

**SANDIGANBAYAN
QUEZON CITY**

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

YUSOPH B. MAMA,
Accused.

SB-18-CRM-0012

For: Violation of Article 217,
Revised Penal Code
(Malversation of Public
Funds)

Present:

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

Promulgated:

SEP 18 2018 

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RESOLUTION

FERNANDEZ, SJ, J.:

This resolves accused Yusoph B. Mama's *Urgent Omnibus Motion*¹ filed on April 16, 2018, together with the prosecution's *Comment/Opposition*² filed on April 30, 2018.

Accused Mama asks for the dismissal of the present case on the ground that his constitutional right to the speedy disposition of his case had been violated by the State, through the Office of the Ombudsman. Pointing out that it took the Office of the Ombudsman five (5) years and seven (7) months to file the Information against him,

* Per Administrative Order No. 071-2018 dated February 1, 2018, Special Member in view of the vacancy in the Sixth Division. The *Motion* was submitted for resolution upon receipt by the Court of the prosecution's *Comment/Opposition (to accused' Urgent Omnibus Motion)* on April 30, 2018.

¹ Dated April 16, 2018

² (to accused' *Urgent Omnibus Motion*) dated April 27, 2018

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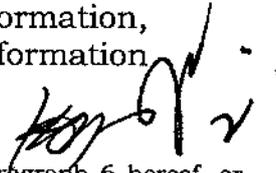
accused Mama claims that there was inordinate delay not only in resolving the case, but also in filing the appropriate Information.³

Accused Mama contends:

1. The alleged criminal act was committed sometime in 1997 to 1999. The Complaint was executed by Commission on Audit representative Mr. Mark Torralba only on December 28, 2012.
2. It took another six (6) months before the COA filed the case with the Office of the Ombudsman on June 19, 2013.
3. The accused did not receive, nor was he notified of, the Order of the Office of the Ombudsman to file his Counter-Affidavit. As of January 9, 2014, no affidavit appears to have been filed by accused Mama.
4. The Office of the Ombudsman-Mindanao issued a Resolution on January 15, 2016.
5. It took another six (6) months, or on September 29, 2016, for Ombudsman Conchita Carpio-Morales to approve the Deputy Ombudsman's Resolution.
6. The Information against accused Mama was filed sometime in 2017, and was raffled to the Second Division of the Sandiganbayan.
7. The above Information was withdrawn at the instance of the prosecution.
8. On November 27, 2017, the Office of the Ombudsman prepared another Information. However, it took the prosecution about two (2) more months before it filed the new Information on January 23, 2018.
9. In accordance with Rule II, Section 4(e), Rules of the Ombudsman,⁴ the complaint was deemed submitted for resolution as early as 2014.
10. The delay in the filing and the resolution of the complaint, the delay in the filing of the Information, and the withdrawal and the refiling of the Information

³ Urgent Omnibus Motion dated April 16, 2018, pp. 1-4.

⁴ If the respondents cannot be served with the order mentioned in paragraph 6 hereof, or having been served, does not comply therewith, the complaint shall be deemed submitted for resolution on the basis of the evidence on the record.



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on January 2018, resulted to the clear, manifest and unmistakable prejudice to accused Mama.⁵

In its *Comment/Opposition*, the prosecution argued that, while the Constitution guarantees the right to speedy trial and disposition of cases, speedy disposition is a relative and flexible concept. It argued that a mere mathematical reckoning of the time involved in resolving a case is not sufficient; several factors must be considered.⁶ The prosecution cited *Torres vs. Sandiganbayan*,⁷ *Braza vs. Sandiganbayan*,⁸ *Dela Peña vs. Sandiganbayan*,⁹ and *Corpuz vs. Sandiganbayan*,¹⁰ in support of its claim.

Below is the prosecution's version of the chronology of events in relation to the present case:

1. On June 19, 2013, COA Regional Office XIII, State Auditor Mark G. Torralba filed an Affidavit of Complaint against accused Mama.
2. On October 3, 2013, after evaluation of the complaint, and finding sufficient basis to proceed with the preliminary investigation, a Joint-Order was issued directing the accused to submit his Counter-Affidavit and to submit other controverting evidence. The said order was returned unserved with the notation "retired from service." The order was again sent to accused's last known address as per information by the DAR Regional Office in the letter dated January 9, 2014. Still, accused did not file a counter-affidavit.
3. On January 15, 2016, a resolution was issued finding probable cause to indict accused Mama for *Malversation of Public Funds*.
4. On August 25, 2017, the Information was filed and raffled to the Second Division of this Honorable Court.
5. On October 23, 2017, the prosecution filed a *Motion to Withdraw Information* which was granted in the Order dated October 27, 2017.



⁵ Urgent Omnibus Motion dated April 16, 2018, pp. 2-3 & 5.

⁶ Comment/Opposition dated April 27, 2018, pp. 1-2.

⁷ 805 SCRA 455 [2016]

⁸ 691 SCRA 471 [2013]

⁹ 360 SCRA 478 [2001]

¹⁰ 442 SCRA 294 [2004]

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6. On January 23, 2018, the Information was filed with this Court.

RULING

The *Urgent Omnibus Motion* filed by accused Yusoph B. Mama is denied. There was no violation of the accused' right to the speedy disposition of his case.

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.¹¹

Not every delay in the trial is vexatious, capricious or oppressive. In the legal firmament, the terms have distinct 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.¹²

In *Remulla vs. Sandiganbayan*,¹³ the Supreme Court explained that as the *balancing test* necessarily compels the courts to approach *speedy trial and/or speedy disposition* 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

¹¹ Coscolluela vs. Sandiganbayan, 701 SCRA 188, 195 [2013]

¹² Lim vs. Court of Appeals, 317 SCRA 521, 526 [1999], quoting with approval the Court of Appeals' decision.

¹³ G.R. No. 218040, April 17, 2017

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circumstances. These factors have no talismanic qualities as courts must still engage in a difficult and sensitive balancing process.

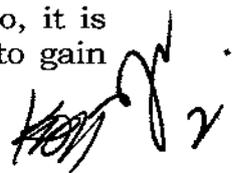
The Supreme Court, in *Corpuz vs. Sandiganbayan*,¹⁴ provided for guidelines for the trial court's assessment of the presence of prejudice to the defendant and the presence of delay, viz:

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 should be weighted heavily against the State. Also, it is improper for the prosecutor to intentionally delay to gain

¹⁴ *Supra*



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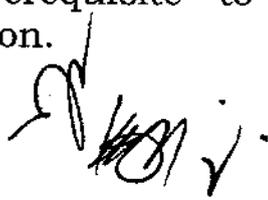
some tactical advantage over the defendant or to harass or prejudice him. On the other hand, the heavy case load of the prosecution or a missing witness should be weighted less heavily against the State. Corollarily, Section 4, Rule 119 of the Revised Rules of Criminal Procedure enumerates the factors for granting a continuance.¹⁵

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.¹⁶

a. The Length of and Reason for the Delay.

Preliminarily, it must be emphasized that the period from the alleged commission of the offense in 1997 to 1999 until the filing of the complaint by COA State Auditor Torralba on December 28, 2012 is excluded from determination of the presence of delay in the conduct of the preliminary investigation.

The Supreme Court explained in **Dimayuga vs. Office of the Ombudsman**,¹⁷ that the preliminary investigation conducted by the Office of the Ombudsman is independent from the special audit conducted by COA. The COA report is not a prerequisite to the conduct of the preliminary investigation.



¹⁵ At pp. 313-314. Citations omitted.

¹⁶ At p. 318.

¹⁷ 495 SCRA 461 [2006]

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Thus, the relevant timeline in this case is as follows:

Date	Event	Period elapsed
June 19, 2013	COA State Auditor III Torralba filed the complaint for "violation of Item 5 of COA Circular 97-02 and Section 89 of PD 1445 and such other criminal and administrative charges as the evidence may warrant, pursuant to Item 9.3.3.1 of COA Circular No. 97-02" against accused Mama. ¹⁸	
October 3, 2013	The Office of the Ombudsman directed accused Mama to submit his counter-affidavit; the <i>Order</i> was returned unserved, with the notation "retired from service." ¹⁹	3 months & 14 days
January 9, 2014	The DAR informed the Office of the Ombudsman that the <i>Order</i> directing accused Mama to file his counter-affidavit was re-sent to accused' last known address. No counter-affidavit was filed by the accused. ²⁰	3 months & 6 days
January 15, 2016	The Office of the Ombudsman, through GIPO II Muego, found probable cause to indict accused Mama for <i>Malversation of Public Funds</i> . ²¹	2 years & 6 days
September 29, 2016	Ombudsman Carpio-Morales approved the Resolution dated January 15, 2016 recommending the filing of Information against accused Mama. ²²	8 months & 14 days
August 25, 2017	An Information for <i>Malversation of Public Funds</i> was filed with the Sandiganbayan. The case was docketed as SB-17-CRM-1667 and was raffled to the 2 nd Division of the Court. ²³	10 months & 27 days



¹⁸ Affidavit of Complaint dated December 28, 2012, p. 1, Record, p. 13; Ombudsman Resolution dated January 15, 2016, p. 1, Record, p. 5.
¹⁹ Comment/Opposition dated April 27, 2018, p. 4.
²⁰ Comment/Opposition dated April 27, 2018, p. 4.
²¹ Office of the Ombudsman Resolution dated January 15, 2016, pp. 3-4; Record, pp. 7-8.
²² Office of the Ombudsman Resolution dated January 15, 2016, p. 8; Record, p. 8.
²³ Office of the Ombudsman Memorandum dated November 27, 2017; Record, p. 11.

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October 23, 2017	The prosecution filed a <i>Motion to Withdraw Information</i> docketed as SB-17-CRM-1667. ²⁴	1 month & 28 days
October 27, 2017	The Court granted the prosecution's <i>Motion to Withdraw Information</i> . ²⁵	4 days
November 27, 2017	In a Memorandum ²⁶ addressed to Hon. Carpio-Morales, Asst. Special Prosecutor Dasing-Jose recommended the filing of a <i>new Information for Malversation of Public Funds</i> against accused Mama.	1 month
January 23, 2018	The present Information was filed. ²⁷	1 month & 27 days

From the foregoing, it appears that 3 years, 3 months, and 10 days elapsed from the filing of the Affidavit of Complaint by COA State Auditor III Torralba on June 19, 2013 until the resolution finding probable cause to charge accused Mama was approved on September 29, 2016, and almost 11 months thence before the *first* Information (SB-17-CRM-1667) was filed on August 25, 2017, or a total of 4 years, 2 months and 6 days from the filing of the Complaint.

The instant Information (SB-18-CRM-0012) appears to have been filed 1 month and 27 days after the Memorandum recommending the *refiling* thereof was approved by Special Prosecutor Sandoval.

The Court finds that the period of 4 years, 2 months and 6 days for the Office of the Ombudsman to resolve the Complaint and file the first Information is justified. According to the Office of the Ombudsman, the period was utilized to conduct preliminary investigation which included the following: issuance of order; evaluation, examination and confirmation of allegations; and preparation of the investigation report, including the drafting and finalization of the Resolution, to ensure due process.²⁸

²⁴ Comment/Opposition dated April 27, 2018, p. 4.
²⁵ Comment/Opposition dated April 27, 2018, p. 4.
²⁶ Record, p. 11.
²⁷ Information dated November 27, 2017; Record, pp. 1-3.
²⁸ Comment/Opposition dated April 27, 2018, p. 4.

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The period of 2 months and 27 days utilized for the Office of the Special Prosecutor to study whether prescription had set in is likewise reasonable.

First, the instant case involves numerous cash advances allegedly made by accused Mama in relation to 28 different *incidents* and/or items, *i.e.*, official local travels, petty operating expenses, and gas, oil, and lubricants expenses, during an 18-month period, or from August 28, 1997 until February 18, 1999.²⁹

Second, the complaint was evaluated on the basis of the following documents, among others:

- 1 COA State Auditor Torralba's Complaint dated December 28, 2012;³⁰
2. Statements of Cash Advances and Liquidations (As of September 30, 2011);³¹
3. Demand-letter dated December 13, 2001;³²
4. 1st Tracer dated June 7, 2002;³³
5. Audit Observation Memorandum dated November 19, 2009;³⁴
6. Narrative Report on Unliquidated Cash Advances;³⁵
7. Notice of Disallowance dated July 21, 2010;³⁶ and,
8. Photocopies of paid checks and disbursement vouchers.³⁷

Third, it appears that accused Mama failed to file any counter-affidavit. According to the prosecution, since the first *Notice* was returned unserved, they had to send, through the Department of Agrarian Reform, another *Order* for the accused to file his Counter-affidavit. The prosecution also explained that "the Office of the Ombudsman, in order to come up with a fair resolution, made several inquiries and conducted investigation to verify the allegations in the Affidavit of Complaint of Mark Torralba".³⁸

²⁹ Letter dated December 13, 2001; Record, pp. 20-21.

³⁰ Record, pp. 13-14.

³¹ Record, pp. 17-18.

³² Record, pp. 20-21.

³³ Record, p. 22.

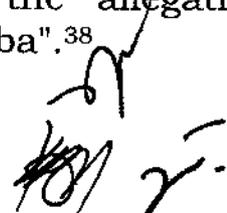
³⁴ Record, pp. 151-152.

³⁵ Record, p. 153.

³⁶ Record, pp. 154-155.

³⁷ Record, pp. 24-79.

³⁸ Comment/Opposition dated April 27, 2018, p. 5.



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Finally, no less than the Supreme Court had taken judicial notice 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.³⁹ Hence, the Supreme Court recognized the efforts exerted by the Office of the Ombudsman in the evaluation of the charges against the accused, and considered as reasonable the eight-month period (from the time accused submitted his counter-affidavit) it took said agency to conclude its preliminary investigation.⁴⁰

It, thus, appears that the period is reasonably attributable to the ordinary process of justice.

b. The Defendant's Assertion of his Right.

It appears from the records that accused Mama did not participate in the proceedings before the Office of the Ombudsman. Neither of the parties alleged that accused Mama invoked in SB-17-CRM-1667 his right to the speedy disposition of his case. Hence, it is only in the instant *Motion to Quash* that accused Mama first invoked his right to the speedy disposition of his case.

c. Prejudice to the Defendant.

As accused had no participation in, and according to him had no knowledge of, the pending preliminary investigation before the Office of the Ombudsman, there is no oppressive pre-trial anxiety and expense to speak of.

Indeed, apart from his claim that the acts complained of occurred more than 20 years ago, accused Mama did not point to any prejudice caused to him by reason of the supposed delay in the disposition of the instant case.

Clearly, accused was not able to establish that the alleged delay prejudiced him.

³⁹ *Raro vs. Sandiganbayan*, 335 SCRA 581, 608 [2000], citing *Dansal vs. Fernandez*, *supra*.
⁴⁰ At p. 607.

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In the absence of clear evidence showing that the alleged delay in the disposition of the case against accused Mama can be characterized as vexatious, capricious or whimsical, this Court finds accused' claim of violation of his right to the speedy disposition of his case bereft merit.

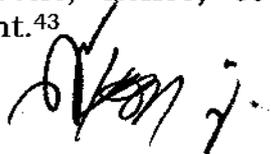
In ***People vs. Sandiganbayan and Gamos***,⁴¹ the supreme Court, in ruling that there was no inordinate delay, noted:

Likewise in this case, there is no allegation, much less proof that respondents were persecuted, oppressed, or made to undergo any vexatious process such as in the above-cited cases, during investigation period before the filing of the Informations.

To reiterate, it is important to emphasize that what the Constitution prohibits are unreasonable, arbitrary, and oppressive delays which render rights nugatory. Considering the foregoing disquisition, there is no such delay in this case amounting to a violation of respondents' constitutional rights.

For justice to prevail, the scales must balance, for justice is not to be dispensed for the accused alone.⁴² The right of the accused to speedy trial (and to the speedy disposition of his case) secure rights to the accused, but it does not preclude the rights of public justice. Thus,

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 the 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.⁴³



⁴¹ G.R. No. 212197-98, April 16, 2018

⁴² Tan vs. People, 586 SCRA 139, 162 [2009]

⁴³ Corpuz, *supra*, at pp. 312-313.

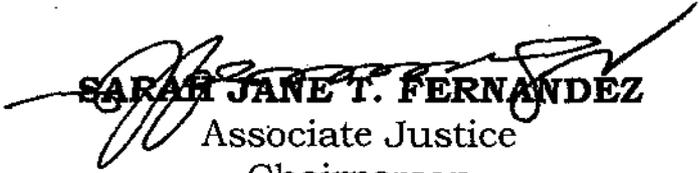
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WHEREFORE, the *Urgent Omnibus Motion* filed by accused Yusoph B. Mama is **DENIED** for lack of merit.

The arraignment of the accused set on October 1, 2018 is maintained.

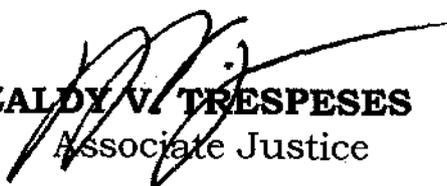
SO ORDERED.

Quezon City, Metro Manila.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

WE CONCUR:


KARL B. MIRANDA
Associate Justice


ZALDY V. TRESPESSES
Associate Justice