REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**Crim. Case Nos. SB-18-CRM-0551**
	FOR: Violation ofSection 3(e) of Republic Act No. 3019
– versus –	**Present:** **LAGOS, J., *Chairperson*** **MENDOZA-ARCEGA, and** **CORPUS-MANALAC, JJ.**
ROLEX T. SUPLICO, et. al. *Accused,*	**Promulgated:** January 15, 2019

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RESOLUTION

LAGOS, J.:

Accused Rolex T. Suplico in the above-captioned case filed on November 13, 2018 a *Motion to Quash Information with Motion to Cancel the Arraignment set on November 16, 2018*[1] on two (2) grounds; (1) violation of his constitutional right to a speedy disposition of his case due to inordinate delay; and (2) violation by the Office of the Ombudsman of the rule against forum-shopping.

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[1] Records, pp. 155-174

Accused-movant Suplico, then Congressman of the 5th District of Iloilo, and two(2) others, Antonio Y. Ortiz and Alfredo A. Ronquillo stand charged in an *Information*[2] filed on October 23, 2018 with violation of Section 3(e) of R.A. 3019, as amended, in connection with the alleged transfer of his 2007 Priority Development Assistance Fund (PDAF) in the total amount of PhP 25 Million to AARON Foundation Phils., Inc. with Technology and Livelihood Resource Center (TLRC), as implementing agency, and AARON's failure to liquidate said amount.

On the day set for arraignment, or on November 16, 2018, the prosecutor manifested that they have received a copy of the *Motion to Quash* and asked for and was granted a period of ten (10) days from said date to file their Comment and/or Opposition. The Court reset the arraignment to January 18, 2019 at 8:30 in the morning.

On December 6, 2018, the prosecution filed its *Comment and/or Opposition.*

In his *Motion to Quash*, the accused-movant Suplico argues that the officer who filed the *Information* had no authority to do so, contending that said authority was lost due to inordinate delay in the resolution of the complaints filed against him, and for deliberate forum shopping. He claims that it took the Office of the Ombudsman more than eight (8) years, seven (7) months and thirteen (13) days, to resolve the *Complaint-Affidavit.*

To bolster his argument on violation of his constitutional right to speedy disposition of his case, accused-movant relies on the Supreme Court's ruling in *Tatad v. Sandiganbayan*,[3] where a delay of three (3) years in the conduct of preliminary investigation was enough to dismiss a case. Quoting extensively portions of the ruling in *Coscolluela vs. Sandiganbayan*[4] on the matter of application of the balancing test[5] on the facts and circumstances of the cited case to determine whether there has been a violation of the right to speedy disposition of cases, accused-movant argues that a preliminary investigation of his case conducted for a protracted length of time-- 8 years, 7 months and 13 days--- has the effect of violating his constitutional right to due process and speedy trial.

Accused-movant narrates that this case stems from OMB-V-C-14-0052 initiated at the behest of Iloilo's 5th District Congressman Niel C. Tupas, Jr. (2007-2016) who wrote the Commission on Audit (COA) on January 29, 2009 regarding the PDAF releases of his predecessor, the herein

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2 Records, pp. 1-3
3 G.R. No. 72335-39, 21 March 1988.
4 G.R. No. 191411, July 15, 2013
5 The four factors are: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay,

accused-movant. In its reply-letter dated March 10, 2009, COA referred to the Annual Audit Report of the Technology Resource Center for the year 2007.

Records show that Congressman Tupas, Jr. then requested the Office of the Ombudsman-Visayas, in his letter dated January 20, 2010, for the conduct of investigation and prosecution of Iloilo Vice Governor Rolex T. Suplico for criminal and administrative violations of R.A 3019 and R.A. 6713. Accused-movant's narrative of the incidents which transpired from receipt by the Office of the Ombudsman-Visayas of the said letter of Congressman Tupas, as summarized below, show that:

Dates	Incidents
February 8, 2010	Office of the Ombudsman-Visayas received copy of letter of Congressman Niel Tupas, Jr. requesting for investigation and prosecution of accused-movant
March 6, 2014	A *Complaint-Affidavit* was filed by the Public Assistance and Corruption Prevention Office (PACPO) with the Office of the Ombudsman, Visayas Regional Office, against accused-movant for violation of Section 3(e) of R.A. 3019 after conducting a fact-finding investigation from receipt of the letter of Congressman Niel Tupas, Jr.
December 2014	Allegedly, the time accused-movant was informed that a *Complaint-Affidavit* was filed against him considering that he is now based in Manila while the *Complaint-Affidavit* was sent to his address in Estancia, Iloilo
December 23, 2014	Accused-appellant filed a *Motion to Reopen Preliminary Investigation and Admit his Counter-Affidavit*
April 23, 2015	Accused-movant filed a *Supplementary Counter-Affidavit*
January 29, 2018	The date accused-movant claims to have received a Resolution, dated October 4, 2017, signed by Honorable Ombudsman Conchita Carpio-Morales
February 5,2018	Motion for Reconsideration filed by accused-movant

Accused-movant, however, complains that he never received a resolution of the Office of the Ombudsman regarding his *Motion for Reconsideration*. Notwithstanding non-receipt of the action of the Office of the Ombudsman, he claims that he learned from the media that an information against him had been filed with the Honorable Sandiganbayan; that he obtained a copy of the *Information* on October 30, 2018 which was filed with the Honorable Sandiganbayan on October 23, 2018.

In addition to the constitutional ground he raised to quash the Information, accused-movant seeks the dismissal of the case against him due to an alleged violation of the rule against forum-shopping. He argues that two (2) *Complaint-Affidavits* arising from the same set of facts and circumstances, the same parties, the same causes of action and the same reliefs soughts were filed against him which were the subject of preliminary

investigations conducted by the Office of the Ombudsman, the first one filed on March 6, 2014 by the Public Assistance and Corruption Prevention Office (PACPO), Office of the Ombudsman for Visayas, docketed as OMB-V-C-14-0052,[6] and the second one, filed on December 22, 2015 by Field Investigation Office (FIO) I, Office of the Ombudsman docketed as OMB-C-C-16-0015[7] and OMB-C-A-16-0013.[8] He claims that the pendency of both cases, notwithstanding the charge of malversation filed by FIO I in the second complaint, falls squarely within the definition and test of forum shopping, citing *First Philippine International Bank, et. al. vs. Court of Appeals*[9] and ECC vs. Court of Appeals,[10] respectively.

Accused-movant further argues that the rules on forum shopping under Rule 7, Section 5 of the Rules of Court, Supreme Court Circular No. 28-91 (September 4, 1991) and Administrative Circular 04-94(February 8,1994) must be taken in *pari material,* that is, they should be harmonized in order to uphold the purpose of the law. Thus, he asserts that the rules apply not only in the courts but to the government prosecution service as well. It will be inconsistent, according to accused-movant, if the rule is limited on those cases filed in the courts only because even in the prosecution stage, conflicting decisions may arise.

Accused-movant points out that he was charged in two (2) separate complaint-affidavits, each containing a sworn certificate against forum shopping, which he claims to be a clear case of forum-shopping. He adds that to allow the PACPO and the FIO to independently pursue accused-movant and to present false certificates against forum shopping will bring about the very evils forbidden in the law and jurisprudence.

In its *Comment and/or Opposition*,[11] the prosecution argues that mere mathematical reckoning of the time involved is not sufficient to invoke inordinate delay and that the right of the accused to speedy disposition of the case was not violated in this case. Invoking the Supreme Court ruling in *Dela Pena vs. Sandiganbayan,*[12] the prosecution contends that the right to

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6 OMB-V-C-14-0052 involves the complaint for violation of Section 3(e) of R.A. 3019, as amended, filed by PACPO of the Office of the Ombudsman for Visayas and Congressman Niel C. Tupas, Jr., against Rolex T. Suplico allegedly conspiring with Antonio Ortiz and Alfredo A. Ronquillo, Director General of the TLRC, Makati City and President of AARON Foundation Philippines, Inc. of Manila, respectively.

7 OMB-C-C-16-0015 involves the complaint for violation of Article 217 of the Revised Penal Code and Section 3(e) of R.A. 3019, as amended against Rolex T. Suplico, Dennis Cunanan, Ma. Rosalinda M. Lacsamana and Marivic Jover allegedly in conspiracy with one another

8 OMB-C-A-16-0013 involves complaint for violation of Section 3(a) of R.A.3019, as amended, against Rolex T. Suplico and Antonio Ortiz., and administrative case against Marivic Jover for grave misconduct and conduct prejudicial to the interest of the service

9 252 SCRA 259, cited in Feria & Noche (2013), Civil Procedure Annotated p. 345

10 257 SCRA 717, Id., p. 346

11 Records, pp. 243-255

12 G.R. No. 144542, June 29, 2001, as cited in Torres vs. Sandiganbayan, G.R. Nos. 221562-69, October 5,2016

speedy disposition of cases is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays; that in determining whether that right has been violated, the factors that may be considered and balanced are as follows: (1) the length of delay; (2) the reason for the delay; (3) the assertion or failure to assert the right by the accused; and (4) the prejudice caused by the delay.

The prosecution notes that in determining the length of delay, accused-movant included the time spent for fact-finding investigation, thus coming up with about more than 8 years of delay before the case was filed. But, the prosecution points out that in the case of *Cagang vs. Sandiganbayan (5th Division)*[13], the Supreme Court held that "*The period for the determination whether inordinate delay was committed shall commenced from the filing of a formal complaint and the conduct of the preliminary investigation*" and not from the filing of the complaint for purposes of fact-finding investigation.

In explaining its argument, the prosecution provides a detailed timeline of the incidents culled from the records commencing from the time the letter request of Congressman Niel Tupas, Jr. dated January20, 2010 was filed on February 11, 2010 until the *Information* was filed on October 23, 2014 before the Sandiganbayan.

Between the dates of February 11, 2010 and October 23, 2014 are several dates showing the approval on January 23, 2014 by Ombudsman Conchita Carpio Morales of the Final Evaluation Report dated November 6, 2013 recommending filing of criminal charges for violation Section 3(e) of R.A. 3019 against Suplico, Ortiz and Ronquillo; the filing of complaint-affidavit on March 6, 2014; the succeeding dates showing administrative processes as necessary incidents of the preliminary investigation, e.g. issuance of order to file counter-affidavits, subpoena to TLRC-HRM for the complete address of Ortiz, NSO Cebu for verification of the death of Ronquillo, COA for the questioned Disbursement Vouchers and their corresponding compliances; the filing on December 23 ,2014 of accused-movant's motion to re-open preliminary investigation and to admit counter-affidavit; the issuance of Resolution dated October 4, 2017 on January 8, 2018; the filing of accused-movant's *Motion for Reconsideration* (MR) on February 14, 2018 and its *Supplement to the MR* filed on March 22, 2018, and the Order dated April 3, 2018 issued on June 7, 2018 denying accused-movant's MR.

As presented in its detailed timeline, the prosecution explains that the counting should be reckoned from March 6, 2014, the date of the filing of

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13 G.R. Nos. 206438 and 206458, July 31, 2018

the formal complaint and its docketing as OMB-V-C-14-0052 for preliminary investigation, and not from January 20, 2010 as argued by the accused-movant. Hence, the length of delay is about 4 years and 7 months. The prosecution thus claims that accused-movant erred in considering the period of fact-finding investigation as part of the entire length of the disposition of this case pursuant to the doctrine in *Cagang vs. Sandiganbayan.*

The length of 4 years and 7 months at the preliminary investigation level, the prosecution insists, is not vexatious, capricious nor oppressive; the reason for the delay if considered as such was beyond the control of the Office of the Ombudsman. The prosecution also claims that in his *Motion to Quash*, accused-movant did not allege that they asserted their right at the earliest possible time and there was no claim or evidence to show that accused-movant was prejudiced.

The prosecution opposes accused-movant's allegation that the forum-shopping committed by the PACPO and FIO are willful and deliberate considering the length of time these cases have been pending and that the Office of the Ombudsman is now fully automated and denies the existence of forum shopping in this case. Relying on the ruling in the case of *Young vs. Sy*[14], the prosecution asserts that to determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment on one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.

It then argues that the parties involved in the PACPO and FIO complaints are not identical. While it is true that both complainants are within the functional structure of the Office of the Ombudsman, they are represented by different individuals acting as nominal complainants. At the time of the filing of the PACPO complaint, there was no FIO complaint to speak of, hence, the PACPO investigator may not be faulted in filing under oath a certificate of non-forum shopping. In fact, the prosecution emphasizes, that it is only the PACPO complaint that was filed in court. Further, the prosecution argues that accused-movant did not allege nor show proof in his *Motion to Quash* that at the time of the filing of the PACPO complaint-- subject of the motion to quash-- a similar complaint had already been filed and/or decided by the court to satisfy the requirement of *litis pendencia* and/or *res judicata.*

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[14] G.R. No. 143464, March 5, 2003

DISCUSION AND RULING

The motion is **DENIED** for lack of merit.

The Court is once again confronted with the clash between the constitutional right of an accused to speedy disposition of the case filed against him under Section 16, Article III of the Constitution, on one hand, and the right of the State to public justice or the right to prosecute people who violate its penal laws, on the other.

I.
The accused-movant's allegation of violation of his right to speedy disposition of his case

When a violation of the constitutional right of the accused to speedy disposition of the case due to inordinate delay is invoked as ground of the motion to quash and/or dismiss, as in this case, it is not merely the *Information* that is being assailed, but more importantly, the entire proceedings where inordinate delay occurred is the subject of judicial scrutiny.

The Supreme Court has laid down the rule in the case of *Corpuz vs. Sandiganbayan*[15], citing *Barker v. Wingo, 33 L.Ed.2d 101 (1972*), that a balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an *ad hoc* basis. Each case must be decided upon the facts peculiar to it.[16] The determination of the existence of inordinate delay is never made through a mere mathematical reckoning of the time involved but through the examination of the peculiar facts and circumstances surrounding each case.[17]

The concept of speedy disposition of the case, like speedy trial, is relative or flexible concept. These rights are 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. It is consistent with delays and depends upon the circumstances of the case. What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which renders rights nugatory.

In the earlier cited case of *Corpuz vs. Sandiganbayan,*[18] the Supreme Court held that in determining whether the right to a speedy disposition of

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15 G.R. No. 162214, November 11, 2004
16 Benares vs. Lim, G.R. No. 173421, December 14, 2006.
17 People vs. Sandiganbayan (Fourth Division), G.R. Nos. 206438 and 206458 and 210141-42, July 31,2018
18 See Note 15

the case has been violated, the following factors may be considered and balanced:(1) the length of the delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right; and (4) prejudice caused by the delay.

Length of the Delay

Accused-movant claims that it took the Office of the Ombudsman more than eight (8) years, seven (7) months and thirteen (13) days, to resolve the *Complaint-Affidavit.* Apparently, accused-movant included the period of the fact-finding investigation in computing the period of disposition of the case, or the entirety of the period from receipt of Congressman Tupas' letter on January 20, 2010 until the filing of the *Information* before the Court on October 23, 2018.

In the recent case of *Cagang vs. Sandiganbayan*[19], 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. For purposes of determining the existence of inordinate delay, a case is deemed to have commenced from the filing of a formal complaint and the subsequent conduct of the preliminary investigation, thus:

"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 formal complaint. At this point, the Office of the Ombudsman will not yet determine if there is probable cause to charge the accused.

Considering that fact-finding investigations are not yet adversarial proceedings against the accused, the period of investigation will not be counted in the determination of whether the right to speedy disposition of cases was violated. **Thus, this Court now holds that for the purpose of determining whether inordinate delay exists, a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation.** In *People vs. Sandiganbayan* Fifth division, the ruling that fact-finding investigations are included in the period for determination of inordinate delay is abandoned." [Emphasis supplied and citation omitted]

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19 G.R. Nos. 206438 and 206458, July 31, 2018

The counting should therefore be reckoned from date of the filing of the formal *Complaint-affidavit* on March 6, 2014 and the subsequent preliminary investigation, and not from January 20, 2010 as argued by accused-movant. Thus the length of delay is only about 4 years and 7 months.

Reason for the delay

The reasonableness of the time to resolve a proceeding as held by the Supreme Court in the case of *Licaros vs. Sandiganbayan*[20] is not determined by "mere mathematical reckoning" but through the examination of the facts and circumstances surrounding the case in light of the balancing test adopted by the Supreme Court in a number of cases.

When the length of delay is four (4) years and 7 months to conduct preliminary investigation, the Court has to examine the facts and circumstances of the case and the burden to prove its reasonableness lies on the prosecution.

The prosecution argues that four (4) years and 7 months to conduct the preliminary investigation under the circumstances which transpired within the period is reasonable considering the presence of several factors which caused the delay, if considered as such, are beyond the control of the Office of the Ombudsman as shown in its detailed timeline, as follows:

Date	Incidents
February 11,2010	Letter Request of Congressman Neil Tupas, Jr. dated 20 January 2010 was filed and docketed as CPL-V-10-0126
January 23, 2014	Final Evaluation Report dated 06 November 2013 recommending formal criminal charges for violation of Sec. 3(e) of RA 30129 was approved by Honorable Conchita Carpio- Morales
March 6,2014	Complaint-Affidavit dated 04 March 2014 was docketed for Preliminary Investigation as OMB-V-C-14-0052, filed by GIPO Theodore P. Banderado, as Nominal Complainant for the Field Investigation Office, OMB-Visayas (FIO Visayas)
April 28, 2014	Order to file Counter-Affidavit were issued to (1) Respondent Ronquillo, in his known address in Tondo, Manila; (2) Respondent Ordiz in his known address at Brgy. Little Baguio, San Juan, Manila; and (3) Respondent Suplico, the Order was sent to three(3) different addresses:

20 421 Phil 1075 (2001), citing Dela Pena vs. Sandiganbayan,412 Phil. 921

	a) Estancia,Iloilo b) Urdaneta Village, Makati c) c/o Ma. Teresa Tan-Cancio in Makati city
October 2, 2014	Subpoena was issued to the Human Resource Management (HRM) Officer of the TLRC, for complete mailing address of Antonio Y. Ortiz Subpoena was issued to the National Statistics Office (NSO) Cebu for the death certificate of Respondent Alfredo A. Ronquillo
October 21, 2014	Compliance from NSO, stating that they need more details as to the circumstances surrounding the death of Respondent Ronquillo for retrieval of his death certificate
October 23, 2014	Compliance from the Human Resource Officer of TLRC disclosing the address on record of Respondent Ortiz as : No. 1515 Joshua St., Jordan Plains Subd., Novaliches, Quezon City
December 15,2014	Order to file Counter-Affidavit,2nd issuance, based on the compliances received by the Office
December 23, 2014	Motion to Re-open Preliminary Investigation and to Admit Counter-Affidavit filed by Respondent Suplico, stating that Respondent only recently received the Order to file Counter-Affidavit sent to Estancia, Iloilo as he was already based in Metro Manila, indicating his new address: Unit 2015-B 2/F Florama Bldg., No. 3625, Bautista cor. Emilia Sts, Palanan, Makati City,1235
November 15,2016	Subpoena was issued to the CommissiononAudit (COA) Resident Auditor for the House of Representatives, pertaining to the DVs of Respondent Suplico for his PDAF amounting to 25 million s
December 29,2016	Compliance from the COA Audit Team Leader of the House of Representatives, informing the Office to issue and/or direct the Subpoena to the COA Audit Team Leader of the TRLRC for the requested documents
March 11,2017	Subpoena was issued to Mr. Jerry A. Calayan COA Resident Auditor for the TLRC, pertaining to the DVs of Respondent Suplico for his PDAF amounting to 25 million
Marchg23,2017	Certification from Auditor Calayan that he is no longer in possession of the requested documents, that said documents were already turned over to the Special Audit Office of the COA on July 14, 2011,COA Central Office.
January 8,2018	Resolution dated 4 October 2017 was approved by the

	Honorable Ombudsman Conchita Carpio-Morales
February 14,2018	Motion for Reconsideration dated 5 February 2018 was filed by Respondent Suplico
March 22, 2018	Supplement to the Motion for Reconsideration dated 5 February 2018 was filed by Respondent Suplico
June 7,2018	Order dated 3 April 2018 denying Respondent Suplico'sMotion for Reconsideration and the Supplement to the Motion for Reconsideration
October 23, 2018	Information dated June 29, 2018 was approved by Honorable Ombudsman Conchita Carpio-Morales on June 29,2018:stamped approved by Honorable Ombudsman Samuel R. Martires, was filed before the Sandiganbayan 5th Division docketed as SB-18-CRM-0551

The Court agrees with the prosecution that the presence of several factors which are beyond the control of the Office of the Ombudsman, as shown by the detailed timeline illustrating the circumstances attendant in the conduct of preliminary investigation, justify the apparent delay.

Clearly, as early as April 28, 2014, or less than 2 months from the filing of the complaint, an order was issued by the Office of the Ombudsman to file *Counter-Affidavits* to all the respondents/accused (Suplico, Ortiz and Ronquillo), but despite the same was sent to three (3) different addresses, accused-movant Suplico claims that he did not receive a copy of the order; that subpoenas were issued to HRM of TLRC for the complete address of Ortiz who apparently did not receive the order, to the NSO for the death certificate of Ronquillo, to the COA Resident Auditor of the House of Representatives and COA Resident Auditor of TLRC, to secure copies of the Disbursement Vouchers, and the corresponding compliances from the government agencies concerned, the latest of which was received on March 17,2017.

Time and again, the Supreme Court has reiterated the rule in a number of cases that the constitutional right to speedy disposition of the case is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays. The perceived delay in this case cannot be characterized as *vexatious* which, in its legal connotation, suggests an act which is willful and without reasonable cause, for the purpose of annoying or embarrassing another or one lacking justification and intended to harass. Neither can it be depicted as *oppressive* which connotes an unjust or cruel

exercise of power or authority nor can it be described as *capricious* action which means willful and unreasoning.[21]

Assertion or failure of the accused to assert the right and Prejudice caused by the delay to the accused

The Court observes that accused-movant quoted extensively portions of the decision in *Coscolluella vs. Sandiganbayan* on the matter of application of the four(4) factors of the balancing test[22] in the said case, but he miserably failed to show to the Court the relevant facts and circumstances of his case which would justify the application of the doctrine laid down in the case of *Coscolluella* to his case, more particularly, the other two(2) factors of the balancing test, namely, assertion or failure of the accused to assert the right to speedy disposition of the case and the prejudice caused by the delay to the accused.

It must be noted that the Court cannot mechanically apply the cases invoked by the accused-movant in his *Motion to Quash* without a thorough examination, as the Court did in the instant case, of the attendant facts and circumstances surrounding the preliminary investigation of this case. His failure to show why *Tatad vs. Sandiganbayan* and *Coscolluella vs. Sandiganbayan* are on all fours with the attendant facts and circumstances surrounding the preliminary investigation of his case is fatal to his plea to quash the Information or dismiss the case against him. Mere reference to the relevant portions of the decision is not enough. There must be conclusive factual basis why the doctrine applies to his case.

On this point, it is significant to point out that in his *Motion to Quash*, accused-movant did not allege that they asserted their right to speedy disposition of his case at the earliest possible time and there was no claim at all or evidence presented to show that he was prejudiced by the delay.

In fact, on the basis of his proffered excuse that because accused-movant is now based in Metro Manila, he did not receive the Order requiring him to file his Counter-Affidavit as the said order was sent to Estancia, Iloilo, he filed on December 23, 2014 a *Motion to Re-open Preliminary Investigation and to Admit Counter-Affidavit*. By his strategy of feigning ignorance of the issuance of the order requiring him to file his Counter-Affidavit despite the said Order, as shown by the records, was sent to his

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21 Tai Lim vs. Court of Appeals, G.R. No. 131483, October 26,1999

22 The four factors are: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay,case

three (3) addresses, accused-movant has contributed almost nine (9) months of delay in the disposition of the Complaint-*Affidavit* filed against him.

II.
Accused-movant's claim of violation of the rule against forum-shopping

Accused-movant seeks the dismissal of the case against him due to an alleged violation of the rule against forum-shopping. He argues that the pendency of two (2) *Complaint-affidavits* arising from the same set of facts, the same parties, the same causes of action and the same reliefs soughts filed against him which were the subject of separate preliminary investigations by the Office of the Ombudsman fall squarely within the definition and test of forum shopping

The Court is not persuaded.

Forum shopping is committed by a party who institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes or to grant the same or substantially the same reliefs, on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action.[23] In *Pentacapital Investment Corporation v. Mahinay*,[24] it was explained how forum shopping can be committed, thus:

> "Forum-shopping can be committed in three ways: (1) by filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) by filing multiple cases based on the same cause of action and with the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) by filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*)"

It is well-settled that, as held in *Yap vs. Court* of Appeals,[25] to determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is

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[23] Top Rate construction and General Services , Inc. vs. Paxton Development Corporation, 457 Phil 740 (2003)
[24] G.R. Nos. 171736 & 181482, 5 July 2010.
[25] G.R. No. 186730, June 13, 2012

whether in the cases pending, there is identity of parties, rights or causes of action, and reliefs sought.

Litis pendentia requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) identity with respect to the two preceding particulars in the cases, such that any judgment that may be rendered in the pending case would amount to *res judicata* in the other case.[26]

Res judicata or prior judgment bars a subsequent case when the following requisites are satisfied: (1) the former judgment is final; (2) it is rendered by a court having jurisdiction over the subject matter and the parties; (3) it is a judgment or an order on the merits; (4) there is between the first and the second actions-identity of parties, of subject matter, and of causes of action.[27]

To substantiate his claim of violation of the rule prohibiting forum-shopping and have this case dismissed against him, accused-movant must show that in the two (2) cases filed, there is identity of parties, of set of facts alleged, and of reliefs sought, and whether *res judicata* may apply.

The Court observes that there are two (2) cases filed against accused-appellant, one case is pending before the court (Sandiganbayan), and the other case, is pending preliminary investigation before the Office of the Ombudsman.

The preliminary question to be answered is whether forum shopping applies when one of the cases filed against the accused-movant is pending before the court, while the other is pending preliminary investigation before the Office of the Ombudsman. Does the ruling of the Office of the Ombudsman in its preliminary investigation-- actual or looming as to bar or as *res judicata* to the other cases on account of *litis pendentia* --bar the filing of the case in court or its dismissal?

Accused-appellant insists that there is violation against forum shopping by the prosecution because all the requisites of *litis pendentia* are present, that is, identity of the parties, rights asserted and reliefs sought between the two(2) cases, and that any judgment that may be rendered in the pending case would amount to *res judicata* in the other case, thus he seeks the dismissal of the case pending before the Court.

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26 Sps. Marasigan v. Chevron Phils., Inc., G.R. No. 184015, 8 February 2012.
27 City of Taguig vs. city of Makati, G.R. No. 208393, June 15,2016

The Court does not agree.

Jurisprudence is clear that forum shopping is committed by a party who institutes "two or more suits in **different courts,** either simultaneously or successively x x x" and Section 5 of Rule 7 of the Rules of Civil Procedure on the requirement of certification against forum shopping speaks of "actions or claims involving the same issues in **any court, tribunal or quasi-judicial agency**."

Res judicata which is one of the essential requisite of *litis pendentia* applies only to judicial or quasi-judicial proceedings, and not the exercise of administrative powers.[28] Administrative powers here refers to those purely administrative in nature, as distinguished from administrative proceedings that take on a quasi-judicial character.

The exercise of quasi-judicial functions involves a determination, with respect to the matter in controversy, of what the law is; what the legal rights and obligations of the contending parties are; and based thereon and the facts obtaining, the adjudication of the respective rights and obligations of the parties.[29]

The conduct of preliminary investigation of criminal cases by the Office of the Ombudsman is not a quasi-judicial proceedings.[30] In rendering its ruling in its preliminary investigation, the Office of the Ombudsman is not a court performing a judicial function nor an administrative agency performing quasi-judicial functions, thus, the doctrine of *res judicata* - the conceptual backbone upon which forum shopping rests[31] - will not attach to its ruling as to bar the filing of a case in court or its dismissal on account of *litis pendentia* on the assumption that the two(2) other requisites of *litis pendentia* are present. As pointed out earlier, *res judicata* which is one of the essential requisite of *litis pendentia* applies only to judicial or quasi-judicial proceedings, and not the exercise of administrative powers.

Res judicata is a doctrine of civil law and thus has no bearing on criminal proceedings.[32] In the case of *Encinas vs. Agustin,*[33] it was held that a ruling in an investigative exercise--such as fact-finding investigations and preliminary investigations-- could not be the basis of *res judicata*, or of forum shopping.

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28 Heirs of Deria vs. Heirs of Deria, G.R No. 157717, April 13,2011, 648 SCRA 638
29 Doran vs. Executive Judge Lucson, Jr. G.R. No. 151344, January 18, 2000
30 Encinas vs. Agustin, G.R. No. 187317, April 11, 2013
31 Steven R. Pavlow vs. Cherry L. Mendenilla, G.R. No. 181489, April 19, 2017
32 Tecson vs. Sandiganbayan, 376 Phil 191 (1999), cited in Trinidad vs. Marcelo G.R. 166038, December 4, 2007
33 G.R. No. 187317, April 11, 2013