



Republic of the Philippines  
**SANDIGANBAYAN**  
Quezon City

**SIXTH DIVISION**

**PEOPLE OF THE PHILIPPINES,**

Plaintiff,

SB-18-CRM-0371 - 0378

For: Violation of Section 3 (e) of Republic Act (R.A.) No. 3019 and Malversation of Public Funds under Article 217 of the Revised Penal Code

-versus-

**MIGUEL DRACULAN ESCOBAR, SUMAIL KUSAIN SEKAK, ABDULWAHAB<sup>1</sup> ADZAL BAYAO, ESTRELLA CATALAN SABAY, MUSTAPHA GAPAS ISMAEL, ARTHUR A. ALLER, and ROMMEL J. SARAOSOS,**

Accused,

PRESENT:

FERNANDEZ, SJ, J., *Chairperson*  
MIRANDA, J., &  
VIVERO, J.

Promulgated:

**JAN 16 2019** 

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**RESOLUTION**

**MIRANDA, J.:**

For resolution are the: (1) Motion to Quash dated October 16, 2018 filed by accused Miguel D. Escobar (Escobar) on October 17, 2018; and (2) Comment/Opposition (To Accused Miguel D. Escobar's Motion to Quash) dated October 26, 2018 filed by the Prosecution on October 30, 2018.

In his motion to quash, accused Escobar alleges that: 1) he was no longer the Governor of Sarangani Province when the acts alleged in the information were committed on July 2004 to September 2004; 2) he was deprived of due process because he never received a copy of the resolution of the Office of the Ombudsman as he has neither used nor gave the Office of the Ombudsman the residential address stated in the informations; and 3) the Office of the Ombudsman violated his right to a speedy disposition of the case as it took the Office of the Ombudsman almost six (6) years to file

<sup>1</sup> Spelled as "Abdulwahab" in the title of the informations, but spelled as "Abdulwazab" in the accusatory portions of the informations.

the informations on May 4, 2018 from the time the complaint was instituted on November 7, 1992.

In its comment/opposition to the motion to quash, the Prosecution, through the Office of the Special Prosecutor (OSP), alleges that: 1) the right to a speedy disposition of the case of accused Escobar was not violated as it took the Office of the Ombudsman four (4) years and five (5) months from the filing of the complaint on March 5, 2017 to the approval of the resolution finding probable cause against him on August 1, 2017; 2) the period was reasonable to allow the Office of the Ombudsman to properly evaluate and resolve the existence of probable cause considering the voluminous records of the case; 3) the numerous complaints filed before the Office of the Ombudsman require stringent evaluation to ensure the protection of the innocent; 4) judicial notice should be taken of the steady stream of cases reaching the Office of the Ombudsman; 5) accused Escobar was not deprived of due process because notices and orders of the Office of the Ombudsman were served at his last known address in Kiamba, Saranggani as stated in his Counter-Affidavit dated June 29, 2013 filed before the Office of the Ombudsman; 6) accused Escobar was charged because he was the proponent of the Five Million Pesos (PhP5,000,000.00) fertilizer fund, and he entered into a tripartite Memorandum of Agreement (MOA) between the Saranggani Province, Department of Agriculture-Regional Field Unit XII (DA-RFU XII), and Workers Cooperative of the Philippines, a non-governmental organization, the selection of which as the conduit-implementor of the fertilizer project was attended by irregularities; and 7) the Workers Cooperative of the Philippines received delivery of the foliar fertilizers when accused Escobar was still the Governor of Saranggani Province and is only awaiting payment from the fertilizer fund.


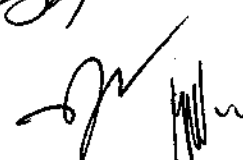
## DISCUSSION AND RULING

### Sufficiency of the informations

A motion to quash is a hypothetical admission of the facts alleged in the information.<sup>2</sup> *The test in resolving a motion to quash on the ground that the information charges no offense is whether the material facts alleged in the complaint or information will establish the essential elements of the offense charged as defined by law. The trial court may not consider a situation contrary to that set forth in the criminal complaint or information. Facts which constitute the defense of the accused against the charge under the information must be proved during the trial. Such*

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<sup>2</sup> *People v. De la Rosa*, L-34112, June 25, 1980.

**facts or circumstances do not constitute prior grounds for a motion to quash the information.<sup>3</sup>**


For a complaint or information to be sufficient, it must state the name of the accused, designation of the offense given by the statute, acts or omission complained of as constituting the offense, name of the offended party, approximate time of commission of the offense, and place where the offense was committed. What controls is the description of the crime charged and the particular facts recited therein. The acts or omission complained of must be sufficiently alleged to enable a person of common understanding to know the offense charged, and to enable the court to pronounce a proper judgment. No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged.<sup>4</sup>

The information in SB-18-CRM-0371 filed against all of the accused reads:

In July 2004, or thereabout, in the Province of Saranggani (Province), Philippines, and within the jurisdiction of this Honorable Court, accused MIGUEL DRACULAN ESCOBAR, being then the Provincial Governor of Saranggani, and Department of Agriculture, Regional Field Unit XII (RFU XII) officials Regional Executive Director SUMAIL KUSAIN SEKAK, Director MUSTAPHA GAPAS ISMAEL, Chief Administrative Officer ABDULWAZAB ADZAL BAYAO, and Accountant II ESTRELLA CATALAN SABAY, committing the offense in the discharge of their official functions and in grave abuse thereof, acting with evident bad faith, manifest partiality and/or gross inexcusable negligence, conspiring with one another and with accused ARTHUR H. ALLER and ROMMEL J. SARAOSOS of the Workers Cooperatives of the Philippines (WCP) did then and there, willfully, unlawfully and criminally cause undue injury to the government and/or give WCP unwarranted benefits, privilege and advantage, by (1) selecting and accrediting WCP as the conduit non-government organization (NGO) to implement the PhP5M fertilizer project of the Province despite WCP's lack of qualifications under Commission on Audit Circular No. 96-003; (2) approving, even without prior public bidding, WCP's purchase of 1,650 gallons of overpriced foliar fertilizers from Reynato C. Sarmiento Trading (Sarmiento Trading), a non-existent and illegitimate supplier which sold the foliar fertilizers at an unconscionable price of PhP1,318.50/liter resulting in a total overpriced amount of PhP3,865,625.00; (3) facilitating, processing, and approving the disbursement of Seven Hundred Fifty Thousand Pesos (PhP750,000.00) as 1<sup>st</sup> tranche

<sup>3</sup> *Torres v. Garchitorena*, G.R. No. 153666, December 27, 2002.

<sup>4</sup> *Consigna v. People*, G.R. No. 175750-51, April 2, 2014.



payment to WCP by signing **Disbursement Voucher (DV) No. 101-2004-07-1153** as well as causing the issuance of **Land Bank Check No. 1801183** to WCP, without accused DA-RFU XII officers and employees having carefully examined and verified the accreditation and qualification of WCP as well as the transaction's supporting documents; and (4) failing to coordinate in the project monitoring and proper liquidation of the PhP5M fertilizer funds transferred to WCP, thereby in the defrauding of and injury to the government in the amount of PhP750,000.00.

CONTRARY TO LAW.

The information in SB-18-CRM-0375 filed against all of the accused reads:

In July 2004, or thereabout, in the Province of Sarangani (Province), Philippines, and within the jurisdiction of this Honorable Court, the above named accused MIGUEL DRACULAN ESCOBAR, being then the Provincial Governor of Sarangani, who, as proponent, had received in trust the Five Million Pesos (PhP5M) fertilizer fund and executed an undated Memorandum of Agreement with the Department of Agriculture (DA), Regional Field Unit XII (RFU XII) and with the Workers Cooperatives of the Philippines (WCP) for the implementation of the Farm Implements Program of the Province, and as such is accountable for said funds, conspiring with accused officials of DA-RFU XII SUMAIL KUSAIN SEKAK, MUSTAPHA GAPAS ISMAEL, ABDULWAZAB ADZAL BAYAO, ESTRELLA CATALAN SABAY, and with the officers of WCP: ARTHUR H. AELLER and ROMMEL J. SARAOSOS, did then and there, willfully, unlawfully and feloniously, and with great carelessness and unjustifiable negligence, select WCP as the conduit non-government organization (NGO) to implement the PhP5M fertilizer fund of the Province despite its lack of qualifications *vis-à-vis* the requirements under COA Circular No. 96-003; and approve, even without prior public bidding, WCP's purchase of 1,560 gallons of fertilizers from Reynato C. Sarmiento Trading (Sarmiento Trading), a non-existent and illegitimate supplier which sold the foliar fertilizers at an unconscionable price of PhP1,318.50/liter resulting in a total overpriced amount of PhP3,865,625.00; while accused DA-RFU XII officials transferred the PhP5M fertilizer fund to WCP as the conduit implementing NGO relying solely on accused Escobar's indorsement, facilitating, processing, and approving the disbursement of Seven Hundred Fifty Thousand Pesos (PhP750,000.00) as 1<sup>st</sup> tranche payment to WCP by signing **Disbursement Voucher (DV) No. 101-2004-07-1153** as well as causing the issuance of **Land Bank Check No. 1801183** to WCP, without accused DA-RFU XII officers and employees having carefully examined and verified the accreditation and qualification of WCP as well as the transaction's supporting documents, and which amount was subsequently paid to



Sarmiento Trading as evidenced by Disbursement Voucher No. 04-10-473 dated 13 October 2004, thereby allowing and permitting WCP and Sarmiento Trading to misappropriate and embezzle the aforestated amount, to the damage and prejudice of the government.

CONTRARY TO LAW.

The informations in SB-18-CRM-0372-0374 are similarly worded with the information in SB-18-CRM-0371, except for the following: 1) date of the alleged commission of the offense; 2) amount approved to be disbursed and tranche payment to the Workers Cooperative of the Philippines; 3) disbursement voucher number; 4) Land Bank check number; and 5) amount the government was defrauded of. On the other hand, the informations in SB-18-CRM-0376-0378 are also similarly worded with the information in SB-18-CRM-0375, except for the following: 1) date of the alleged commission of the offense; 2) amount approved to be disbursed and tranche payment to the Workers Cooperative of the Philippines; 3) disbursement voucher number; and 4) Land Bank check number.

By filing a motion to quash, accused Escobar hypothetically admitted the facts alleged in the informations. The informations are sufficient and complete because all the facts required are stated therein. In a nutshell, the informations in SB-18-CRM-0371-0374 allege that the accused public officers, committing the offense in the discharge of their official functions, in conspiracy with accused private individuals, acted with evident bad faith, manifest partiality, and/or gross inexcusable negligence by selecting and accrediting the Workers Cooperative of the Philippines to implement the Five Million Pesos (PhP5,000,000.00) fertilizer fund despite its lack of qualifications, approving the purchase of the over-priced fertilizers from a non-existent NGO without public bidding, facilitating, processing and approving the disbursement of public funds and issuing the corresponding checks to the said non-existent NGO without verifying its qualifications and the supporting documents, and failing to coordinate the monitoring and liquidation of the fertilizer fund resulting in injury to the government.

On the other hand, the informations in SB-18-CRM-0375-0378 allege that accused Escobar, an accountable public officer of the Five Million Pesos (PhP5,000,000.00) fertilizer fund, in conspiracy with co-accused public officials and private individuals, executed a tripartite MOA, selected the Workers Cooperative of the Philippines, a non-existent NGO, to implement the Farm Implements Program of Sarangani Province despite its lack of qualifications, with great carelessness and unjustifiable negligence, and approved the purchase of the over-priced fertilizers from the said non-



existent NGO without public bidding, while accused DA-RFU XII officials transferred the fertilizer fund to the Workers Cooperative of the Philippines relying solely on accused Escobar's indorsement, facilitated, processed and approved the disbursement of public funds and issued the corresponding checks to the said non-existent NGO without verifying its qualifications and the supporting documents, which amount was paid to Sarmiento Trading, thereby allowing the said non-existent NGO and Sarmiento Trading to misappropriate and embezzle the said amount to the damage and prejudice of the government.

The facts clearly constitute the offense of violation of Section 3(e) of R.A. No. 3019, as amended, and Malversation of Public Funds. The elements of the offenses are accurately and clearly alleged in the informations. The allegation of accused Escobar that he was no longer the Governor of Saranggani Province at the time of the alleged commission of the offenses and the argument of the Prosecution that accused Escobar was the proponent of the fertilizer fund and the tripartite MOA are matters of evidence which are best threshed out in a full-blown trial.

*Accused Escobar was not deprived of due process.*

Accused Escobar alleged that he was not furnished with a copy of the resolution of the Office of the Ombudsman because it was sent to Kiamba, Saranggani which he neither used nor gave to the Office of the Ombudsman.

The Court is not convinced. The records are very clear. Accused Escobar stated in his Counter-Affidavit dated June 29, 2013, which he filed before the Office of the Ombudsman on July 16, 2013, that he is a resident of Kiamba, Saranggani.<sup>5</sup> Naturally, the Office of the Ombudsman would serve or mail its subsequent orders and resolutions to the said address of accused Escobar. The resolution finding probable cause was sent thru registered mail on September 14, 2017 to the address given by accused Escobar himself per the Official Mailing List dated September 13, 2017 of the Office of the Ombudsman.<sup>6</sup> Even the Joint Order dated December 27, 2017, which denied the motions for reconsideration of the other accused, was sent thru registered mail to the same address of accused Escobar on March 20, 2018 per the Official Mailing List of even date.<sup>7</sup> Accused Escobar, thus, was not deprived of due process.

*There is no inordinate delay in these cases.*

<sup>5</sup> Records, pp. 294-332; Annex "A" of the Prosecution's Comment/Opposition (To Accused Miguel D. Escobar's Motion to Quash) dated October 26, 2018.

<sup>6</sup> Records, p. 54.

<sup>7</sup> Records, p. 60.



While inordinate delay is not one of the grounds mentioned in Section 3, Rule 117 of the Rules of Court to quash an information, the Court will treat the motion to quash on the said ground as a motion to dismiss on the ground of violation of the right of the accused to a speedy disposition of the case. This is because there is no substantial distinction between a motion to quash and a motion to dismiss. Both pray for an identical relief, which is the dismissal of the case. The said motions are used to raise preliminary objections to avoid the necessity of proceeding to trial. A motion to quash is generally used in criminal proceedings to annul a defective indictment. A motion to dismiss is used in civil proceedings to summarily defeat a complaint. Both the motion to quash and motion to dismiss are anchored on the same grounds and pray for the same relief. Any distinction does not really make a difference.<sup>8</sup>

The factual antecedents in these cases are summarized as follows:

Incidents	Date
Graft Investigation and Prosecution Officer (GIPO) I Atty. Ronald Allan D. Ramos (Ramos) of the Task Force Abono-Field Investigation Office drafted a complaint charging accused Escobar, Abdulwahab Adzal Bayao (Bayao), Estrella Catalan Sabay (Sabay), Mustapha Gapas Ismael (Ismael), Arthur A. Aller (Aller), Sumail Kusain Sekak (Sekak), Rommel J. Saraosos (Saraosos), and Reynato C. Sarmiento, Jr. (Sarmiento, Jr.) of violation of Sections 3(e) and 3(g) of R.A. No. 3019. The said complaint also charged accused Bayao, Sabay, Ismael, and Kekak of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service. <sup>9</sup>	November 7, 2012
The Field Investigation Office (FIO) filed the complaint with the Office of the Ombudsman. <sup>10</sup>	March 5, 2013
The Office of Ombudsman directed all of the accused and Sarmiento, Jr. to submit their counter-affidavits. <sup>11</sup>	April 18, 2013
The Office of the Ombudsman Luzon received the Counter-Affidavit dated June 29, 2013 of accused Escobar. <sup>12</sup>	July 16, 2013
The Office of the Ombudsman received the Counter-Affidavit dated June 16, 2013 of accused Bayao, Sabay, Ismael, and Sekak. <sup>13</sup>	

<sup>8</sup> *Romualdez v. Sandiganbayan*, G.R. No. 152259, July 29, 2004.

<sup>9</sup> Complaint dated November 7, 2012, Records, pp. 61-364.


<sup>10</sup> Resolution dated July 26, 2017, Records, p. 37.

<sup>11</sup> *Id.*, Records, p. 42.

<sup>12</sup> Counter-Affidavit dated June 29, 2013, Records, pp. 294-332.

<sup>13</sup> Counter-Affidavit dated June 16, 2013, Records, pp. 333-364.

Incidents	Date
GIPO III Rowena R. Vidad (Vidad) drafted a resolution finding probable cause against all of the accused for four (4) counts of violation of Section 3(e) of R.A. No. 3019 and four (4) counts of Malversation of Public Funds, and dismissing the case against Sarmiento, Jr. <sup>14</sup>	July 26, 2017
PIAB-D Director Nellie P. Boguen-Golez reviewed the draft resolution. <sup>15</sup>	
Deputy Ombudsman for Luzon Gerard A. Mosquera recommended the draft resolution for approval by the Ombudsman. <sup>16</sup>	July 31, 2017
Ombudsman Conchita Carpio-Morales (Carpio-Morales) approved the draft resolution. <sup>17</sup>	August 1, 2017
Accused Aller sought a reconsideration of the resolution finding probable cause against him and/or reinvestigation before the Office of the Ombudsman Luzon. <sup>18</sup>	November 6, 2017
Accused Bayao, Sabay, and Ismael sought a reconsideration of the resolution finding probable cause against them before the Office of the Ombudsman Luzon. <sup>19</sup>	November 8, 2017
GIPO III Myla Teona N. Teologio drafted a joint order denying the motion for reconsideration filed by accused Bayao, Sabay, Ismael, and Aller. <sup>20</sup>	December 27, 2017
PIAB-A Director Medwin S. Dizon reviewed the draft joint order. <sup>21</sup>	January 9, 2018
Assistant Ombudsman PAMO-I Aleu A. Amante recommended the joint order for approval by the Ombudsman. <sup>22</sup>	February 6, 2018
Ombudsman Carpio-Morales approved the joint order. <sup>23</sup>	March 9, 2018
GIPO III Vidad drafted eight (8) Informations, all dated April 6, 2018. <sup>24</sup>	April 6, 2018
Ombudsman Carpio-Morales approved the eight (8) informations. <sup>25</sup>	April 11, 2018

  
<sup>14</sup> Resolution dated July 26, 2017, Records, pp. 36-53.

<sup>15</sup> *Id.*, Records, p. 52.

<sup>16</sup> *Id.*, Records, p. 52.

<sup>17</sup> *Id.*, Records, p. 52.

<sup>18</sup> Joint Order dated December 27, 2017, Records, p. 56.

<sup>19</sup> Joint Order dated December 27, 2017, Records, p. 56.

<sup>20</sup> *Id.*, Records, pp. 55-59.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Eight (8) Informations, all dated April 6, 2018, Records, pp. 3, 7, 11, 15, 19, 23, 27, 31.

<sup>25</sup> *Id.*, Records, pp. 4, 8, 12, 16, 20, 24, 28, 32.



<b>Incidents</b>	<b>Date</b>
The OSP filed four (4) informations for violation of R.A. No. 3019 and four (4) informations for Malversation of Public Funds before the Sandiganbayan. <sup>26</sup>	May 4, 2018
Accused Escobar filed a Motion to Quash dated October 16, 2018 praying for the quashal of the informations and/or dismissal of the cases.	October 17, 2018
The OSP filed its comment/opposition.	October 30, 2018

After a thorough review of the case records, the Court resolves to **deny** the motion to quash on the ground of violation of the right of accused Escobar to a speedy disposition of the case and accused' prayer for the cancellation of his arraignment.

Each case must be decided upon the **facts peculiar** to it.<sup>27</sup> A mere mathematical reckoning of time involved would not be sufficient.<sup>28</sup>

Article III, Section 16 of the Constitution provides that, *all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies*. The constitutional right to a speedy disposition of cases is not limited to the accused in criminal proceedings but extends to all parties in all cases, including civil and administrative cases, and in all proceedings, including judicial and quasi-judicial hearings. Hence, under the Constitution, any party to a case may demand expeditious action from all officials who are tasked with the administration of justice.<sup>29</sup>

Due regard must be given to the facts and circumstances surrounding each case. The right to a speedy disposition of a case, like the right to speedy trial, 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 when without cause or justifiable motive, a long time is allowed to elapse without the party having his case tried. Just like the constitutional guarantee of speedy trial, speedy disposition of cases is a flexible concept. It is consistent with delays and depends upon the circumstances. What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory.<sup>30</sup>

<sup>26</sup> Eight (8) Informations, all dated April 6, 2018, Records, pp. 1, 5, 9, 13, 17, 21, 25, 29.

<sup>27</sup> *Benares v. Lim*, G.R. No. 173421, December 14, 2006.

<sup>28</sup> *Bernat v. Sandiganbayan*, G.R. No. 158018, May 20, 2004.

<sup>29</sup> *The Ombudsman v. Jurado*, G.R. No. 154155, August 6, 2008.

<sup>30</sup> *Id.*

The conduct of both the Prosecution and the Defense, the length of the delay, the reasons for such delay, the assertion or failure to assert such right by the accused, and the prejudice caused by the delay are the factors to consider and balance.<sup>31</sup>

In determining whether or not the right to a speedy disposition of the case has been violated, equally applicable is the balancing test which weighs the conduct of both the Prosecution and the defendant.<sup>32</sup>


The doctrinal rule is that in the determination of whether the right to a speedy disposition of the case has been violated, the following factors **may** be considered and balanced: (1) **length** of delay; (2) **reasons** for the delay; (3) **assertion or failure to assert** such right by the accused; and (4) **prejudice** caused by the delay.<sup>33</sup>


The period before March 5, 2013, or the date when the complaint was filed by Task Force Abono-Field Investigation Office at the Office of the Ombudsman, constitutes the fact-finding investigation and should not be attributed to the Office of the Ombudsman Luzon.

In the very recent case of *Cagang v. Sandiganbayan*,<sup>34</sup> the Supreme Court held that the fact-finding investigation is not counted in determining whether or not the right of the accused to a speedy disposition of the case was violated. When an anonymous complaint is filed or the Office of the Ombudsman conducts a *motu proprio* fact-finding investigation, the proceedings are not yet adversarial. Even if the accused is invited to attend these investigations, this period cannot be counted since these are merely preparatory to the filing of a complaint. At this point, the Office of the Ombudsman will not yet determine if there is probable cause to charge the accused. A case is deemed to have commenced only from the filing of the formal complaint and the subsequent conduct of the preliminary investigation.<sup>35</sup>

Even assuming that the period of fact-finding investigation is to be included in the computation, there is still no inordinate delay in the conduct of the preliminary investigation because accused Escobar failed to show that the case lingered with the Task Force Abono-Field Investigation Office or the latter sat on the case before it was filed with the Office of the Ombudsman Luzon for preliminary investigation.

  
<sup>31</sup> *Ty-Dazo v. Sandiganbayan*, G.R. Nos. 143885-86, January 21, 2012.

  
<sup>32</sup> *Remulla v. Sandiganbayan and Maliksi*, G.R. No. 218040, April 11, 2017.

  
<sup>33</sup> *Roquero v. Chancellor of UP Manila, et al.*, G.R. No. 181851, March 9, 2010.

<sup>34</sup> G.R. Nos. 206438, 206458, 210141-42, July 31, 2018.

<sup>35</sup> *Cagang v. Sandiganbayan*, G.R. Nos. 206438, 206458, 210141-42, July 31, 2018.

The point of reckoning for cases which resulted from *motu proprio* investigations conducted by the Office of the Ombudsman is the filing of a formal complaint by the Field Investigation Office of the Office of the Ombudsman.<sup>36</sup> In these cases, the point of reckoning is March 5, 2013 which was the filing date of the complaint by the Task Force Abono-Field Investigation Office, and not on November 7, 2012 which was the date of the complaint.

The preliminary investigation conducted by the Office of the Ombudsman Luzon, which lasted from the filing of the complaint by Task Force Abono-Field Investigation Office on March 5, 2013 to the approval of the draft resolution finding probable cause against all of the accused on August 1, 2017, or *four (4) years, four (4) months and twenty-seven (27) days*, is not entirely attributable to the Office of the Ombudsman Visayas.

The period from March 5, 2013 to April 18, 2013, or *one (1) month and thirteen (13) days*, is ascribed to the Office of the Ombudsman Luzon as this was spent to order all of the accused and Sarmiento, Jr. to submit their counter-affidavits and controverting evidence.

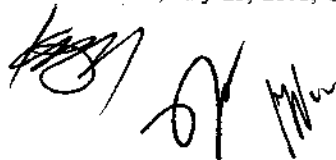
The period from April 18, 2013 to July 16, 2013, or *two (2) months and twenty-six (26) days*, is credited to all of the accused and Sarmiento, Jr. for the preparation and submission of their counter-affidavits. While accused Bayao, Sabay, Ismael, and Sekak submitted their counter-affidavit to the Office of the Ombudsman Luzon, the records, however, are bereft of any information as to when the said counter-affidavit was filed by them or received by the Office of the Ombudsman Luzon. Since the said date of receipt cannot be determined, the Court will consider the date of receipt of the counter-affidavit of accused Escobar on July 16, 2013 by the Office of the Ombudsman Luzon as the date when the last counter-affidavit was filed. The Court also notes the allegation of the Prosecution in its Comment/Opposition dated October 26, 2018 that accused Escobar sought a second extension of time to file his counter-affidavit.

The period from July 16, 2013 to August 1, 2017, or *four (4) years and sixteen (16) days*, is visited upon the Office of the Ombudsman Luzon because this was spent in drafting the resolution finding probable cause and the informations, and seeking the approval thereof by Ombudsman Carpio-Morales.

The period from August 1, 2017 to November 8, 2017, or *three (3) months and seven (7) days*, is ascribed to accused Escobar's co-accused

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<sup>36</sup> *Magante v. Sandiganbayan*, G.R. Nos. 230950-51, July 23, 2018; *Cagang v. Sandiganbayan*, G.R. Nos. 206438, 206458, 210141-42, July 31, 2018.



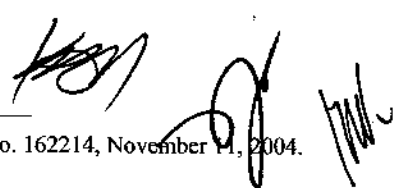
Bayao, Sabay, Ismael, and Aller because they exercised their right to due process in seeking the reconsideration of the resolution finding probable cause against them and/or reinvestigation of their case by the Office of the Ombudsman Luzon.

The period from November 8, 2017 to May 4, 2018, or *five (5) months and twenty-six (26) days*, is credited to the Office of the Ombudsman Luzon and the OSP for time spent in drafting and seeking approval of the joint order denying the motion for reconsideration and/or reinvestigation and the filing of the eight (8) informations with the Sandiganbayan.

In sum, the total periods of *six (6) months and three (3) days* (attributable to all of the accused) and an undetermined period of fact-finding investigation should be excluded from the time spent by the Office of the Ombudsman Luzon to terminate the preliminary investigation, and for the OSP to file the corresponding informations with the Sandiganbayan.

Subtracting the periods attributable to all of the accused and the fact-finding investigation, the total period it took the Office of the Ombudsman Luzon to finish its preliminary investigation, and for the OSP to file the corresponding informations is only *four (4) years, seven (7) months, and twenty-five (25) days*. The Court considers this period reasonable because the investigating prosecutor had to carefully evaluate the complaint and the supporting documents to determine whether probable cause for violation of Section 3(e) of R.A. No 3019 and Malversation of Public Funds existed against all of the accused. The Office of the Ombudsman considered the right of all of the accused to due process. The OSP had to review the case again so that only the case that could stand the rigors of trial would be filed. Also, these cases involve eight respondents, two (2) criminal charges, two (2) administrative charges, and voluminous records because it is part of the fertilizer fund scam cases involving several government officials and employees around the country. Under these circumstances, the said period is not capricious, oppressive and vexatious.

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.<sup>37</sup>

  
<sup>37</sup> Corpuz v. Sandiganbayan, G.R. No. 162214, November 11, 2004.

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 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 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.<sup>38</sup>

The accused had the burden of proving the factual basis for his motion to quash and/or dismiss on the ground of violation of his right to a speedy disposition of the case, and that the delay was vexatious, capricious, or whimsical. On the other hand, the Prosecution had the burden to establish that any delay was reasonably attributed to the ordinary process of justice, and that the accused did not suffer serious prejudice beyond that which ensued after an inevitable and ordinary delay.<sup>39</sup>

In *People vs. Sandiganbayan and Gamos*,<sup>40</sup> the Supreme Court held that there was no inordinate delay when there is no allegation, much less proof, that respondents therein were persecuted, oppressed, or made to undergo any vexatious process during the investigation period before the filing of the informations. 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 the constitutional rights of the respondents therein.

Applying the foregoing principles in these cases, the Court rules that accused Escobar failed to state any factual basis of the alleged violation of his right to a speedy disposition of the case. There is also no indication that the cases against him were instituted for the purpose of harassing him or for some malicious motive.

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

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<sup>38</sup> *Corpuz v. Sandiganbayan*, G.R. No. 162214, November 11, 2004.

<sup>39</sup> *Id.*

<sup>40</sup> G.R. No. 232197-98, April 16, 2018.



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.<sup>41</sup>

Accused Escobar did not allege some form of prejudice in his motion to quash. Any form of prejudice he may have suffered does not appear to have been caused by inordinate delay, but is a result of the mere passage of time regardless of the existence of inordinate delay. Accused Escobar was not suspended from office and was given all the opportunity to present his defenses during the preliminary investigation. In fact, accused Escobar filed his counter-affidavit and attached several documents detailing his defenses on the charges against him.

Moreover, accused Escobar waived his right to question the alleged violation of his right to a speedy disposition of the case.

In *Barcelona v. Lim*,<sup>42</sup> the Supreme Court held that the petitioner therein was considered to have waived his right to a speedy disposition of the case because of his failure to assert it. The right to speedy trial, as well as other rights conferred by the Constitution or statute, may be waived except when otherwise expressly provided by law.

In *Tilendo v. Ombudsman and Sandiganbayan*,<sup>43</sup> the Supreme Court held that the right of the petitioner therein to a speedy disposition of the case was not violated because he slept on his right and did not take any step whatsoever to accelerate the disposition of his cases. The inaction of the petitioner gave an impression that he did not object to the supervening delay, hence, it was impliedly with his acquiescence. He did not make any overt act, like filing a motion for early resolution.

In *Bernat v. Sandiganbayan and People*,<sup>44</sup> the petitioner therein raised the violation of his right to a speedy disposition of the case only when the trial court judge reset the case for rehearing. The Supreme Court held that it is fair to assume that the petitioner therein would have just continued to sleep on his right, a situation amounting to laches had the trial court judge not taken the initiative of determining the non-completion of the records and ordering the remedy precisely so he could dispose of the case. The matter could have taken a different dimension if during all those ten years between

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<sup>41</sup> *Corpus v. Sandiganbayan*, G.R. No. 162214, November 11, 2004.

<sup>42</sup> G.R. No. 189171, June 3, 2014.

<sup>43</sup> G.R. No. 165975, September 13, 2007.

<sup>44</sup> G.R. No. 158018, May 20, 2004.



1979 when accused filed his memorandum and 1989 when the case was re-raffled, the petitioner showed signs of asserting his right which was granted him in 1987 when the new Constitution took effect, or at least made some overt act (like filing a motion for early disposition or a motion to compel the stenographer to transcribe stenographic notes) that he was not waiving it. As it is, his silence would have to be interpreted as a waiver of such right.

In the cases before the Court, accused Escobar failed to seasonably assert his right to a speedy disposition of the case. He neither raised the issue of inordinate delay before the Office of the Ombudsman nor took any overt acts questioning the alleged inordinate delay. His inaction shows acquiescence and waiver to question any violation of his right to a speedy disposition of the case.

It is relevant to note that while procedural periods to act upon complaints and motions are set by the rules, these may not be absolute. Law and jurisprudence allow certain exceptions thereto, as this Court and the law recognizes the fact that judicial, as well as investigatory, proceedings do not exist in a vacuum and must contend with the realities of everyday life. It bears stressing that in spite of the prescribed periods, jurisprudence continues to adopt the view that the fundamentally recognized principle is that the concept of speedy trial, or speedy disposition of cases for that matter, is a relative term and must necessarily be a flexible concept.<sup>45</sup>

Considering the number of times that the cases had to be reviewed, the levels of review that the cases had to undergo, waiver of the right to a speedy disposition of the case, and the lack of prejudice to accused Escobar, the period that lapsed could not be considered vexatious, capricious and oppressive. Under the circumstances, this cannot be considered inordinate delay. Accused Escobar cannot now seek the protection of the law to benefit from the adverse effects of his own conduct in these cases. The assertion of accused Escobar that his right to a speedy disposition of the case has been violated must necessarily fail.

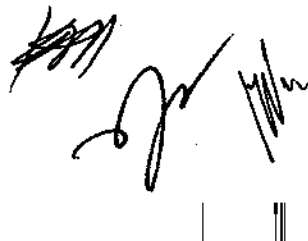
*The cases on inordinate delay cited by accused Escobar are not applicable.*

The cases on inordinate delay cited by accused Escobar in his motion to quash are not applicable to the cases against him now pending before this Court.

In *Tatad v. Sandiganbayan*,<sup>46</sup> the inordinate delay of almost three (3) years in the conduct of the preliminary investigation was due to political

<sup>45</sup> *People v. Sandiganbayan and Gamos*, G.R. No. 232197-98, April 16, 2018.

<sup>46</sup> No. L-72335, March 21, 1988.



motivation and blatant departure from procedures prescribed by law in the conduct of preliminary investigation. Also, the long delay in resolving the preliminary investigation was not justified by the records.

In *Coscolluela v. Sandiganbayan and People*<sup>47</sup> and *Nacionales v. Sandiganbayan and People*,<sup>48</sup> the Supreme Court found the presence of inordinate delay because it took the Ombudsman eight (8) years to complete the preliminary investigation. Petitioners therein could not be faulted for failing to assert their right to a speedy disposition of the case because they were not aware that the preliminary investigation was still on-going. They were merely asked to comment and not to file any counter-affidavits. Thereafter, the resolution finding probable cause and the information were issued and filed, respectively, only after six (6) years. They could have reasonably assumed that the proceedings were already terminated.

The motion to quash on the ground of inordinate delay must be resolved on the basis of the particular facts of the case. The circumstances of inordinate delay in the foregoing cases are not present in the cases now before this Court. There was neither political motivation nor blatant departure from prescribed procedures in the preliminary investigation. Accused Escobar was aware that a preliminary investigation was being conducted against him. He was served a copy of the complaint and given the opportunity to file his counter-affidavit, which he, in fact, filed after seeking two extensions of time. The informations were filed one (1) month and twenty-five (25) days from the approval of the joint order denying the motion for reconsideration and/or reinvestigation filed by his co-accused. The Prosecution also gave sufficient justification for the time it took the Office of the Ombudsman to conduct its preliminary investigation and to file the informations with the Sandiganbayan.

The protection under the right to a speedy disposition of the case should not operate to deprive the government of its inherent prerogative in prosecuting criminal cases or in generally seeing to it that all who approach the bar of justice are afforded a fair opportunity to present their side.<sup>49</sup>

This Court is not unmindful of the duty of the Ombudsman under the Constitution and R.A. No. 6770 to act promptly on complaints brought before it. Such duty, however, should not be mistaken with a hasty resolution of cases at the expense of thoroughness and correctness.<sup>50</sup> Judicial notice should be taken of the fact that the nature of the Office of the

<sup>47</sup> G.R. No. 191411, July 15, 2013.

<sup>48</sup> G.R. No. 191871, July 15, 2013. *Coscolluela v. Sandiganbayan and People* and *Nacionales v. Sandiganbayan and People* are consolidated cases.

<sup>49</sup> *Dansal v. Fernandez*, G.R. No. 126814, March 2, 2000.

<sup>50</sup> *Id.*



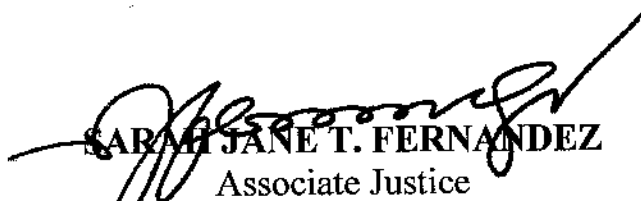
Ombudsman encourages individuals who clamor for efficient government service to freely lodge their complaints against wrongdoings of government personnel. A steady stream of cases reaching the Ombudsman inevitably results. Naturally, disposition of those cases would take some time.<sup>51</sup>

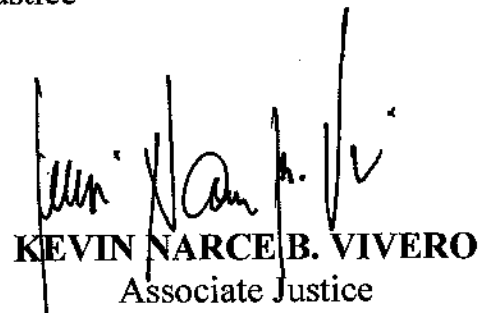
**WHEREFORE**, the Motion to Quash dated October 16, 2018 of accused Miguel Draculan Escobar is **DENIED** for lack of merit. The arraignment of and pre-trial for accused Miguel Draculan Escobar shall be on February 8, 2019 to coincide with the arraignment of and pre-trial for accused Abdulwahab Adzal Bayao, Estrella Catalan Sabay, and Mustapha Gapas Ismael.

**SO ORDERED.**

  
**KARL B. MIRANDA**  
Associate Justice

WE CONCUR:

  
**SARAH JANE T. FERNANDEZ**  
Associate Justice  
Chairperson

  
**KEVIN NARCE B. VIVERO**  
Associate Justice

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<sup>51</sup> *Mendoza-Ong v. Sandiganbayan and People*, G.R. Nos. 146368-69, October 23, 2003.