamental right of equal protection of the laws is not absolute, but is subject to reasonable classification. It maintains that particular regard must be taken of the facts and circumstances peculiar to each case. The prosecution states that the cases of Lapid and Mitra have not yet attained finality, nor have been upheld by the Supreme Court. It explains that the case of accused Barbers is allegedly different from the Lapid and Mitra cases taking into account the volume of the liquidation documents and the number of respondents.

With regard to the *Motion To Reduce Bail And Motion To Hold In Abeyance The Issuance Of The Warrant Of Arrest And If One Had Been Issued To Suspend Its Implementation*, accused Pantilo moves for the reduction of his bail by fifty percent (50%) from the recommended amount of PhP60,000.00 for two (2) counts of violation of Section 3(e) of Republic Act No. 3019 (“R.A. No. 3019”) and PhP80,000.00 for two (2) counts of Malversation.

Accused Pantilo claims that the amount of bail is beyond his financial capacity considering that he is already a retired government employee with a monthly pension of only PhP7,000.00, which is not even enough for his daily needs and maintenance medicine.

In its *Comment/Opposition*, the prosecution argues that a person applying for admission to bail must be in the custody of the law or otherwise deprived of his liberty. Since bail is intended to obtain or secure one’s provisional liberty, the prosecution argues that the same cannot be posted before custody over him has been acquired, either by his lawful arrest or voluntary surrender. In this case, the prosecution alleges that accused Pantilo has not yet submitted himself to the jurisdiction of this Court.

Moreover, the prosecution argues that the recommended bail is commensurate to the crimes charged. It also notes that accused Pantilo merely alleged his financial incapacity without attaching any proof of the same. Likewise, even if financial incapacity was proven, the prosecution contends that the accused can post surety or property bond for his temporary liberty.

RULING

At the outset, it is important to stress that this Court is not bound by the findings in other divisions of the Sandiganbayan and, thus, will make its own independent finding on whether there is a violation of the accused’s right to speedy disposition of cases based on the particular circumstances of these cases. In the case of *Central Azucarera De Bais Employees Union-NFL v. Central Azucarera De Bais, Inc.*,⁵ the Supreme Court held, thus:

“As a general rule, courts are not authorized to take judicial notice in the adjudication of cases pending before them of the contents of other cases even when such cases have been tried or are pending in the same court and notwithstanding the fact that both cases may have been tried or are actually pending before the same judge. Courts may be required to take judicial notice of the decisions of the appellate courts but not of the

⁵ G.R. No. 186605, 17 November 2010.

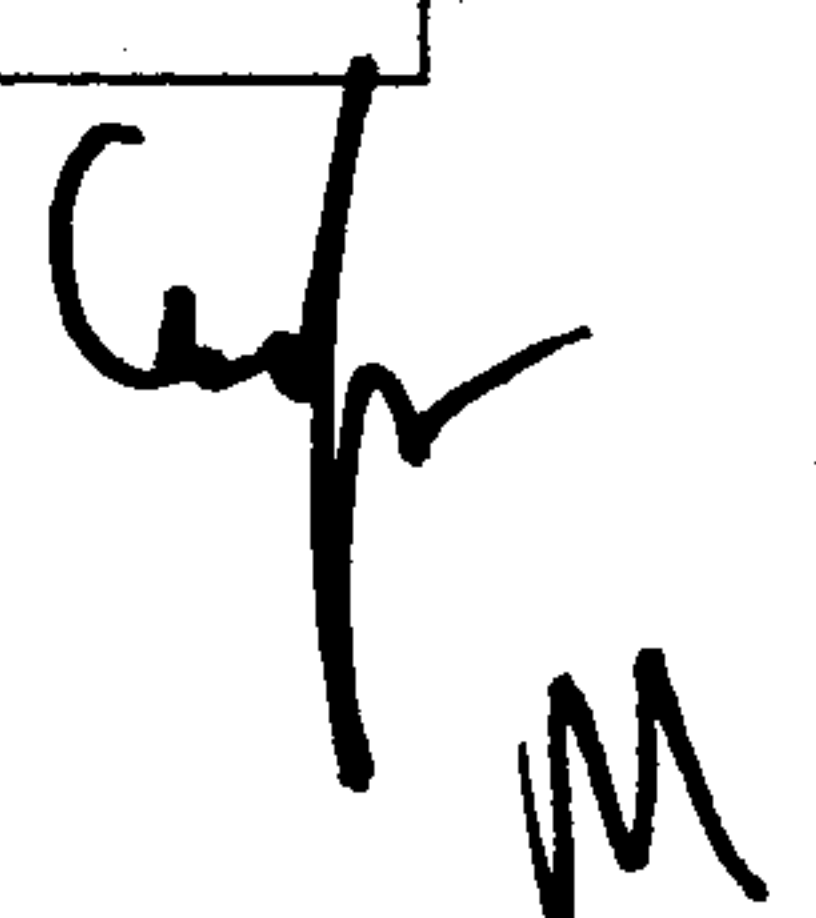
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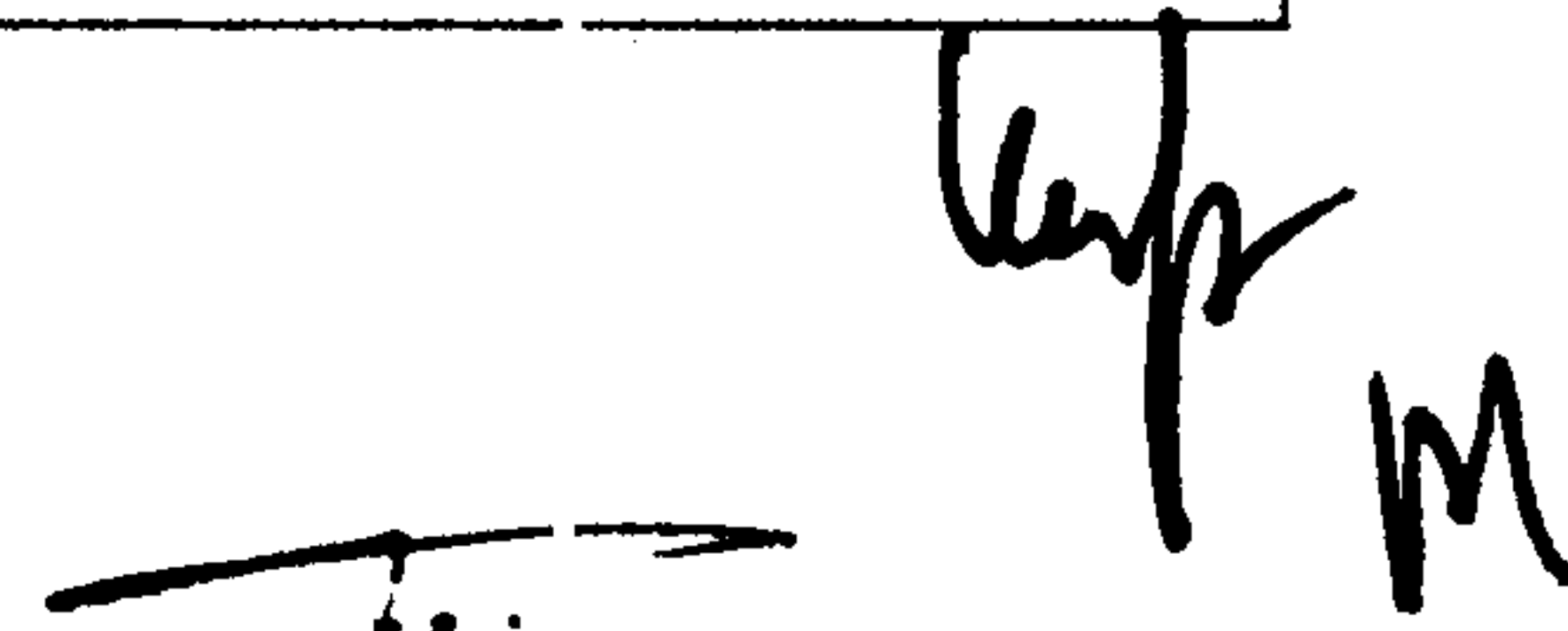
decisions of the coordinate trial courts, or even of a decision or the facts involved in another case tried by the same court itself, unless the parties introduce the same in evidence or the court, as a matter of convenience, decides to do so. Besides, judicial notice of matters which ought to be known to judges because of their judicial functions is only discretionary upon the court. It is not mandatory.”

Based on the records of the case, the following pertinent dates are uncontroverted:

Date	Incident
16 August 2010	<i>Complaint</i> was executed by Task Force Abono of the Field Investigator Office of the Office of the Ombudsman
02 May 2011	<i>Complaint</i> was filed with the Office of the Ombudsman for preliminary investigation
19 May 2011	<i>Order</i> was issued by the Office of the Ombudsman ordering the respondents to file their counter-affidavits
11 July 2011	Letter of extension of time to file counter-affidavit was filed by accused Barbers
21 July 2011	<i>Counter-Affidavit</i> was filed by accused Barbers
27 July 2011	Letter of extension of time to file counter-affidavit was filed by accused Pantilo
27 July 2011	Joint Letter of extension of time to file counter-affidavit was filed by accused Virginia Yuipco (“Yuipco”), Daisy Andit (“Andit”), Daisy Hubilla (“Hubilla”), Bob Edera (“Edera”) and Teresa Durero (“Durero”)
04 August 2011	<i>Counter-Affidavit</i> was filed by accused Madlos, Yuipco, Durero, Pantilo, and Edera
15 August 2011	<i>Joint Counter-Affidavit</i> was filed by accused Hubilla and Andit



08 March 2013	<i>Order</i> to file counter-affidavit was issued to Dr. Audie Mosende Relliquette
11 June 2013	<i>Subpoena Duces Tecum</i> was issued to the Head of Human Resources and Management Division of the Provincial Government of Surigao Del Norte
23 July 2013	Compliance from the Head of Human Resources and Management Division of the Provincial Government of Surigao Del Norte
10 September 2013	Second issuance of subpoena to Dr. Audie Mosende Relliquette to file counter-affidavit
16 November 2015	<i>Resolution</i> signed by GIPO II Rowena R. Vidad
05 April 2016	Hon. Ombudsman Conchita Carpio Morales approved the <i>Resolution</i>
03 June 2016	<i>Motion for Reconsideration</i> was filed by accused Barbers
15 June 2016	<i>Motion for Reconsideration</i> was filed by accused Madlos, Yuipco, Durero, Pantilo, and Edera
24 October 2016	<i>Resolution</i> on the <i>Motions for Reconsideration</i> was issued
22 November 2016	<i>Resolution</i> on the <i>Motions for Reconsideration</i> was reviewed and approved by the Deputy Ombudsman for Luzon
02 December 2016	Hon. Ombudsman Conchita Carpio Morales signed and approved the <i>Resolution</i> on the <i>Motions for Reconsideration</i>
03 February 2017	<i>Informations</i> were filed before the Sandiganbayan

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In the case of *Corpuz vs. Sandiganbayan*,⁶ the Supreme Court discussed the right of the accused to speedy disposition of cases and the correlative obligation of the Court to protect such right as follows:

“The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts to proceed with reasonable dispatch in the trial of criminal cases. Such right to a speedy trial and a speedy disposition of a case is violated only when the proceeding is attended by vexatious, capricious and oppressive delays. The inquiry as to whether or not an accused has been denied such right is not susceptible by precise qualification. The concept of a speedy disposition is a relative term and must necessarily be a flexible concept.’

‘While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.’

‘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.’

‘In determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, **four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant’s assertion of his right; and (d) prejudice to the defendant.** Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.’

‘Delay is a two-edge sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden.

⁶ G.R. No. 162214, 11 November 2004.

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The Constitution and the Rules do not require impossibilities or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such right shall deprive the State of a reasonable opportunity of fairly prosecuting criminals. As held in *Williams v. United States*, for the government to sustain its right to try the accused despite a delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice.'

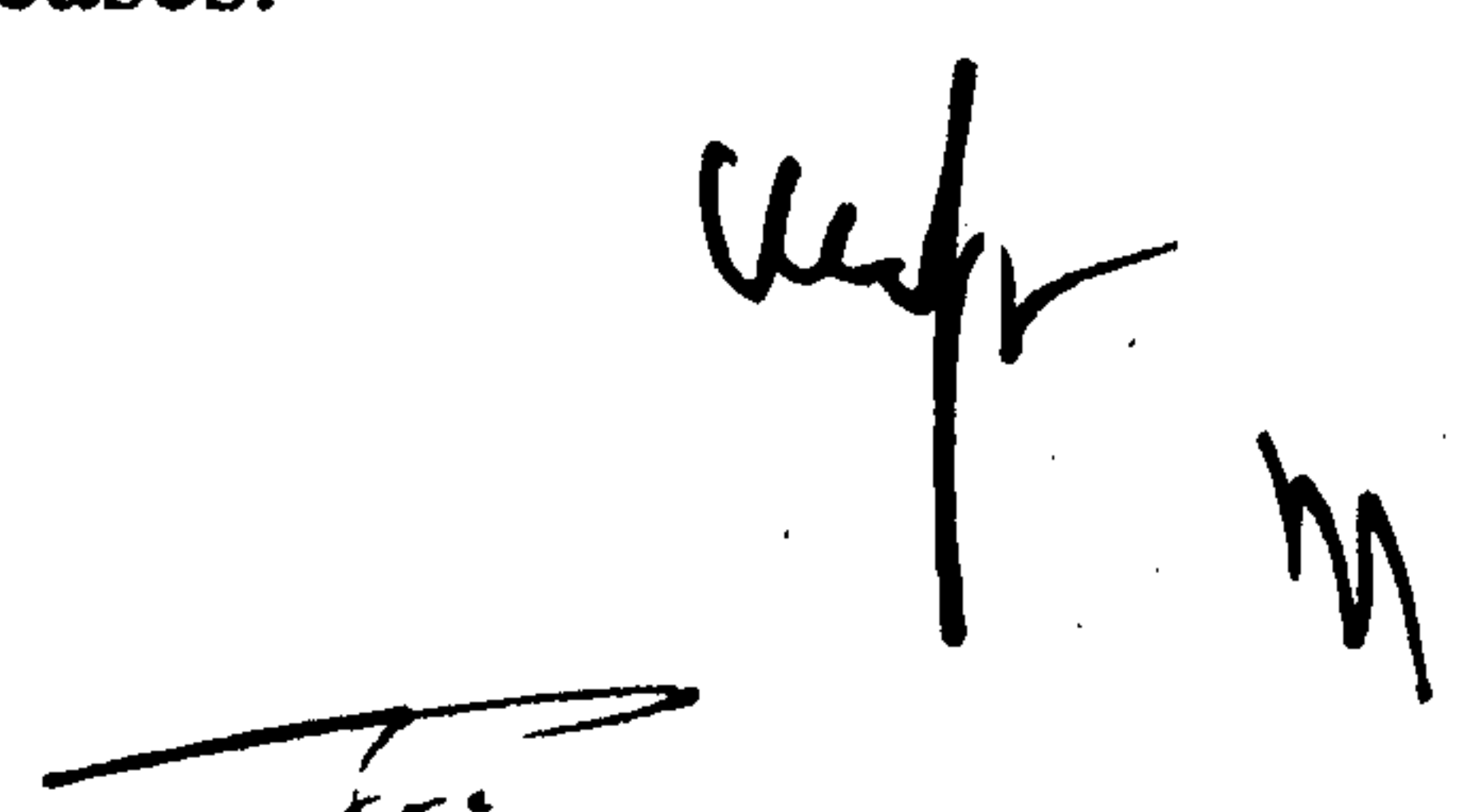
'Closely related to the length of delay is the reason or justification of the State for such delay. Different weights should be assigned to different reasons or justifications invoked by the State. For instance, a deliberate attempt to delay the trial in order to hamper or prejudice the defense should be weighted heavily against the State. Also, it is improper for the prosecutor to intentionally delay to gain some tactical advantage over the defendant or to harass or prejudice him. On the other hand, the heavy case load of the prosecution or a missing witness should be weighted less heavily against the State. Corollarily, Section 4, Rule 119 of the Revised Rules of Criminal Procedure enumerates the factors for granting a continuance.'" (Emphasis supplied and citations omitted)

Hence, in determining whether the defendant has been denied of his/her right to a speedy disposition of a case, the following factors should be taken into account: (1) length of delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) prejudice to the defendant.

Applying the aforesaid factors of delay to this case, the Court holds that the right of accused Barbers to a speedy disposition of criminal case has been violated.

First, records show that it took the Office of the Ombudsman **5 years and 9 months** to complete its preliminary investigation counted from the filing of the *Complaint* on 02 May 2011 until the filing of the *Informations* before the Court on 07 February 2017. Moreover, including the 5-year fact-finding investigation by the Task Force *Abono* in the computation of the delay counted from the issuance of the 2006 COA Regional Technical Service Office Memorandum on 02 May 2006, then the delay would be **10 years and 9 months**.

Indeed, the duty of the Office of the Ombudsman to conduct a fact-finding inquiry is distinct from its power to conduct a preliminary investigation. However, the issue on whether the fact-finding investigation should be included in the computation of the attendant delay had already been settled by the Supreme Court in a number of cases.



In the recent case of *Commo. Lamberto R. Torres (Ret.) v. Sandiganbayan, et al.*,⁷ the Supreme Court ruled that the fact-finding investigation is included in the determination of the duration of delay, to wit:

“We find it necessary to emphasize that the speedy disposition of cases covers not only the period within which the preliminary investigation was conducted, but also all stages to which the accused is subjected, even including fact-finding investigations conducted prior to the preliminary investigation proper. We explained in *Dansal v. Fernandez, Sr.*:

‘Initially embodied in Section 16, Article IV of the 1973 Constitution, the aforesaid constitutional provision is one of three provisions mandating speedier dispensation of justice. It **guarantees the right of all persons to "a speedy disposition of their case"; includes within its contemplation the periods before, during and after trial**, and affords broader protection than Section 14(2), which guarantees just the right to a speedy trial. It is more embracing than the protection under Article VII, Section 15, which covers only the period after the submission of the case. The present constitutional provision applies to civil, criminal and administrative cases.’

‘Considering that the subject transactions were allegedly committed in 1991 and 1992, and the fact-finding and preliminary investigations were ordered to be conducted by Tanodbayan Marcelo in 2004, the length of time which lapsed before the Ombudsman was able to resolve the case and actually file the Informations against petitioner was undeniably long-drawn-out.’ (Citations omitted; Emphasis supplied)

Moreover, in *People vs. Sandiganbayan, Hernando Perez, et al.*,⁸ the Supreme Court also resolved that:

“The guarantee of speedy disposition under Section 16, Article III of the Constitution applies to all cases pending before all judicial, quasi-judicial or administrative bodies. Thus, the fact-finding investigation should not be deemed separate from the preliminary investigation conducted by the Office of the Ombudsman if the aggregate time spent for both constitutes inordinate and oppressive delay in the disposition of any case.”

Second, the prosecution did not offer any explanation why it took the fact-finding investigation 5 years from the issuance of the 2006 COA Regional Technical Service Office Memorandum on 02 May 2006 until the filing of the *Complaint*.

⁷ G.R. Nos. 221562-69, 05 October 2016.

⁸ G.R. Nos. 188165 and 189063, December 11, 2013.



Likewise, the prosecution failed to explain why it took the Office of the Ombudsman 5 years and 9 months to conduct its preliminary investigation. This case involves the alleged anomalous procurement by the Provincial Government of Surigao Del Norte of 3,332 kilos of Elements foliar fertilizer from Rosa Mia Trading resulting in only 2 counts of violation of Section 3(e) of R.A. No. 3019 and 2 counts of Malversation charged against ten (10) accused persons. The prosecution failed to justify the extraordinary delay in the resolution of the *Complaint*.

Again, in the case of *Commo. Lamberto R. Torres (Ret.) v. Sandiganbayan, et al.*,⁹ the Supreme Court pronounced that:

“Any delay in the investigation and prosecution of cases must be duly justified. The State must prove that the delay in the prosecution was reasonable, or that the delay was not attributable to it.”

Third, the Court finds that the assertion of accused Barbers of his right to speedy disposition of cases is timely because a Motion to Quash may be filed at any time before arraignment.¹⁰

Moreover, in the case of *Coscolluela vs. Sandiganbayan*,¹¹ the Supreme Court, citing *Barker v. Wingo*,¹² ruled that the respondents in a preliminary investigation are not required to follow up on the prosecution of their case, thus:

“Being the respondents in the preliminary investigation proceedings, it was not the petitioners’ duty to follow up on the prosecution of their case. Conversely, it was the Office of the Ombudsman’s responsibility to expedite the same within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it. As pronounced in the case of *Barker v. Wingo*:

‘A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process.’ (citation omitted)

The accused’s assertion of his constitutional right to speedy disposition of cases is not the only factor to consider in determining inordinate delay. A balancing test of applying societal interests and the right of the accused necessarily compels the Court to approach speedy disposition cases on an *ad hoc* basis.¹³

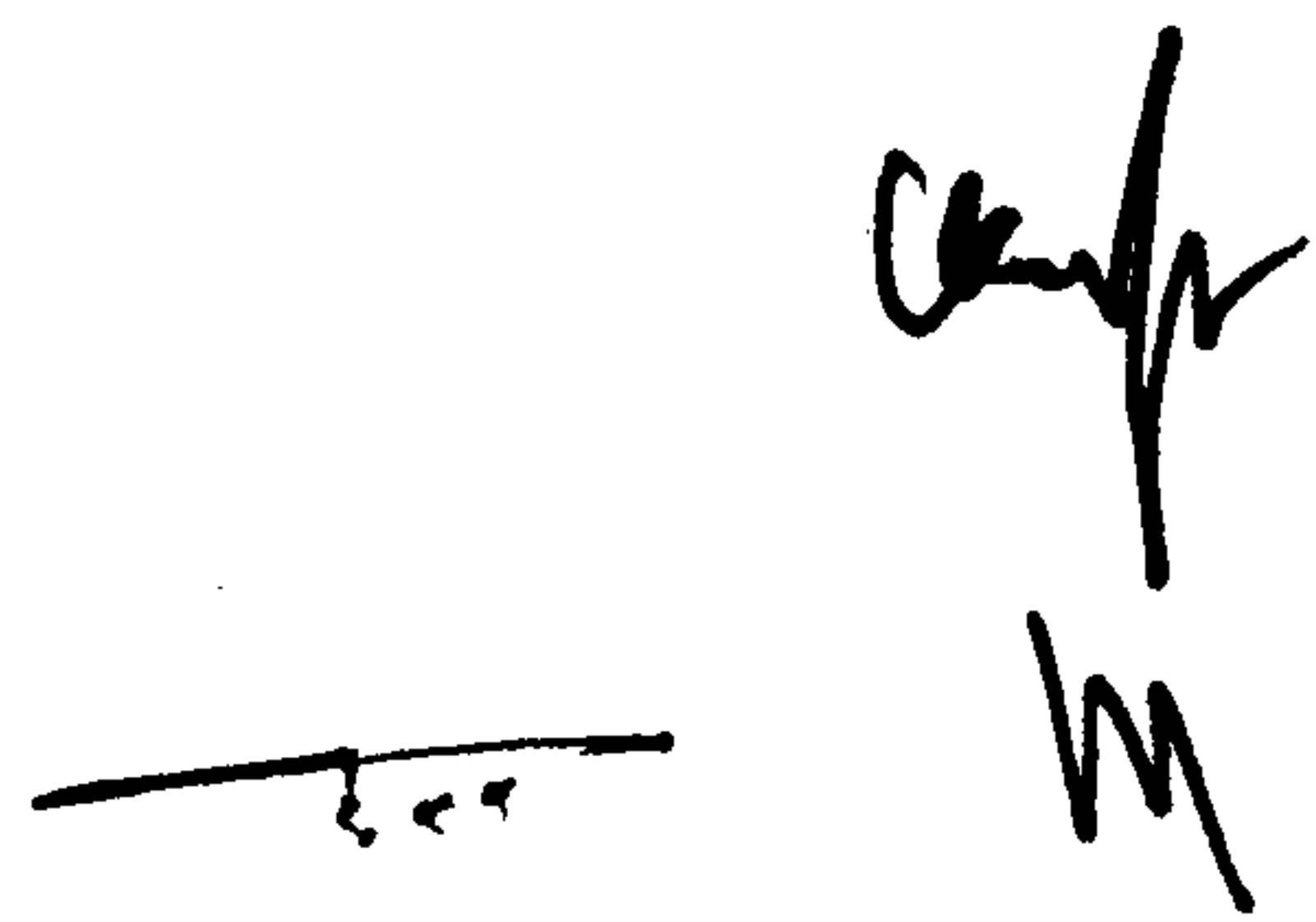
⁹ G.R. Nos. 221562-69, 05 October 2016.

¹⁰ Section 1, Rule 117, Rules of Court.

¹¹ G.R. No. 191411, July 15, 2013.

¹² 407 U.S. 514 (1972).

¹³ *Corpus v. Sandiganbayan*, G.R. No. L-37007, 20 July 1987.



Fourth, the long period of delay attendant in this case has already caused prejudice to the accused. The passage of time in the conduct of the investigations has veritably weakened his ability to adequately prepare his defense. Possible witnesses may not be able to recall accurately the specific events of the past. There is also an increase in the risk of losing important pieces of evidence and records.

Generally, a pending and prolonged investigation against the accused causes anxiety, hostility, additional expenses, and restriction on their person and well-being.

As held in *Coscolluela*,¹⁴ it is the duty of the Ombudsman to act with reasonable dispatch on the cases entrusted to it, thus:

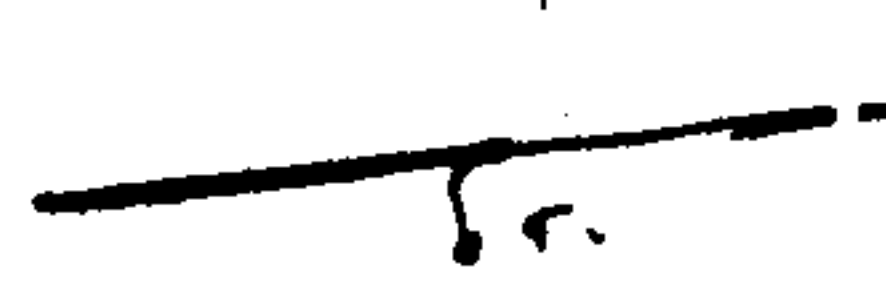
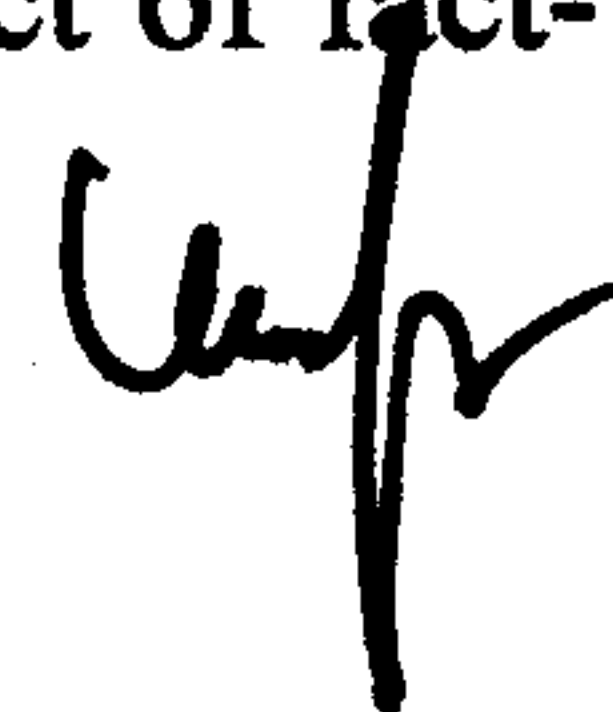
“Verily, the Office of the Ombudsman was created under the mantle of the Constitution, mandated to be the ‘protector of the people’ and as such, required to ‘act promptly on complaints filed in any form or manner against officers and employees of the Government, or of any subdivision, agency or instrumentality 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 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.’

Based on the foregoing, it is evident that the constitutional rights of the accused to speedy disposition of cases has been violated due to the delay in the investigations conducted by the Office of the Ombudsman. The Court finds that the total period of **10 years and 9 months** in the conduct of fact-

¹⁴ *Supra* note 9.



finding investigation and preliminary investigation is unjustified. Ultimately, the prosecution failed to satisfactorily explain the cause of the delays.

Lastly, with regard to the *Motion To Reduce Bail And Motion To Hold In Abeyance The Issuance Of The Warrant Of Arrest And If One Had Been Issued To Suspend Its Implementation* filed by accused Pantilo, the Court resolves to deny the same. Accused Pantilo moves for the reduction of his bail by fifty percent (50%) from the recommended amount of PhP60,000.00 for 2 counts of violation of Section 3(e) of R.A. No. 3019 and PhP80,000.00 for 2 counts of Malversation. Accused Pantilo alleged that he is financially incapable of paying the same.

Records show that the warrant of arrest against accused Pantilo for the crimes charged had already been issued by the Court on 09 August 2017. Absent any proof of financial incapacity, the Court denies the motion to reduce the amount of bail.

WHEREFORE, in light of the foregoing, the Court **GRANTS** the *Omnibus Motion to Quash* filed by accused Barbers for the dismissal of these cases on the ground of violation of the constitutional right of the accused to speedy disposition of cases. Accordingly, CRIMINAL CASE NOS. SB-17-CRM-0164 to 0167 are hereby **DISMISSED**, insofar as said accused is concerned.

The hold departure order issued by the Court against the same accused is hereby **LIFTED** and **SET ASIDE**, and the cash bond he posted is ordered **RELEASED**, subject to the usual accounting and auditing procedures.

Lastly, the *Motion To Reduce Bail And Motion To Hold In Abeyance The Issuance Of The Warrant Of Arrest And If One Had Been Issued To Suspend Its Implementation* filed by accused Pantilo, is **DENIED** for lack of merit.

SO ORDERED.

Quezon City, Philippines.


MICHAEL FREDERICK L. MUSNGI
Associate Justice

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Criminal Cases Nos. SB -17-CRM-0164 to 0167

People vs. Barbers, et al.

RESOLUTION

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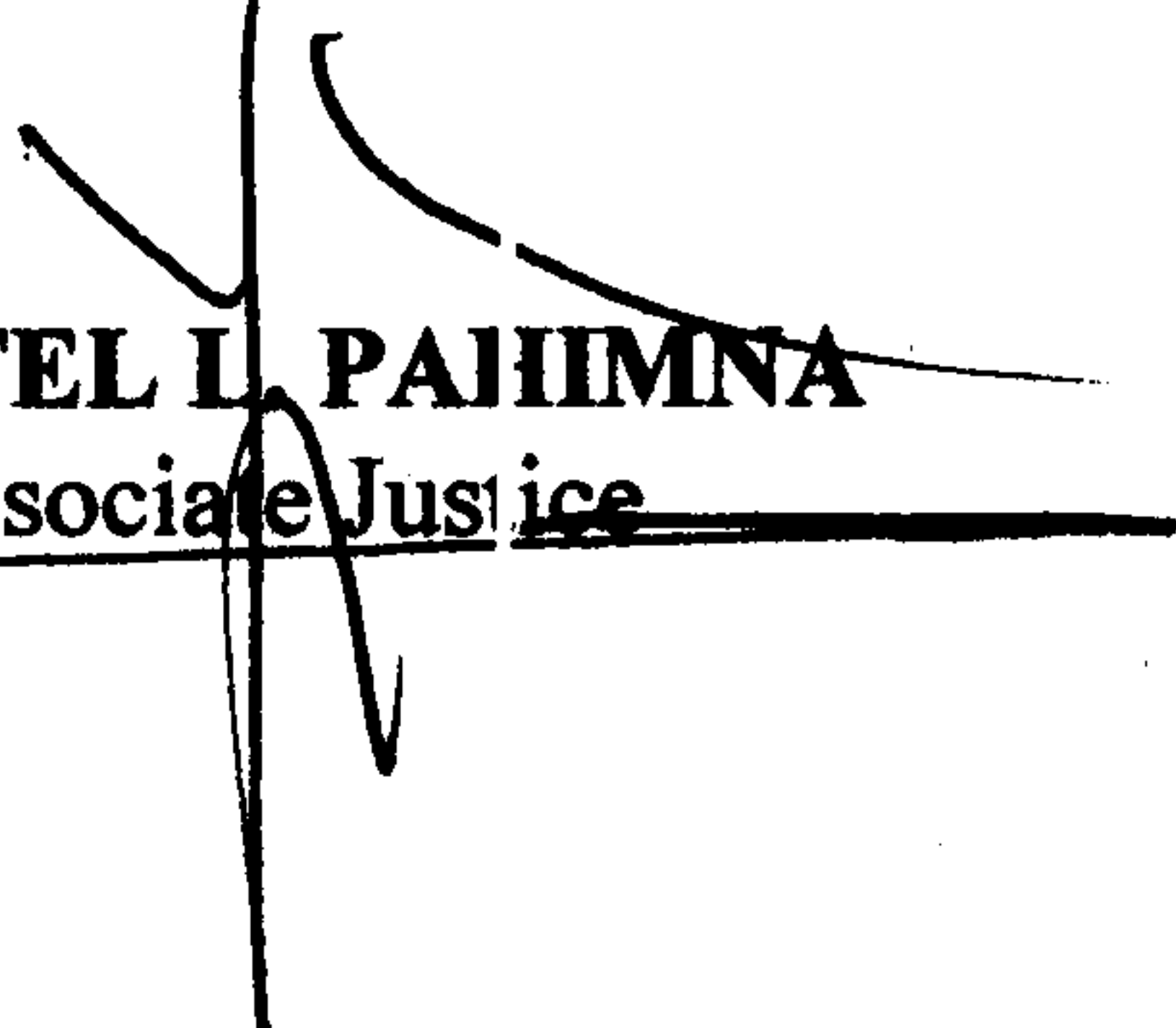
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OSCAR C. HERRERA, JR.

Associate Justice

Chairperson



LORIFEL L. PAHIMNA

Associate Justice

