REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

**PEOPLE OF THE PHILIPPINES,**
**Plaintiff,**

**SB-22-CRM-0074 to 0083**
**For: Violation of Section 3(e) of R.A. No. 3019**

**SB-22-CRM-0084 to 0093**
**For: Malversation of Public Funds thru Falsification of Public Documents**

*Present*

**- versus -**

**FERNANDEZ, SJ, *J.*,**
Chairperson
**VIVERO, *J.*** and
**HIDALGO,* *J.***

**JERRY E. PACTURAN, ET AL.,**
**Accused.**

*Promulgated:*

August 30, 2022

X----------X

# RESOLUTION

***FERNANDEZ, SJ, J.***

This resolves the following:

1. *Omnibus Motion Ad Cautelam (1. To Produce the Complete Records of the Preliminary Investigation supporting the allegations in the Informations; (2. To Quash the Informations; (3. To Suspend Arraignment/Proceedings)*[1] filed by accused Janet Lim Napoles;

2. *Motion to Quash*[2] filed by accused Teresita L. Panlilio; and

* In view of the inhibition of J. Miranda (Per Administrative Order No. 099-2022 dated May 16, 2022)
[1] Dated July 29, 2022; Record, Vol. 3, pp. 449-464
[2] Dated August 1, 2022; Record, Vol. 3, pp. 466-497

3. The prosecution's *Consolidated Comment/Opposition (Re: Accused Janet Lim Napoles' Omnibus Motion Ad Cautelam dated July 29, 2022 and Accused Teresita L. Panlilio's Motion to Quash dated August 1, 2022).*[3]

In her *Omnibus Motion*, accused Napoles prays (1) that her arraignment be suspended pending the resolution of her said *Omnibus Motion*, and (2) that the Informations in these cases be quashed, and these cases be dismissed pursuant to the Supreme Court's ruling in the *Okabe* case. She avers:

1. The Informations in these cases should be quashed for lack of jurisdiction over the offense charged, and for lack of jurisdiction over the person of the Non-Governmental Organizations (NGOs) whose veils of corporate fiction are sought to be pierced by the allegation in the Informations that she owns the same.

2. Sec. 8(b)[4] [sic], Rule 112 of the Revised Rules on Criminal Procedure provides that the court on its own initiative or on motion of any party, may order the production of the record or any of its part when necessary in the resolution of the case or any incident therein.

3. In *Okabe v. Gutierrez*, it was held that if the judge finds the records and/or evidence submitted by the investigating prosecutor insufficient, the judge may order the dismissal of the case.

4. The records of the preliminary investigation attached to the Informations do not support the allegation therein that she actually owned the named NGOs to which public funds were diverted. The records do not show that she is an incorporator, owner, proprietor, member of the Board of Trustees, duly authorized representative, officer or an employee of the said NGOs.

5. The complete records of the preliminary investigation must be produced to determine whether the said allegation in the Informations is a statement of ultimate fact or a conclusion of law.

6. If the complete records are not produced, then the allegation in the Informations will necessarily be a conclusion of law because a stranger or third party cannot be the real owner or proprietor

[3] Dated August 8, 2022 and filed by electronic mail on August 9, 2022
[4] Sec. 7(b), Rule 112 of the Rules of Court (as amended by A.M. No. 05-8-26-SC)

of a corporation duly organized and existing under Philippine laws unless the doctrine of piercing the veil of corporate fiction is applied. However, before the said doctrine may be applied, the following requisites must first be complied with:

a. That there is an established liability declared in a final and executory decision by a court of competent jurisdiction for the amounts being claimed in the Informations; and,

b. That the court applying the doctrine has jurisdiction over the person of the corporation whose corporate veil shall be pierced.

7. Her and the NGOs' liability in the amount of PhP5 million in each of the Informations has not yet been established. Furthermore, the NGOs are not impleaded for the offenses charged, and the Court has no jurisdiction over the person of the said corporations. Thus, the doctrine of piercing the veil of corporate fiction cannot be applied.

8. She cannot hypothetically admit the allegation in the Informations because the rule on hypothetical admission does not include conclusions of law.

9. The Informations do not appear to charge any offense against her over which the Court can validly exercise its jurisdiction. All the elements of Violation of Sec. 3(e) of R.A. No. 3019 and Malversation do not apply to her because she is not a public officer.

10. The arraignment and proceedings in the present cases must be suspended on the ground of prejudicial question, in view of the pendency of AMLC Case No. 14-002-02 entitled *Republic of the Philippines represented by the Anti-Money Laundering Council v. Janet Lim Napoles, et al.* before the Regional Trial Court of Manila, Branch 37.

11. The issue in the said previously instituted civil action is similar or intimately related to the issue in the present criminal cases, and the resolution of the issue in the civil case determines whether or not the present criminal cases may proceed.

In her *Motion to Quash*, accused Panlilio prays that the Court quash the Amended Informations against her, and dismiss the present cases. She avers:

1. Her rights to due process and to speedy disposition of cases were violated.

a. In *People v. Sandiganbayan (Fifth Division)*,[5] it was held that the graft investigation officer in the Office of the Ombudsman has ten (10) days after investigation to determine probable cause, and five (5) days from resolution to forward the records of the case to the Ombudsman, who shall resolve the same within ten (10) days from receipt.

b. The Ombudsman is expected to argue that the period is merely "directory," but the Ombudsman cannot disregard the said periods.

c. Here, the Ombudsman issued the Resolution finding probable cause almost a year and a half after the case was submitted for resolution.

d. The preliminary investigation took around three years. The Informations were filed around eleven (11) years since the alleged occurrence of the factual antecedents.

e. The Ombudsman proffered no reason for the unjustified length of time in filing the Information against her. The COVID-19 pandemic is not an excuse for the delay because the Supreme Court, as early as April 3, 2020, already provided for the manner of electronic filing of Complaints and Informations, and Posting of Bail.

f. She did not acquiesce to the delay. It is not her duty to follow up on her case.

g. The inordinate delay in the preliminary investigation deprived her of her right to be free from anxiety and expenses of litigation through the timely disposition of the case.

h. She would not be able to raise an adequate defense against the charges due to the delay. Because the transactions occurred more than a decade ago, it is probable that documentary evidence for her defense have already been lost and destroyed, and witnesses to corroborate the defense may no longer be available, or if available, their memories may have already failed.

2. Her right to equal protection was violated.

a. The Ombudsman, in manifest abuse of prosecutorial privilege, singled her out among the public officials and

[5] G.R. No. 239878, February 28, 2022

private individuals who processed the alleged transactions.

b. Respondents De los Reyes, Venancio, Estrada, Labayen/Cabico, Talaboc, Oliveros, Tansip, Encarnacion and Galay were exonerated on the basis of a negative finding of overt acts in participation of a conspiracy.

c. Virgilio R. De los Reyes, then Secretary of the Department of Agrarian Reform (DAR), was exonerated despite being the official with complete control and supervision over his department. The Ombudsman implicitly applied the *Arias* doctrine in his favor. In contrast, she was criminally charged notwithstanding the fact that she also did not sign the MOAs involved in the case.

d. The Ombudsman held that Ronald J. Venancio, DAR Budget Officer IV, was not liable because his act of signing Box B of the Obligation Requests was merely ministerial.

e. In *Roque v. Court of Appeals, et al.*,[6] it was held that the authority of the Head of Office to approve the Disbursement Voucher is dependent on the certifications of the Budget Officer, the Accountant and the Treasurer, on the principle that it is improbable for the Head of Office to check all details, and to conduct physical inspection and verification of all papers, considering the voluminous paperwork attendant to his or her office.

f. If Venancio, the Budget Officer, was absolved from any wrongdoing, she should similarly be freed of any liability. Her alleged approval of the Disbursement Vouchers was a ministerial act based on the signatures of her subordinates.

In its *Consolidated Comment/Opposition*, the prosecution counters:

1. Accused Napoles' *Omnibus Motion Ad Cautelam*

a. The *Okabe* case is not on all fours with the present cases. There, it was held that therein respondent judge acted with grave abuse of discretion in finding probable cause for the petitioner's arrest in the absence of copies of

[6] G.R. No. 179245, July 23, 2008

affidavits of the complainant's witnesses, petitioner's counter-affidavit, and evidence adduced during the preliminary investigation.

b. In the present cases, the Informations are supported by the Ombudsman's Resolution and the supporting evidence, which the Court surely considered when it found probable cause for the issuance of warrants of arrest and commitment order against the accused.

c. The Informations and Amended Informations do not allege that accused Napoles is an incorporator, owner, proprietor, member of the board of trustees, a duly authorized representative, an officer, or an employee of the subject NGOs. The accusation against her is not grounded on her ownership of the NGOs. She is charged as a co-conspirator of the accused public officials and other private individuals in the anomalous disbursement of PhP50 million from the DAR's regular funds for the supposed implementation of projects which turned out to be non-existent, and in the malversation of the said public funds through falsification of public documents.

d. The matter of accused Napoles' ownership or control of the subject NGOs is evidentiary in nature, which is best passed upon in a full-blown trial. At this point, the doctrine of piercing the veil of corporate fiction is irrelevant.

e. Preliminary investigation is a function that properly pertains to the public prosecutor. Whether or not the function has been correctly discharged by not indicting the subject NGOs is a matter that the trial court does not and may not be compelled to pass upon.

f. Accused Napoles' claim that the Informations do not charge any offense against her is erroneous. It is well-settled that private persons, when acting in conspiracy with public officers, may be indicted, and, if found guilty, held liable for the pertinent offenses under Section 3 of R.A. No. 3019. Similarly, in *Barriga v. Sandiganbayan*,[7] it was held that a private individual may be held liable for malversation if he or she conspires with an accountable public officer to commit malversation.

g. Accused Napoles is charged with acting in conspiracy with accused Jerry E. Pacturan, Teresita L. Panlilio and Rowena U. Agbayani, all high-ranking public officers

[7] G.R. Nos. 161784-86, April 26, 2005

from the DAR, in perpetrating the crime of violation of Sec. 3(e) of R.A. No. 3019 and Malversation of Public Funds through Falsification of Public Documents.

h. There is no prejudicial question that would warrant the suspension of the arraignment and proceedings in the present cases. The present cases do not involve the PDAF, and the subject transactions are not included in the pending AMLC case.

2. Accused Panlilio's *Motion to Quash*

a. The right to speedy disposition of cases is violated only when there is inordinate delay, such that 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 unjustifiable motive, a long period of time is allowed to elapse without the party having the case tried.

b. The right to speedy disposition of cases is a flexible concept. In determining if there was deprivation of such right, the balancing test is observed, considering the four factors, *i.e.*, (1) length of delay; (2) reason for the delay; (3) the defendant's assertion of the right; and (4) prejudice to the defendant. Later, in *Cagang v. Sandiganbayan*, the Supreme Court clarified the mode of analysis where the right to speedy disposition of cases is invoked.

c. Although under the Rules of Court, there are periods for the conduct of the preliminary investigation, the Supreme Court held, in *Salcedo v. The Honorable Third Division of the Sandiganbayan*, that it has never set a threshold period for terminating the preliminary investigation proceedings before the Office of the Ombudsman premised on the fact that the right to speedy disposition of cases is a relative or flexible concept. In *Republic v. Sandiganbayan (Special Second Division)*, it was reiterated that the ten-day period for the Ombudsman to act on the resolution is merely directory.

d. There was no inordinate delay in the preliminary investigation. The delay in the proceedings was reasonable, considering the circumstances.

i. The Complaint was filed on October 11, 2016, and the respondents were ordered to submit their counter-affidavits. The Ombudsman approved the Resolution dated May 20, 2019 on September 23, 2019. The

preliminary investigation would have been concluded but it continued with the filing of the respondents' motions for reconsideration, which were denied in the Joint Order dated December 6, 2019.

ii. Accused Jerry E. Pacturan moved for reconsideration/reinvestigation, and filed his counter-affidavit only on January 22, 2020. However, before the same was resolved, the entire country was placed under a state of public health emergency because of the coronavirus disease (COVID-19).

iii. Although OCA Circular No. 89-2020 dated April 3, 2020 permitted the electronic filing of Informations, from March 2020 to January 2022, the country was placed under varying levels of community quarantine and the alert level system, which resulted in lockdowns and work suspensions.

iv. Relative to accused Pacturan's counter-affidavit, the Ombudsman approved the Resolution dated September 23, 2020 on November 23, 2020, and resolved accused Pacturan's motion for reconsideration in the Order dated March 22, 2021.

v. The present cases are a part of the investigation on the 27 DAR projects worth ₱220 million, involving four regions, and several municipalities and NGOs. There were at least 18 respondents implicated in the Complaint and the voluminous records required meticulous verification and evaluation. Furthermore, the resolutions and orders went through levels of review and approval for a thorough study of the case.

e. Accused Panlilio failed to establish that the perceived delay in the preliminary investigation caused her prejudice tantamount to the deprivation of her right to speedy disposition of cases.

f. Accused Panlilio failed to assert her right to speedy disposition of cases, which may be waived. She filed her *Motion to Quash* only after the cases were set for arraignment. She did not invoke her right to speedy disposition of cases during the preliminary investigation, and even after the Court resolved the Motion to Admit the *Amended Informations*. Accused Panlilio can no longer invoke the said constitutional right because she acquiesced to the delay.

g. The Office of the Ombudsman is mandated to determine the existence of probable cause against the accused, and to determine whether or not to file the corresponding information with the appropriate court. The issue of whether there was abuse of discretion in the determination of probable cause against accused Panlilio and in the dismissal of the charges against the other respondents is not a ground for the dismissal of these cases.

## THE COURT'S RULING

The Court resolves to deny the respective Motions of accused Napoles and accused Panlilio.

### *I. Accused Napoles' Omnibus Motion Ad Cautelam*

Accused Napoles, citing *Okabe v. Gutierrez*,[8] contends that these cases must be dismissed because of the insufficiency of the records which are required to be attached to the Informations. According to her, the Informations allege that she owned the NGOs indicated therein, but there is nothing in the records attached to the Informations that would show that she is an incorporator, owner, proprietor, member of the Board of Trustees, duly authorized representative, officer, or employee of the said NGOs.

Accused Napoles' contention is untenable. Indeed, in *Okabe*, it was held that if the judge finds the records and/or evidence submitted by the investigating prosecutor to be insufficient, he or she may order the dismissal of the case. It must, however, be stressed that the issue in the said case involves therein respondent judge's finding of probable cause for the issuance of a warrant of arrest. The pertinent portion of the said decision reads:

> If the judge is able to determine the existence or non-existence of probable cause on the basis of the records submitted by the investigating prosecutor, there would no longer be a need to order the elevation of the rest of the records of the case. However, if the judge finds the records and/or evidence submitted by the investigating prosecutor to be insufficient, he [or she] may order the dismissal of the case, or direct the investigating prosecutor either to submit more evidence or to submit the entire records of the preliminary investigation, to enable him [or her] to discharge his [or

[8] G.R. No. 150185, May 27, 2004

her] duty. The judge may even call the complainant and his [or her] witness to themselves answer the court's probing questions to determine the existence of probable cause. The rulings of this Court in *Soliven v. Makasiar* and *Lim v. Felix* are now embodied in Section 6, Rule 112 of the Revised Rules on Criminal Procedure, with modifications, *viz.*:

> SEC. 6.[9] *When warrant of arrest may issue.* – (a) *By the Regional Trial Court.* – Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information
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> (underscoring supplied)

The ruling in *Okabe* does not apply to the present cases. In the Resolution dated May 17, 2022,[10] this Court, after examining the Informations, and evaluating the Ombudsman's Resolution and the supporting evidence, had already determined that sufficient grounds exist for the finding of probable cause for the issuance of warrants of arrest against the accused in these cases, and ordered the issuance of same.

Next, accused Napoles argues that the Informations must be quashed because they fail to charge any offense against her over which the Court can validly exercise its jurisdiction. According to accused Napoles, the allegation in the Informations that she actually owned the named NGOs is a conclusion of law because the complete records of the preliminary investigation that will support such allegation were not submitted. Furthermore, the allegation of facts constituting the elements of the offenses charged do not apply to her because she is a private person, not a public officer.

Accused Napoles' arguments do not persuade. In *People v. Sandiganbayan (Fourth Division)*,[11] the Supreme Court explained that the main purpose of an Information is to ensure that the accused is formally informed of the facts and the acts constituting the offense

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[9] Now Sec. 5 (A.M. No. 05-8-26-SC)
[10] Record, Vol. 3, p. 93
[11] G.R. No. 160619, September 9, 2015

charged. It further discussed what must be alleged for the Information to be considered sufficient. *Viz.*:

> A motion to quash an information on the ground that the facts charged do not constitute an offense should be resolved on the basis of the allegations in the Information whose truth and veracity are hypothetically admitted. The question that must be answered is whether such allegations are sufficient to establish the elements of the crime charged without considering matters *aliunde*. In proceeding to resolve this issue, courts must look into three matters: (1) what must be alleged in a valid information; (2) what the elements of the crime charged are; and (3) whether these elements are sufficiently stated in the Information.
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> ***Sufficiency of Complaint or Information***
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> Sections 6 and 9 of Rule 110 of the Rules of Court are relevant. They state-
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> > Sec. 6. *Sufficiency of complaint or information.* – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; **the acts or omissions complained of as constituting the offense;** the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.
> >
> > When an offense is committed by more than one person, all of them shall be included in the complaint or information.
> >
> > x x x
> >
> > Sec. 9. *Cause of the accusation.* – The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but **in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.**
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> (Emphasis supplied.)
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> This Court, in *Lazarte v. Sandiganbayan*, explained the two important purposes underlying the rule. *First*, it enables the accused to suitably prepare his [or her] defense. *Second*, it allows the accused, if found guilty, to plead his [or her] conviction in a subsequent prosecution for the same offense. Thus, this Court held

> that the true test in ascertaining the validity and sufficiency of an Information is "whether the crime is described in intelligible terms with such particularity as to apprise the accused, with reasonable certainty, of the offense charged."
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> x x x
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> x x x. We have consistently and repeatedly held in a number of cases that an Information need only state the ultimate facts constituting the offense and not the finer details of why and how the crime was committed.

In *People v. Naciongayo*,[12] it was held that the elements of Violation of Sec. 3(e) of Republic Act No. 3019 (R.A. No. 3019) are as follows:

1. The accused must be a public officer discharging administrative, judicial, or official functions (**or a private individual acting in conspiracy with such public officers**);

2. He or she must have acted with manifest partiality, evident bad faith, or inexcusable negligence; and,

3. His or her action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his or her functions.

The Amended Informations in SB-22-CRM-0074 to 0083, charging the accused with Violation of Sec. 3(e) of R.A. No. 3019 are similarly worded except for certain details such as the dates, the names of the NGOs and projects, and the numbers of the documents involved, among others. The accusatory portion of the Amended Information in SB-22-CRM-0074 reads:

> That on October 20, 2011, or some time prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused public officers **JERRY ERMIO PACTURAN** (Pacturan), Undersecretary for the Support Services Office, **TERESITA LEGASPI PANLILIO** (Panlilio), Director for Finance and Management Service, and **ROWENA UBANDO AGBAYANI** (Agbayani), Chief Accountant, all of the Department of Agrarian Reform (DAR), while in the performance of their

[12] G.R. No. 243897, June 8, 2020

administrative and/or official functions, conspiring and confederating with one another and with private individuals **JANET LIM NAPOLES** (Napoles), **EVELYN DITCHON DE LEON** (De Leon), and **RONALD JOHN B. LIM, JR.** (Lim, Jr.) did then and there willfully, unlawfully and criminally cause undue injury to the government in the amount of at least **FIVE MILLION PESOS (PhP5,000,000.00)** and give unwarranted benefits, advantage, and preference to said private individuals and to **Ginintuang Alay sa Magsasaka Foundation, Inc.** (GAMFI), a non-governmental organization controlled by Napoles, through manifest partiality, evident bad faith or gross inexcusable negligence by falsifying certain documents, by disregarding the relevant provisions of Republic Act No. 9184, and other applicable laws, rules, regulations, and standard operating procedures in the accreditation and selection of the said NGO as project partner and in the disbursement and release of funds to said NGO for project implementation, and by making it appear that said amount will be used for the project **"Agricultural Harvest Development Strategy"** for farmer-beneficiaries of the Comprehensive Agrarian Reform Program in the **Municipality of San Nicolas, Batangas**, which project turned out to be non-existent, to the damage and prejudice of the government in the said amount, through the following acts:

(a) x x x

x x x

(d) **Napoles** ordered Lim, Jr. to act as President of GAMFI; directed witnesses Benhur K. Luy (Luy), Merlina P. Suñas (Suñas) and accused De Leon to prepare a fabricated letter-request of Mayor Epifanio R. Sandoval (Sandoval) of San Nicolas, Batangas to Sen. Jose "Jinggoy" E. Estrada for funding of a livelihood project; directed Lim, Jr. to prepare the aforesaid MOA and a fabricated project proposal suitable to the needs of the LGU; directed witness Luy to falsify the signatures of Mayor Sandoval in the aforesaid letter-request dated March 28, 2011 and in the MOA, and the signature of notary public Mark S. Oliveros in the MOA; directed De Leon to submit the foregoing documents to the DAR office, receive the check, and issue the official receipt; and took or misappropriated the FIVE MILLION PESOS (PhP5,000,000.00);

x x x

As seen above, the Informations allege that the accused public officers, all of the DAR, while in the performance of their administrative and/or official functions, conspiring with each other and with the accused private individuals, caused undue injury to the government, and gave unwarranted benefits, advantage and preference to the

named NGO and to the accused private individuals, through manifest partiality, evident bad faith or gross inexcusable negligence, by falsifying certain documents and disregarding certain laws, rules and regulations, and by making it appear that the stated amount will be used for the named project which turned out to be non-existent. The Amended Informations also allege the specific acts attributable to each of the accused.

On the other hand, the elements of Malversation under Art. 217 of the Revised Penal Code (RPC), and of Falsification of Public Documents under Art. 171, and par. 1 of Art. 172, of the Revised Penal Code, are as follows:

**Malversation**[13]
**(Art. 217 of the RPC)**

1. That the offender is a public officer;

2. That he or she had custody or control of funds or property by reason of the duties of his or her office;

3. That those funds or property were funds or property for which he or she was accountable; and,

4. That he or she appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.

**Falsification of Public Documents**
**(Art. 171 of the RPC)**[14]

1. The offender is a public officer, employee, or a notary public;

2. The offender takes advantage of his or her official position; and,

3. The offender falsifies a document by committing any of the acts of falsification under Article 171 of the RPC.[15]

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[13] Please see *Corpuz v. People*, G.R. No. 241383, June 8, 2020

[14] Please see *Torres v. Court of Appeals*, G.R. No. 241164, August 14, 2019

[15] 1. Counterfeiting or imitating any handwriting, signature, or rubric; 2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate; 3. Attributing to persons

**(Paragraph 1, Art. 172 of the RPC)**[16]

1. The offender is a private individual or a public officer or employee who did not take advantage of his or her official position;

2. That he or she committed any of the acts of falsification enumerated in Article 171 of the RPC; and,

3. That the falsification was committed in a public, official or commercial document.

As in the Amended Informations in SB-22-CRM-0074 to 0083, charging the accused with Violation of Sec. 3(e) of R.A. No. 3019, the Amended Informations in SB-22-CRM-0084 to 0093 are similarly worded except for certain details. The accusatory portion of the Amended Information in SB-22-CRM-0084 reads:

> That on October 20, 2011, or some time prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused **JERRY ERMIO PACTURAN** (Pacturan), **TERESITA LEGASPI PANLILIO** (Panlilio) and **ROWENA UBANDO AGBAYANI** (Agbayani), all public officers, being the Undersecretary for the Support Services Office, Director for Finance and Management Service, and Chief Accountant, respectively, of the Department of Agrarian Reform (DAR), and as such are accountable for public funds received and/or entrusted to them by reason of their office, acting in relation to their office and taking advantage of the same, conspiring and confederating with one another and with private individuals **JANET LIM NAPOLES** (Napoles), **EVELYN DITCHON DE LEON** (De Leon) and **RONALD JOHN B. LIM, JR.** (Lim, Jr.), did then and there willfully, unlawfully and feloniously misappropriate or consent to, or through abandonment or negligence, permit the said private individuals and **Ginintuang Alay sa Magsasaka Foundation, Inc.** (GAMFI), a non-governmental organization controlled by Napoles, to take or misappropriate public funds of the DAR in the amount of FIVE MILLION PESOS (PhP5,000,000.00) by means of falsifying the signature of Mayor Epifanio R. Sandoval in the letter-request dated

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who have participated in an act or proceeding statements other than those in fact made by them; 4. Making untruthful statements in a narration of facts; 5. Altering true dates; 6. Making any alteration or intercalation in a genuine document which changes its meaning; 7. Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such copy a statement contrary to, or different from, that of the genuine original; or 8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

[16] Please see *Tanenggee v. People*, G.R. No. 179448, June 26, 2013

March 28, 2011 and in the Memorandum of Agreement (MOA) dated April 5, 2011 for the project "**Agricultural Harvest Development Strategy**" for farmer-beneficiaries of the Comprehensive Agrarian Reform Program in the **Municipality of San Nicolas, Batangas**, which made it appear that the said municipality participated in the project and that the amount of FIVE MILLION PESOS (PhP5,000,000.00) will be used therefor, which project turned out to be non-existent, and by disregarding the pertinent provisions of Republic Act No. 9184, and other applicable laws, rules, regulations, and standard operating procedures in the accreditation and selection of the said NGO as project partner and in the disbursement and release of funds to said NGO for project implementation, to the damage and prejudice of the government in the said amount, through the following acts:

(a) x x x

x x x

(d) **Napoles** ordered Lim, Jr. to act as the President of GAMFI; directed witnesses Benhur K. Luy (Luy), Merlina P. Suñas (Suñas) and accused De Leon to prepare a fabricated letter-request of Mayor Epifanio R. Sandoval (Sandoval) of San Nicolas, Batangas, to Sen. Jose "Jinggoy" E. Estrada for funding of a livelihood project; directed Lim, Jr. to prepare the aforesaid MOA and a fabricated project proposal suitable to the needs of the LGU; directed witness Luy to falsify the signatures of Mayor Sandoval in the aforesaid letter-request dated March 28, 2011 and in the MOA, and the signature of notary public Mark S. Oliveros in the MOA; directed De Leon to submit the foregoing documents to the DAR office, receive the check, and issue the official receipt; and took or misappropriated the FIVE MILLION PESOS (pHp5,000,000.00);

x x x

As in Violation of Sec. 3(e) of R.A. No. 3019, a private individual may be held liable for Malversation if he or she conspires with an accountable public officer to commit Malversation.[17]

As seen above, the Amended Informations charging the accused with Malversation through Falsification of Public Documents allege that the accused public officers are accountable for the public funds which they received and/or were entrusted to them by reason of their office;

[17] Please see *People v. Sendaydiego*, G.R. Nos. L-33252, L-33253 and L-33254, January 20, 1978; *People v. Pajaro*, G.R. Nos. 167860-65, June 17, 2008

that they conspired with one another, and with accused private individuals; and that they misappropriated or consented to, or through abandonment or negligence, permitted the accused private individuals and named NGO to take or misappropriate the said funds of the DAR, by disregarding the pertinent laws and regulations, and by falsifying the signature of the Mayor of the named local government unit in certain documents to make it appear that the named local government unit participated in the project which turned out to be non-existent. The Amended Informations also allege the specific acts attributable to each of the accused.

In fine, with respect to accused public officers, the Amended Informations in these cases sufficiently allege acts constituting the elements of Violation of Sec. 3(e) of R.A. No. 3019, and of Malversation through Falsification of Public Documents. The Amended Informations also sufficiently allege the acts performed by accused private individuals in conspiracy with the other accused.

Indeed, the Amended Informations allege that accused Napoles controlled the named NGOs. However, as seen above, the charges against her are not based solely on her alleged control of the said NGOs, but also on her alleged specific acts in furtherance of the conspiracy to commit the crimes charged. The details of how accused Napoles controlled the named NGOs are matters of evidence, which are better raised during the trial. At this point, it is unnecessary to discuss whether the doctrine of piercing the veil of corporate fiction may be applied. It is also unnecessary to discuss the Court's jurisdiction over the person of the named NGOs, considering that they are not even included as accused in these cases.

Finally, there is no ground for suspending the arraignment and the proceedings on the basis of prejudicial question. Accused Napoles failed to show (1) how the issue in AMLC Case No. 14-002-02 entitled *Republic of the Philippines represented by the Anti-Money Laundering Council vs. Janet Lim Napoles, et al.* is intimately related to those in the present cases; and (2) how the resolution of such issue determines whether or not the criminal action may proceed. As previously discussed, although the Amended Informations allege that accused Napoles controlled the named NGOs, the charges against her are not solely based on her alleged control of the named NGOs, but also based on other acts.

*II. Accused Panlilio's Motion to Quash*

Accused Panlilio claims that her right to speedy disposition of cases was violated because of the inordinate delay in the proceedings before the Office of the Ombudsman.

The right to speedy disposition of cases is enshrined in Sec. 16, Art. III of the Constitution, which provides:

> SECTION 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

In *Corpuz v. Sandiganbayan*,[18] the Supreme Court explained that the right to speedy disposition of cases is violated only when the proceeding is attended by vexatious, capricious and oppressive delays. Determining whether or not an accused was deprived of such right is not susceptible by precise qualification because the concept of a speedy disposition is a relative term, and must necessarily be a flexible concept.

In determining whether there was a violation of the right to speedy disposition of cases, the Supreme Court adopted the balancing test which considered the following factors: (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.[19] Later, in *Cagang v. Sandiganbayan, Fifth Division*,[20] the Supreme Court *en banc* clarified the mode of analysis in situations where the right to speedy disposition of cases or the right to speedy trial is invoked. To wit:

> *First*, the right to speedy disposition of cases is different from the right to speedy trial. While the rationale for both rights is the same, the right to speedy trial may only be invoked in criminal prosecutions against courts of law. The right to speedy disposition of cases, however, may be invoked before any tribunal, whether judicial or quasi-judicial. What is important is that the accused may already be prejudiced by the proceeding for the right to speedy disposition of cases to be invoked.
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> *Second*, a case is deemed initiated upon the filing of a formal complaint prior to a conduct of a preliminary investigation. This Court acknowledges, however, that the Ombudsman should set

[18] G.R. No. 162214, November 11, 2004
[19] Please see *Perez v. People*, G.R. No. 164763, February 12, 2008
[20] G.R. Nos. 206438 and 206458, and G.R. Nos. 210141-42, July 31, 2018

reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case. Delays beyond this period will be taken against the prosecution. The period taken for fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay.

*Third*, courts must first determine which party carries the burden of proof. If the right is invoked within the given time periods contained in current Supreme Court resolutions and circulars, and the time periods that will be promulgated by the Office of the Ombudsman, the defense has the burden of proving that the right was justifiably invoked. If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay.

If the defense has the burden of proof, it must prove *first*, whether the case is motivated by malice or clearly only politically motivated and is attended by the utter lack of evidence, and *second*, that the defense did not contribute to the delay.

Once the burden of proof shifts to the prosecution, the prosecution must prove *first*, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; *second*, that the complexity of the issues and the volume of evidence made the delay inevitable; and *third*, that no prejudice was suffered by the accused as a result of the delay.

*Fourth*, determination of the length of delay is never mechanical. Courts must consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised.

An exception to this rule is if there is an allegation that the prosecution of the case was solely motivated by malice, such as when the case is politically motivated or when there is continued prosecution despite utter lack of evidence. Malicious intent may be gauged from the behavior of the prosecution throughout the proceedings. If malicious prosecution is properly alleged and substantially proven, the case would automatically be dismissed without need of further analysis of the delay.

Another exception would be the waiver of the accused to the right to speedy disposition of cases or the right to speedy trial. If it can be proven that the accused acquiesced to the delay, the constitutional right can no longer be invoked.

In all cases of dismissals due to inordinate delay, the causes of the delays must be properly laid out and discussed by the relevant court.

> *Fifth*, the right to speedy disposition of cases or the right to speedy trial must be timely raised. The respondent or the accused must file the appropriate motion upon the lapse of the statutory or procedural periods. Otherwise, they are deemed to have waived their right to speedy disposition of cases.

The record shows that the *Complaint* dated June 24, 2016 of Graft Investigation and Prosecution Officer II Ryan P. Medrano, as nominal complainant, was filed with the Office of the Ombudsman on October 11, 2016.[21] The respondents were then directed to submit their respective counter-affidavits in the Order dated December 8, 2016. The said Order was not served upon therein respondents Galay and Pacturan because they were no longer employed in their known office addresses or were unknown in their given addresses on record.[22] On different dates from January 13, 2017 to July 26, 2018, therein respondents Gumafelix, Agbayani, Napoles, Rodriguez, De Leon, Panlilio, and de los Reyes filed their respective counter-affidavits with the Office of the Ombudsman.[23] Therein respondents Estrada, Venancio, and Tansip also filed their respective counter-affidavits, while the rest of the respondents failed to comply with the Office of the Ombudsman's Order.[24]

Thereafter, the Ombudsman approved the Resolution dated May 20, 2019 on September 23, 2019,[25] finding probable cause to indict therein respondents Pacturan, Panlilio, Agbayani, Napoles, Lim, De Leon, De Asis, Gumafelix and Rodriguez for Malversation of Public Funds through Falsification of Public Documents and Violation of Sec. 3(e) of R.A. No. 3019, and dismissing the charges against the rest of the respondents. Therein respondents Napoles, Pacturan and Panlilio then filed their respective motions for reconsideration on October 21, 2019, October 28, 2019 and October 31, 2019, respectively.[26] In the Office of the Ombudsman's *Joint Order (Motions for Reconsideration)* dated December 6, 2019[27] and approved by the Ombudsman on January 31, 2020, therein respondent Pacturan's Motion for Reconsideration/Reinvestigation was granted, and he was allowed to

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[21] Record, Vol. 1, p. 283

[22] Office of the Ombudsman's Resolution dated May 20, 2019, p. 13; Record, Vol. 1, p. 104

[23] Record, Vol. 1, pp. 188-259 (counter-affidavits of accused Panlilio, Agbayani, Napoles, Gumafelix, Rodriguez and De Leon); Prosecution's *Consolidated Comment/Opposition*, p. 11

[24] Office of the Ombudsman's Resolution dated May 20, 2019, p. 13; Record, Vol. 1, p. 104

[25] Record, Vol. 1, pp. 127-128

[26] Office of the Ombudsman's *Joint Order (Motions for Reconsideration)* dated December 6, 2019, p. 3; Record, Vol. 1, p. 172

[27] Record, Vol. 1, pp. 170-185

file his counter-affidavit. On the other hand, therein respondents Napoles and Panlilio's respective Motions for Reconsideration were denied.

Therein respondent Pacturan filed his counter-affidavit on January 22, 2020,[28] and the Office of the Ombudsman resolved the case as to him in the Resolution dated September 23, 2020,[29] which the Ombudsman approved on November 23, 2020. Therein respondent Pacturan filed his motion for reconsideration of the said Resolution, which was denied in *Order (Motion for Reconsideration)* dated February 15, 2021 and approved by the Ombudsman on March 22, 2021.[30] The Informations in these cases were eventually filed with the Sandiganbayan on April 22, 2022.

The Ombudsman's Administrative Order No. 1, series of 2020[31] took effect on September 25, 2020,[32] long after the preliminary investigation, with respect to accused Panlilio, was terminated. Thus, the said Administrative Order did not apply. Sec. 4, Rule II of the *Rules of Procedure of the Office of the Ombudsman*[33] provides that the preliminary investigation of cases falling under the jurisdiction of the Sandiganbayan shall be conducted in the manner prescribed in Sec. 3, Rule 112 of the Rules of Court, subject to the provisions in Sec. 4, Rule II of the said *Rules of Procedure of the Office of the Ombudsman.* Sec. 3, Rule 112 of the Rules of Court, which provides for the periods pertinent to the conduct of the preliminary investigation, reads:

> **Sec. 3.** *Procedure.* – The preliminary investigation shall be conducted in the following manner:
>
> (a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or

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[28] Office of the Ombudsman's Resolution dated September 23, 2020, p. 12; Record, Vol. 1, p. 143
[29] Record, Vol. 1, pp. 132-158
[30] Record, Vol. 1, pp. 161-167
[31] Prescribing the Periods in the Conduct of Investigations by the Office of the Ombudsman
[32] **Section 16.** *Effectivity.* – These rules shall take effect fifteen (15) days following the completion of their publication in a newspaper of general circulation in the Philippines. The published rules shall be filed with the Office of the National Administrative Register in the University of the Philippines Law Center.; *Administrative Order No. 1, Series of 2020* was filed with the University of the Philippines and published in "The Manila Times" on September 10, 2020
[33] Administrative Order No. 07, series of 1990

government official authorized to administer oath, or, in their absence or unavailability, before a notary public, each of whom must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense.

Objects as evidence need not be furnished a party but shall be made available for examination, copying, or photographing at the expense of the requesting party.

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.

(d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.

(e) The investigating officer may set a hearing if there are facts and issues to be clarified from a party or a witness. The parties can be present at the hearing but without the right to examine or cross-examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned.

The hearing shall be held within ten (10) days from submission of the counter-affidavits and other documents or from the expiration of the period for their submission. It shall be terminated within five (5) days.

> (f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

The Ombudsman's *Joint Order (Motions for Reconsideration)*, which resolved accused Panlilio's Motion for Reconsideration of the Ombudsman's Resolution dated May 20, 2019, was approved on January 31, 2020, or three (3) years, three (3) months, and twenty (20) days from the filing of the Complaint. Without doubt, the time it took to terminate the preliminary investigation, with respect to accused Panlilio, was beyond the period provided in the Rules of Court.

However, as early as *Dansal v. Fernandez*,[34] the Supreme Court took judicial notice of the steady stream of cases reaching the Office of the Ombudsman, and held that although under the Rules of Court, the Investigating Officer must issue a resolution within ten (10) days from the submission of the case, the period fixed by law is merely "directory," although it cannot be disregarded or ignored completely, with absolute impunity. Later, in *Salcedo v. Third Division of the Sandiganbayan*,[35] the Supreme Court held that it has never set a threshold period for terminating the preliminary investigation proceedings before the Office of the Ombudsman, considering that the right to speedy disposition of cases is a relative or flexible concept. More recently, in *Republic v. Sandiganbayan (Special Second Division)*,[36] the Supreme Court reiterated that while the rules provide a ten-day period for the Ombudsman to act on the resolution, such period is merely directory, considering the heavy docket of the Ombudsman.

Here, it does not appear that there was complete disregard of the established procedure on the part of the Office of the Ombudsman, or that investigation was motivated by malice or merely to harass the respondents, or that the proceedings were attended by utter lack of evidence. It also appears that the Office of the Ombudsman gave the respondents ample opportunity to explain their side by filing their respective counter-affidavits. From the time of the filing of the last counter-affidavit on July 26, 2018, it took the Office of the Ombudsman around ten (10) months to prepare the Resolution dated May 20,

[34] G.R. No. 126814, March 2, 2000
[35] G.R. Nos. 223869-960, February 13, 2019
[36] G.R. No. 231144, February 19, 2020

2019.[37] Considering the number of transactions and respondents involved, and further considering that the Office of the Ombudsman also handles other cases, such period is not unreasonable. After the Ombudsman approved the said Resolution and furnished the respondents with copies of the same, it gave the said respondents ample opportunity to file their respective motions for reconsideration of the said Resolution. The preliminary investigation would have been terminated upon the Ombudsman's approval of the *Joint Order (Motions for Reconsideration)* on January 31, 2020. However, the Office of the Ombudsman could not have filed the Informations with the Sandiganbayan immediately thereafter because it granted accused Pacturan's Motion for Reconsideration/Reinvestigation, and allowed him to file his counter-affidavit.

The Office of the Ombudsman approved the Resolution dated September 23, 2020, resolving the Complaint as to accused Pacturan, on November 23, 2020, and thereafter, approved the *Order (Motion for Reconsideration)* dated February 15, 2021, denying accused Pacturan's Motion for Reconsideration, on March 22, 2021. It must be recalled that from March 2020 to January 2022, Metro Manila and other parts of the Philippines were placed under a series of community quarantines and Alert Levels to prevent the spread of the COVID-19 infection. These resulted in work suspensions and closure of courts, among others. Considering the disruptions caused by the said community quarantines and Alert Levels, the delay caused by the proceedings as to accused Pacturan was not unreasonable.

Next, accused Panlilio claims that she was prejudiced as a result of the delay because it brought about anxiety and expense of litigation, and she would not be able to raise an adequate defense against the charges. According to her, there is a great probability that documentary evidence and witnesses for her defense will no longer be available, and if available, their memories may have already failed.

The Court is not convinced. Accused Panlilio failed to show actual, specific, and real injury to her rights.

In *People v. Sandiganbayan (First Division)*,[38] the Supreme Court held that in determining whether the right to speedy disposition

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[37] The Resolution was signed by Graft Investigation and Prosecution Officer III Christine Carol A. Casela-Doctor on June 7, 2019

[38] G.R. No. 233557-67, June 19, 2019

was violated, it is essential to show the prejudice suffered due to the delay. There must be a conclusive factual basis to support the claim of prejudice. The pertinent portion of the Supreme Court's Decision reads:

> In determining whether the right of the accused to a speedy disposition of his/her case was violated, it is likewise essential for the accused to show that he/she suffered prejudice due to delay. This "prejudice" is assessed in light of the interests of the accused which the speedy disposition right is designed to protect, such as: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired.
>
> To begin with, the first criterion does not apply in the case at bar, as the respondent was never arrested or taken into custody, or otherwise deprived of his liberty in any manner. Thus, the only conceivable harm to Diaz are the anxiety brought by the investigation, and the potential prejudice to his ability to defend his case. Even then, the harm suffered by Diaz occasioned by the filing of the criminal charges against him is too minimal and insubstantial to tip the scales in his favor.
>
> Suffice to say, not every claim of prejudice shall conveniently work in favor of the respondent. First, there must be a conclusive factual basis behind the purported claim of prejudice, as the Court cannot rely on pure speculation or guesswork. The respondent, who asserts to have suffered prejudice, must show actual, specific, and real injury to his rights. Thus, a "mere reference to a general asseveration that their 'life, liberty and property, not to mention reputation' have been prejudiced is not enough.
>
> Diaz's claim that he "endured financial drain, restrained freedom of movement, public ridicule, embarrassment, anguish, sleepless nights, restless moments, and isolation from friends and other people," are vague assertions, and typical trepidations and problems attendant to every criminal prosecution. Concededly, anxiety typically accompanies a criminal charge. However, not every claim of anxiety affords the accused a ground to decry a violation of the rights to speedy disposition of cases and to speedy trial. "The anxiety must be of such nature and degree that it becomes oppressive, unnecessary and notoriously disproportionate to the nature of the criminal charge."
>
> Likewise, the alleged public ridicule, embarrassment, anguish, sleepless nights, restless moments and isolation do not amount to that degree that would justify the nullification of the appropriate and regular steps that must be taken to assure that while the innocent should go unpunished, those guilty must expiate for their offense.

They pale in importance to the gravity of the charges and the paramount considerations of seeking justice.

Furthermore, a claim that the delay has caused an impairment to one's defense must be specific and not merely conjectural. "Vague assertions of faded memory will not suffice. Failure to claim that particular evidence had been lost or had disappeared defeats speedy trial claim.

In the instant case, all that Diaz decried were general claims that he could no longer locate unnamed and unidentified witnesses and that he is having difficulty securing unspecified documents. These shall not serve to deprive the State of its right to prosecute criminal offenses involving millions of pesos from the public coffers.

It must be remembered that in *Alvizo v. Sandiganbayan*, the Court warned against purported claims of prejudice that are simply "conjectural and dubious invocations." The claim of possible loss of evidence, or unavailability of witnesses, although prejudicial to the accused, must still be scrutinized, *viz.*:

> We recognize the concern often invoked that undue delay in the disposition of cases may impair the ability of the accused to defend himself, the usual advertence being to the possible loss or unavailability of evidence for the accused. We do not apprehend that such a difficulty would arise here. x x x.
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> x x x x
>
> Consequently, whatever apprehension petitioner may have over the availability of such documents for his defense is inevitably shared in equal measure by the prosecution for building its case against him. This case, parenthetically, is illustrative of the situation that what is beneficial speed or delay for one side could be harmful speed or delay for the other, and vice-versa. Accordingly, we are not convinced at this juncture that petitioner has been or shall be disadvantaged by the delay complained of or that such delay shall prove oppressive to him. The just albeit belated prosecution of a criminal offense by the State, which was enjoined by this very Court, should not be forestalled either by conjectural supplications of prejudice or by dubious invocations of constitutional rights.

In any event, accused Panlilio appears to have acquiesced to the delay, and has therefore, waived her right to speedy disposition of cases. In *Cagang*, it was held that the accused's failure to timely invoke the right to speedy disposition of cases may indicate acquiescence to the delay. In *People v. Sandiganbayan (First Division)*,[39] it was held that the failure to timely assert one's right to speedy disposition of cases constitutes a waiver of such right. *Viz.*:

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[39] *Ibid.*

> It must be remembered that the invocation of one's right to speedy disposition of cases must be timely raised. The accused must file the appropriate motion upon the lapse of the statutory or procedural periods. Failure to do so constitutes a waiver of such right. Indeed, although the Sandiganbayan noted that Diaz raised this right immediately after the filing of the Information, there was no showing that he attempted to assert his right during the conduct of the preliminary investigation.
>
> Although there may have been delay, Diaz has not shown that he asserted his right during the period, choosing to wait until the Information was filed against him with the Sandiganbayan. In *Cagang*, this was considered against therein accused, who raised no objection before the OMB, where the inordinate delay was claimed to have occurred.
>
> Indeed, Diaz, as the accused, has no obligation to bring himself to trial. However, his act of waiting for four (4) years while the preliminary investigation took place, passively accepting the delay without any objection, and then suddenly asserting his right to speedy disposition as soon as he received the OMB's adverse ruling, is certainly questionable.

Similarly, accused Panlilio insists that the Office of the Ombudsman should have resolved the case within the ten (10)-day period after the case was submitted for resolution. However, it does not appear that she asserted her right to speedy disposition of cases after the lapse of the said period. And indeed, it was not her duty to follow up on her case, but it does not appear that she raised the matter when she had the opportunity do to so, when she filed her Motion for Reconsideration of the Office of the Ombudsman's Resolution.[40]

In fine, there was no violation of accused Panlilio's right to speedy disposition of cases.

Finally, with regard to the matter of the alleged violation of accused Panlilio's right to equal protection, she is, in essence, assailing the Office of the Ombudsman's finding of probable cause against her, and the lack thereof as to other respondents, in the Office of the Ombudsman's Resolution dated May 20, 2019. This Court has no jurisdiction to act on such matter. In *Gatchalian v. Office of the Ombudsman*,[41] the Supreme Court explained that such matter must be

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[40] *Joint Order (Motion for Reconsideration)* dated December 6, 2019, pp. 7-8 (summary of arguments in accused Panlilio's Motion for Reconsideration of the Office of the Ombudsman's Resolution dated May 20, 2019); Record, Vol. 1, pp. 176-177

[41] G.R. No. 229288, August 1, 2018

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brought to the Supreme Court through a petition for certiorari under Rule 65 of the Rules of Court. To wit:

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With regard to orders, directive, or decisions of the Ombudsman in criminal or nonadministrative cases, the Court, in *Tirol, Jr. v. Del Rosario*, held that the remedy for the same is to file a petition for *certiorari* under Rule 65 of the Rules of Court. The Court explained:

> True, the law is silent on the remedy of an aggrieved party in case the Ombudsman found sufficient cause to indict him in a criminal or nonadministrative cases. We cannot supply such deficiency if none has been provided in the law. We have held that the right to appeal is a mere statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of law. Hence, there must be a law expressly granting such privilege. The Ombudsman Act specifically deals with the remedy of an aggrieved party from orders, directives and decisions of the Ombudsman in administrative disciplinary cases. As we ruled in *Fabian*, the aggrieved party is given the right to appeal to the Court of Appeals. Such right of appeal is not granted to parties aggrieved by orders and decisions of the Ombudsman in criminal cases, like finding probable cause to indict accused persons.
>
> **However, an aggrieved party is not without recourse where the finding of the Ombudsman as to the existence of probable cause is tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction. An aggrieved party may file a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure.**

The Court in *Tirol, Jr.*, however was unable to specify the court – whether it be the RTC, the CA, or the Supreme Court – to which the petition for *certiorari* under Rule 65 should be filed given the concurrent jurisdictions of the aforementioned courts over petitions for *certiorari*.

Five years after, the Court clarified in *Estrada v. Desierto* that a petition for *certiorari* under Rule 65 of the Rules of Court questioning the finding of the existence of probable cause – or the lack thereof – by the Ombudsman should be filed with the Supreme Court. The Court elucidated:

> *But in which court should this special civil action be filed?*
>
> ***Petitioner contends that certiorari under Rule 65 should first be filed with the Court of Appeals as the doctrine of hierarchy of courts precludes the immediate invocation of this Court's jurisdiction.*** *Unfortunately for petitioner, he is flogging a dead horse as this argument has already been shot down in Kuizon v. Ombudsman where we decreed –*
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> In dismissing petitioners' petition for lack of jurisdiction, the Court of Appeals cited the case of *Fabian vs. Desierto*. The appellate court correctly ruled that its jurisdiction extends only to decisions of the

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> Office of the Ombudsman in administrative cases. In the *Fabian* case, we ruled that appeals from decisions of the Office of the Ombudsman in *administrative disciplinary* cases should be taken to the Court of Appeals under Rule 43 of the 1997 Rules of Civil Procedure. It bears stressing that when we declared Section 27 of Republic Act No. 6770 as unconstitutional, we categorically stated that said provision is involved only whenever an appeal by *certiorari* under Rule 45 is taken from a decision in an administrative disciplinary action. It cannot be taken into account where an original action for *certiorari* under Rule 65 is resorted to as a remedy for judicial review, such as from an incident in a criminal action. In fine, we hold that the present petition should have been filed with this Court.
>
> ***Kuizon* and the subsequent case of *Mendoza-Arce v. Office of the Ombudsman (Visayas)* drove home the point that the remedy of aggrieved parties from resolutions of the Office of the Ombudsman finding probable cause in criminal cases or nonadministrative cases, when tainted with grave abuse of discretion, is to file an original action for *certiorari* with this Court and not with the Court of Appeals.** In cases when the aggrieved party is questioning the Office of the Ombudsman's finding of lack of probable cause, as in this case, there is likewise the remedy of *certiorari* under Rule 65 to be filed with this Court and not with the Court of Appeals following our ruling in *Perez v. Office of the Ombudsman.*
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**WHEREFORE**, Court rules as follows:

1. The *Omnibus Motion Ad Cautelam* of accused Napoles is hereby DENIED for lack of merit.

2. The *Motion to Quash* of accused Panlilio is hereby DENIED for lack of merit.

SO ORDERED.

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

***We Concur:***

**KEVIN NARCE B. VIVERO**
Associate Justice

**GEORGINA D. HIDALGO**
Associate Justice