

SANDIGANBAYAN
QUEZON CITY

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-17-CRM-1490

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

- versus -

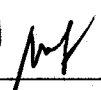
ELEANDRO JESUS F.
MADRONA, ET AL.

Accused.

Present:

FERNANDEZ, SJ, J.,
Chairperson
MIRANDA, J.,
PAHIMNA,* J.

Promulgated:

APR 26 2018 

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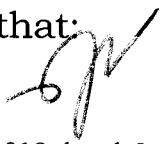
RESOLUTION

FERNANDEZ, SJ, J.:

This resolves the *Omnibus Motion 1. To Quash the Information, and 2. To Dismiss the Case*¹ filed by accused Eleandro Jesus F. Madrona, Oscar P. Galos, Geishler F. Fadri, and, Joel Angcaco Sy on January 9, 2018.

The accused ask this Court to 1) Quash the instant Information on the ground that the facts charged in the Information do not constitute an offense;² and, 2) Dismiss the Information on the ground of inordinate delay in the disposition of the case.³

The accused pray that:

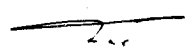


* Per Administrative Order No. 023-2018 dated January 15, 2018, Special Member in view of the vacancy in the Sixth Division.

¹ *Omnibus Motion* dated January 8, 2018; Record, pp. 294-307.

² *Omnibus Motion* dated January 8, 2018, p. 1; Record, p. 294.

³ *Omnibus Motion* dated January 8, 2018, p. 12; Record, p. 305.



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1. The Sixth Division of the Court rule on whether as a matter of law (which is also a jurisdictional question) the accused can immediately resort to the alternative method of purchasing of *direct contracting or single source procurement* under Section 48, par. b of RA 9184, without first resorting to competitive public bidding.
2. And if the ruling is yes, that the Information in this case be quashed because the facts charged (that accused gave “unwarranted benefits” to Feshan by immediately going to the alternative method of *direct contracting*, without first resorting to public bidding) do not constitute an offense, and therefore this Honorable Court has *no* jurisdiction over the offense charged of violation of Section 3, Par. (e), RA 3019, because the 3rd element of the crime is lacking.
3. This Complaint be dismissed by reason of the inordinate delay in the disposition of this case violating accused’s right under Section 16 of Article III of the Constitution.⁴

Accused Madrona, et al., argue:

The facts in the Information do not constitute an offense

1. The third element of Section 3(e), R.A. No. 3019, giving unwarranted benefit, is not present. Accused did not give Feshan any unwarranted benefit by awarding the contract without public bidding. While R.A. No. 9184 provides that all procurement shall be done through competitive bidding, the law provides for exceptions. As *exceptions*, the “*alternative methods of procurement*,” specifically *direct contracting*, can be resorted to even without prior conduct of a competitive bidding.⁵

Inordinate delay in the resolution of the case

1. The Office of the Ombudsman took a total of twelve (12) years from 2004, when the transaction took place, to file the corresponding information in court in 2016.⁶

⁴ Omnibus Motion dated January 8, 2018, p. 12; Record, p. 305.

⁵ Omnibus Motion dated January 8, 2018, p. 3; Record, p. 296.

⁶ Omnibus Motion dated January 8, 2018, p. 11; Record, p. 304.

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2. The first complaint against the accused involving similar facts filed in 2004 (OMB-L-C-04-0865-J) was dismissed in a Resolution dated June 29, 2006, for insufficient evidence to establish probable cause for violation of R.A. No. 3019 and R.A. No. 9184.
3. The Complaint subject of the present case, based on the same facts, was filed on October 14, 2011, or almost seven (7) years after the first complaint was filed, and more than five (5) years after the June 29, 2006 Resolution.
4. This second complaint was consolidated with the earlier complaint filed by the Task Force Abono of the Ombudsman's Field Investigation Office. The Information was filed with the Sandiganbayan only on August 1, 2017, or after conducting the preliminary investigation for six (6) years of a simple case.⁷
5. The Complaint of Task Force Abono was based on rules that were non-existent when the transaction took place in 2004. The rules became effective only in 2009.⁸

The prosecution, in its *Comment/Opposition (To Omnibus Motion 1. To Quash the Information, and 2. To Dismiss the Case)*,⁹ argued as follows:

1. The Omnibus Motion is merely dilatory. It was filed after the accused have been arraigned, on September 7, 2017 for accused Madrona and Sy, and on October 13, 2017 for accused Fadri and Galos. Conformably to Section 1 of Rule 117 of the Rules of Court, their failure to raise any ground for a motion to quash before they plead is deemed a waiver of any other objections.¹⁰
2. The essential elements of Section 3(e), R.A. No. 3019, are sufficiently alleged in the Information for the accused to prepare their defense. The phrase, "*thereby depriving the government the opportunity to get the most advantageous offer/price*" was included to describe the fact that when the accused resorted to direct contracting, they gave unwarranted benefit, advantage and preference to Feshan.¹¹

⁷ Omnibus Motion dated January 8, 2018, p. 10; Record, p. 303.

⁸ Omnibus Motion dated January 8, 2018, p. 11; Record, p. 304.

⁹ *Comment/Opposition* dated January 16, 2018, filed on January 17, 2018; Record, pp. 312- 320.

¹⁰ *Comment/Opposition* dated January 16, 2018, p. 2; Record, p. 313.

¹¹ *Comment/Opposition* dated January 16, 2018, p. 3; Record, p. 314.

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3. While immediate resort to direct contracting may be done without prior conduct of public bidding, it may be done only under the conditions set in Section 50, R.A. No. 9184. In this case, the requirements under Section 50 (c) were not extant:
 - a. The goods must be sold by an exclusive dealer or manufacturer;
 - b. The exclusive dealer or manufacturer does not have sub-dealers selling at lower prices; and,
 - c. No suitable substitute can be obtained from the market at more advantageous terms to the Government.¹²

4. There was no vexatious, capricious and oppressive delay in the conduct of the preliminary investigation.¹³ The entire process, including the preliminary investigation, finding of probable cause, and filing of the Information, was conducted within a reasonable period of time:¹⁴
 - a. On June 27, 2011, the Field Investigation Office-Task Force Abono (FIO-TFA), as nominal complainant, filed a Complaint against herein accused for violation of Section 3(a), (e) and (g) of R.A. No. 3019;¹⁵
 - b. On July 27, 2011, after evaluation of the complaints filed by FIO-TFA and finding enough basis to proceed with the preliminary investigation, the accused were required to file their respective counter-affidavits and other controverting evidence;¹⁶
 - c. On October 14, 2011, private complainant Lyndon Molino filed a Complaint-Affidavit against herein accused for violation of Section 3(a), (e) and (g) of R.A. No. 3019;¹⁷
 - d. On November 16, 2011, after evaluation of the complaint filed by private complainant Molino, and finding enough basis to proceed with the

¹² Comment/Opposition dated January 16, 2018, pp. 3-4; Record, pp. 314-315.

¹³ Comment/Opposition dated January 16, 2018, p. 7; Record, p. 318.

¹⁴ Comment/Opposition dated January 16, 2018, p. 6; Record, p. 317.

¹⁵ Comment/Opposition dated January 16, 2018, p. 5; Record, p. 316.

¹⁶ Comment/Opposition dated January 16, 2018, p. 6; Record, p. 317.

¹⁷ Comment/Opposition dated January 16, 2018, p. 5; Record, p. 316.

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preliminary investigation, the accused were required to file their respective counter-affidavits and other controverting evidence;¹⁸

- e. Accused Sy, Fadri, Galos and Rugas filed their Counter-Affidavits:¹⁹

Accused	Complaint	
	FIO-TFA (OMB-C-C11-0932-G)	Molino (OMB-C-C-11-0649-J)
Sy	4/16/2012	12/19/2011
Fadri	9/14/2011	1/17/2012
Galos	9/14/2011	1/17/2012
Rugas	2/29/2012	2/ 2/2012

- f. Private complainant Molino filed his Reply-Affidavit on the following dates:

Date filed	To the Counter-affidavit of:
January 9, 2012	Sy
February 3, 2012	Fadri and Galos
February 8, 2012	Rugas ²⁰

- g. On October 9, 2014, the Office of the Ombudsman issued a Joint Resolution finding probable cause to indict herein accused for violation of Section 3(e) of R.A. No. 3019;²¹

- h. Motions for Reconsideration thereto were filed, as follows:

Fadri	April 22, 2015
Galos	April 14, 2015
Rugas and Madrona	May 5, 2015
Private complainant Molino	July 27, 2015 ²²

- i. On February 9, 2016, the Office of the Ombudsman denied the Motions for Reconsideration filed by the accused;²³

- j. On August 1, 2017, the Information was filed before the Honorable Court.²⁴

¹⁸ Comment/Opposition dated January 16, 2018, p. 6; Record, p. 317.

¹⁹ Comment/Opposition dated January 16, 2018, p. 6; Record, p. 317.

²⁰ Comment/Opposition dated January 16, 2018, p. 6; Record, p. 317.

²¹ Comment/Opposition dated January 16, 2018, p. 6; Record, p. 317.

²² Comment/Opposition dated January 16, 2018, p. 6; Record, p. 317.

²³ Comment/Opposition dated January 16, 2018, p. 6; Record, p. 317.

²⁴ Comment/Opposition dated January 16, 2018, p. 6; Record, p. 317.

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5. The accused did not assert their right to speedy disposition of their case at the earliest opportune time. They merely moved to quash the information and dismiss the case after this case was set for initial presentation of evidence for the prosecution.²⁵

Discussion

The *Omnibus Motion 1. To Quash the Information, and, 2. To Dismiss the Case* is denied for lack of merit.

Section 3, Rule 117 of the Rules of Criminal Procedure provides:

SEC. 3. Grounds. – The accused may move to quash the complaint or information on any of the following grounds:

- (a) That the facts charged do not constitute an offense;

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The fundamental test in reflecting on the viability of a motion to quash on the ground that the facts charged do not constitute an offense is whether or not the facts asseverated, if hypothetically admitted, would establish the essential elements of the crime defined in law. Matters *aliunde* will not be considered.²⁶ The Information must allege clearly and accurately the elements of the crime charged. What facts and circumstances are necessary to be included therein must be determined by reference to the definition and elements of the specific crimes.²⁷

Here, the Court finds that the facts alleged in the instant Information, if admitted, would establish the

²⁵ Comment/Opposition dated January 16, 2018, p. 7; Record, p. 318. Citing *Guerrero vs. Court of Appeals*, 257 SCRA 703 [1996].

²⁶ *Lazarte vs. Sandiganbayan*, 581 SCRA 431, 445 [2009].

²⁷ At pp. 445-446.

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elements of violation of Section 3(e) of R.A. No. 3019,²⁸ which are as follows:

1. The accused must be a public officer discharging administrative, judicial or official functions, or a private person charged in conspiracy with him;²⁹
2. The accused must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
3. The action of the accused caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of the functions of the accused.³⁰

The First Element.

The Information alleged that accused were public officers at the time relevant to the present case. Thus, accused Madrona was the Provincial Governor; Fadri, the Provincial Agriculturist; Sy, the Provincial Administrator; and, Galos, the Senior Agriculturist, all of the Province of Romblon, at the time relevant to the present case:

xxx accused **ELEANDRO JESUS F. MADRONA, a high ranking public official, then being the Governor of the Province of Romblon, with GEISHLER FIEDACAN FADRI (Provincial Agriculturist), RUBY F. FABABEIR (Provincial Treasurer), JOEL ANGCACO SY (Provincial Administrator), ANTHONY G. RUGAS (Assistant**

²⁸ **Section 3. Corrupt practices of public officers.** In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

xxx xxx xxx

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

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²⁹ Lazarte vs. Sandiganbayan, *Supra*, at p. 447.

³⁰ Rivera vs. People, 743 SCRA 476, 496 [2014].

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Provincial Government Department Head, General Services Officer) and OSCAR PLACITO GALOS (Senior Agriculturist), all public officers being employees of the Provincial Government of Romblon,³¹ xxx xxx xxx

The Second Element.

The Information alleged that accused acted with evident bad faith, manifest partiality, or gross inexcusable negligence when they entered into a contract with Feshan Philippines for the purchase of 3,333 bottles of Bio Nature liquid organic fertilizer through direct contracting, and caused the payment of a total amount of Php4,863,823.19, without complying with the requirements of R.A. No. 9184 for the procurement of goods, viz:

xxx acting with manifest partiality, evident bad faith, or gross inexcusable negligence, did then and there willfully, unlawfully, and criminally, give Feshan, through ELISA D. MORALES, unwarranted benefits, privilege and advantage by entering into a contract with Feshan to purchase 3,333 bottles of Bio Nature liquid organic fertilizer at Php1,500.00 per bottle through the alternative method of procurement of direct contracting, and causing the payment of a total amount of Php4,863,823.19 (net after tax), without complying first with the mandatory public bidding as required under Republic Act No. 9184, as amended, and its implementing rules and regulations, thereby depriving the government the opportunity to get the most advantageous offer/price.³²

The Third Element.

The Information alleged that accused Madrona, Sy, Fadri, Galos, conspiring with one another and with their co-accused, Fababeir, Rugas, and Morales, gave unwarranted benefits, privilege and advantage to Feshan, in the amount of Php4,863,823.19, for the purchase of 3,333 bottles of Bio Nature liquid organic fertilizer without complying with the requirements of procurement under R.A. No. 9184:

xxx while in the performance of their official functions, committing the crime in relation to their office, and taking advantage of their official positions, conspiring and

³¹ Information dated February 9, 2016, p. 2; Record, p. 2. Underscoring supplied.

³² Information dated February 9, 2016, p. 2; Record, p. 2. Underscoring supplied.

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confederating with one another and with accused **ELISA D. MORALES**, a private person representing Feshan Philippines, Incorporated (Feshan), acting with manifest partiality, evident bad faith, or gross inexcusable negligence, did then and there willfully, unlawfully, and criminally, give Feshan, through ELISA D. MORALES, unwarranted benefits, privilege and advantage by entering into a contract with Feshan to purchase 3,333 bottles of Bio Nature liquid organic fertilizer at Php1,500.00 per bottle through the alternative method of procurement of direct contracting, and causing the payment of a total amount of Php4,863,823.19 (net after tax), without complying first with the mandatory public bidding as required under Republic Act No. 9184, as amended, and its implementing rules and regulations, thereby depriving the government the opportunity to get the most advantageous offer/price.³³

Clearly, the Information is sufficient in form and in substance.

The general rule is that a motion to quash must be resolved on the basis of the allegations stated in the Information. The few exceptions are when:

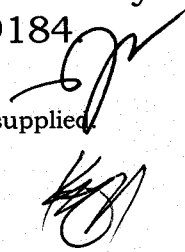
- (1) The new allegations are admitted by the prosecution;
- (2) The Rules so permit, such as upon the grounds of extinction of criminal liability and double jeopardy; and,
- (3) Facts have been established by evidence presented by both parties which destroyed the *prima facie* truth of the allegations in the information during the hearing on a motion to quash.³⁴

This case does not fall under any of the foregoing exceptions.

The prosecution's admission that resort may be made to direct contracting even without prior conduct of a public bidding would not bring the case under the first exception since the same is a matter of law. Relevantly, there is no factual admission by the prosecution that would clearly bring the transaction within Section 50 (c), R.A. No. 9184.

³³ Information dated February 9, 2016, p. 2; Record, p. 2. Underscoring supplied.

³⁴ *Antone vs. Beronilla*, 637 SCRA 615, 628 [2010].



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Finally, accused' contention that a) they can immediately resort to the alternative method of procurement through *direct contracting* under Section 48 (b), without first resorting to public bidding; and, b) it is not true that the government did not get the most advantageous price, are all matters of defense which are not the proper subject of a Motion to Quash, and, are best threshed out during the trial of the case.

Motion to Dismiss on the ground of inordinate delay

The *Motion to Dismiss the Case* on the ground of inordinate delay is denied on the following grounds:

1. Accused failed to establish that the alleged delay can be characterized as capricious, vexatious, and oppressive, or that which violates the right to a speedy disposition of cases;
2. Accused failed to seasonably invoke their right to the speedy disposition of the cases; and,
3. Accused failed to show that they were unduly prejudiced by the alleged delay in the preliminary investigation conducted by the Office of the Ombudsman.

The right to speedy disposition of cases should be understood to be a relative or flexible concept such that a mere mathematical reckoning of the time involved would not be sufficient. Jurisprudence dictates that the right 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 even without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried.³⁵

Not every delay in the trial is vexatious, capricious or oppressive. In the legal firmament, the terms have distinct

³⁵ Coscolluela vs. Sandiganbayan, 701 SCRA 188, 195 [2013].

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connotations. Vexatious suggests an act which is willful and without reasonable cause, for the purpose of annoying and embarrassing another or one lacking justification and intended to harass. Oppressive connotes an unjust or cruel exercise of power or authority. Capricious action, on the other hand, means willful and unreasoning action.³⁶

In **Remulla vs. Sandiganbayan**,³⁷ the Supreme Court explained that as the *balancing test* necessarily compels the courts to approach *speedy trial and/or speedy disposition* of cases on an *ad hoc* basis, the conduct of both the prosecution and defendant are weighed *apropos* the four-fold factors, to wit: (1) length of the delay; (2) reason for the delay; (3) defendant's assertion or non-assertion of his right; and (4) prejudice to defendant resulting from the delay. The Supreme Court underscored that none of these elements is either a necessary or sufficient condition; they are related and must be considered together with other relevant circumstances. These factors have no talismanic qualities as courts must still engage in a difficult and sensitive balancing process.

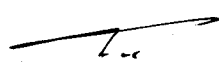
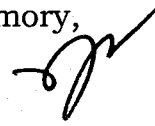
In **Ombudsman vs. Jurado**,³⁸ the Supreme Court explained why the last of the enumerated interests is the most serious:

A fourth factor is prejudice to the defendant. Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the 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. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past. Loss of memory,

³⁶ Lim vs. Court of Appeals, 317 SCRA 521, 526 [1999], quoting with approval the Court of Appeals' decision.

³⁷ G.R. No. 218040, April 17, 2017.

³⁸ 561 SCRA 135 [2008].



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however, is not always reflected in the record because what has been forgotten can rarely be shown.³⁹

The Supreme Court, in **Corpuz vs. Sandiganbayan**,⁴⁰ provided for guidelines for the trial court's assessment of the presence of prejudice to the defendant and the presence of delay, as follows:

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. 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

³⁹ At p. 150.

⁴⁰ 442 SCRA 294 [2004].

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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.⁴¹

In **Corpuz**, the Supreme Court underscored that the accused had the burden of proving the factual basis for their motion for the dismissal of the Information on the ground of a denial of their right to a speedy trial and to a speedy disposition of the cases against them. They are burdened to prove that such delay caused by the prosecution was vexatious, capricious or whimsical. On the other hand, the prosecutor is burdened to present evidence to establish that the delay in the submission of his report on the reinvestigation of the cases was reasonably attributed to the ordinary process of justice, and that the accused suffered no serious prejudice beyond that which ensued after an inevitable and ordinary delay.⁴²

a. Length of Delay.

The period of 6 years, 1 month and 5 days for the conduct of the preliminary investigation in this case cannot be considered vexatious, capricious or whimsical and inordinate delay.

The relevant timeline in this case is as follows:

Date	Event	Period Elapsed
June 27, 2011	The FIO-Task Force Abono filed a Complaint against accused Madrona, Sy, Fababeir, Fadri, Rugas, Galos and Morales and their co-respondents Fruelda, Dela Cruz, Gregorio, Glass, Kin, and Sarinas for alleged violation of Section 65.2.4	

⁴¹ At pp. 313-314. Citations omitted.

⁴² *Supra*, at p. 318.

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	of the Implementing Rules and Regulations of R.A. No. 9184 in relation to Sections 3(e) and (g), R.A. No. 3019 and Sections 10, 18 and 50, R.A. No. 9184. ⁴³	
July 27, 2011	Accused and their co-respondents were directed to file their respective counter-affidavits to the Abono Complaint. ⁴⁴	30 days
September 14, 2011	Accused Fadri and Gallos separately filed their Counter-Affidavits to the Abono Complaint. ⁴⁵	1 month & 18 days
October 14, 2011	Lyndon M. Molino filed a Complaint against the respondents in the Abono Complaint and Lozada and Ylagan, Jr. for violation of Sections 3(a), (e), and (g), R.A. No. 3019. ⁴⁶	
November 16, 2011	Accused and their co-respondents were directed to file their respective counter-affidavits in relation to the Molino Complaint. ⁴⁷	1 month & 2 days (from the date the Molino Complaint was filed with the Office of the Ombudsman)
December 19, 2011	Accused Sy filed his Counter-Affidavit to the Molino Complaint. ⁴⁸	1 month & 3 days
January 9, 2012	Complainant Molino filed a Reply to accused Sy's Counter-Affidavit. ⁴⁹	21 days
January 17, 2012	Accused Fadri and Galos separately filed their Counter-Affidavit to the Molino Complaint. ⁵⁰	2 months & 1 day (from the date the respondents in the Molino Complaint were directed to file their counter-affidavits)
February 2, 2012	Accused Rugas filed his Counter-Affidavit to the Molino Complaint. ⁵¹	2 months & 17 days

⁴³ Complaint dated April 18, 2011; Record, pp. 43-57; Ombudsman Joint Resolution dated October 9, 2014, p. 3; Record, p. 8.

⁴⁴ Comment/Opposition dated January 16, 2018, p. 6; Record, p. 317.

⁴⁵ Comment/Opposition dated January 16, 2018, p. 6; Record, p. 317.

⁴⁶ Complaint-Affidavit dated October 14, 2011; Record, pp. 107-116; Comment/Opposition dated January 16, 2018, p. 5; Record, p. 316; Omnibus Motion dated January 8, 2018, p. 10; Record, p. 303.

⁴⁷ Comment/Opposition dated January 16, 2018, p. 6; Record, p. 317.

⁴⁸ Comment/Opposition dated January 16, 2018, p. 6; Record, p. 317.

⁴⁹ Comment/Opposition dated January 16, 2018, p. 6; Record, p. 317.

⁵⁰ Comment/Opposition dated January 16, 2018, p. 6; Record, p. 317.

⁵¹ Comment/Opposition dated January 16, 2018, p. 6; Record, p. 317.

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February 3, 2012	Complainant Molino filed a Reply to accused Fadri's and Galos' Counter-Affidavit in relation to the Molino Complaint. ⁵²	17 days (from the date accused Fadri and Galos' filed their Counter-Affidavit)
February 8, 2012	Complainant Molino filed a Reply to accused Rugas' Counter-Affidavit in relation to the Molino Complaint. ⁵³	6 days (from the date accused Rugas filed his Counter-Affidavit)
February 29, 2012	Accused Rugas filed his Counter-Affidavit to the Abono Complaint. ⁵⁴	7 months & 2 days (from the date the respondents in the Abono Complaint were directed to file their respective counter-affidavits)
April 16, 2012	Accused Sy filed his Counter-Affidavit to the Abono Complaint. ⁵⁵	8 months & 20 days (from the date the respondents in the Abono Complaint were directed to file their respective counter-affidavits)
October 9, 2014	<p>The Office of the Ombudsman, through the Special Panel for Fertilizer Fund Scam,⁵⁶ in its Joint Resolution dated October 9, 2014, found probable cause to charge accused Madrona, Fadri, Fababeir, Sy, Rugas, Galos, and Morales, and respondent Lozada, for violation of Section 3(e), R.A. No. 3019.</p> <p>The charge against the other respondents accused (Fruelda, Ylagan, Jr., Glass, Kin, Sarinas and Gregorio) was dismissed on the ground of lack of probable cause, and, as to Dela Cruz, on account of his death.⁵⁷</p>	<p>3 years, 3 months, & 12 days (from the date the Abono Complaint was filed with the Office of the Ombudsman)</p> <p>-and-</p> <p>2 years, 11 months, & 25 days (from the date the Molino Complaint was filed with the Office of the Ombudsman)</p> <p>2 years, 5 months, & 23 days (from the date the last Counter Affidavit was received by the Office of the Ombudsman)</p>
April 14, 2015	Accused Galos filed a Motion for Reconsideration	6 months & 5 days

⁵² Comment/Opposition dated January 16, 2018, p. 6; Record, p. 317.

⁵³ Comment/Opposition dated January 16, 2018, p. 6; Record, p. 317.

⁵⁴ Comment/Opposition dated January 16, 2018, p. 6; Record, p. 317.

⁵⁵ Comment/Opposition dated January 16, 2018, p. 6; Record, p. 317.

⁵⁶ Composed of Member Marius F. Veloso; Team Leader Adoracion A. Agbada; and, Chairman Gerard A. Mosquera (Deputy Ombudsman for Luzon).

⁵⁷ Ombudsman Joint Resolution dated October 9, 2014, p. 23; Record, p. 28.

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	of the Joint Resolution dated October 9, 2014. ⁵⁸	
April 22, 2015	Accused Fadri filed a Motion for Reconsideration of the Joint Resolution dated October 9, 2014. ⁵⁹	6 months & 13 days
May 5, 2015	Accused Rugas and Madrona filed a Motion for Reconsideration of the Joint Resolution dated October 9, 2014. ⁶⁰	6 months & 26 days
July 27, 2015	Complainant Molino filed a Motion for Reconsideration of the Joint Resolution dated October 9, 2014. ⁶¹	9 months & 18 days (from the date the Office of the Ombudsman found probable cause to indict accused for violation of Section 3(e), R.A. No. 3019.)
February 9, 2016	In a Joint Order dated February 9, 2016, the Special Panel, denied all the Motions for Reconsideration and dismissed the charges against Lozada by reason of his death. ⁶²	6 months & 13 days (from receipt of the last Motion for Reconsideration of the Joint Resolution dated October 9, 2014)
August 1, 2017	The present Information was filed with the Sandiganbayan. ⁶³	1 year 5 months & 23 days (from the date of the Joint Order dated February 9, 2016) 2 years, 9 months, & 23 days (from the Joint Resolution dated October 9, 2014) 5 years, 9 months, & 18 days (from the date the Molino Complaint was filed with the Office of the Ombudsman) 6 years, 1 month, & 5 days (from the date the Abono Complaint was filed with the Office of the Ombudsman)

⁵⁸ Ombudsman Joint Resolution dated October 9, 2014, footnote # 3, p. 3; Record, p. 35.

⁵⁹ Ombudsman Joint Resolution dated October 9, 2014, footnote # 4, p. 3; Record, p. 35.

⁶⁰ Ombudsman Joint Resolution dated October 9, 2014, footnotes # 6 & 7, p. 4; Record, p. 36.

⁶¹ Ombudsman Joint Resolution dated October 9, 2014, footnote # 8, p. 4; Record, p. 36.

⁶² Ombudsman Joint Order dated February 9, 2016, p. 8; Record, p. 40.

⁶³ Record, pp. 1-3.

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From the foregoing, it appears that 3 years, 3 months, and 12 days elapsed from the filing of the Abono Complaint; and 2 years, 11 months, and 25 days elapsed from the filing of the Molino Complaint before the Office of the Ombudsman, through the Special Panel for Fertilizer Fund Scam,⁶⁴ issued its resolution finding probable cause against all the accused. The foregoing also shows that it took another 2 years, 9 months and 23 days before the Office of the Ombudsman filed the present Information.

The Supreme Court stressed, in **Dansal vs. Fernandez, Sr.**,⁶⁵ that the 10-day period provided by the Rules of Court to conduct preliminary investigation is merely directory, although it cannot be disregarded with absolute impunity, *viz:*

The Court is not unmindful of the duty of the Ombudsman under the Constitution and Republic Act No. 6770 to act promptly on Complaints brought before him. But such duty should not be mistaken with a hasty resolution of cases at the expense of thoroughness and correctness. 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, thus resulting in a steady stream of cases reaching the Office of the Ombudsman.

As stressed upon by the Solicitor General, the Rules of Procedure of the Ombudsman do not specifically prescribe a period within which a criminal complaint may be investigated and decided. But the same Rules adopt the Rules of Court on Preliminary Investigation, as modified by the Rules of Procedure of the Ombudsman. Under the Rules of Court, the Investigating Officer has ten (10) days from submission of the case to come out with the resolution.

But it bears stressing that the period fixed by law is merely "directory", although it cannot be disregarded or ignored completely, with absolute impunity.⁶⁶ xxx

⁶⁴ Composed of Marius F. Veloso (Member); Adoracion A. Agbada (Team Leader); and, Deputy Ombudsman for Luzon Gerard A. Mosquera (Chairman).

⁶⁵ *Supra*

⁶⁶ At p. 156. Underscoring supplied.

