



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-17-CRM-1593 and 1594**
Plaintiff, For: Violation of Sec. 3(e)
of R.A. No. 3019, as amended

SB-17-CRM-1595 and 1596
For: Malversation of Public Funds

Present

- versus -

FERNANDEZ, SJ,* J.,
Chairperson
MUSNGI, J.** and
JACINTO,* J.**

RODOLFO W. ANTONINO,
ET AL.,

Accused.

Promulgated:

NOV 28 2017

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves accused Arthur C. Yap's *Urgent Omnibus Motion*¹ on the matter of judicial determination of probable cause.

The issue of violation of the right to speedy disposition of cases will be the subject of a separate resolution.

* J. Ponferrada was the Chairperson of the Sixth Division at the time the Order dated August 31, 2017 (Record, p. 552-A) was issued. J. Fernandez assumed her position as Chairperson of the Sixth Division upon J. Ponferrada's retirement on September 13, 2017 (Per Administrative Order No. 314-2017 dated September 13, 2017). The incident was deemed submitted for resolution after the filing of the prosecution's *Comment/Opposition* on September 13, 2017 (Record, p. 553; *Revised Internal Rules of the Sandiganbayan*. Rule XII, Sec. 3).

** At the time the present incident was submitted for resolution, J. Musngi was designated as a temporary member of the Sixth Division, in view of the vacancy therein (Per Administrative Order No. 124-2017 dated April 4, 2017; *Revised Internal Rules of the Sandiganbayan*. Rule XII, Sec. 3).

*** In view of the inhibition of J. Miranda (Per Administrative Order No. 307-A-2017 dated August 31, 2017).

¹ Dated August 25, 2017; Record, pp. 288-550

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Accused Yap prays that this Court defer the issuance of warrants of arrest and suspend the conduct of proceedings pending the resolution of his Motion. He likewise prays that the Information in the present cases be dismissed or quashed for lack of probable cause. He contends:

1. Aside from his act of executing the Memorandum of Agreement (DA-NABCOR MOA) with the National Agribusiness Corporation (NABCOR), as the representative of the Department of Agriculture (DA), no other specific overt act was attributed to him. Such act does not constitute a crime.
2. There is no probable cause to charge him with violation of Sec. 3(e) of R.A. No. 3019.
 - a. The DA-NABCOR MOA was entered into for a legitimate purpose, *i.e.*, to expedite the implementation of the livelihood development program of accused Antonino.
 - b. NABCOR is a government-owned and controlled corporation (GOCC) attached to the DA. It has the competency or expertise to implement such livelihood development program.
 - c. The DA-NABCOR MOA was not in violation of the requirements of Special Allotment Release Order (SARO) No. ROCS-07-02898.
 - d. The violations found by the Ombudsman pertained to the engagement of, and the direct release of funds to the non-government organization (NGO) called *Buhay Mo Mahal Ko Foundation, Inc.* (BMMKFI).
 - e. He had no participation in the selection or engagement of BMMKFI to implement accused Antonino's project.
 - f. The DA-NABCOR MOA had safeguards to ensure the proper disbursement and utilization of the subject Priority Development Assistance Fund (PDAF). Thus, he cannot be said to have failed to exercise "even the slightest degree of care" to prevent the alleged misuse of the subject funds.
 - g. There is no evidence, or even an allegation for that matter, that he received a single centavo by reason of the execution of the DA-NABCOR MOA.

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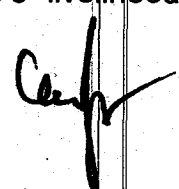
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- h. Even if it is proved that the government suffered undue injury by reason of the transfer of funds from NABCOR to BMMKFI, he had no participation in causing the same.
- 3. There is no probable cause to charge him with Malversation of Public Funds.
 - a. The Informations did not allege the specific overt acts he supposedly performed. It was merely alleged that the accused "consciously participated in the processing and release of the PDAF to BMMKFI."
 - b. The Complaint and the Ombudsman's Resolution failed to show anything that would link him to accused Antonio and Barredo, presidents of BMMKFI and C.C. Barredo Enterprises, respectively.
 - c. He was not an accountable officer. He did not have custody or control of the subject PDAF allotment. He merely authorized the transfer of accused Antonino's PDAF allocation to NABCOR. Accused Antonino remained to be the public officer accountable for said PDAF.
 - d. Even assuming that said PDAF allotments became DA funds, the finance officers of the DA, and not him as DA Secretary, were accountable for said funds.
 - e. He did not misappropriate or benefit from the subject PDAF allotment. His only participation in the subject transaction was executing the DA-NABCOR MOA on behalf of the DA, which was done in good faith, and upon the reasonable request of accused Antonino.
- 4. There is no probable cause to believe that he conspired with the other accused in diverting accused Antonino's PDAF allocation.
 - a. When no actual agreement is shown, each of the conspirators must be shown to have performed an overt act in furtherance of the conspiracy.
 - b. The only overt act attributed to him was the execution of the DA-NABCOR MOA. There is nothing illegal in said act.
 - c. He had no knowledge of the NABCOR-NGO MOA between NABCOR and BMMKFI, whereby BMMKFI undertook to implement accused Antonino's livelihood projects.



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- d. Accused Antonino, not he, as head of the DA, requested that the subject project be implemented by BMMKFI.
- 5. In other cases wherein the facts are similar to those in the present cases, the Ombudsman dismissed the charges against him.
- 6. The trial court is not bound to adopt the Resolution of the Ombudsman. The Court must make a personal evaluation of the Ombudsman's resolutions and the supporting evidence to determine whether there is probable cause for the issuance of warrants of arrest against the accused.

In its *Comment/Opposition (To Accused Yap's Urgent Omnibus Motion)*,² the prosecution counters:

- 1. There is probable cause if there is evidence showing that, more likely than not, a crime has been committed. Proof beyond reasonable doubt is not required to arrive at a conclusion that probable cause exists.
- 2. The matters raised by accused Yap are matters of defense, which are better threshed out in a full blown trial.
- 3. Accused Yap's Motion praying for the deferment of the issuance of warrants of arrest and the suspension of further proceedings is a mere superfluity. With or without such motion, the Court is duty-bound to determine the existence of probable cause.

THE COURT'S RULING

Accused Yap argues that the Information in the present cases must be dismissed or quashed for lack of probable cause. The Court disagrees.

The procedure for the issuance of a warrant of arrest is embodied in Rule 112, Sec. 5(a) of the Rules of Court, which reads:

Sec. 5. When warrant of arrest may issue. – (a) *By the Regional Trial Court.* – Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order when the complaint

² Dated September 11, 2017; Record, pp. 553-559

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or information was filed pursuant to section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.

Under Sec. 5, the Court shall issue a warrant of arrest if, after personally evaluating the resolution of the prosecutor and the supporting evidence, it finds probable cause. On the other hand, if the Court is in doubt as to the existence of probable cause, it can order the prosecutor to present additional evidence. Finally, if the evidence on record clearly fails to establish probable cause, the case may be dismissed. Common to the three (3) possible courses of action is the Court's determination of the existence of probable cause.

In *Leviste v. Alameda*,³ it was held that the Court is duty-bound to make a determination of the existence of probable cause. A motion for judicial determination of probable cause is, thus, a mere superfluity. *Viz.:*

To move the court to conduct a judicial determination of probable cause is a mere superfluity, for with or without such motion, the judge is duty-bound to personally evaluate the resolution of the public prosecutor and the supporting evidence. In fact, the task of the presiding judge when the Information is filed with the court is *first* and *foremost* to determine the existence or non-existence of probable cause for the arrest of the accused.

What the Constitution underscores is the exclusive and personal responsibility of the issuing judge to satisfy himself of the existence of probable cause. **But the judge is not required to personally examine the complainant and his witnesses.** Following established doctrine and procedure, he shall (1) personally evaluate the report and the supporting documents submitted by the prosecutor regarding the existence of probable cause; and (2) if he is not satisfied that probable cause exists, he may disregard the prosecutor's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause.

The rules do not require cases to be set for hearing to determine probable cause for the issuance of a warrant of arrest of the accused before any warrant may be issued. Petitioner thus cannot, as a matter of right, insist on a hearing for judicial determination of probable cause. Certainly, petitioner "cannot determine beforehand how cursory or exhaustive the [judge's] examination of the records should be [since t]he extent of the judge's examination depends on

³ G.R. No. 182677, August 3, 2010

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the exercise of his sound discretion as the circumstances of the case require." x x x

In accordance with Rule 112, Sec. 5 of the Rules of Court, this Court will make a determination of the existence of probable cause.

Attached to the Ombudsman's Resolution⁴ are the following documents:

1. *Complaint-Affidavit* dated April 28, 2014.⁵
2. (a) *Certificate of Canvass of Votes and Proclamation of the Winning Candidates for Member of the House of Representatives*, (b) *Certificate of Candidacy for Member, House of Representatives*, (c) *Application for Passport*, and (d) *Passport Preview* of accused Antonino.⁶
3. *Personal Data Sheets* of accused Yap, Javellana, Munsod, Mendoza and Guañizo.⁷
4. Letter dated January 31, 2007 of accused Antonino, addressed to Hon. Joey S. Salceda, requesting the release of funds for Livelihood Projects to be implemented by the Department of Agriculture-Office of the Secretary.⁸
5. *1st Indorsement* dated February 1, 2007 with list of priority projects for the first tranche of FY 2007, chargeable against the PDAF.⁹
6. SARO No. ROCS-07-02898 dated February 9, 2007, authorizing the allotment of ₱15,000,000.00.¹⁰
7. Letter dated February 14, 2007 of accused Antonino, addressed to accused Yap, requesting that the amount allocated under SARO No. ROCS-07-02898 be transferred to the NABCOR to expedite the implementation of livelihood projects in the 4th Congressional District of Nueva Ecija.¹¹
8. *Advice of NCA Issued* dated February 23, 2007.¹²
9. *Memorandum of Agreement* dated March 7, 2007, entered into by and between the Department of Agriculture, represented by accused Yap, and the NABCOR, represented by accused Javellana.¹³
10. *Obligation Request No. 200-07-03-867* dated March 7, 2007.¹⁴

⁴ Record, pp. 8-54

⁵ Record, pp. 74-98

⁶ Record, pp. 99-102

⁷ Record, pp. 103-119

⁸ Record, p. 120

⁹ Record, pp. 121-122

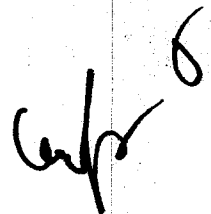
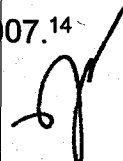
¹⁰ Record, p. 123

¹¹ Record, p. 125

¹² Record, p. 126

¹³ Record, pp. 127-128

¹⁴ Record, p. 129



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11. Disbursement Voucher No. 07-03-0750 approved by accused Yap.¹⁵
12. *Memorandum of Agreement* dated March 5, 2007, entered into by and between the NABCOR, represented by accused Javellana, and BMMKFI, represented by accused Antonio.¹⁶
13. Disbursement Voucher No. 07-03-0413 dated March 19, 2007. Box A signed by accused Munsod, no signature in Box B, approved by accused Javellana, and payment received by accused Antonio.¹⁷
14. UCPB Check No. 0000232341 dated March 19, 2007, in the amount of ₱13,095,000.00, payable to BMMKFI, signed by accused Mendoza and Javellana.¹⁸
15. BMMKFI Official Receipt No. 02066 dated March 21, 2007.¹⁹
16. BMMKFI Purchase Order No. 03-011-2007 signed by accused Antonio and a representative of C.C. Barredo Publishing House.²⁰
17. C.C. Barredo Publishing House Invoice No. 5492 dated March 23, 2007.²¹
18. C.C. Barredo Publishing House Official Receipt No. 5433 dated March 23, 2007.²²
19. Letter dated February 14, 2007 of accused Barredo, addressed to the President of BMMKFI.²³
20. C.C. Barredo Publishing House Delivery Receipt No. 5532 dated March 23, 2007.²⁴
21. *Certificate of Acceptance* dated March 23, 2007, signed by accused Antonino, certifying the receipt of 7,275 sets of Livelihood Technology Kits (Volume I-V) delivered by BMMKFI.²⁵
22. BMMKFI *Partial Physical Report* dated April 2, 2007 of accused Antonio.²⁶
23. BMMKFI *Disbursement and Liquidation Report* As of April 2, 2007 prepared by accused Antonio.²⁷
24. Disbursement Voucher No. 07-04-0669 dated April 24, 2007. Box A signed by accused Munsod, Box B signed by accused Guañizo, approved by accused Javellana, and payment received by accused Antonio.²⁸

¹⁵ Record, p. 130

¹⁶ Record, pp. 131-133

¹⁷ Record, p. 134

¹⁸ Record, pp. 135-136

¹⁹ Record, p. 137

²⁰ Record, p. 138

²¹ Record, p. 139

²² Record, p. 140

²³ Record, p. 141

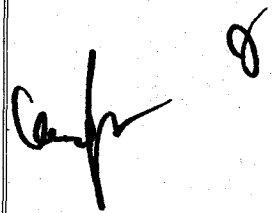
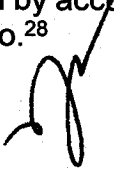
²⁴ Record, p. 142

²⁵ Record, p. 143

²⁶ Record, p. 144

²⁷ Record, p. 145

²⁸ Record, p. 146



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25. UCPB Check No. 0000232623 dated April 24, 2007, in the amount of ₱1,455,000.00, payable to BMMKFI, signed by accused Mendoza and Javellana.²⁹
26. BMMKFI Official Receipt No. 02068 dated April 24, 2007.³⁰
27. C.C. Barredo Publishing House Official Receipt No. 5456 dated April 30, 2007.³¹
28. Business Permit No. 97-103127, Billing No. 06515842, Official Receipt No. A-17916753 and Barangay Clearance issued to accused Barredo.³²
29. List of project beneficiaries in the 4th District of Nueva Ecija, certified correct by accused Antonino.³³
30. Compliance/Certifications/Affidavits of local government officials, stating that they did not receive or distribute Livelihood Technology Kits from BMMKFI or from the office of accused Antonino in 2007.³⁴
31. Counter-Affidavit dated November 14, 2014 of accused Antonino, with attached annexes.³⁵
32. Counter-Affidavit dated December 3, 2014 of accused Yap.³⁶
33. Counter-Affidavit dated February 18, 2015 of accused Munsod.³⁷
34. Counter-Affidavit dated March 16, 2015 of accused Javellana, with attached annexes.³⁸

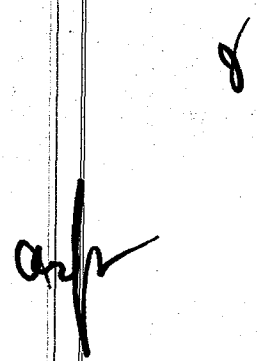
After personally perusing the Information in the present cases, and evaluating the Ombudsman's Resolution, the abovesited evidence in support thereof, and the records of the preliminary investigation attached thereto, the Court finds that sufficient grounds exist for the finding of probable cause for the purpose of issuing warrants of arrest against the accused.

The issues raised by accused Yap, including the existence of conspiracy, are matters of defense, which the Court will pass upon after a trial on the merits.

WHEREFORE, Accused Yap's Motion is hereby DENIED for lack of merit.



²⁹ Record, pp. 147-148
³⁰ Record, p. 149
³¹ Record, p. 150
³² Record, pp. 151-154
³³ Record, p. 155
³⁴ Record, pp. 156-173
³⁵ Record, pp. 174-231
³⁶ Record, pp. 232-248
³⁷ Record, pp. 249-259
³⁸ Record, pp. 260-287



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The Court finds probable cause for the issuance of warrants of arrest against the accused.

In **Crim. Cases No. SB-17-CRM-1593 and 1595**, let warrants of arrest be issued against accused ALAN A. JAVELLANA, RHODORA B. MENDOZA, ENCARNITA CRISTINA P. MUNSOD, MARILOU L. ANTONIO and CARMELITA C. BARREDO.

In **Crim. Cases No. SB-17-CRM-1594 and 1596**, let warrants of arrest be issued against accused ALAN A. JAVELLANA, RHODORA B. MENDOZA, ENCARNITA CRISTINA P. MUNSOD, MARIA NINEZ P. GUAÑIZO, MARILOU L. ANTONIO and CARMELITA C. BARREDO.

Considering that after posting bail, accused RODOLFO W. ANTONINO and ARTHUR C. YAP were allowed provisional liberty, the warrants of arrest in connection with **Crim. Cases No. SB-17-CRM-1593 to 1596** will no longer be issued against them. Let their arraignment be now set.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


MICHAEL FREDERICK L. MUSNGI
Associate Justice


BAYANI H. JACINTO
Associate Justice