



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SPECIAL SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-18-CRM-0140
For: Violation of Section 3(e)
of Republic Act No. 3019

- versus -

ENRICO R. ECHIVERRI, ET AL.,
Accused.

X-----X

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-18-CRM-0141
For: Falsification of Public Document

- versus -

EDNA V. CENTENO, ET AL.,
Accused.

Present
FERNANDEZ, SJ, J.,
Chairperson
MIRANDA, J.
MUSNGI,* J.
QUIROZ, J. and**
LAGOS, J.**

X-----X

Promulgated:

JUL 26 2018

X-----X

RESOLUTION

FERNANDEZ, SJ, J.

This resolves the *Urgent Motion to Dismiss*¹ of accused Enrico R. Echiverri, Edna V. Centeno and Jesusa C. Garcia.

* The incident was submitted for resolution after the filing of the prosecution's *Comment/Opposition* on April 10, 2018; Sitting as special member in view of the vacancy in the Sixth Division, per Administrative Order No. 057-2018 dated January 29, 2018 (*Revised Internal Rules of the Sandiganbayan*, Rule XII, Sec. 3).

** Per Administrative Order No. 9-C-2018 dated May 21, 2018

¹ Dated March 20, 2018; Record, pp. 234-240

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In their Motion, the accused pray that this Court dismiss the Information in the present cases for having been filed in violation of their right to speedy trial. They contend:

1. Their rights to due process and to speedy disposition of cases were violated because of the inordinate delay in the conduct of the preliminary investigation.
2. The Complaint against them was filed on October 29, 2015. However, the Informations were filed with the Court only after around two (2) years and four (4) months, or on February 23, 2018.
3. Under Sec. 4, Rule II of the Rules of Procedure of the Office of the Ombudsman, the preliminary investigation should be conducted in the manner prescribed in Sec. 3, Rule 112 of the Rules of Court. Rule 112, Sec. 3(f) of the Rules of Court provides that the investigating officer must determine within ten (10) days after the investigation whether or not there is sufficient ground to hold the respondent for trial.
4. Applying the balancing test as enunciated in *Corpuz v. Sandiganbayan*, it is clear that their right to speedy disposition of cases was violated.
 - a. A delay of almost three (3) years violates Rule 112, Sec. 3(f) of the rules of Court.
 - b. 67 informations have been filed against them. The informations involve the same set of facts and the same set of accused. There is no justification for the delay of almost three (3) years for the termination of the preliminary investigation.
 - c. The piecemeal filing of the cases against them is vexatious, capricious and oppressive. The first wave of cases were filed as early as March 2017, with new cases still being filed every week. The cases involve transactions covered by the same Omnibus Term Loan or Internal Revenue Allotment for the years 2010 to 2012.
 - d. For these cases, in particular, the Office of the Ombudsman's Order denying their Motion for Reconsideration was issued as early as March 10, 2017. However, it took almost one (1) year before the Informations were filed.
 - e. They suffered constant anxiety and public humiliation as a result of the piecemeal filing of the numerous cases.

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Moreover, the way the informations were filed prevents the possibility of consolidating the cases.

- f. The delay caused prejudice to them because they have to periodically go through the anxiety of having warrants issued against them without their knowledge. The combined amount of the bail required of them will surely bankrupt them.

In its *Comment/Opposition (In re: a. Accused's Urgent Motion to Dismiss)*,² the prosecution counters that:

1. The right to speedy disposition of cases is 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 when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried.
2. In determining if there was a violation of the accused' right to speedy trial or speedy disposition of cases, a balancing test must be applied. Particular regard must be taken of the facts and circumstances peculiar to each case.
3. The Complaint-Affidavit filed by Madeline M. Tampoya charged the accused with Technical Malversation through Falsification under Articles 220 and Art. 171 (4) of the Revised Penal Code (RPC), and violation of Sec. 3(e) of Republic Act No. 3019 (R.A. No. 3019). In determining the existence of probable cause, the Office of the Ombudsman is duty-bound to study the facts of the case but it is not bound to charge the accused with the crimes in the Complaint-Affidavit.
4. Hereunder are events from the preliminary investigation to the filing of the Informations with the Court:
 - a. The Affidavit Complaint of Madeline M. Tampoya was filed on October 9, 2015.
 - b. The accused were directed to file their respective Counter-Affidavits in the Order dated November 10, 2015.
 - c. On November 24, 2015, accused Centeno and Garcia filed a motion for extension of time to file their Counter-Affidavits. Accused Echiverri, on the other hand, filed his Counter-Affidavit.

² Dated April 5, 2018; Record, pp. 252-257

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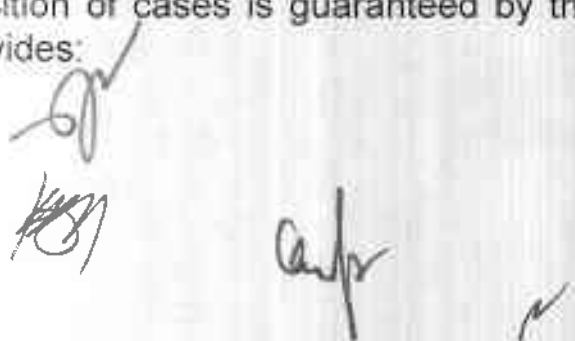
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- d. Accused Centeno and Garcia filed their Joint Counter-Affidavit on December 10, 2015.
 - e. The Complainant filed a Consolidated Reply-Affidavit on January 6, 2016.
 - f. On August 22, 2016, the City Auditor was directed to submit documents in connection with the improvement of road and drainage at Cuadra Street, Barangay 164, Caloocan City in the Subpoena Duces Tecum issued by the Office of the Ombudsman.
 - g. The Office of the Ombudsman received a reply-letter with regard to said subpoena on September 5, 2016.
 - h. The Resolution finding probable cause was approved on December 29, 2016.
 - i. The accused filed their Joint Motion for Reconsideration on February 27, 2017.
 - j. The Order denying the accused' Joint Motion for Reconsideration was approved on May 29, 2017.
 - k. The Informations were filed on February 23, 2018.
5. Accused Centeno and Garcia filed a motion for extension of time to file their counter-affidavits. They are estopped from questioning the length of the preliminary investigation because they contributed to the delay.
6. The Supreme Court has already taken judicial notice of the steady stream of cases reaching the Office of the Ombudsman.
7. From the foregoing, it can be seen that there was no violation of the accused' right to speedy disposition of cases.

THE COURT'S RULING

The Court resolves to deny the Motion of accused Echiverri, Centeno and Garcia.

The right to speedy disposition of cases is guaranteed by the Constitution. Art. III, Sec. 16 provides:



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

It bears stressing that the right to speedy disposition of cases is not violated by the mere fact of delay. The delay must be vexatious, capricious and oppressive. The concept of speedy disposition being flexible, courts must consider the peculiar circumstances surrounding each case. In *Corpuz v. Sandiganbayan*,³ it was held:

The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts to proceed with reasonable dispatch in the trial of criminal cases. Such right to a speedy trial and a speedy disposition of a case is violated only when the proceeding is attended by vexatious, capricious and oppressive delays. The inquiry as to whether or not an accused has been denied such right is not susceptible by precise qualification. The concept of a speedy disposition is a relative term and must necessarily be a flexible concept.

While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude rights of public justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.

(underscoring supplied)

In determining if there was a violation of the right to speedy disposition of cases, the Supreme Court adopted the balancing test. It is a middle ground which weighs the conduct of both the prosecution and the defendant, and considers four factors, namely: (1) length of delay, (2) the reason for the delay, (3) the defendant's assertion of such right, and (4) prejudice to the defendant.⁴

³ G.R. No. 162214, November 11, 2004

⁴ Please see *Perez v. People*, G.R. No. 164763, February 12, 2008

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A. Length of delay

The following are some of the events that transpired from the filing of the Complaint-Affidavit to the filing of the Informations with the Court:

October 9, 2015	Filing of the Complaint-Affidavit of Madeline M. Tampoya, charging the accused with Technical Malversation through Falsification under Articles 220 and 171(4) of the RPC, Sec. 3(e) of R.A. No. 3019 and Grave Misconduct. ⁵
November 10, 2015	Date of the Order directing respondents to submit their respective Counter-Affidavits ⁶
November 24, 2015	Accused Echiverri filed a copy of his Counter-Affidavit dated November 23, 2015. ⁷ The Office of the Ombudsman received a copy of the same on December 14, 2015. ⁸ Accused Centeno and Garcia requested for an extension of time to file their Counter-Affidavit ⁹
December 10, 2015	Accused Centeno and Garcia filed their Joint Counter-Affidavit ¹⁰
August 22, 2016	The Office of the Ombudsman issued a Subpoena Duces Tecum addressed to the City Auditor, directing the submission of documents related to the subject transaction ¹¹
September 5, 2016	The Office of the Ombudsman received a reply-letter regarding the said subpoena ¹²
December 29, 2016	The Ombudsman approved the Resolution dated November 18, 2016 finding probable cause to charge accused Echiverri, Centeno and Garcia with violation of Sec. 3(e) of R.A. No. 3019, and accused Centeno and Garcia with Falsification of Public Document ¹³

⁵ Record, pp. 34-113

⁶ Record, p. 11

⁷ Record, p. 254 (*Comment/Opposition*, p. 3)

⁸ Record, pp. 114-146

⁹ *Supra*. Note 7

¹⁰ Record, pp. 147-185

¹¹ *Supra*. Note 7

¹² *Ibid*.

¹³ Record, pp. 6-25

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	(Around 1 year and 3 months from the filing of the Complaint-Affidavit)
February 27, 2017	Accused Echiverri, Centeno and Garcia filed their Joint Motion for Reconsideration of the Resolution dated November 18, 2016
May 29, 2017	The Ombudsman approved the Joint Order dated March 10, 2017, denying the Joint Motion for Reconsideration of accused Echiverri, Centeno and Garcia ¹⁴ (Around 3 months from the filing of the Joint Motion for Reconsideration)
February 23, 2018	The Informations in the present cases were filed with the Court. (Around 9 months from approval of the Joint Order)

The Information in the present cases were filed around two (2) years and four (4) months from the filing of Madeline M. Tampoya's Complaint-Affidavit. However, length of delay by itself, being only one of the factors in the balancing test, is not conclusive of whether or not there was a violation of the right to speedy disposition of cases.

B. Reason for the delay

Closely related to the length of delay is the reason or justification for such delay. Different weights should be assigned to different reasons. As explained in *Barker v. Wingo*,¹⁵ cited in *Perez v. People*:¹⁶

Closely related to length of delay is the reason the government assigns to justify the delay. Here, too, different weights should be assigned to different reasons. A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay. x x x

According to the prosecution, accused Centeno and Garcia contributed to the delay because they requested for an extension of

¹⁴ Record, pp. 27-32

¹⁵ 407 US 514 (1972)

¹⁶ *Supra*, Note 4

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time within which to file their counter-affidavit. It further contends that this Court should take judicial notice of the steady stream of cases reaching the Office of the Ombudsman.

This Court is not inclined to agree with the prosecution's contention that accused Centeno and Garcia contributed significantly to the delay. While it is true that they requested for an extension of time for the filing of their counter-affidavit, such extension was only for a period of sixteen (16) days. This Court notes that they filed their Joint Counter-Affidavit one (1) month after they were directed to do so.

This Court, nevertheless, finds that the two (2) years and four (4) months it took the Office of the Ombudsman to file the Informations is not unreasonable. In *Mendoza-Ong v. Sandiganbayan*,¹⁷ citing *Dansal v. Fernandez*,¹⁸ the Supreme Court recognized that the number of cases being handled by the Office of the Ombudsman may cause delays. *Viz.:*

x x x. "Speedy disposition of cases" is consistent with reasonable delays. The Court takes judicial notice of the fact that the nature of the Office of the Ombudsman encourages individuals who clamor for efficient government service to lodge freely their complaints against alleged wrongdoing of government personnel. A steady stream of cases reaching the Ombudsman inevitably results. Naturally, disposition of those cases would take some time. x x x

(underscoring supplied)

Breaking down the period from the filing of the Complaint-Affidavit to the filing of the Informations with the Court, it does not appear that the case stagnated for an overly long time at any stage of the preliminary investigation. The Resolution finding probable cause to indict the accused was prepared around eleven (11) months after the accused filed their respective counter-affidavits, and was approved by the Ombudsman around one (1) month thereafter. The Order denying the accused' Joint Motion for Reconsideration was approved around three (3) months after the filing of such motion. Finally, the Informations were filed around nine (9) months from the approval of the Order denying the accused' Joint Motion for Reconsideration.

¹⁷ G.R. Nos. 146368-69, October 18, 2004

¹⁸ G.R. No. 126814, March 2, 2000

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The piecemeal filing of the cases against the accused, likewise, does not appear to have been done with malicious intent. The present cases arose from the Complaint-Affidavit of Madeline M. Tampoya, the subject of which was the alleged irregularities in the contract for the *Improvement of Road and Drainage at Cuadra Street, Barangay 164, Caloocan City* project. As averred by the accused, such contract is only one of the many that the City Government of Caloocan entered into from 2010 to 2012. The preliminary investigation would have taken a significantly longer time to complete if, in addition to the contract subject of the complaint, the Office of the Ombudsman would conduct investigations on contracts that are not included in the complaint.

C. Assertion of the right

The time it took to terminate the preliminary investigation is not so long as to necessitate the filing of motions to resolve the complaint.

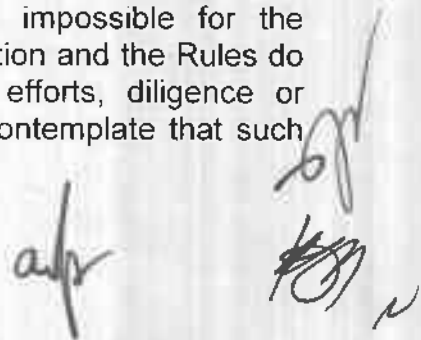
D. Prejudice to the accused

Verily, delay can cause prejudice to the accused. This was recognized in *Corpuz v. Sandiganbayan*,¹⁹ where the Supreme Court held:

x x x. 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

¹⁹ *Supra*, Note 3



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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.

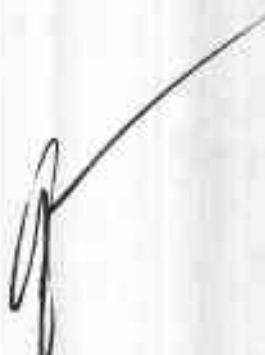
For the purpose of determining if the right to speedy disposition of cases was violated, it must be shown that there was serious prejudice caused by inordinate delay in the proceedings.

Accused Echiverri, Centeno and Garcia claim that they suffered constant anxiety and public humiliation as a result of the piecemeal filing of the numerous cases against them. The Court is not unmindful of the fact that the accused may suffer such anxiety and humiliation. However, as previously discussed, the time it took to terminate the preliminary investigation was not unreasonable. Furthermore, it does not appear that such prejudice was brought about by inordinate delay in the proceedings, but rather, by the number of cases filed against them.

Considering the factors of the balancing test, this Court concludes that there was no vexatious, capricious and oppressive delay in the conduct of the preliminary investigation. Hence, there was no violation of accused Echiverri, Centeno and Garcia's right to speedy disposition of cases.

WHEREFORE, accused Echiverri, Centeno and Garcia's *Urgent Motion to Dismiss* is hereby DENIED for lack of merit.

SO ORDERED.



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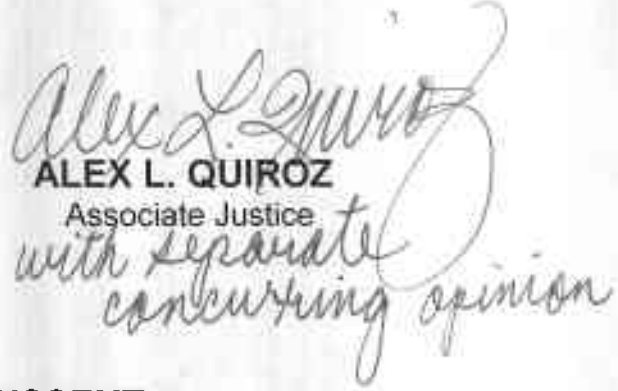


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

WE CONCUR:



KARL B. MIRANDA
Associate Justice



ALEX L. QUIROZ
Associate Justice
with separate concurring opinion



RAFAEL R. LAGOS
Associate Justice

I DISSENT:



MICHAEL FREDERICK L. MUSNGI
Associate Justice

SB-18-CRM-0140 - PEOPLE OF THE PHILIPPINES, *Plaintiff*, v. ENRICO R. ECHIVERRI, ET.AL., *Accused*.

SB-18-CRM-0141 - PEOPLE OF THE PHILIPPINES, *Plaintiff*, v. EDNA V. CENTENO, ET.AL., *Accused*.

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CONCURRING OPINION

I respectfully concur with the *ponencia*.

Not all kinds of delay offend the constitutional guarantee to speedy disposition of cases. Only delays that are characterized as vexatious, capricious and oppressive violate the constitutional right of the accused, the yardstick thereof being the length of delay vis-à-vis the reasons therefor, the assertion or failure to assert such right by the accused, and the prejudice caused by the delay.

The Undersigned cannot subscribe to the claim of accused Echiverri, Centeno, and Garcia that the proceedings before the Office of the Ombudsman were attended with inordinate delay, or that they have been prejudiced thereby, for the following reasons: *first*, two (2) years and four (4) months can hardly be characterized as unreasonable; and, *second*, not one of the accused raised the issue of violation of their constitutional right to speedy disposition of cases in their *Joint Motion for Reconsideration*.

On the basis of this case alone and its attendant circumstances, it can hardly be said that the constitutional right of the accused to speedy disposition of cases had been transgressed.

In view of the foregoing, I vote for the DENIAL of accused Echiverri, Centeno and Garcia's *Urgent Motion to Dismiss*.


ALEX L. QUIROZ
Associate Justice

DISSENTING OPINION

MUSNGI, J.:

Respectfully, I dissent from the Resolution denying the *Urgent Motion to Dismiss*¹ filed by accused Enrico R. Echiverri (“**Echiverri**”), Edna V. Centeno (“**Centeno**”), and Jesusa C. Garcia (“**Garcia**”) on 21 March 2018.

These cases stemmed from the Complaint-Affidavit filed by Madeline M. Tampoya (“**Tampoya**”) on 09 October 2015 against accused Echiverri, Centeno, and Garcia, former Mayor, City Accountant, and City Budget Officer, respectively, of Caloocan City for violation of Section 3(e) of Republic Act No. 3019 (R.A. No. 3019), as amended, otherwise known as the *Anti-Graft and Corrupt Practices Act*, Illegal Use of Public Funds under Article 220, and Falsification of Public Documents under Article 171 both of the Revised Penal Code, relative to the City Government’s project of Improvement of Road and Drainage at Cuadra Street, Barangay 164. The project cost is Php4,508,725.00.

In two (2) separate *Informations* both dated 13 October 2017, the accused are being charged with one count of violation of Section 3(e) of R.A. No. 3019, as amended, in Criminal Case No. SB-18-CRM-0140 and one count of Falsification of Public Document under Article 171 of the Revised Penal Code in Criminal Case No. SB-18-CRM-0141. These *Informations* were both filed on 23 February 2018.

Accused Echiverri, Centeno, and Garcia pray for the dismissal of the *Informations* filed against them and assert that an unreasonable period of almost three (3) long years in conducting the preliminary investigation of these cases already constitutes inordinate delay. The accused claim to have suffered tremendous prejudice caused by the piecemeal filing of the numerous cases against them and have subjected them to constant anxiety and public ridicule.

On the other hand, the prosecution argues in its *Comment/Opposition (In re: a. Accused’s Urgent Motion to Dismiss)*² that the instant motion should be denied because (1) there was no vexatious, capricious, and oppressive delay in the conduct of the preliminary investigation of these cases; (2) accused Centeno and Garcia contributed to the attendant delay when they filed a motion for extension of time to file their Counter-Affidavits; and (3) the Supreme Court has already taken judicial notice of the steady stream of cases reaching the Office of the Ombudsman.

A thoughtful review of the facts of these cases, *vis-à-vis* the factors of balancing test laid down by jurisprudence, support the conclusion that the

¹ Sandiganbayan Records, pp. 234-240.

² *Ibid.*, pp. 252-257.



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constitutional right of the accused to speedy disposition of cases has been violated.

Culled from the records of these cases, the total period spent by the Office of the Ombudsman in the preliminary investigation of these cases is two (2) years, four (4) months, and fourteen (14) days reckoned from the filing of the Complaint by Madeline M. Tampoya up to the filing of the subject *Informations* in Court on 23 February 2018.

The following dates and incidents are undisputed:

DATE	INCIDENT
09 October 2015	Tampoya filed a Complaint-Affidavit against the accused
10 November 2015	The Office of the Ombudsman issued an Order directing the accused, who were respondents then, to file their Counter-Affidavits
24 November 2015	Accused Centeno and Garcia requested for an extension of time to file their Counter-Affidavits Accused Echiverri filed his Counter-Affidavit
10 December 2015	Accused Centeno and Garcia filed their Joint Counter-Affidavit
14 December 2015	The Office of the Ombudsman received another copy of accused Echiverri's Counter-Affidavit dated 23 November 2015
22 August 2016	The Office of the Ombudsman issued a Subpoena <i>Duces Tecum</i> addressed to the City Auditor directing the submission of documents related to the subject transaction
05 September 2016	The Office of the Ombudsman received a reply-letter regarding the subpoena
18 November 2016	The Office of the Ombudsman issued a Resolution finding probable cause against the accused

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29 December 2016	Ombudsman Conchita Carpio-Morales approved the above Resolution
27 February 2017	The accused filed their Joint Motion for Reconsideration of the above Resolution
10 March 2017	The Office of the Ombudsman issued a Joint Order denying the accused's Motion for Reconsideration
29 May 2017	Ombudsman Carpio-Morales approved the above Order
13 October 2017	The Office of the Special Prosecutor drafted the <i>Informations</i>
23 February 2018	The subject <i>Informations</i> were filed in Court

As aptly discussed in the Resolution, the accused cannot be estopped from asserting their right to speedy disposition of cases just because they exercised their right to file a motion for extension of time to file their Counter-Affidavits. Such extension only took a total period of sixteen (16) days.

Applying the balancing test herein, the prosecution failed to provide a justifiable reason for the period of two (2) years, four (4) months, and fourteen (14) days that it took them to find probable cause against the accused for the simple charges of one count of violation of Section 3(e) of R.A. No. 3019, as amended, and one count of Falsification of Public Document. These cases do not involve a very complicated issue. There is likewise no difficulty in obtaining evidence for preliminary investigation purposes considering that the finding of probable cause against the accused was based mostly on the same evidence as in the other cases earlier filed against them because the subject transactions arose from the Omnibus Term Loan Agreement between the City Government of Caloocan and the LandBank of the Philippines. Moreover, there was no sufficient explanation on why it still took the Office of the Special Prosecutor nine (9) months to file the subject *Informations* after the Order denying the accused's Motion for Reconsideration of the Resolution finding probable cause against them was issued.

Although judicial notice is taken on the fact that the Office of the Ombudsman receives a steady stream of complaints, which would necessarily entail a certain period of delay in the resolution thereof, the prosecution cannot hide behind the same to the detriment of the accused.



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It cannot be overemphasized that the most serious interest of the accused which is protected by the right to speedy disposition of cases is the limitation on the possibility of impairing his/her defense. A pending and prolonged disposition of a case against the accused causes anxiety, hostility, additional expenses, and restriction on his person and well-being. The passage of time in the conduct of the investigations weakens the defense of the accused.

ACCORDINGLY, I vote to **GRANT** the *Urgent Motion to Dismiss* filed by accused Enrico R. Echiverri, Edna V. Centeno and Jesusa C. Garcia on 21 March 2018.


MICHAEL FREDERICK L. MUSNGI
Associate Justice