REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES, **Crim. Case Nos. SB-18-CRM-0551**
Plaintiff,

FOR: **Violation of Section 3(e) of Republic Act No. 3019**

– versus –

Present:
LAGOS, J., *Chairperson*
MENDOZA-ARCEGA, and
CORPUS-MAÑALAC, JJ.

ROLEX T. SUPLICO, et. al.
Accused,

Promulgated:
February 12, 2019 lcd

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RESOLUTION

LAGOS, J.:

For resolution is the *Motion for Reconsideration* filed on January 23, 2019 by accused-movant Rolex T. Suplico in the above-captioned case which seeks to set aside the *Resolution* of the Court dated January 15, 2019 and to issue a new one granting the said *Motion* and to quash the *Information* against him.

The *Resolution*[1] of the Court dated January 15, 2019 denied for lack of merit the *Motion to Quash* filed by accused-movant Rolex T. Suplico.

The prosecution filed its *Comment and/or Opposition* on January 28, 2019.

Accused-movant argues that the period it took the Honorable Ombudsman to resolve the case, after removing the fact-finding portion pursuant to the doctrine laid down in *Cagang vs. Sandiganbayan,*[2] is still beyond the periods given by Sections 3 and 4 of Rule 112 of the Rules of Court and existing jurisprudence. He asserts that a reading of both provisions of law will show that a preliminary investigation will never exceed six (6) months or even a year, applying the periods given and giving ample time allowance for service of subpoena and appearance of the parties and their respective witnesses. Thus, he claims that the period of four (4) years and seven (7) months in resolving the preliminary investigation of the case against him constitute inordinate delay which violates his constitutional right to speedy disposition of his case enshrined under the Bill of Rights. Relying on *Tatad v. Sandiganbayan,*[3] he avers that it was ruled in *Tatad* case that a delay of close to three (3) years cannot be deemed reasonable or justifiable in the light of the circumstance obtaining in the said case.

Accused-movant then questions the reasonableness of the period utilized by the Office of the Ombudsman which, as presented in prosecution's timeline, attributed the delay to factors beyond its control, contending that the four(4)-year period from February 11, 2010 when the letter-request of Congressman Tupas, Jr was filed and docketed until January 23, 2014 when the recommendation to file formal criminal charges for violation of Section 3(e) of RA 3019 was approved by the Honorable Conchita Carpio-Morales should have been utilized to collect and gather the necessary data and evidence to file the complaint against him, and yet, it utilized the period of preliminary investigation to do the same. Although accused-movant acknowledges the ruling in *Cagang vs. Sandiganbayan*, he nevertheless argues that the four-(4) year fact-finding period shows the obvious neglect, if not capricious and deliberate intent to delay the proceedings which deprived him of a speedy disposition of his case.

In addition to his earlier excuse proffered in his *Motion to Quash* that in 2014, he was already based in Manila, accused-movant now explains the details and circumstances of the three (3) addresses used by the Office of the Ombudsman to send the order to file his counter-affidavit which allegedly justified why it took him almost eight (8) months, to be exact, to file his

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1 Records, pp.295-311
2 G.R. Nos. 206438 and 206458, July 31, 2018
3 G.R. No. 72335-39, 21 March 1988.

Counter-Affidavit on December 23, 2014. He explains that: (1) although he has a residence in Estancia, Iloilo, the residential house is empty and is merely taken care of by a caretaker; (2) there was no one to receive the complaint affidavit in the residential address in Urdaneta Village, Makati City, because the house, formerly owned by his father-in-law who died in June 2002, was eventually sold in 2013, a year before the complaint-affidavit was filed, and his estranged wife whom he had separated in 2000 left the house together with his children in 2013; and (3) the last address "c/o Ma. Teresa Tan-Cancio", which is maiden name of his estranged wife, is in itself vague because indicating merely Makati City which occupies 27.36 square kilometers will not be sufficient to find the person named therein.

Attributing the complaint against him to the political rivalry between him and Congressman Tupas, Jr. in the May 2010 elections, accused-movant reiterates the prejudice he suffered and is continuing to suffer due to the delay brought about by the political machinations of the then Congressman Tupas, Jr. which, allegedly, extended to the Office of the Ombudsman. He implies that the then Congressman Tupas Jr. who was the lead prosecutor in the Chief Justice Renato Corona impeachment trial, had a hand in the appointment of then Ombudsman Conchita Carpio-Morales.

On the issue of forum shopping, accused-appellant posits the view that the Certificate of Non-Forum Shopping has two (2) aspects: the first one aims to prevent forum-shopping proper, and the second, to prohibit the filing of multiple suits. He claims that the Honorable Court failed to consider the prohibition against the filing of multiple suits. He adds that if the reason for the requirement is to prevent forum shopping and disregard the rule on multiplicity of suits, then the said requirement can be considered a dead law, in so far as multiple filing of cases involving the same issues is concerned.

DISCUSSION AND RULING

After considering the arguments raised by accused-movant in his *Motion for Reconsideration* and the *Comment and/or Opposition* thereon by the prosecution, the Court resolves to ***DENY*** the motion for lack of merit.

The issues raised and arguments have already been passed upon, discussed and judiciously resolved in the assailed *Resolution*. The Court finds no new matter or compelling reason that could warrant the reversal and setting aside of the said *Resolution.*

Accused-movant reiterates his lengthy arguments on the mathematical determination of the time involved in concluding that there was an inordinate delay in the conduct of the preliminary investigation. He insists that the period of four (4) years and seven (7 months is still beyond the period given by Sections 3 and 4 of Rule 112 of the Rules of Court because a preliminary

investigation, as contemplated under the said provisions of law, will never exceed six (6) months or even a year.

The Court is not convinced.

The Supreme Court was categorical in its pronouncements in *Dela Pena vs. Sandiganbayan*[4] that a mere mathematical reckoning of time involved is not sufficient to hold the existence of inordinate delay. There is the need for courts dealing with "speedy disposition of cases", as exhorted by the Supreme Court in the more recent case of *Remulla vs. Sandiganbayan*[5] to approach the said cases on an *ad hoc* basis and weigh the conduct of both the prosecution and the accused vis-à-vis the (1) length of delay; (2) reason for the delay; (3) defendant assertion or non-assertion of this right, and; (4) prejudice to defendant resulting from the delay.

It must be stressed than none of the four (4)-fold factors above-mentioned is either necessary or sufficient condition to hold the existence of inordinate delay.[6] The said factors must be considered and related together with other relevant circumstances, and courts must still engage in a difficult an sensitive balancing process.[7] In short, the length of delay, standing alone, is not sufficient to judiciously determine whether or not the right of the accused to speedy disposition of his cases was violated. The Court has still to engage in a difficult and sensitive balancing process where the totality of the facts and circumstances have to be considered, as in instant case, within the parameters of all the four(4) factors first adopted by the Supreme Court in *Martin vs. Ver.*[8] The Court has to balance societal interests and rights of the accused, as held in *Corpuz vs. Sandiganbayan*[9], and reiterated in *Remulla vs. Sandiganbayan*[10].

The case of *Tatad vs. Sandiganbayan* cited by accused-movant in support of his claim of violation of his right to speedy disposition of the case cannot be blindly applied to the present case without a close scrutiny of the attendant facts and circumstances in the conduct of preliminary investigation. The steps and processes undertaken by the investigating officer in the present case were all geared towards the observance of procedural due process of law. For, procedural short-cut has no place in our criminal justice system whenever the life, liberty or property of the accused is at stake. In performing the delicate task of balancing the societal interests and the rights of the accused,

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4 360 SCRA 478 (2001)
5 G.R. No. 218040, April 17, 2017
6 Id.
7 Remulla vs. Sandiganbayan, G.R. No. 218040, April 17,2017; Spouses Uy vs. Adriano, G.R. No. 159098 (October 27, 2006); 536 Phil. 575, 498 (2006).
8 G.R. L-62810, July 25, 1983, 208 Phil. 658 (1983), citing Barker vs. Wingo, 407 US 514, 92 SCt 2182 (1982).
9 G.R. No. 162214, November 11, 2004.
10 G.R. No. 218040, Apri 17, 2017.

both the accused and the prosecution are given the equal opportunity and reasonable time to expound on their respective cause.

It is significant to note that the Office of the Ombudsman favorably considered accused-movant's *Motion to Re-open the Preliminary Investigation and Admit his Counter-Affidavit* which he filed on December 23,2014, or after almost eight (8) months from the issuance of the order on April 28, 2014. From his own accounts in his *Motion to Quash,* accused-movant even filed a *Supplementary Counter-Affidavit* on April 23, 2015, or four (4) months after his motion to re-open the preliminary investigation. While the Court understands the reasons for his delayed compliance, accused-movant cannot, however, ascribe as unreasonable the steps and processes undertaken by the Office of the Ombudsman in the conduct of its preliminary investigation which under normal circumstances are stalled by factors beyond its control.

On balance, the Court, as pronounced in the assailed Resolution, found that the accused-movant failed to pass the test within the purview of the four (4)-fold factors. Significantly, there is no clear and sufficient proof in the records that the proceedings was attended by inordinate, vexatious, capricious and oppressive delays within the contemplation of the ruling of the Supreme Court in *Corpuz vs. Sandiganbayan.*[11]

In respect of accused-movant's allegations that he suffered prejudice by reason of the delay because of the political machinations of his political rival, Congressman Tupas, Jr., which extended to the Office of the Ombudsman, the same remain to be mere allegations. Allegation is not synonymous with evidence. The said allegations find no support in the records of the case.

Finally, on the issue of forum-shopping, accused-movant argues that the Honorable Court failed to consider the prohibition against the filing of multiple suits.

The argument is devoid of merit.

The view posited by accused-movant by his hair-splitting distinction between the prohibition against forum-shopping and the prohibition against multiplicity of suits is of no moment.

Forum-shopping is basically the filing of multiple cases in different courts, tribunal or quasi-judicial agency, either simultaneously or successively, involving the same parties, the same cause of action and the same prayers. Multiplicity of suits, as the term signifies, is the filing of

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11 See Note 10

multiple cases in different courts. In short, when the Supreme Court Circulars No. 28-91, 04-94 and section 5, Rule 7 of the Rules of Court speak of forum-shopping, there is necessarily multiplicity of suits as denominator involving the same parties, the same cause of action and the same prayers.

As held in *Pentacapital Investment Corporation v. Mahinay*,[12] 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*).

When there is multiplicity of suits, forum-shopping may be a ground for dismissal anchored on either *litis pendentia* or *res judicata* as explained above.

The test applied in the case of *Yap vs. Court* of Appeals,[13] is instructive, thus: "[T]o 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 whether in the cases pending, there is identity of parties, rights or causes of action, and reliefs sought".

The Court need not belabor any further on the issue of forum-shopping allegedly arising from the pendency of the case against accused-movant before the Sandiganbayan, on one hand, and the other case against him before the Office of the Ombudsman, on the other, which has been exhaustively discussed in the assailed Resolution as "this would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant."[14]

WHEREFORE, in view of the foregoing, the Motion for Reconsideration filed by accused-movant Rolex T. Suplico is **DENIED** for

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12 G.R. Nos. 171736 & 181482, 5 July 2010.
13 G.R. No. 186730, June 13, 2012
14 Ortigas and Company Limited Partnership vs. Judge Tirso Velasco and Dolores V. Molina, G.R. No. 109645, March 4, 1996 and Dolores V. Molina vs. Hon. Presiding Judge, RTC, Quezon City, Branch 105 and Manila Banking Corporation, G.R. No. 112564, March 4, 1996.

lack of merit. The scheduled arraignment of said accused on February 22, 2019 at 8:30 a.m. should proceed.

SO ORDERED.

Quezon City, Metro Manila

RAFAEL R. LAGOS
Chairperson
Associate Justice

WE CONCUR:

MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

MARYANN E. CORPUS-MAÑALAC
Associate Justice