



Republic of the Philippines
SANDIGANBAYAN
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

SB-17-CRM-1385

For: Violation of Section 7 (d) of
Republic Act (R.A.) No. 6713

-versus-

PRESENT:

AILEEN CYNTHIA M. AMURAO, ET AL.

Accused,

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

Promulgated: **JAN 07 2020** *[Signature]*

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RESOLUTION

MIRANDA, J.:

This resolves the suspension *pendente lite* of accused Michie H. Meneses (Meneses) and Joyce C. Enriquez (Enriquez).

In its Show Cause Order dated July 23, 2019, Resolution dated October 4, 2019, the Court, pursuant to Section 13 of R.A. No. 3019 and Section 4, Rule VIII of the Revised Internal Rules of the Sandiganbayan,¹ directed accused Meneses and Enriquez to show cause why they should not be suspended *pendente lite* within a non-extendible period of ten (10) days from receipt.

In their Compliance dated October 28, 2019, accused Meneses and Enriquez allege that: 1) their suspension *pendente lite* has become moot and academic because the dismissal by the Court of Appeals of the administrative charges against them for violation of Section 7(d) of R.A. No. 6713 and Grave

¹ 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.

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Misconduct had already become final and executory; 2) their suspension *pendente lite* would be improper and will not serve its purpose because both the Prosecution and the Defense have already presented their respective evidence; 3) the evil sought to be avoided by the suspension *pendente lite* no longer exists because of the dismissal of the administrative cases against them; and 4) suspension *pendente lite* after the dismissal of the administrative cases against them amounts to a penalty

RULING

The Court does not find merit in the arguments of accused Meneses and Enriquez.

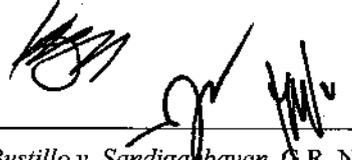
Suspension pendente lite is mandatory.

Section 13 of R.A. No. 3019 states:

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.
(Emphasis supplied)

Suspension from office is mandatory whenever a valid information charges an incumbent public officer with: (1) violation of R.A. No. 3019; (2) violation of Title 7, Book II of the Revised Penal Code; (3) any offense involving fraud upon government; or (4) any offense involving fraud upon public funds or property.²

In this case, the Court finds that all the requisites for the suspension *pendente lite* of accused Meneses and Enriquez exist.


² *Bustillo v. Sandiganbayan*, G.R. No. 146217, April 7, 2006.

Accused Meneses and Enriquez were charged under a valid information for violation of Section 7 (d) of R.A. No. 6713. They entered a plea of "not guilty" to the charge against them. Having entered their respective plea, accused Meneses and Enriquez admitted and acknowledged the validity of the information. Accused Meneses and Enriquez also did not dispute the fact that they are the Tourism Operations Officer and Tourism Operations Assistant, respectively, of the City Government of Puerto Princesa City. As far as the Court is concerned, there is no question as to the validity of the information.

A violation of Section 7 (d) of R.A. No. 6713 is an offense involving fraud upon the government which is a catch-all provision under Section 13 of R.A. No. 3019. The phrase "fraud upon government" means "any instance or act of trickery or deceit against the government." It cannot be read restrictively so as to be equivalent to malversation of funds as this is covered by the preceding phrase "any offense involving . . . public funds or property."³ Accused Meneses and Enriquez were accused of committing fraud upon the government when they allegedly took advantage of their positions to solicit sponsorships from tourism-oriented and private entities or individuals for the tourism activities and related projects of the City Government of Puerto Princesa City.

Once a court determines that the information charging a public officer with an offense under R.A. No. 3019 or Title 7, Book II of the Revised Penal Code, or any other offense involving fraud upon government or public funds or property is valid, the suspension *pendente lite* of the accused must follow as a matter of course.⁴ Preventive suspension under Section 13 of R.A. No. 3019 is mandatory, and there are no 'ifs' and 'buts' about it.⁵

The court possesses no discretion to determine whether a preventive suspension is necessary to forestall the possibility that the accused may use his office to intimidate witnesses, or frustrate his prosecution, or continue committing malfeasance. The presumption is that unless the accused is suspended, he may frustrate his prosecution or commit further acts of malfeasance or do both.⁶

The presumption remains even if the parties have already presented their evidence.

³ *Miranda v. Sandiganbayan*, G.R. No. 154098, July 27, 2005.

⁴ *Flores v. Hon. Layosa*, G.R. No. 154714, August 12, 2004.

⁵ *Villaseñor v. Sandiganbayan*, G.R. No. 180700, March 4, 2008; *Beroña v. Sandiganbayan and People*, G.R. No. 142456, July 27, 2004.

⁶ *Dela Cruz v. Sandiganbayan*, G.R. No. 161929, December 8, 2009.

Suspension pendente lite is not a penalty.

The preventive suspension required under Section 13 of R.A. No. 3019 is **not** a penalty because it is not imposed as a result of judicial proceedings.⁷

It is merely a measure of precaution so that the employee who is charged may be separated, for obvious reasons, from office. Thus, preventive suspension is distinct from the penalty. While the former may be imposed on a respondent during the investigation of the charges against him, the latter may be meted out to him at the final disposition of the case.⁸

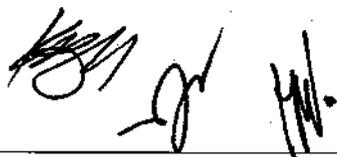
In *Quimbo v. Gervacio*,⁹ the Supreme Court held:

Jurisprudential law establishes a clear-cut distinction between suspension as *preventive measure* and suspension as *penalty*. The distinction, by considering the purpose aspect of the suspensions, is readily cognizable as they have different ends sought to be achieved.

Preventive suspension is merely a preventive measure, a preliminary step in an administrative investigation. The purpose of the suspension order is to prevent the accused from using his position and the powers and prerogatives of his office to influence potential witnesses or tamper with records which may be vital in the prosecution of the case against him. If after such investigation, the charge is established and the person investigated is found guilty of acts warranting his suspension or removal, then he is suspended, removed or dismissed. This is the penalty.

Suspension is a mere preventive measure that arises from the legal presumption that unless the accused is suspended, he may frustrate his prosecution or commit further acts of malfeasance or do both, in the same way that upon a finding that there is probable cause to believe that a crime has been committed and that the accused is probably guilty thereof, the law requires the judge to issue a warrant for the arrest of the accused.¹⁰

Accused Meneses and Enriquez are still entitled to the constitutional presumption of innocence as their culpability remains to be proven.¹¹ If



⁷ *Bayot v. Sandiganbayan*, No. L-61776 to L-61861, March 23, 1984.

⁸ *Villaseñor v. Sandiganbayan*, G.R. No. 180700, March 4, 2008.

⁹ G.R. No. 155620, August 9, 2005.

¹⁰ *Miguel v. Sandiganbayan*, G.R. No. 172035, July 4, 2012.

¹¹ *Berona v. Sandiganbayan*, G.R. No. 142456, July 27, 2004.

acquitted, they shall be entitled to reinstatement and to the salaries and benefits which they failed to receive during their suspension.¹²

The administrative case is distinct from the criminal case.

In *Villaseñor v. Sandiganbayan*,¹³ the Supreme Court stressed the distinct and independent character of the remedies available to an offended party against any impropriety or wrongdoing committed by a public officer, thus:

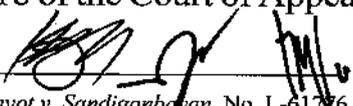
Significantly, there are three kinds of remedies available against a public officer for impropriety in the performance of his powers and the discharge of his duties: (1) civil, (2) criminal, and (3) administrative. These remedies may be invoked separately, alternately, simultaneously or successively. Sometimes, the same offense may be the subject of all three kinds of remedies.

Defeat of any of the three remedies will not necessarily preclude resort to other remedies or affect decisions reached thereat, as different degrees of evidence are required in these several actions. In criminal cases, proof beyond reasonable doubt is needed, whereas a mere preponderance of evidence will suffice in civil cases. In administrative cases, only substantial evidence is required.

It is clear, then, that criminal and administrative cases are distinct from each other. The settled rule is that criminal and civil cases are altogether different from administrative matters, such that the first two will not inevitably govern or affect the third and vice versa. Verily, administrative cases may proceed independently of the criminal proceedings. (Emphasis and underscoring supplied)

The Court of Appeals' dismissal of the administrative cases against accused Meneses and Enriquez is distinct and has no effect on the criminal case. Both cases do not affect each other and may proceed independently of each other. A criminal case will not preclude administrative proceedings, and vice-versa.¹⁴

Moreover, the dispositive portion of the Decision dated January 31, 2018 of the Court of Appeals¹⁵ did not say anything with regard to the criminal


¹² *Bayot v. Sandiganbayan*, No. L-61776 to L-61861, March 23, 1984.

¹³ *Villaseñor v. Sandiganbayan*, G.R. No. 180700, March 4, 2008.

¹⁴ *Id.*

¹⁵ The dispositive portion of the Decision dated January 31, 2018 is reproduced in toto in the Partial Entry of Judgment dated March 3, 2018 (Insofar as petitioners Joyce C. Enriquez and Michie H. Meneses).

case. In fact, the Court of Appeals affirmed all aspects of the Decision dated March 5, 2015 (administrative cases) and Joint Order dated June 30, 2016 of the Office of the Ombudsman except that the administrative cases were dismissed. The Joint Order dated June 30, 2016 affirmed the Resolution dated March 5, 2015 (criminal case) of the Office of the Ombudsman indicting accused Meneses and Enriquez for violation of Section 7 (d) of R.A. No. 6713. However, the Court may consider the decision of the Court of Appeals in resolving the present case later.

WHEREFORE, accused Michie H. Meneses and Joyce C. Enriquez are hereby ordered **SUSPENDED** *pendente lite*, for a period of ninety (90) days, as Tourism Operations Officer and Tourism Operations Assistant, respectively, of the City Government of Puerto Princesa City, or any other public positions they may now or hereafter be holding.

Accused Meneses and Enriquez are ordered to **CEASE AND DESIST** from further performing and/or exercising the functions, duties, and privileges of their positions upon the implementation of this Order of Preventive Suspension. The suspension of accused Meneses and Enriquez shall be automatically lifted upon the expiration of the 90-day period from the implementation of this resolution.

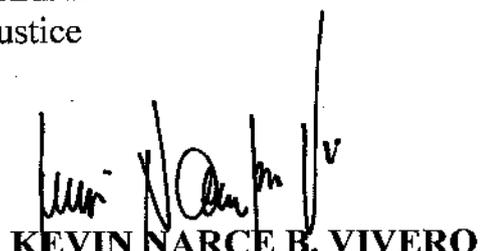
Let a copy of this Resolution be furnished the Secretary of the Department of the Interior and Local Government (DILG) for the implementation of this order of suspension. The Secretary of the DILG, or his duly authorized representative, is directed to inform the Court of the action taken thereon, the 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