



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

FOURTH DIVISION

MINUTES of the proceedings held on 14 June 2018.

Present:

JUSTICE ALEX L. QUIROZ	-----	Chairperson
JUSTICE REYNALDO P. CRUZ	-----	Member
JUSTICE BAYANI H. JACINTO	-----	Member

The following resolution was adopted:

SB-17-CRM-2135 – PEOPLE OF THE PHILIPPINES v. DIOSDADO L. EGINA ET AL.

This resolves the *Motion to Quash/Dismiss* (Information dated 16 August 2017) dated 2 March 2018¹ filed by accused **DIOSDADO L. EGINA, JAIL B. ERODIAS, and NOBEL N. BALESTRAMON.**

The accused claim that it took the Office of the Ombudsman (OMB) more than six years to conclude the fact-finding and preliminary investigations of their case, in violation of their right to the speedy disposition thereof. To support their argument, they present the following timeline:

17 January 2011 Complainant Ephraim J. Lim filed a Letter-Complaint before the Office of the Ombudsman-Visayas (OMB-Visayas), Regional Office No. VI, Iloilo City. The Letter-Complaint was docketed as CPL-V-11-0056.

30 April 2014 Graft Prosecution and Investigation Officer (GIPO) I Theodore P. Banderado, acting as nominal complainant, filed the Affidavit-Complaint that initiated the OMB's preliminary investigation. The said Complaint was docketed as OMB-V-C-14-0470 and OMB-V-A-14-0325.

23 October 2014 OMB issued the Order directing respondents to file their counter-affidavits.

¹ Records, pp. 112-121.

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| 6 January 2015 | Respondents filed their Joint Counter-Affidavits. |
| 4 August 2015 | Date of OMB Resolution in OMB-V-C-14-0470. |
| 23 September 2016 | Date of approval by the Honorable Ombudsman of the OMB Resolution. |
| 17 August 2017 | Date of approval of the Information dated 16 August 2017. |
| 7 November 2017 | Date of filing of the Information with the Sandiganbayan. |

The accused point out that the records of the case are not voluminous, and that the issues that had to be addressed therein by the OMB are not so complicated as to warrant the length of time it took the OMB to conclude its investigation. Citing *Ombudsman v. Jurado*,² *Tatad v. Sandiganbayan*,³ and *Lopez v. Office of the Ombudsman*,⁴ they submit that such period was vexatious, capricious, and oppressive, thus necessitating the quashal of the Information.

In its *Comment*,⁵ the prosecution claims that the accused merely made a mathematical computation of the periods involved. It asserts that the preliminary investigation started only on 28 July 2014, when the Complaint-Affidavit of GIPO I Theodore P. Banderado was re-docketed as OMB-V-C-14-0470 and OMB-V-A-14-0325. Thus, the delay, if any, should be reckoned only from 28 July 2014 and counted only up to the filing of the Information with this Court on 7 November 2017.

In this regard, the prosecution submits that the time it took for the OMB to conclude its preliminary investigation was not vexatious, capricious, and oppressive. It explains that the Complaint stemmed from a Letter-Complaint of a certain Ephraim Lim, which was filed with the Regional Office in Iloilo City of the Office of the Deputy Ombudsman for the Visayas. The Letter-Complaint was thereafter forwarded to the OMB-Visayas main office in Cebu City, and it was only then that *subpoenas* to various agencies were issued to start the fact-finding investigation. The prosecution also points out that the accused were not required to participate during the fact-finding investigation.

² G.R. No. 154155, 6 August 2008.

³ G.R. No. 72335-39, 21 March 1988.

⁴ G.R. No. 140529, 6 September 2001.

⁵ Dated 9 March 2018, Records, pp. 131-142.

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Invoking the pronouncement in *Dela Peña v. Sandiganbayan*,⁶ the prosecution stresses that a “balancing test” of the following factors should be considered and weighed in order to determine whether accused’s right to the speedy disposition of their case had been violated: (a) length of delay; (b) reason of the delay; (c) assertion or failure to assert such right by the accused; and (d) the prejudice caused by the delay.

The Court finds merit in the accused’s motion.

A. Length of delay

The accused reckon the delay attributable to the OMB from the start of its fact-finding investigation and claim that, all in all, it took the OMB six years to conclude its preliminary investigation. The prosecution, on the other hand, argues that the period devoted to the OMB’s fact-finding investigation should not included in computing the period for preliminary investigation. Hence, any delay should be counted from 28 July 2014 (filing of the OMB Complaint), instead of 17 January 2011.

Recent jurisprudence⁷ supports the accused’s proposition that, for purposes of determining whether their right to the speedy disposition of cases has been violated, the time it took the OMB to conclude its fact-finding investigation should be factored into the period for preliminary investigation. Thus, in this case, the delay shall be pegged at more than six years.

B. Reason for the delay:

The prosecution argues that the time it took the OMB to conclude its preliminary investigation was reasonable and necessary, considering that the case originated from the OMB-Visayas Regional Office in Iloilo City, and had to undergo different levels of review as a matter of procedure.

The Record cannot sustain the prosecution’s claim. The Court notes that the OMB Complaint only has 13 pieces of documentary evidence as attachment, most of which were submitted by Mr. Ephraim Lim, the original complainant. This can hardly justify the three years it took the OMB to finish its fact-finding investigation.

⁶ G.R. No. 14452, 29 June 2001.

⁷ *People v. Sandiganbayan*, G.R. No. 188165, 11 December 2013, *Torres v. Sandiganbayan* G.R. Nos. 221562-69, 5 October 2016.

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Further, the Court notes that the OMB Resolution was dated 4 August 2015, but the same was approved by the Ombudsman only on 23 September 2016 – or after more than one year. In other words, the case remained unacted upon for the reason that the OMB waited for the Ombudsman's approval. Parenthetically, the prosecution failed to justify why the final approval of the OMB Resolution took this much time, putting into consideration the levels of review that it already underwent.

In all, these circumstances, paired with the fact that the case does not involve a complex issue – merely a single count of violation of Republic Act No. 3019 where the accused are said to have acted in conspiracy with each other – prevents the Court from finding merit in the justifications advanced by the prosecution.

C. Failure to assert such right:

The prosecution argues that the accused failed to seasonably invoke their right to the speedy disposition of their case. It further claims that the present motion is but an afterthought, since it was filed on the same day that the accused were to be arraigned.

While the accused appear to have failed to invoke their right to speedy disposition of cases before the OMB, this does not absolutely prevent them from asserting the same before the Court. As clarified in *Remulla v. Sandiganbayan*,⁸ notwithstanding the accused's failure to invoke said right at the earliest opportunity, the case may still be dismissed if the prosecution utterly fails to justify the delay. Such situation obtains in this case.

D. Prejudice caused by the delay:

Delay affects both the State and the accused. However, it is the State that must show that the accused suffered no serious prejudice beyond that which ensued from ordinary and inevitable delay, and that there was no more delay than is reasonably attributable to the ordinary processes of justice.

Thus, taking into account the facts of this case *vis-à-vis* the balancing test, the Court finds that the six years it took the OMB to conclude its fact-finding and preliminary investigations for a single count of violation of the Anti-Graft Law to be unreasonably lengthy, vexatious, and oppressive. The prosecution's failure to justify such period yields to the conclusion that there was a violation of the accused's right to the speedy disposition of their case, and that the dismissal of the present case is warranted.

⁸ G.R. No. 218040, 17 April 2017.

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WHEREFORE, premises considered, the *Motion to Quash/Dismiss* dated 2 March 2018 filed by accused **DIOSDADO L. EGINA, JAIL B. ERODIAS,** and **NOBEL N. BALESTRAMO** is hereby **GRANTED**. The Information dated 16 August 2017 is **DISMISSED** as against all the accused.

The cash bonds posted by all accused for their provisional liberty are ordered **RELEASED**, subject to the usual accounting and auditing procedures, and the Hold Departure Order issued against them in connection with this case is hereby **RECALLED**.

SO ORDERED

QUIROZ, J., *Chairperson*

CRUZ, J.

JACINTO, J.

Alex L. Quiroz
J. Cruz
J. Jacinto