

Republic of the Philippines
SANDIGANBAYAN
Quezon City

Second Division

People of the Philippines,
Plaintiff,

Crim. Cases Nos. SB-17-CRM-1570 to
SB-17-CRM-1572

-versus-

Present:
Herrera, Jr., J. *Chairperson*
Musngi, J. &
Pahimna, J.

Cabinbanan Q. Mamukid,
Accused.

Promulgated:

November 10, 2017 *A-*

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RESOLUTION

HERRERA, JR., J.:

For resolution of the Court is a ***Motion To Dismiss/To Quash The Informations (On The Ground Of Inordinate Delay)***¹ dated September 12, 2017, filed by accused Cabinbanan Quibor Mamukid (Movant for short), through counsel, to which the plaintiff, through the Office of the Special Prosecutor, Office of the Ombudsman, filed an ***Opposition (Re: Motion to Dismiss/to Quash the Informations)***² dated September 19, 2017.

Movant is charged with three (3) offenses under three (3) separate ***Informations*** all dated June 30, 2017. The charges are as follows: 1) ***Violation of Section 7, in relation to Section 9 of Republic Act (R.A.) No. 3019, or the Anti-Graft and Corrupt Practices Act***, docketed as Criminal Case No. SB-17-CRM-1570; 2) ***Violation of Section 8, paragraph (A) of R.A. 6713, also known as the Code of Conduct and Ethical Standards for Public Officials and Employees***, docketed as Criminal Case No. SB-17-CRM-1571; and 3) ***Perjury***, defined and

¹ Record, pp. 84-93

² Id, pp. 107-118

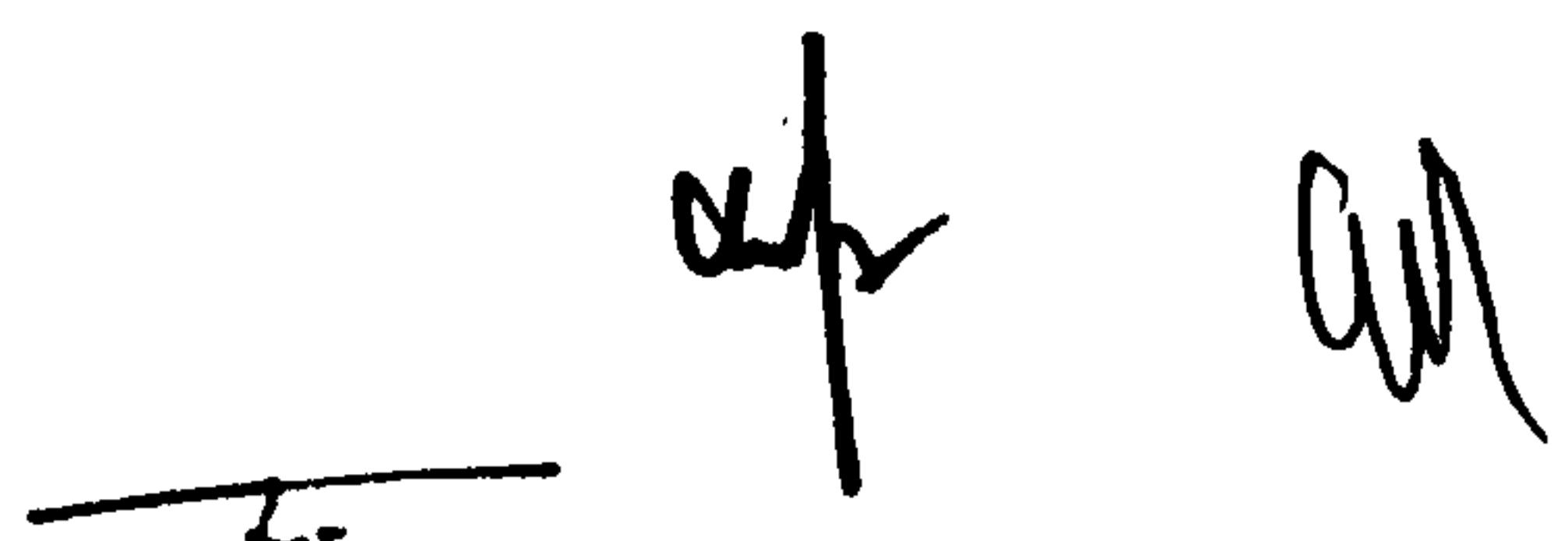
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penalized under **Article 183 of the Revised Penal Code**, docketed as Criminal Case No. SB-17-CRM-1572. The charges are based on movant's alleged failure to disclose in his **Sworn Statement of Assets, Liabilities and Net Worth (SALN)** as of December 31, 2010 the following assets/properties: 1) 2008 model Honda Civic; 2) a residential lot located at Lot 4, Block 25, Central Park Subdivision, Bangkal, Davao City, covered by TCT No. T-112030; 3) residential lot located at Lot 6, Block 25 Central Park Subdivision, Bangkal, Davao City, covered by TCT No. T-118031; 4) an agricultural land at Rang-ay, Banaybay, Davao Oriental, covered by Tax Declaration No. L-1300096.

In seeking dismissal of the **Informations**, movant contends that there was inordinate delay in the investigation of the cases by the Office of the Ombudsman which took a period of six (6) years and eight (8) months, resulting in violation of his constitutional right to speedy disposition of cases.

Movant gave the following material dates and chronology of events:

- 1.1. 10 October 2010 – Concerned Muslim Filipino Citizens in Region XI wrote a letter to His Excellency Benigno Simeon “Noynoy” Aquino III requesting for a lifestyle check investigation against Accused-Movant.
- 1.2. This complaint with reference number CPL-M-11-0018 entitled “*Concerned Citizen v. Cabinbanan Q. Mamukid*” was docketed before the Office of the Ombudsman-Mindanao.
- 1.3. 25 February 2011 – CPL Officer-Designate Concepcion S. Bartolata issued a Memorandum to Records Officer Teofilo Q. Macatiog requesting for the Statements of Assets, Liabilities and Net Worth (SALNs) of Accused-Movant for the period 31 December 2006 to 31 December 2009.
- 1.4. 02 March 2011 – Maria Corazon A. Arancon, Director IV, of the Office of the Ombudsman Mindanao wrote a letter to the Regional Director of the Bureau of Internal Revenue (BIR), Revenue Region No. 19, requesting for a Certification as to the Income Tax



Returns filed by Accused-Movant and spouse Siga / M. Mamukid, showing the different Revenue District Offices where the ITRs were filed for each year.

- 1.5. 02 March 2011 – various subpoena *duces tecum* were issued by the Deputy Ombudsman for Mindanao, Humphrey T. Monteroso and its Director Arancon directed to the following agencies:

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- 1.6. 14 April 2011 - a subpoena *duces tecum* was issued to the Human Resource Management Officer of the Office on Muslim Affairs Regional Office No. 01 requesting it to submit certified true copies of the personal data sheet, oath of office and service record of Accused-Movant.

- 1.7. 16 January 2012 – various subpoena *duces tecum* were issued to the following:

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- 1.8. 17 December 2015 – The Complaints Unit of the Office of the Ombudsman-Mindanao filed an Affidavit Complaint against Accused-Movant for violation of Section 7 of R.A. No. 3019, Section 8 of R.A. No. 6713 and Article 183 of the Revised Penal Code.

- 1.9. 18 January 2016 – the Office of the Ombudsman for Mindanao issued an Order directing Accused-Movant to file his Counter-Affidavit to the complaint filed by the Ombudsman-Mindanao Field Investigation Unit (FIU).

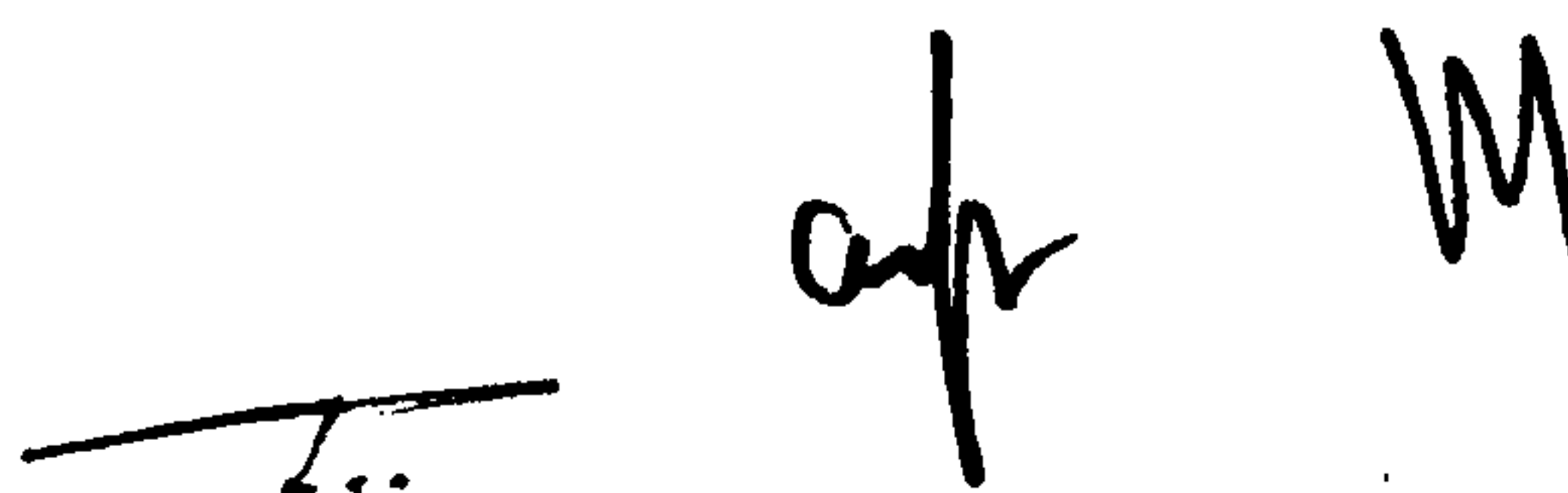
- 1.10. 12 May 2016 – Accused-Movant filed his Counter-Affidavit.

- 1.11. 30 March 2017 – the Office of the Ombudsman issued a Resolution finding probable cause to indict Accused-Movant.

- 1.12. 2 May 2017 – Accused-Movant filed his Motion for Reconsideration.

- 1.13. 30 June 2017 – the Office of the Ombudsman issued an Order denying the motion for reconsideration filed by Accused-Movant.

- 1.14. 06 July 2017 – the Ombudsman Conchita Capio-Morales approved the Order denying Accused-Movant's motion for reconsideration.

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1.15. 14 August 2017 – the Informations were filed before the Honorable Sandiganbayan.”³

Movant also claims that:

“4. This delay is unjustifiable considering that there is only one respondent in the complaint and there are no complex issues for the Office of the Ombudsman to resolve. In fact, the subject matter of these criminal cases filed before this Honorable Sandiganbayan is only one Statement of Assets, Liabilities and Network, that for the year 2010.

5. The case involves the supposed failure to file Accused-Movant’s 2010 SALN as required by Republic Act No. 3019, which certainly does not involve complicated legal and factual issues necessitating a painstaking and grueling scrutiny of the documents as would justify a delay of six (6) years and eight (8) months before the Informations were filed in Court.”⁴

The plaintiff, in its *Opposition, etc.*, argues that there was no inordinate delay in the investigation by the Office of the Ombudsman. The plaintiff gave the following explanation:

“7. Based on the records, the Office of the Ombudsman received a *Letter-Complaint* dated 10 October 2010 from a Concerned Citizen on **15 December 2010** requesting that a Lifestyle Check Investigation be commenced against accused-movant who was then the Regional Director of the Office on Muslim Affairs (OMA) Regional Office No. XI, Davao City.

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11. Upon receipt of the *Letter-Complaint*, records reveal that the Field Investigation Unit of the Office of the Ombudsman (Mindanao) immediately acted on it and issued the following:

7.1 *Memorandum dated 25 February 2011* by Concepcion S. Bartolata, CPL Officer Designate of the Field Investigation Unit, to Teofilo Q. Macatig, Records Officer III, requesting for the Statements of

³ Id, pp. 84-87

⁴ Id, p. 87



Assets, Liabilities and Networth (SALNs) of accused-movant;

- 7.2 *Letter* dated **02 March 2011** by Maria Corazon A. Arancon, Director IV, to the Bureau of Internal Revenue (BIR), Revenue Region No. 19, requesting for a Certification as to the Income Tax Returns filed by accused-movant;
 - 7.3 *Subpoena Duces Tecum* dated **02 March 2011** by Humphrey T. Monteroso, Deputy Ombudsman for Mindanao, to the Land Transportation Office (LTO), directing the submission of a print-out of Motor Vehicle Registration and copies of O.R. and C.R. of all vehicles registered under the name of the accused-movant.
 - 7.4 Various *subpoena duces tecum* all dated **02 March 2011** issued by Maria Corazon A. Arancon, Director IV, to the following:
 - 7.4.1 Register of Deeds of Davao City directing the submission of titles of all real properties registered under the name of the accused-movant and Sigay M. Mamukid;
 - 7.4.2 City Assessor's Office of Davao City directing the submission of tax declarations and its accompanying documents of accused-movant and Sigay M. Mamukid;
 - 7.5 *Subpoena Duces Tecum* dated **14 April 2011** issued by Maria Corazon A. Arancon, Director IV, to the Human Resource Management Officer, Office on Muslim Affairs, Davao City, directing the submission of the Personal Data Sheet (PDS), Oath of Office, and Service Record of accused-movant;
 - 7.6 Various *subpoena duces tecum* all dated **16 January 2012** issued by Maria Corazon A. Arancon, Director IV, to the Municipal Assessor's Office of Lupon and Banaybanay, Davao Oriental, and Pantukan, Compostela Valley Province, directing the submission of tax declarations and its accompanying documents of accused-movant, Sigay M. Mamukid, Anwar M. Mamukid, Charinaila M. Mamukid, Romellan M. Mamukid and Abdiljalil M. Mamukid.
12. As a result of the fact-finding investigation on the *Letter-Complaint*, the Complaints Unit of the Office of the Ombudsman (Mindanao), represented by Concepcion S. Bartolata, Administrative Officer V/CPL Officer-Designate, of the Field Investigation Unit issued an

Investigation Report and subsequently executed an *Affidavit* dated **15 December 2015** to initiate the filing of a criminal case against accused-movant. The *Affidavit* was received immediately thereafter or on **17 December 2015** by the Office of the Ombudsman (Mindanao) – Records Section.

13. It was only on **18 January 2016** that preliminary investigation proceedings commenced with the issuance of an *Order* directing accused-movant to submit his counter-affidavit within ten (10) days from receipt thereof;
14. On **02 May 2016**, accused-movant filed a *Motion for Extension* requesting for additional period of time to file his counter-affidavit. If it is true that the length it took for the fact-finding process to conclude was prejudicial to the accused, he should have raised it at the first instance.
15. On **12 May 2016**, accused-movant filed his *Counter-Affidavit*.
16. Less than a year from the filing of the *Counter-Affidavit*, or on **30 March 2017**, the Office of the Ombudsman issued the *Resolution* finding probable cause to indict accused-movant.
17. On **02 May 2017**, accused-movant filed his *Motion for Reconsideration* citing good faith and lack of intention to commit a crime as grounds to reconsider the assailed *Resolution*. Furthermore, he did not raise the issue of inordinate delay in his motion.
18. On **30 June 2017**, the Office of the Ombudsman denied accused-movant's *Motion for Reconsideration*.
19. On **14 August 2017**, the *Informations* were filed before the Sandiganbayan.
20. Based from the record of fact-finding and preliminary investigation proceedings, the period from 18 January 2016 up to 30 June 2017 is the period covered in the conduct of its preliminary investigation. Thus, it took only a little over one (1) year and six (6) months to resolve the case."⁵

The Court finds unacceptable and devoid of merit the explanation given by the plaintiff.

⁵ Id, pp. 109-112



Here, the plaintiff admits that the investigation of movant started when the Office of the Ombudsman received on December 15, 2010 a Letter-Complaint dated October 10, 2010.⁶ Said Letter-Complaint is unsigned and contains no details about the sender, except that it purports to be from "Concerned Muslim Filipino Citizens In Region XI," as printed therein. After conducting fact-finding and preliminary investigations, the **Informations** against movant were filed with the Court on August 14, 2017, or after a period of six (6) years and eight (8) months.

From the foregoing, the Court finds that there was indeed inordinate delay in conducting the investigation and filing of the **Informations** in court, in violation of the constitutional right of the movant to speedy disposition of cases guaranteed under **Section 16, Article III of the 1987 Constitution**. The provision reads:

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

In **People v. Sandiganbayan**,⁷ the Supreme Court explained that the constitutional right to a speedy disposition of cases is not limited to the accused in criminal proceedings but extends to all parties in all cases, including civil and administrative cases, and in all proceedings, including judicial and quasi-judicial hearings.

While three (3) cases were filed against movant, they all pertain to the very simple issue regarding his alleged failure to include in his SALN of December 31, 2011 four (4) properties, two (2) of which are registered in the name of his wife Sigay M. Mamukid and one in the name of his nephew Michael Mamukid. The Court finds that the issue is not complicated to require a period of six (6) years and eight (8) months to

⁶ Id, pp. 24-25

⁷ 712 SCRA 359, 411

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investigate. In fact, the findings of the Office of the Ombudsman are contained in barely five (5) pages of its seven (7) page *Resolution*⁸ dated June 30, 2017 directing the indictment of movant.

The plaintiff contends that the fact-finding investigation is separate from the preliminary investigation. Essentially, the plaintiff avers that the fact-finding investigation started in February 2011 and ended in December 2015. On the other hand, the preliminary investigation started only on January 18, 2016 and culminated in the filing of the *Informations* in court on August 14, 2017. The preliminary investigation covered only a period of one (1) year and six (6) months.

The plaintiff argues that the fact-finding investigation should not be considered in the determination of whether or not there was inordinate delay.⁹

In the case of *Torres v. Sandiganbayan*,¹⁰ however, the Supreme Court explicitly declared the right to speedy disposition of cases covers both fact-finding investigation and preliminary investigation. Said the Court:

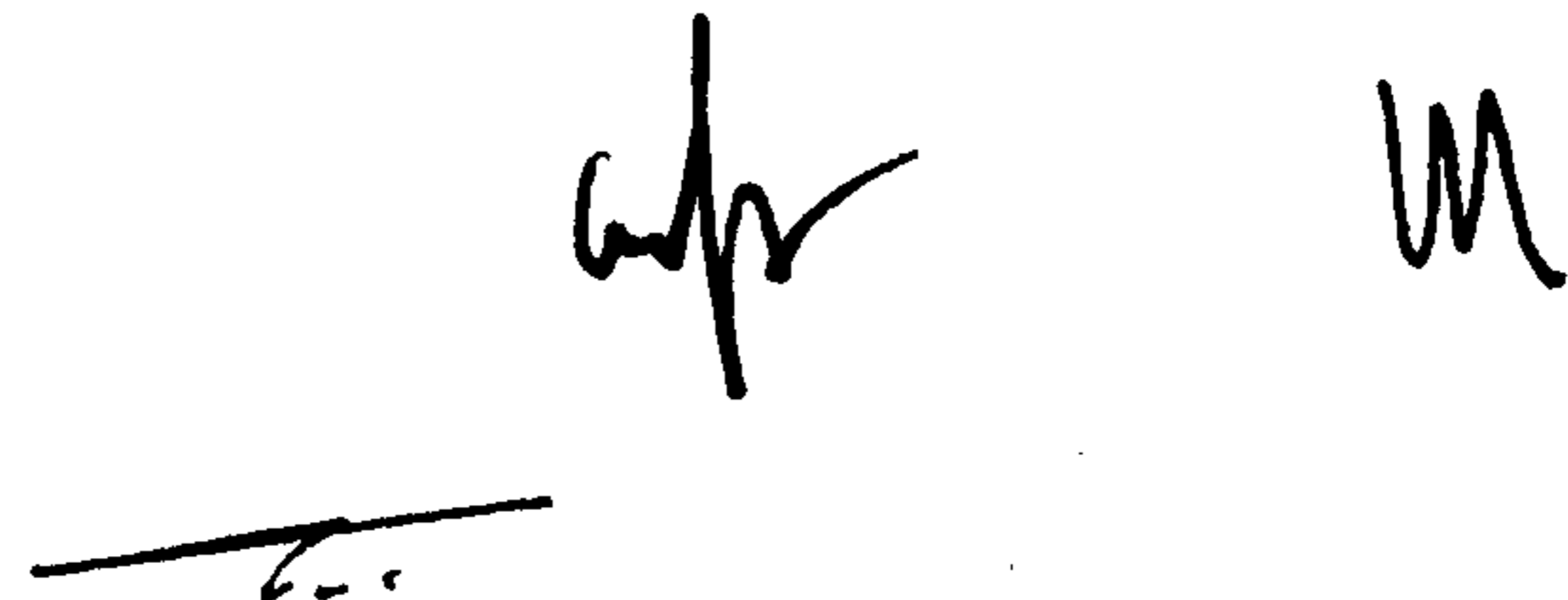
“We find it necessary to emphasize that the speedy disposition of cases covers not only the period within which the preliminary investigation was conducted, but also all stages to which the accused is subjected, even including fact-finding investigations conducted prior to the preliminary investigation 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

⁸ Record, pp. 5-11

⁹ Id, p. 112

¹⁰ G.R. No. 221562-69, October 5, 2016

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of the case. The present constitutional provision applies to civil, criminal and administrative cases. (citations omitted; emphasis supplied)

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-drawnout.”

The plaintiff also asserts that the fact-finding investigation did not prejudice the movant since no subpoena was sent to him at that time yet. In short, movant was not yet personally involved in the proceedings during the fact-finding investigation and before the preliminary investigation proper.¹¹

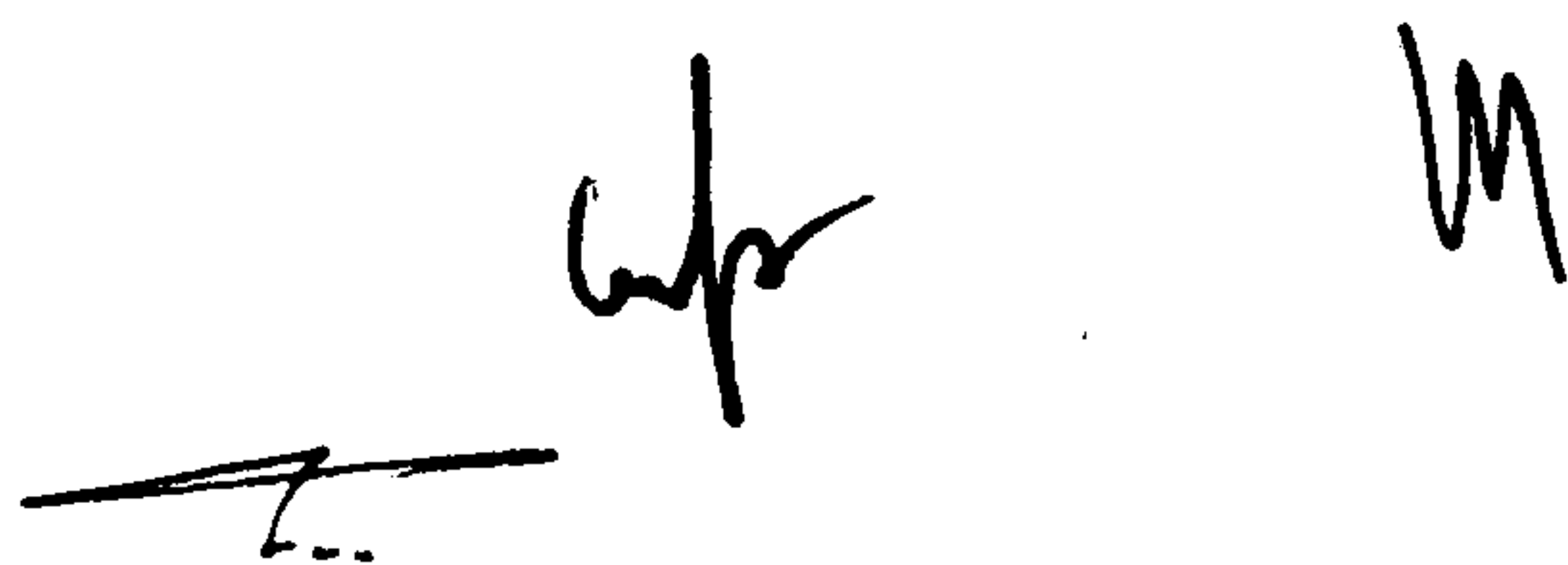
The Court rules that this assertion is unwarranted, especially so that movant retired from the government service in 2011.

In *Coscolluela v. Sandiganbayan*,¹² the Supreme Court explained:

“As for the prejudice caused by the delay, respondents claim that no prejudice was caused to petitioner from the delay in the second set of investigations because he never participated therein and was actually never even informed of the proceedings anyway. We cannot agree with this position. A similar assertion was struck down by this Court in *Coscolluela*, to wit:

xxx 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**

¹¹ Record, p. 114
¹² 701 SCRA 188



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.

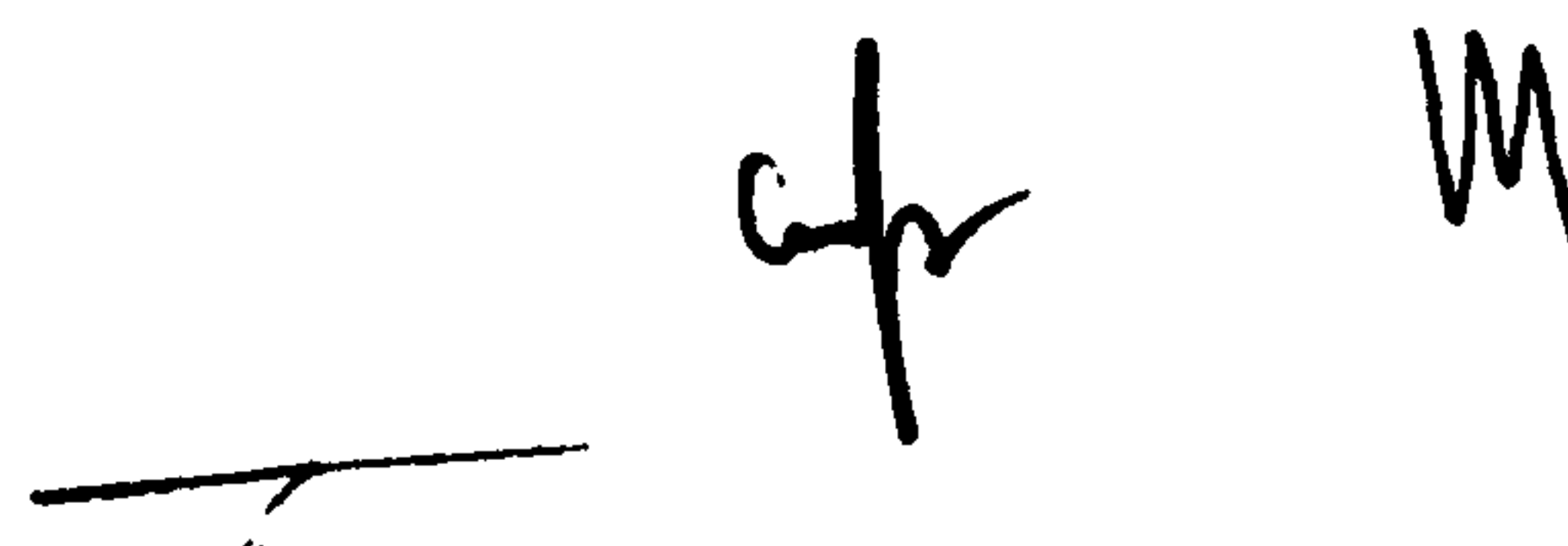
Delay is a two-edge sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden. The Constitution and the Rules do not require impossibilities or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such rights 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 xxx (emphasis supplied; citations omitted)

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In the present case, petitioner has undoubtedly been prejudiced by virtue of the delay in the resolution of the cases filed against him. Even though he was not initially included as a respondent in the investigation conducted from 1996 to 2006 pertaining to the "overpricing of medicines" procured through emergency purchase, he has already been deprived of the ability to adequately prepare his case considering that he may no longer have any access to records or contact with any witness in support of his defense. This is even aggravated by the fact that petitioner had been retired for fifteen (15) years. Even if he has never been imprisoned and subjected to trial, it cannot be denied that he has lived under a cloud of anxiety by virtue of the delay in the resolution of his case."

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WHEREFORE, premises considered, the ***Motion To Dismiss/To Quash Informations (On The Ground Of Inordinate Delay)*** dated September 12, 2017, filed by accused Cabinbanan Quiboc Mamukid, through counsel, is hereby granted.

These cases are hereby dismissed for violation of the Constitutional right of accused Mamukid to speedy disposition of cases.

SO ORDERED.


OSCAR C. HERRERA, JR.
Chairperson

We concur:


MICHAEL FREDERICK L. MUSNGI
Associate Justice


LORIFEL L. PAHIMNA
Associate Justice