



Republic of the Philippines

Sandiganbayan

Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on September 28, 2022.

Present:

Justice MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Chairperson

Justice ZALDY V. TRESPESES ----- Member

Justice GEORGINA D. HIDALGO ----- Member

The following resolution was adopted:

CRIMINAL CASE NO. SB-12-CRM-0164 to 0167–

PEOPLE V. JESUS A. VERZOSA, ET. AL.

This resolves the following:

1. Accused Avensuel G. Dy's "**OMNIBUS MANIFESTATION AND MOTION**" dated September 10, 2022;¹ and,
2. Prosecution's "**OPPOSITION (on accused Dy's Omnibus Manifestation and Motion dated 10 September 2022)**" dated September 14, 2022.²

GOMEZ-ESTOESTA, J.:

✓ This resolves Accused Dy's *Omnibus Manifestation and Motion* and the Prosecution's *Opposition* thereto.

ACCUSED DY'S
OMNIBUS MANIFESTATION AND MOTION

The *Omnibus Manifestation and Motion* of accused Dy is comprised of two parts:

- a) To Join/Adopt Co-Accused Lukban's Manifestation and Motion dated September 1, 2020; and
- b) To Quash/Dismiss the above-entitled cases on the ground of legal jeopardy or *res judicata in prison grey*.

¹ Records, Vol. 33, pp. 326-346. The *Omnibus Manifestation and Motion* was received by the court on September 12, 2022 at 11:18 a.m. and set for hearing on September 19, 2022.

² Records, Vol. 33, pp. 364-369.

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In his *Omnibus Manifestation and Motion*, accused Dy argues that his sole involvement in the procurement and inspection of the helicopters can be narrowed down to his preparation of the Inspection Report Form, to wit:

29. The crux of the matter that prompted the Ombudsman to file the afore-cited cases against Lukban and Dy is because of the fact that the INSPECTION REPORT FORM which they issued stating that “the undersigned together with the Technical and Acceptance Committee of TDRD found the items stated in the approved PNPPPO#0(M)220909-017 to be in good order/condition and in accordance/conforming to the approved NAPOLCOM specifications” is false and untrue. According to the Ombudsman, the subject choppers are not conforming to the NAPOLCOM specifications. Hence, the inspection report is a falsity.

30. The sole documentary evidence alluded to by the Ombudsman against both accused (INSPECTION REPORT FORM marked by the Prosecution as Exhibits “MM-348”, “MM-357”, “J-441”, “K-139”, “BB”) are actually one and the same though differently marked in the process.

X X X

33. In summing up all the charges against both accused, the Ombudsman in its Joint Resolution formulated the theory of conspiracy, this wise:

“Respondent Dy, Property Inspector of the Directorate For Comptrollership, was part of the conspiracy. In his Inspection Report Form dated November 13, 2009, he stated that:

Inspection conducted by the undersigned together with the Technical and Acceptance Committee of TDRD found the items stated in the approved and in accordance/conforming to the approved NAPOLCOM specifications.

However, as already discussed, they were not in accordance with NAPOLCOM specifications contrary to Dy’s statement. How then could Dy say that the helicopters conformed with standard? x x x

Accused Dy also emphasizes that he and Lukban both worked in the Office of the Directorate for Comptrollership. Hence, both of their responsibilities should only be bound by the mandate of their office, viz:

34. Accused Dy and Lukban are police officers assigned in the same Office of the Directorate for Comptrollership. Accused Dy is the inspector while Lukban, as Chief Management Division of said office is his immediate superior.

X X X

40. Thus, working together in the same office for comptrollership as inspector and Chief Management officer with the rank of PO3 and Senior/Supt., respectively, and the latter acting as his immediate superior in the performance of their duties as provided for in their Office Hand Book,

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they “could only be held responsible of the duties enumerated therein and could not be charged with functions that fall outside the ambit of the Management Division mandate.”

41. Consequently, by being collectively charged with the same piece of document (Inspection Report Form) under the same conspiracy theory formulated by the Prosecution, inevitably shows that they **share common interest** and substantially **share common defense**, which is by simply relying [on] the resolution of the IAC along with the WTCD report which form part and parcel of their own Inspection Report. (emphasis in the original text)

x x x

49. The Comptrollership’s Hand Book which serves as Lukban’s confined duties and responsibilities should also be the same confined duties and responsibilities for Accused Dy as they served the same office. x x x

On the face of these premises, accused Dy now deduces that the Supreme Court in *Lukban v. Ombudsman*³ had ruled that the Inspection Report Form was not a “**falsity, false or untrue**” in absolving Lukban of administrative liability. He offers this conclusion, as quoted below:

21. In a nut shell (sic), Lukban was exonerated because the only documentary evidence (INSPECTION REPORT FORM x x x) used by the Prosecution against him is **not a falsity, false or untrue**. The signature of Lukban found in the “NOTED BY” portion of the said Inspection Report Form stating that **the LPOH conform to the NAPOLCOM specification** is not deceitful and/or falsified because he simply relied on the IAC report which has the sole responsibility and whose act is the final act in determining that the standard specification of the LPOH conformed to that of the NAPOLCOM. x x x

x x x

54. On February 12, 2020, the Honorable Supreme Court rendered a Decision exonerating Co-Accused Lukban of his administrative liability. In absolving Lukban, the Supreme Court was emphatic in stating that the Inspection Report Form is not falsified. The entry appearing therein was a product of honest findings and recommendations “on the basis of the IAC resolution along with the WTCD report which confirmed the findings of the technical inspection conducted on the LPOHs.” (emphasis from the Omnibus Motion and Manifestation; underlining supplied)

Then again, accused Dy cites *Lukban v. Sandiganbayan*⁴ in seeking the dismissal of his criminal charges, viz:

While the general rule remains to be that administrative and criminal liabilities are distinct and separate from one another, and that the dismissal of a criminal case does not *ipso facto* result in the dismissal of the related administrative case and vice-versa, this Court recognizes that when an administrative case has been dismissed by a court on the

³ G.R. No. 238563, February 12, 2020.

⁴ G.R. 254312-15, March 2, 2022.

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ground that the act or omission which serves as the basis for administrative liability does not exist or such act or omission cannot be considered as unlawful or wrongful, and no additional evidence was presented in the criminal case, then the findings in the administrative case can be used as basis for the dismissal of the criminal case for as long as both cases are based on the same facts and circumstances.

Following the Supreme Court's twin Decisions in *Lukban v. Ombudsman*⁵ and *Lukban v. Sandiganbayan*⁶, accused Dy concludes that the criminal cases (SB-12-CRM-0164 and SB-12-CRM-0167) against him should be dismissed as the evidence and charges against him and Lukban are identical. He alleges that the concept of *res judicata in prison grey* or double jeopardy would support his stance for a dismissal.

Accused Dy likewise prays for his reinstatement to his former rank as Police Officer 3, and the payment of his back salaries and benefits.

PROSECUTION'S OPPOSITION

The Prosecution avers that the *Omnibus Motion and Manifestation* has no merit. In its *Opposition*, the Prosecution highlights the following points:

First, the rationale of the Supreme Court in dismissing the cases against accused Lukban was that he merely relied on the "findings of the Inspection and Acceptance Committee (IAC) and the property inspections within his division" and this negated any dishonest intent.

Second, there is a disparity on the degree of participation between accused Lukban and accused Dy. The Inspection Report Form reveals that accused Dy has conducted his own inspection as reflected in the "Findings/Comment/Recommendations" portion reproduced below:

FINDINGS/COMMENTS/RECOMMENDATIONS:

Inspection conducted by the undersigned together with the Technical and Acceptance Committee of TDRD found the items stated in the approved PNPPPO#O(M)220909-017 to be in good order/condition and in accordance conforming to the approved NAPOLCOM specifications.

Inspected By:

PC3 Arsenio G Dy
Property Inspector

Date Inspected: November 13, 2009
In: INSP02/DY

NOTED:
FOR THE DIRECTOR, DC

MANSUE N LUKBAN
Police Senior Superintendent
Chief, Management Div, ODC

⁵ G.R. No. 238563, February 12, 2020.

⁶ G.R. Nos. 254312-15, March 2, 2022.

Lastly, the concept of *res judicata in prison gray* does not apply to accused Dy. The Supreme Court Decision in *Lukban vs. Sandiganbayan*⁷ did not rule or even discuss the participation of accused Dy. Hence, the ruling in *Lukban vs. Sandiganbayan* could not be extended to the benefit of accused Dy as the parties, cause of action, and subject matter were not identical; and hence, could not apply to accused Dy in the same way.

THE COURT'S RULING

The *Omnibus Manifestation and Motion*⁸ of accused Dy cannot be granted. The dismissal of the criminal and administrative cases ordered by the Supreme Court against accused Lukban cannot be extended to accused Dy.

Difference in role and functions between Lukban and Dy.

For one, the twin cases of *Lukban v. Ombudsman*⁸ and *Lukban vs. Sandiganbayan*⁹ are only relevant for accused Lukban, not accused Dy. Accused Dy's theory that he and accused Lukban "share common interest" or "share common defense" is a conclusion built on a wrong premise.

In *Lukban v. Ombudsman*,¹⁰ it was palpable that accused Lukban was cleared of his administrative as well as criminal liability when his signature on the "NOTED BY" portion of the Inspection Report Form was not construed as an act of dishonesty as he merely "*relied on the IAC and the property inspectors within his division*". To quote:

x x x Lukban cannot be held liable for serious dishonesty or conduct prejudicial to the best interest of the service. To reiterate, dishonesty — like bad faith — is not simply bad judgment or negligence, but a question of intention. Lukban's acts do not show any disposition to defraud, cheat, deceive, or betray, nor any intent to violate the truth. Moreover, **Lukban's reliance on the findings of the IAC and the property inspectors within his division negates any dishonest intent.** (emphasis and underlining supplied)

For sure, the "*property inspectors within his division*" could only refer to accused Dy in this instance. In exculpating the charges filed against accused Lukban, the Supreme Court did intend to look at the participation of the "***IAC and the property inspectors within [Lukban's] division***" which necessarily meant that they cannot be exculpated in the same way as that of accused Lukban. No "common interest" nor "common defense" could thus be taken from this.

⁷ G.R. Nos. 254312-15. March 2, 2022.

⁸ G.R. No. 238563, February 12, 2020.

⁹ G.R. Nos. 254312-15. March 2, 2022.

¹⁰ G.R. No. 238563, February 12, 2020.

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Then again, in *Lukban vs. Sandiganbayan*,¹¹ the Supreme Court reiterated that accused Lukban had relied on the “*IAC and the property inspections within his division*”, to wit:

Third, it is undisputed that in dismissing the administrative charges against herein petitioner, the First Division of this Court found that the latter merely relied on the IAC Resolution as regards the compliance of the LPOH units with the NAPOLCOM specifications when he affixed his signature on the Inspection Report Form under the portion of “Noted by.” It was also emphasized therein that it was the IAC who has the responsibility of inspecting the deliveries to make sure that they conform to the quantity and the approved technical specifications in the contract, and to accept or reject the same. x x x Thus, it was also declared that petitioner’s acts do not show any disposition to defraud, cheat, deceive, or betray, nor any intent to violate the truth, and his reliance on the findings of IAC and the property inspection within his division negates any dishonest intent. (emphasis and underlining supplied)

The Supreme Court further considered the functions and duties of accused Lukban as **Chief of the Management Division** of the PNP Directorate for Comptrollership, to quote:

x x x Lukban's official duties **revolve only around accounting and fund or resource management.** To be sure, his claim that the function of verifying the LPOH specifications belonged to different departments of the PNP is, in fact, already recognized by jurisprudence.

This cannot be said of accused Dy. The responsibilities of accused Dy as **Property Inspector** are starkly different from the role of accused Lukban as Chief of the Management Division. As pointed out by the Prosecution, the Inspection Report Form¹² itself reveals that accused Dy has inspected the two helicopters himself on November 13, 2009. The Inspection Report Form states “**Inspection conducted by the undersigned together with the Technical and Acceptance committee of TDRD**”. In contrast, accused Lukban merely indicated “**Noted**” in affixing his signature thereunder.

Undeniably, there is a marked disparity in the participation of accused Dy as the Property Inspector and accused Lukban as Chief of the Management Division. Hence, the twin cases of *Lukban v. Ombudsman*¹³ and *Lukban vs. Sandiganbayan*¹⁴ cannot be invoked by accused Dy to move for the dismissal of the criminal cases against him.

Besides, contrary to the assertion of accused Dy, the Supreme Court never pronounced that *the Inspection Report Form was not a “falsity, false or untrue”* in the twin cases of *Lukban v. Ombudsman* and *Lukban vs. Sandiganbayan*. Rather, the Supreme Court held that Accused Lukban could not be considered as acting with serious dishonesty **for having relied on the**

¹¹ G.R. Nos. 254312-15. March 2, 2022.

¹² Exhibits “MM-348” / “J-441” / “K-139” / “BB” / “36-Verzosa” / “27-Lukban and Antonio”.

¹³ G.R. No. 238563, February 12, 2020.

¹⁴ G.R. Nos. 254312-15. March 2, 2022.

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inspection of the IAC and the property inspectors within his division, as quoted above.

Invocation of *res judicata* or double jeopardy with no first jeopardy to allude to.

The court agrees with the Prosecution that accused Dy cannot invoke *res judicata in prison gray* as the term simply connotes double jeopardy. As held in *People v. Escobar*,¹⁵ a dismissal on this ground requires that the **accused has been convicted or acquitted or that the case against the person has been dismissed**, as quoted here:

An interlocutory order denying an application for bail, in this case being criminal in nature, does not give rise to *res judicata*. As in *Trinidad*, even if we are to expand the argument of the prosecution in this case to contemplate "*res judicata in prison grey*" or double jeopardy, the same will still not apply. **Double jeopardy requires that the accused has been convicted or acquitted or that the case against him or her has been dismissed or terminated without his express consent.** x x x (citations omitted, emphasis supplied)

Definitely, there is no first jeopardy to even speak of; no resolution or decision to which the charges against accused Dy have been dismissed or terminated. He has neither been acquitted or convicted at this stage of the proceedings. Hence, there is no basis to quash the information based on *res judicata in prison gray* or double jeopardy.

Court has no jurisdiction to review administrative liability of the accused.

Although accused Dy prays for his reinstatement in service, the court has no jurisdiction to hear and order his reinstatement, much less order the payment of his back salaries and all benefits which may have accrued from the time of his dismissal. These reliefs are part of the administrative aspect of the case before the Office of the Ombudsman whose decision on the same may only be appealed to the Court of Appeals. As stated in the Rules of Procedure of the Office of the Ombudsman,¹⁶ the remedy of a respondent is to file a petition for review before the Court of Appeals, to wit:

RULE III
PROCEDURE IN ADMINISTRATIVE CASES

¹⁵ G.R. No. 214300, July 26, 2017.

¹⁶ Administrative Order No. 07, April 10, 1990 as amended by Administrative Order No. 17 on September 7, 2003.

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Section 7. Finality and execution of decision.- Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. **In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review** under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

An appeal shall not stop the decision from being executory. **In case the penalty is suspension or removal and the respondent wins such appeal**, he shall be considered as having been under preventive suspension and shall be **paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.** (emphasis and underlining supplied)

The remedy of appealing before the Court of Appeals for administrative cases was affirmed by the Supreme Court in *Yatco vs. Office of the Deputy Ombudsman for Luzon*¹⁷, viz:


In *Ornales v. Office of the Deputy Ombudsman for Luzon*, a Rule 65 petition was filed with the CA to question the Ombudsman's order holding respondent administratively liable for grave misconduct and finding probable cause to indict him for violation of RA 3019. The CA dismissed the Rule 65 petition for lack of jurisdiction. The Court affirmed the CA's dismissal of the petition for being the wrong remedy, stressing that it has "repeatedly pronounced that the [Ombudsman's] orders and decisions in criminal cases may be elevated to this Court in a Rule 65 petition, while **its orders and decisions in administrative disciplinary cases may be raised on appeal to the [CA].**" (emphasis supplied)

In sum, accused Dy should have appealed the administrative disciplinary case and prayed for the relief of reinstatement and payment of back salaries before the Court of Appeals, not before this court. This court could only hear the criminal aspect of the cases.

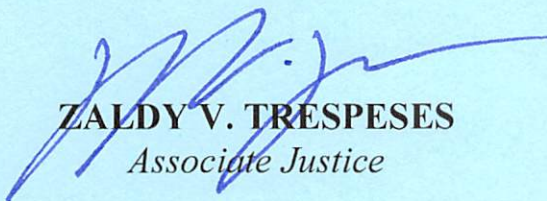
WHEREFORE, the *Omnibus Manifestation and Motion* filed by accused Avensuel G. Dy praying for the dismissal of the charges filed against him is **DENIED**.


SO ORDERED.

¹⁷ G.R. No. 244775, July 06, 2020.


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice, Chairperson

WE CONCUR:


ZALDY V. TRESPESSES
Associate Justice


GEORGINA D. HIDALGO
Associate Justice