



Republic of the Philippines
SANDIGANBAYAN
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,

OF THE
Plaintiff,

SB-17-CRM-2082

For: Violation of Section 3 (e) of
Republic Act (R.A.) No. 3019

-versus-

ANNALIZA P. GONZALES-KWAN, ARSENIO V. SALAMIDA, ESPERANZA G. COTIN, MA. NENITA S. ECLEO, FELIPE D. PADUAL, DANILO G. COLANDOG, and GILBETO N. LABICANE,
Accused,

PRESENT:

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

Promulgated: **NOV 25 2019** *my*

X-----X

RESOLUTION

MIRANDA, J.:

This resolves the suspension *pendente lite* of accused Annaliza P. Gonzales-Kwan (Gonzales-Kwan).

In its Order¹ dated October 3, 2019 and pursuant to Section 4, Rule VIII of the Revised Internal Rules of the Sandiganbayan,² the Court directed

¹ Records, vol. 3, p. 108-C.

² Section 4, Rule VIII of the Revised Internal Rules of the Sandiganbayan:

Suspension pendente lite. – After the arraignment of an accused public officer against whom a valid information charging any of the violations referred to in Section 13 of R.A. No. 3019 is filed, the Sandiganbayan shall *motu proprio* give the accused a non-extendible period of ten (10) calendar days from notice within which to explain in writing why he should not be preventively suspended. Thereafter, the Sandiganbayan shall issue an order of preventive suspension of the accused, if found warranted under the aforesaid provision of R.A. No. 3019, as well as applicable decisions of the Supreme Court.

[Handwritten signatures]

accused Gonzales-Kwan to show cause why she should not be suspended *pendente lite* in accordance with Section 13 of R.A. No. 3019.

In her **Compliance** dated October 28, 2019, accused Gonzales-Kwan stated that preventive suspension or suspension *pendente lite* under Section 13 of R.A. No. 3019 is imposed to prevent the accused from using the position and the powers and prerogatives of the office to influence, intimidate, or harass potential witnesses, tamper or manipulate records which may be vital in the prosecution of the case, or to prevent the accused from continuing the commission of malfeasance in office. She particularly alleged that: 1) the said reasons for the imposition of suspension *pendente lite* do not apply to her case; 2) she was elected as Municipal Mayor of Guiuan, Eastern Samar last May 13, 2019; 3) she was a private citizen from the time of filing of the Information until the Prosecution filed its Formal Offer of Documentary Exhibits on March 4, 2019; and 4) she did not commit and has no intention of committing any malfeasance in office.

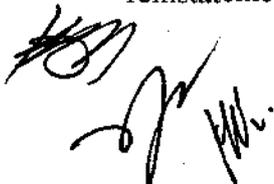
RULING

The Court does not find merit in the arguments of accused Gonzales-Kwan.

The power of this Court to order the suspension *pendente lite* of an incumbent public official charged with violation of R.A. No. 3019, as amended, or Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property is supported by law and has been steadfastly upheld by the Supreme Court in many of its decisions

Section 13 of R.A. No. 3019, as amended, states:

SEC. 13. *Suspension and loss of benefits.* Any incumbent public officer against whom any criminal prosecution under a valid Information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as a complex offense and in whatever stage of execution and mode of participation, is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement, and to the salaries and benefits which he failed to



receive during suspension, unless in the meantime administrative proceedings have been filed against him.

In the event that such convicted officer, who may have already been separated from the service, has already received such benefits he shall be liable to reconstitute the same to the government.
(*Emphasis supplied*)

An accused may be suspended *pendente lite* if the following conditions concur: 1) accused is an incumbent public official; and 2) accused is charged under a valid Information for violation of R.A. No. 3019, as amended, or Title 7, Book II of the Revised Penal Code, or for any offense involving fraud upon government or public funds or property.³

In this case, both conditions are present.

First, accused Gonzales-Kwan is an incumbent public official. She admitted in her Compliance dated October 28, 2019 that she is the incumbent Municipal Mayor of Guiuan, Eastern Samar.

Second, the Information filed against accused Gonzales-Kwan is valid. She was charged with violation of Section 3 (e) of R.A. No. 3019 under the Information dated September 22, 2017. Accused Gonzales-Kwan was arraigned on August 3, 2018, during which she entered a plea of "not guilty" to the charge in the said Information.⁴

Having entered her plea, accused Gonzales-Kwan is deemed to have admitted and acknowledged the validity of the Information under which she was charged except on the following grounds: 1) the Information charges no offense; 2) the Court has no jurisdiction over the offense charged; 3) the penalty or the offense has been extinguished; and 4) double jeopardy has attached.

In *Miranda v. Sandiganbayan, et al.*,⁵ the Supreme Court stressed:

It is basic that entering a plea waives any objection the petitioner may have to the validity of the information except on the following grounds: (1) the information charges no offense; (2) the trial court has no jurisdiction over the offense charged; (3) the penalty or the

³ *Bustillo v. Sandiganbayan*, G.R. No. 146217, April 7, 2006.

⁴ Order dated August 3, 2018, Records, vol. 1, pp. 353-354.

⁵ G.R. No. 154098, July 27, 2005.



offense has been extinguished; and (4) double jeopardy has attached. Objections to the sufficiency of the allegations in the Amended Information do not fall among the exceptions to the rule. They fall under the objection that the information "does not conform substantially to the prescribed form." Needless to state, the petitioner has by his acts acquiesced to the validity and sufficiency of the Amended Information.

The issue on the validity of the Information dated September 22, 2017 had also been resolved with finality when the Court denied the Motion to Dismiss/Quash Information⁶ dated November 7, 2017 on the ground of inordinate delay filed by accused Gonzales-Kwan.⁷ Accused Gonzales-Kwan neither sought reconsideration of the said resolution nor filed a petition for certiorari. As far as the Court is concerned, there is no more question as to the validity of the Information.

With the concurrence of the two conditions, the suspension *pendente lite* of accused Gonzales-Kwan becomes mandatory. Once the Information is found to be sufficient in form and substance or its validity is determined, it becomes the ministerial duty of this Court to issue an order of suspension *pendente lite* against the accused and **"there are no ifs and buts about it"**.⁸

In *Beroa v. Sandiganbayan*,⁹ the Supreme Court emphasized:

Section 13 is so clear and explicit that there is hardly room for any extended court rationalization of the law. Section 13 unequivocally mandates the suspension of a public official from office pending a criminal prosecution under RA 3019 or Title 7, Book II of the Revised Penal Code or for any offense involving public funds or property or fraud on government. **This Court has repeatedly held that such preventive suspension is mandatory, and there are no 'ifs' and 'buts' about it.** (*Emphasis supplied*)

Section 13 of R.A. No. 3019, as amended, unequivocally provides that the accused public officials "shall be suspended from office" while the criminal prosecution is pending in court. The court has neither discretion nor duty to determine whether suspension *pendente lite* is required to prevent the

⁶ Records, vol. 1, pp. 91-98.

⁷ Resolution dated April 5, 2018, Records, vol. 1, pp. 221-237.

⁸ *Libanan v. Sandiganbayan*, G.R. No. 112386, June 14, 1994; *Emphasis supplied*.

⁹ G.R. No. 142456. July 27, 2004.

accused from using his office to intimidate witnesses or frustrate his prosecution or continue committing malfeasance in office.¹⁰

WHEREFORE, premises considered, accused **ANNALIZA P. GONZALES-KWAN** is ordered **SUSPENDED** *pendente lite*, for a period of ninety (90) days, as Municipal Mayor of Guiuan, Southern Samar, or any other public position she may now or hereafter be holding.

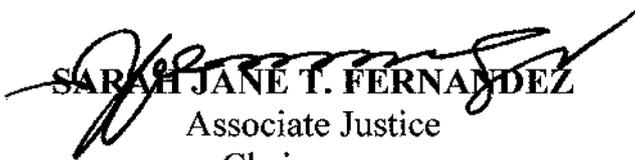
Accused Annaliza P. Gonzales-Kwan is ordered to **CEASE AND DESIST** from further performing and/or exercising the functions, duties, and privileges of her position upon the implementation of this Order of Preventive Suspension. The suspension of the accused shall be automatically lifted upon the expiration of the 90-day period from the implementation of this resolution.

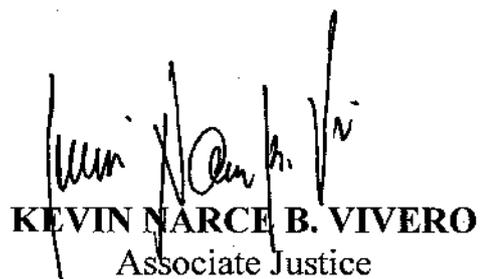
Let a copy of this Resolution be furnished the Secretary of the Department of the Interior and Local Government (DILG) for the implementation of this order of suspension. The Secretary of the DILG, or his duly authorized representative, is directed to inform the Court of the action taken thereon, the actual date of the implementation of the suspension, and the expiry date of the 90-day period, within fifteen (15) days from receipt hereof.

SO ORDERED.


KARL B. MIRANDA
Associate Justice

WE CONCUR:


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson


KEVIN NARCE B. VIVERO
Associate Justice

¹⁰ *Bolastig v. Sandiganbayan*, G.R. No. 110503, August 4, 1994.