



REPUBLIC OF THE PHILIPPINES  
**Sandiganbayan**  
QUEZON CITY

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SEVENTH DIVISION

MINUTES of the proceedings held on May 11, 2018.

*Present:*

**MA. THERESA DOLORES C. GOMEZ-ESTOESTA** ----- Chairperson  
**ZALDY V. TRESPESES** ----- Associate Justice  
**REYNALDO P. CRUZ\*** ----- Associate Justice

The following resolution was adopted:

**Crim. Cases No. SB-17-CRM-1657 to SB-17-CRM-1664 -**

**People vs. Rustico De Belen y Tigas  
Antonio Cacdac y Abuan  
Lucila Valdez y Santiago  
Eduardo D. Mercado**

This considers the following:

1. Accused Rustico T. De Belen's "**MOTION TO DISMISS**" dated April 10, 2018 (as adopted by accused Antonio A. Cacdac, Lucila S. Valdez, and Eduardo D. Mercado during the hearing of April 20, 2018);<sup>1</sup> and
2. The Prosecution's "**CONSOLIDATED COMMENT/OPPOSITION (On the Motion to Dismiss)**" dated April 26, 2018.<sup>2</sup>

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It is significant to note, at the outset, that accused Rustico T. De Belen, Antonio A. Cacdac, Lucila S. Valdez, and Eduardo D. Mercado have jointly filed with the Supreme Court a *Petition for Certiorari (With Urgent Prayer for the Issuance of a Temporary Restraining Order (TRO)/Status Quo Ante and Preliminary Injunction)* to question:

(a) The Resolution dated December 18, 2017 of this Court which denied accused's *Urgent Motion to Quash Information and/or Reinvestigation*

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\*Per Administrative Order No. 435-2017 dated December 14, 2017

<sup>1</sup> Records, Volume 2, pp. 231-253; Order dated April 20, 2018, Records, Volume 2, pp. 277-278

<sup>2</sup> Ibid., pp. 313-318

*[On Serious Constitutional Grounds and Section 3, Rule 117 and Section 9, Rule 119 of the Revised Rules of Criminal Procedure]; and*

(b) The Resolution dated February 9, 2018 of this Court which denied accused's *Motion for Reconsideration*.

The resolution of the afore-stated motions were centered on the following grounds raised by the accused, viz:

(1) the filing of the eight (8) Informations was based on an illegal Resolution which found *prima facie* evidence for violation of Section 3 (e) of R.A. 3019 regardless of:

(i) the invalidity of Provincial Ordinance No. C-005,<sup>3</sup> which the Ombudsman relied on in its Resolution, being an *ex post facto* law as applied to the accused, and where certified copies were found not to have been filed with the UP Law Center contrary to Section 3, Chapter 2, Book VII of the Administrative Code, thus affecting its effectivity;

(ii) the violation of accused's constitutional right to due process and equal protection when it took the Ombudsman an inordinate delay of four (4) years before finally resolving the charges;

(iii) the wrong citation of *Vda. De Cabalu, et al. v. Tabu, et al.*<sup>4</sup> in the Ombudsman Resolution which failed to distinguish a contract from a license or permit; and

(iv) the erroneous Decision of the DENR which failed to take into account the *doctrine of operative fact* by not considering the effects of oxidation and erosion on the ore minerals already extracted with the cancellation of the SSMPs.

(2) the Informations are "*defective and unconstitutional*" since:

(i) the Resolution from which they were based from "*d[id] not clearly and distinctly state the facts and the law from which they were based from,*" citing Section 14, Article VIII of the 1987 Constitution;<sup>5</sup>

(ii) the amount of damages incorporated therein which was neither stated in the complaint nor discussed in the Ombudsman Resolution. Should the damages reflect the amount of iron ores subject of the permits, the Ombudsman has not shown from where it sourced such amounts; and

(iii) the selective justice and double standard exhibited by the Ombudsman in the non-inclusion of other officials in the present charges who were likewise responsible in the processing and issuances of the OTPs and MOEPs should the conspiracy angle be tightened; e.g.,

<sup>3</sup> Entitled "An Ordinance Enacting the 2011 Revised Environmental Code of the Province of Bulacan"

<sup>4</sup> G.R. No. 188417, September 24, 2012 as found in page 9 of the Ombudsman Resolution

<sup>5</sup> SECTION 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

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Provincial Governor Wilhelmino Sy-Alvarado, DENR-MGB OIC Regional Director Orlando Pineda and other DENR-BENRO staff namely Baldwin Peneyra, Danila Fernandez, Diosdado Dagdaan, Ernesto Reyes and others who signed reports and recommendations; and the dismissal of the charges against respondents Lowel and Juvylyn Sembrano despite being apparent beneficiaries who personally applied the OTPs and MOEPs for and in behalf of permittees Valdez and Mercado; and

(3) inordinate delay of “four (4) years”<sup>6</sup> from the time the complaint was filed on February 28, 2012<sup>7</sup> until the Ombudsman finally filed the instant cases [on August 25, 2017].<sup>8</sup>

Inevitably, these are the **same issues** raised in the *Petition for Certiorari* now pending before the Supreme Court.

Now, accused resurrect the **same issues** in the guise of the present *Motion to Dismiss*.

At this point, the pending *Petition for Certiorari* before the Supreme Court should bar this Court from taking further action on the same issues. Short of resorting to two overlapping remedies which may possibly result in conflicting rulings, accused cannot expect this Court to make a complete turn-around of its previous resolutions with the filing of the present *Motion to Dismiss*.

The disquisition of the Supreme Court in *Estrada v. Office of the Ombudsman*<sup>9</sup> is apropos:

. . . [D]espite the fact that what the petitioners filed was a petition for certiorari, a recourse that — in the usual course and because of its nature and purpose — is not covered by the rule on forum shopping. The exception from the forum shopping rule, however, is true only where a petition for certiorari is properly or regularly invoked in the usual course; the exception does not apply when the relief sought, through a petition for certiorari, is still pending with or has as yet to be decided by the respondent court, tribunal or body exercising judicial or quasi-judicial body, e.g., a motion for reconsideration of the order assailed via a petition for certiorari under Rule 65, as in the present case. This conclusion is supported and strengthened by Section 1, Rule 65 of the Revised Rules of Court which provides that the availability of a remedy in the ordinary course of law precludes the filing of a petition for certiorari; under this rule, the petition's dismissal is the necessary consequence if recourse to Rule 65 is prematurely taken.

To be sure, the simultaneous remedies the petitioners sought could result in possible conflicting rulings, or at the very least, to complicated situations, between the RTC and the Court of Appeals. **An extreme**

<sup>6</sup> Vide: page 15 of the *Urgent Motion to Quash Information and/or Reinvestigation*

<sup>7</sup> Complaint-Affidavit of Reynaldo R. So of Atlantic Mines and Trading Corporation was filed on February 28, 2012

<sup>8</sup> Mathematical computation should have been pegged at five (5) years, which accused now corrected to five (5) years in the present *Motion to Dismiss*

<sup>9</sup> G.R. Nos. 212140-41, January 21, 2015

possible result is for the appellate court to confirm that the RTC decision is meritorious, yet the RTC may at the same time reconsider its ruling and recall its order of dismissal. In this eventuality, the result is the affirmation of the decision that the court a quo has backtracked on. Other permutations depending on the rulings of the two courts and the timing of these rulings are possible. In every case, our justice system suffers as this kind of sharp practice opens the system to the possibility of manipulation; to uncertainties when conflict of rulings arise; and at least to vexation for complications other than conflict of rulings. Thus, it matters not that ultimately the Court of Appeals may completely agree with the RTC; what the rule on forum shopping addresses are the possibility and the actuality of its harmful effects on our judicial system. [Emphasis supplied]

Sen. Estrada resorted to simultaneous remedies by filing this Petition alleging violation of due process by the Ombudsman even as his Motion for Reconsideration raising the very same issue remained pending with the Ombudsman. This is plain and simple forum shopping, warranting outright dismissal of this Petition.

Stripped of its cover, it can be said that accused engaged in forum-shopping in the hope of obtaining a favorable ruling. The case of *Disini v. Sandiganbayan, et al.*<sup>10</sup> illustrates:

The situation here is strikingly similar to that in *People v. Sandiganbayan*. In that case, the petitioner had filed with the Sandiganbayan a motion for consolidation of a bribery case with a plunder case. The Sandiganbayan refused, leading the petitioner to file a petition for certiorari with this Court. While the said petition was pending with this Court, the petitioner filed another motion for consolidation with the Sandiganbayan, praying anew for the consolidation of the bribery case with a plunder case. The motion raised the same issues and prayed for the same remedy as the pending petition with this Court, namely, the consolidation of the bribery case and the plunder case. The Court held that "such move clearly constitutes forum-shopping." [Emphasis supplied]

This is almost exactly what happened in the instant case. Petitioner had filed with the Sandiganbayan a motion to lift default order. The Sandiganbayan refused, leading petitioner to file a petition for certiorari with this Court. While the said petition was pending with this Court, petitioner filed another motion to lift default order with the Sandiganbayan, praying anew for the lifting of the default order. Thus, following the ruling in *People v. Sandiganbayan*, we rule that petitioner's actuations clearly constitute forum-shopping.

Because of the forum-shopping committed by petitioner, the Court cannot grant the relief he prayed for.

In the same tenor, therefore, the reliefs prayed for in the *Motion to Dismiss*, which are a mere replication of those already raised in the *Petition for Certiorari*, cannot be granted.

<sup>10</sup> G.R. No. 175730, July 5, 2010

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Further, accused may have enmeshed a new, albeit belated, ground in the *Motion to Dismiss*, this time alluding to the **lack of jurisdiction** of this Court over main accused Atty. De Belen since he held a Salary Grade 26 position. This contention immediately wanes.

As correctly cited by the Prosecution, the case of *Duncan v. Sandiganbayan*<sup>11</sup> is on all fours with the instant cases. To quote:

With the advent of the 1987 Constitution, the special court was retained as provided for in Section 4, Article XI thereof.<sup>24</sup> Aside from Executive Order Nos. 14<sup>25</sup> and 14-a,<sup>26</sup> and R.A. 7080,<sup>27</sup> which expanded the jurisdiction of the Sandiganbayan, P.D. No. 1606 was further modified by R.A. No. 7975,<sup>28</sup> R.A. No. 8249,<sup>29</sup> and just this year, R.A. No. 10660.<sup>30</sup>

For the purpose of this case, the relevant provision is Section 4 of R.A. No. 8249, which states: SEC. 4. Section 4 of the same decree is hereby further amended to read as follows:

"SEC. 4. Jurisdiction.— The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

"A. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

"(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

"(a) Provincial governors, vice-governors, members of the sangguniang panlalawigan, and provincial treasurers, assessors, engineers, and other provincial department heads;

"(b) City mayor, vice-mayors, members of the sangguniang panlungsod, city treasurers, assessors, engineers, and other **city department heads**; [Emphasis supplied]

"(c) Officials of the diplomatic service occupying the position of consul and higher;

"(d) Philippine army and air force colonels, naval captains, and all officers of higher rank;

"(e) Officers of the Philippine National Police while occupying the position of provincial director and those holding the rank of senior superintendent or higher;

<sup>11</sup> G.R. No. 191894, July 15, 2015

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"(f) City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor;

"(g) Presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations.

"(2) Members of Congress and officials thereof classified as Grade '27' and up under the Compensation and Position Classification Act of 1989;

"(3) Members of the judiciary without prejudice to the provisions of the Constitution;

"(4) Chairmen and members of Constitutional Commission, without prejudice to the provisions of the Constitution; and

"(5) All other national and local officials classified as Grade '27' and higher under the Compensation and Position Classification Act of 1989.

"B. Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a of this section in relation to their office.

"C. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

x x x"

Based on the afore-quoted, those that fall within the original jurisdiction of the Sandiganbayan are: (1) officials of the executive branch with Salary Grade 27 or higher, and (2) officials specifically enumerated in Section 4 (A) (1) (a) to (g), regardless of their salary grades.<sup>31</sup> While the first part of Section 4 (A) covers only officials of the executive branch with Salary Grade 27 and higher, its second part specifically includes other executive officials whose positions may not be of Salary Grade 27 and higher but who are by express provision of law placed under the jurisdiction of the Sandiganbayan.<sup>32</sup>

As a **Provincial Government Department Head** (SG-26), accused Atty. De Belen is specifically covered under Section 4 (A) (1) (b), *regardless of his salary grade*. By express provision of law, therefore, he is placed under the jurisdiction of this Court and must now face the charges filed against him.

The same holds true for accused Antonio Cacdac (SG-18) and private accused Lucila Valdez and Eduardo Mercado who were charged in conspiracy with accused Atty. De Belen; and hence, have to similarly contend with the same charges.

WHEREFORE, the *Motion to Dismiss* filed by accused Rustico T. De Belen, as adopted by accused Antonio A. Cacdac, Lucila S. Valdez and Eduardo D. Mercado, is **DENIED** for lack of merit.

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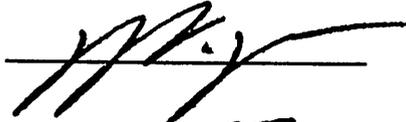
Let the arraignment and pre-trial of all the accused **PROCEED** on *June 29, 2018 at 8:30 in the morning.*

SO ORDERED.

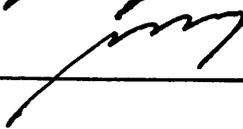
GOMEZ-ESTOESTA, J., *Chairperson*

  
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TRESPESES, J.

  
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CRUZ, J.

  
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