

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MARIA SHIELA HUBAHIB G.R. Nos. 212491–92
TUPAZ,

Petitioner,

Present:

-versus-

PERALTA, J., *Chairperson*,
LEONEN,
REYES, A., JR.,
HERNANDO, and
CARANDANG,* JJ.

THE OFFICE OF THE DEPUTY
OMBUDSMAN FOR THE
VISAYAS; ATTY. FERNANDO
ABELLA, REGISTER OF DEEDS;
and MACRINA ESPINA,
Respondents.

Promulgated:
March 6, 2019

X-----*Richard J. Leonen*-----X

DECISION

LEONEN, J.:

Public prosecutors must address the different dimensions of complaints raised before them. When they provide well-reasoned resolutions on one (1) dimension, but overlook palpable indications that another crime has been committed, they fail to responsibly discharge the functions entrusted to them. This amounts to an evasion of positive duty, an act of grave abuse of discretion correctible by certiorari.

This resolves a Petition for Certiorari¹ under Rule 65 of the 1997 Rules of Civil Procedure, praying that the assailed April 23, 2013

* Designated additional Member per Special Order No. 2624 dated November 28, 2018.

¹ *Rollo*, p. 131–157.

Consolidated Evaluation Report² and November 25, 2013 Order³ issued in OMB-V-C-13-0098 by public respondent Office of the Deputy Ombudsman for the Visayas be set aside for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

In its assailed Consolidated Evaluation Report, the Office of the Deputy Ombudsman for the Visayas dismissed the Criminal Complaint for falsification (as penalized under Article 171⁴ of the Revised Penal Code) and violation of Section 3(e)⁵ of the Anti-Graft and Corrupt Practices Act, filed by petitioner Maria Shiela Hubahib Tupaz (Tupaz) against private respondents Fernando M. Abella (Atty. Abella), Registrar of Deeds of Catarman, Northern Samar, and Macrina Espiña (Macrina), a private individual and the person at whose urging Abella allegedly acted.⁶

In its assailed Order, the Office of the Deputy Ombudsman for the Visayas denied Tupaz's Motion for Reconsideration.

In her Complaint-Affidavit⁷ (Complaint), Tupaz stated that her

² Id. at 8–11. The Consolidated Evaluation Report was penned by Graft Investigation and Prosecution Officer II Maria Corazon S. Vergara-Naraja, reviewed by Acting Director Euphemia B. Bacalso, and approved by Deputy Ombudsman for the Visayas Pelagio S. Apostol of the Office of the Deputy Ombudsman for the Visayas, Cebu City.

³ Id. at 70–72. The Order was penned by Graft Investigation and Prosecution Officer II Maria Corazon S. Vergara-Naraja, reviewed by Acting Director Euphemia B. Bacalso, and approved by Deputy Ombudsman for the Visayas Pelagio S. Apostol of the Office of the Deputy Ombudsman for the Visayas, Cebu City.

⁴ REVISED PENAL CODE, art. 171 provides:

ARTICLE 171. Falsification by Public Officer, Employee or Notary or Ecclesiastic Minister. — The penalty of prisión mayor and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

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 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 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.

⁵ Rep. Act No. 3019 (1960), sec. 3(e) provides:

SECTION 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

....

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

⁶ *Rollo*, p. 27.

⁷ Id. at 27–38.

mother, Sol Espiña Hubahib (Hubahib), was the registered owner of a 100,691-square meter property in Barangay Rawis, Lao-ang, Northern Samar, covered by Original Certificate of Title No. 15609. Since its issuance in 1971, she added, a duplicate has always been in the possession of their family—initially by Hubahib and, upon her demise, by her heirs.⁸

On April 17, 2011, Atty. Abella canceled Original Certificate of Title No. 15609 and, in its stead, issued Transfer Certificate of Title Nos. 116-2011000073 and 116-2011000074 in favor of Genaro Espiña (Genaro), represented by his attorney-in-fact, Macrina.⁹ According to Tupaz, this cancellation was anchored on the following:

1. A document labeled as the owner's duplicate of Original Certificate of Title No. 15609 but which Tupaz argued was "materially and essentially different"¹⁰ from the copy on file with the Register of Deeds and the genuine owner's duplicate copy in her family's custody;
2. A Certificate Authorizing Registration supposedly issued by the Bureau of Internal Revenue, which indicated that no capital gains tax was paid despite the property being a more than 100,000-square meter commercial land with zonal valuation of ₱400.00 per square meter as of 2002. The same certificate indicated that only ₱2,655.00 in documentary stamp taxes and ₱100.00 for the certification fee were paid;¹¹
3. A 1972 Deed of Conveyance, which was never annotated onto Original Certificate of Title No. 15609, and which had surfaced only in 2011, bearing a forgery of Hubahib's signature;¹² and
4. A subdivision plan that was made without the participation of or notice to Tupaz or her co-heirs/owners.¹³

Tupaz maintained that Atty. Abella: (1) issued a spurious owner's duplicate copy of Original Certificate of Title No. 15609;¹⁴ (2) tolerated the use of an equally spurious Certificate Authorizing Registration and Deed of Conveyance;¹⁵ and (3) enabled the issuance of specious transfer certificates of titles, with Genaro as beneficiary.¹⁶ Hence, she filed her Complaint, asserting that Atty. Abella, along with Macrina, were liable for falsification, graft and corrupt practices, misconduct, dishonesty, and conduct prejudicial

⁸ Id. at 27–28.

⁹ Id. at 138.

¹⁰ Id. at 139.

¹¹ Id. at 32 and 139.

¹² Id. at 33 and 139.

¹³ Id.

¹⁴ Id. at 32.

¹⁵ Id. at 33–35.

¹⁶ Id. at 138.

to the best interest of the service.

Tupaz's Complaint was docketed as OMB-V-C-13-0098 for the criminal aspect concerning falsification and graft and corrupt practices, and OMB-V-A-13-0100 for the administrative aspect concerning misconduct, dishonesty, and conduct prejudicial to the best interest of the service.¹⁷

In its assailed April 23, 2013 Consolidated Evaluation Report,¹⁸ the Office of the Deputy Ombudsman for the Visayas dismissed Tupaz's Complaint for being "premature"¹⁹ and declined to file criminal informations—both for falsification and graft and corrupt practices—against Atty. Abella and Macrina. It reasoned:

Upon scrutiny of the present complaint, it is found that the issue on the possible criminal liability of the respondents and the administrative liability of respondent ABELLA is closely intertwined with the issue on ownership of the subject property. It hinges on which party has the better right over the lot in question. If the transfer of the title of the property in favor of respondent ESPÍÑA is upheld as valid, the present charges for falsification and dishonesty, etc. against the respondents would have no leg to stand on. Hence, the issue presented before this Office cannot be resolved without first touching on the overarching issue on ownership which is not within our jurisdiction to determine. This matter should be brought before the proper forum wherein questions regarding the transfer of title can be adjudicated.²⁰

In its assailed November 25, 2013 Order,²¹ the Office of the Deputy Ombudsman for the Visayas denied Tupaz's Motion for Reconsideration. Maintaining that the Complaint was premature, it stated that Tupaz "has the option to again lodge the same complaint as long as the issue on ownership of the subject property has been settled by the proper court."²²

Thus, Tupaz filed this Petition for Certiorari²³ specifically assailing the ruling of the Office of the Deputy Ombudsman for the Visayas on the criminal aspect of her Complaint. While no longer making averments concerning Abella's and Macrina's liability for falsification, she maintains that they must both stand trial for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act.²⁴

For resolution is the issue of whether or not public respondent Office

¹⁷ Id. at 70.

¹⁸ Id. at 8–11.

¹⁹ Id. at 10.

²⁰ Id. at 9–10.

²¹ Id. at 70–72.

²² Id. at 71.

²³ Id. at 131–157.

²⁴ Id. at 141.

of the Deputy Ombudsman for the Visayas acted with grave abuse of discretion amounting to lack or excess of jurisdiction in not finding probable cause to charge private respondent Fernando M. Abella, along with private respondent Macrina Espiña, with violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act.

This Court grants the Petition.

I

Probable cause for the filing of an information is “a matter which rests on likelihood rather than on certainty. It relies on common sense rather than on ‘clear and convincing evidence.’”²⁵ In *Ampil v. Office of the Ombudsman*:²⁶

We likewise stress that the determination of probable cause does not require certainty of guilt for a crime. As the term itself implies, probable cause is concerned merely with probability and not absolute or even moral certainty; it is merely based on opinion and reasonable belief. It is sufficient that based on the preliminary investigation conducted, it is believed that the act or omission complained of constitutes the offense charged. Well-settled in jurisprudence, as in *Raro v. Sandiganbayan*, that:

. . . [P]robable cause has been defined as the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.

Probable cause is a reasonable ground for presuming that a matter is or may be well-founded on such state of facts in the prosecutor's mind as would lead a person of ordinary caution and prudence to believe — or entertain an honest or strong suspicion — that it is so.

A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt.

A finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.

A finding of probable cause merely binds over the suspect to stand

²⁵ *Marasigan v. Fuentes*, 776 Phil. 574, 584 (2016) [Per J. Leonen, Second Division].

²⁶ 715 Phil. 733 (2013) [Per J. Perez, Second Division].

trial. It is not a pronouncement of guilt.

The term does not mean “actual and positive cause” nor does it import absolute certainty. It is merely based on opinion and reasonable belief. . . . Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction.²⁷ (Citations omitted)

The determination of probable cause is an executive, not a judicial, function. It is generally not for a court to disturb the conclusion made by a public prosecutor. This is grounded on the basic principle of separation of powers. However, “grave abuse of discretion taints a public prosecutor’s resolution if he [or she] arbitrarily disregards the jurisprudential parameters of probable cause.”²⁸ In such cases, consistent with the principle of checks and balances among the three (3) branches of government, a writ of certiorari may be issued to undo the prosecutor’s iniquitous determination. In *Lim v. Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices*:²⁹

As a general rule, a public prosecutor’s determination of probable cause — that is, one made for the purpose of filing an Information in court — is essentially an executive function and, therefore, generally lies beyond the pale of judicial scrutiny. The exception to this rule is when such determination is tainted with grave abuse of discretion and perforce becomes correctible through the extraordinary writ of certiorari. The rationale behind the general rule rests on the principle of separation of powers, dictating that the determination of probable cause for the purpose of indicting a suspect is properly an executive function, while the exception hinges on the limiting principle of checks and balances, whereby the judiciary, through a special civil action of certiorari, has been tasked by the present Constitution to determine whether or not grave abuse of discretion has been committed amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. It is fundamental that the concept of grave abuse of discretion transcends mere judgmental error as it properly pertains to a jurisdictional aberration. *While defying precise definition, grave abuse of discretion generally refers to a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. Corollarily, the abuse of discretion must be patent and gross so as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law.* To note, the underlying principle behind the courts’ power to review a public prosecutor’s determination of probable cause is to ensure that the latter acts within the permissible bounds of his authority or does not gravely abuse the same. This manner of judicial review is a constitutionally-enshrined form of check and balance which underpins the very core of our system of government.³⁰ (Emphasis supplied, citation omitted)

²⁷ Id. at 761–762.

²⁸ *Aguilar v. Department of Justice*, 717 Phil. 789, 799 (2013) [Per Curiam, Second Division].

²⁹ 795 Phil. 226 (2016) [Per J. Peralta, Third Division].

³⁰ Id. at 241 citing *Aguilar v. Department of Justice*, 717 Phil. 789 (2013) [Per Curiam, Second Division].

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Assessing the evidence before them, public prosecutors are vested “with a wide range of discretion, the discretion of whether, what and whom to charge[.]”³¹ As such, “[t]he prosecuting attorney cannot be compelled to file a particular criminal information.”³²

Public prosecutors are not bound to adhere to a party’s apparent determination of the specific crime for which a person shall stand trial. Their discretion “include[s] the right to determine under which laws prosecution will be pursued.”³³ Thus, in *Uy v. People*,³⁴ the petitioner’s indictment and eventual conviction for estafa was sustained despite his protestations that “the private complainant’s demand letter, . . . indicates that the demand was for alleged violation of Batas Pambansa Blg. 22.”³⁵

In keeping with the basic precept of judicial non-interference, “not even the Supreme Court can order the prosecution of a person against whom the prosecutor does not find sufficient evidence to support at least a *prima facie* case.”³⁶ In *People v. Pineda*,³⁷ this Court sustained the public prosecutor and issued a writ of certiorari, invalidating the orders of Court of First Instance Judge Hernando Pineda, which compelled the prosecutor to drop four (4) out of the five (5) cases which the prosecutor had filed since, according to Judge Pineda, “the acts complained of ‘stemmed out of a series of continuing acts on the part of the accused, not by different and separate sets of shots, moved by one impulse and should therefore be treated as one crime to the series of shots killed more than one victim[.]’”³⁸ In ruling against judicial overreach, this Court explained:

3. The impact of respondent Judge’s orders is that his judgment is to be substituted for that of the prosecutor’s on the matter of what crime is to be filed in court. The question of instituting a criminal charge is one addressed to the sound discretion of the investigating Fiscal. The information he lodges in court must have to be supported by facts brought about by an inquiry made by him. It stands to reason then to say that in a clash of views between the judge who did not investigate and the fiscal who did, or between the fiscal and the offended party or the defendant, those of the Fiscal’s should normally prevail. In this regard, he cannot ordinarily be subject to dictation. We are not to be understood as saying that criminal prosecution may not be blocked in exceptional cases. A relief in equity “may be availed of to stop a purported enforcement of a criminal law where it is necessary (a) for the orderly administration of

³¹ *Gonzalez v. Hongkong and Shanghai Banking Corporation*, 562 Phil. 841, 855 (2007) [Per J. Chico-Nazario, Third Division].

³² *Uy v. People*, 586 Phil. 473, 492 (2008) [Per J. Chico-Nazario, Third Division] *citing* *People v. Pineda*, 127 Phil. 150 (1967) [Per J. Sanchez, En Banc].

³³ *Spouses Romualdez v. Commission on Elections*, 576 Phil. 357, 403 (2008) [Per J. Chico-Nazario, En Banc].

³⁴ 586 Phil. 473 (2008) [Per J. Chico-Nazario, Third Division].

³⁵ *Id.* at 492.

³⁶ *Chua v. Padillo*, 550 Phil. 241, 249 (2007) [Per J. Sandoval-Gutierrez, First Division] *citing* *Sanchez v. Demetriou*, 298 Phil. 421 (1993) [Per J. Cruz, En Banc].

³⁷ 127 Phil. 150 (1967) [Per J. Sanchez, En Banc].

³⁸ *Id.* at 152.

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justice; (b) to prevent the use of the strong arm of the law in an oppressive and vindictive manner; (c) to avoid multiplicity of actions; (d) to afford adequate protection to constitutional rights; and (e) in proper cases, because the statute relied upon is unconstitutional or was ‘held invalid.’” Nothing in the record would as much as intimate that the present case fits into any of the situations just recited.

And at this distance and in the absence of any compelling fact or circumstance, we are loathe to tag the City Fiscal of Iligan City with abuse of discretion in filing separate cases for murder and frustrated murder, instead of a single case for the complex crime of robbery with homicide and frustrated homicide under the provisions of Article 294 (1) of the Revised Penal Code or, for that matter, for multiple murder and frustrated murder. We state that, here, the Fiscal's discretion should not be controlled.³⁹ (Citation omitted)

When, however, “there is an unmistakable showing of grave abuse of discretion on the part of the prosecutor”⁴⁰ in declining to prosecute specific persons for specific offenses, a writ of certiorari may be issued to set aside the prosecutor’s initial determination.⁴¹

In *Chua v. Padillo*,⁴² this Court sustained the Court of Appeals in granting the respondents’ Petition for Certiorari and in ordering the inclusion of the petitioners-siblings Wilson and Renita Chua as accused, along with Wilson’s wife, Marissa Padillo-Chua, in a case of estafa through falsification of commercial documents.

In *Marasigan v. Fuentes*,⁴³ this Court reversed the Court of Appeals’ dismissal of the private complainant’s Petition for Certiorari. It found that it was “grave abuse of discretion for [Department of Justice] Secretary [Agnes VST] Devanadera to conclude that respondent [Robert] Calilan may only be prosecuted for the crime of less serious physical injuries while his co-respondents, [Reginald] Fuentes and [Alain Delon] Lindo, may not be prosecuted at all.”⁴⁴ Accordingly, this Court reinstated the previous Resolution issued by Undersecretary Linda Malenab-Hornilla, which “ordered the provincial prosecutor of Laguna to file informations for attempted murder against Fuentes, Calilan, and Lindo.”⁴⁵

*Reynes v. Office of the Ombudsman (Visayas)*⁴⁶ concerned prosecution for illegal exactions as penalized under Article 213(2) of the Revised Penal

³⁹ Id. at 157–158.

⁴⁰ *Chua v. Padillo*, 550 Phil. 241, 249 (2007) [Per J. Sandoval-Gutierrez, First Division] citing *Sanchez v. Demetriou*, 298 Phil. 421 (1993) [Per J. Cruz, En Banc].

⁴¹ Id.

⁴² 550 Phil. 241 (2007) [Per J. Sandoval-Gutierrez, First Division].

⁴³ 776 Phil. 574 (2016) [Per J. Leonen, Second Division].

⁴⁴ Id. at 583–584.

⁴⁵ Id. at 580.

⁴⁶ *Reynes v. Office of the Ombudsman (Visayas)*, G.R. No. 223405, February 20, 2019 [Per J. Leonen, Third Division].

Code.⁴⁷ This Court found grave abuse of discretion on the part of a graft investigation and prosecution officer who, in evaluating proof that the private respondents collected sums which had precisely been alleged by the complainant to lack legal basis, faulted the same complainant for failing to present an ordinance as proof that the amounts received were “different . . . than those authorized by law.”⁴⁸ This Court set aside the Resolution and Order of the Office of the Ombudsman (Visayas) and directed the filing of an information against one (1) of the private respondents.

II

Determining probable cause must be made in reference to the elements of the crime charged. “This is based on the principle that every crime is defined by its elements, without which there should be, at the most, no criminal offense.”⁴⁹

Appraising probable cause for a violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act must begin with the text of Section 3(e):

SECTION 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

....

- (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

⁴⁷ REV. PEN. CODE, art. 213 provides:

ARTICLE 213. Frauds against the public treasury and similar offenses. — The penalty of prison correccional in its medium period to prison mayor in its minimum period, or a fine ranging from 200 to 10,000 pesos, or both, shall be imposed upon any public officer who:

....

2. Being entrusted with the collection of taxes, licenses, fees and other imposts, shall be guilty or any of the following acts or omissions:

- (a) Demanding, directly or indirectly, the payment of sums different from or larger than those authorized by law.
- (b) Failing voluntarily to issue a receipt, as provided by law, for any sum of money collected by him officially.
- (c) Collecting or receiving, directly or indirectly, by way of payment or otherwise, things or objects of a nature different from that provided by law.

⁴⁸ *Reynes v. Office of the Ombudsman (Visayas)*, G.R. No. 223405, February 20, 2019 [Per J. Leonen, Third Division].

⁴⁹ *Aguilar v. Department of Justice*, 717 Phil. 789, 800 (2013) [Per Curiam, Second Division] citing *Ang-Abaya v. Ang*, 593 Phil. 530 (2008) [Per J. Ynares-Santiago, Third Division].

Accordingly, a violation of Section 3(e) is deemed to have occurred when the following elements are demonstrated:

- (1) the offender is a public officer;
- (2) the act was done in the discharge of the public officer's official, administrative or judicial functions;
- (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and
- (4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.⁵⁰

The third element identifies three (3) distinct modes of commission: manifest partiality, evident bad faith, and gross inexcusable negligence. *Fonacier v. Sandiganbayan*⁵¹ distinguished these modes, as follows:

“Partiality” is synonymous with “bias” which “excites a disposition to see and report matters as they are wished for rather than as they are.” “Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud.” “Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wil[l]fully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property.” These definitions prove all too well that the three modes are distinct and different from each other. Proof of the existence of any of these modes in connection with the prohibited acts under Section 3(e) should suffice to warrant conviction.⁵² (Citations omitted)

The fourth element identifies two (2) alternative, typifying effects: causing undue injury to any party and/or giving any private party unwarranted benefit, advantage, or preference. Prosecution and/or conviction under Section 3(e) ensues when either or both of these are occasioned by the public officer's manifest partiality, evident bad faith, or gross inexcusable negligence:

[T]here are two ways by which Section 3 (e) of RA 3019 may be violated — the first, by causing undue injury to any party, including the government, or the second, by giving any private party any unwarranted benefit, advantage or preference. Although neither mode constitutes a

⁵⁰ *Ampil v. Office of the Ombudsman*, 715 Phil. 733, 755 (2013) [Per J. Perez, Second Division] citing *Sison v. People*, 628 Phil. 573 (2010) [Per J. Corona, Third Division].

⁵¹ *Fonacier v. Sandiganbayan*, 308 Phil. 660 (1994) [Per J. Vitug, En Banc].

⁵² *Id.* at 693–694.

distinct offense, an accused may be charged under either mode or both. The use of the disjunctive “or” connotes that the two modes need not be present at the same time. In other words, the presence of one would suffice for conviction.

....


The word “unwarranted” means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. “Advantage” means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. “Preference” signifies priority or higher evaluation or desirability; choice or estimation above another.

In order to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions.⁵³ (Citations omitted)

III

This case is not unique. In the past, this Court has overturned the Office of the Ombudsman’s resolution not finding probable cause in criminal complaints concerning titles whose issuance was allegedly occasioned by falsification perpetrated by a registrar of deeds who may have violated Section 3(e).

In *Ampil*, petitioner Oscar R. Ampil filed a Complaint charging the private respondents—among them, Pasig City Registrar of Deeds Policarpio L. Espenesin (Espenesin)—with Falsification of Public Documents under Article 171(6) of the Revised Penal Code and violation of Section 3(a)⁵⁴ and (e) of the Anti-Graft and Corrupt Practices Act. His Complaint arose from Espenesin’s issuance of a second set of condominium certificates of title indicating Malayan Insurance Company (Malayan Insurance) as the owner of 38 condominium units in the Malayan Tower. This was despite his own prior issuance of condominium certificates of title over the same units in the name of ASB Realty Corporation (ASB Realty), and despite ASB Realty allegedly being entitled to those units pursuant to a memorandum of agreement between ASB Realty and Malayan Insurance.

The Office of the Ombudsman dismissed Ampil’s Complaint, as in 

⁵³ *Sison v. People*, 628 Phil. 573, 584–585 (2010) [Per J. Corona, Third Division].

⁵⁴ Rep. Act No. 3019 (1960), sec. 3 provides:

SECTION 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

(a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.

this case, for being supposedly premature considering that the issue of ownership between ASB Realty and Malayan Insurance had yet to be settled. As summarized by this Court:

For the Ombudsman, the resolution of whether respondents falsified the CCTs must be prefaced by a determination of who, between MICO and ASB, is the rightful owner of the subject units. The Ombudsman held that it had no authority to interpret the provisions of the [Memorandum of Agreement] and, thus, refrained from resolving the preliminary question of ownership. Given the foregoing, the Ombudsman was hard pressed to make a categorical finding that the CCTs were altered to speak something false. In short, the Ombudsman did not have probable cause to indict respondents for falsification of the CCTs because the last element of the crime, *i.e.*, that the change made the document speak something false, had not been established.⁵⁵

However, as to the charge of graft and corruption under Section 3(a) and (e) of the Anti-Graft and Corrupt Practices Act, this Court noted that “the Ombudsman did not dispose of whether probable cause exists to indict respondents for violation of Section 3(a) and (e) of Republic Act No. 3019.”⁵⁶

This Court conceded that the charge of falsification cannot prosper. Nonetheless, it faulted the Office of the Ombudsman for failing to address the charges of graft and corruption:

[T]he Ombudsman abruptly dismissed Ampil’s complaint-affidavit, resolving only one of the charges contained therein with nary a link regarding the other charge of violation of Sections 3 (a) and (e) of Republic Act No. 3019. Indeed, as found by the Ombudsman, the 4th element of the crime of Falsification of Public Documents is lacking, as the actual ownership of the subject units at The Malayan Tower has yet to be resolved. *Nonetheless, this circumstance does not detract from, much less diminish, Ampil’s charge, and the evidence pointing to the possible commission, of offenses under Sections 3 (a) and (e) of the Anti-Graft and Corrupt Practices Act.*⁵⁷ (Emphasis supplied)

This Court then proceeded to explain that a *prima facie* case for violating Section 3(e) existed against Espenesin and his co-respondent, Francis Serrano, the lawyer with whom Espenesin had grown familiar for previously liaising with his office on behalf of ASB and Malayan Insurance. It found that based on the evidence, Espenesin acted with gross inexcusable negligence, not complying with “the procedure provided by law for the issuance of [condominium certificates of title] and registration of property,”⁵⁸ and “the well-established practice necessitating submission of

⁵⁵ *Ampil v. Office of the Ombudsman*, 715 Phil. 733, 747–748 (2013) [Per J. Perez, Second Division].

⁵⁶ *Id.* at 748.

⁵⁷ *Id.* at 753–754.

⁵⁸ *Id.* at 757.

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required documents for registration of property[.]”⁵⁹ In violation of his task under Sections 10, 57, and 108 of Presidential Decree No. 1529,⁶⁰ or the Property Registration Decree, “to review deeds and other documents for conformance with the legal requirements of registration[.]”⁶¹ he proceeded to issue a second set of titles merely “at the urging of Serrano[.]”⁶²

Thus, “by simply relying on the fact that all throughout the transaction to register the subject units at The Malayan Tower he liaised with Serrano, [Espenesin] gave [Malayan Insurance] an unwarranted benefit, advantage or preference in the registration of the subject units.”⁶³

⁵⁹ Id. at 765.

⁶⁰ Pres. Decree No. 1529, secs. 10, 57, and 108 provide:

SECTION 10. General Functions of Registers of Deeds. — The office of the Register of Deeds constitutes a public repository of records of instruments affecting registered or unregistered lands and chattel mortgages in the province or city wherein such office is situated.

It shall be the duty of the Register of Deeds to immediately register an instrument presented for registration dealing with real or personal property which complies with all the requisites for registration. He shall see to it that said instrument bears the proper documentary and science stamps and that the same are properly cancelled. If the instrument is not registrable, he shall forthwith deny registration thereof and inform the presenter of such denial in writing, stating the ground or reason therefor, and advising him of his right to appeal by *consulta* in accordance with Section 117 of this Decree.

SECTION 57. Procedure in Registration of Conveyances. — An owner desiring to convey his registered land in fee simple shall execute and register a deed of conveyance in a form sufficient in law. The Register of Deeds shall thereafter make out in the registration book a new certificate of title to the grantee and shall prepare and deliver to him an owner's duplicate certificate. The Register of Deeds shall note upon the original and duplicate certificate the date of transfer, the volume and page of the registration book in which the new certificate is registered and a reference by number to the last preceding certificate. The original and the owner's duplicate of the grantor's certificate shall be stamped “cancelled”. The deed of conveyance shall be filed and indorsed with the number and the place of registration of the certificate of title of the land conveyed.

SECTION 108. Amendment and Alteration of Certificates. — No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same by the Register of Deeds, except by order of the proper Court of First Instance. A registered owner or other person having an interest in registered property, or, in proper cases, the Register of Deeds with the approval of the Commissioner of Land Registration, may apply by petition to the court upon the ground that the registered interests of any description, whether vested, contingent, expectant or inchoate appearing on the certificate, have terminated and ceased; or that new interest not appearing upon the certificate have arisen or been created; or that an omission or error was made in entering a certificate or any memorandum thereon, or on any duplicate certificate; or that the same or any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated and no right or interests of heirs or creditors will thereby be affected; or that a corporation which owned registered land and has been dissolved has not conveyed the same within three years after its dissolution; or upon any other reasonable ground; and the court may hear and determine the petition after notice to all parties in interest, and may order the entry or cancellation of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security or bond if necessary, as it may consider proper; Provided, however, That this section shall not be construed to give the court authority to reopen the judgment or decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs and assigns, without his or their written consent. Where the owner's duplicate certificate is not presented, a similar petition may be filed as provided in the preceding section.

All petitions or motions filed under this Section as well as under any other provision of this Decree after original registration shall be filed and entitled in the original case in which the decree or registration was entered.

⁶¹ *Ampil v. Office of the Ombudsman*, 715 Phil. 733, 755 (2013) [Per J. Perez, Second Division].

⁶² Id. at 757.

⁶³ Id.

Accordingly, this Court concluded that “certiorari will lie, given that the Ombudsman made no finding at all on respondents[’] possible liability for violation of Section 3(a) and (e) of Republic Act No. 3019.”⁶⁴

IV

As with *Ampil*, private respondent Abella’s official acts of canceling Original Certificate of Title No. 15609, and issuing in its stead Transfer Certificate of Title Nos. 116-2011000073 and 116-2011000074 in the name of Genaro, appear to be attended, at the very least, by gross inexcusable negligence. Here, the evidence strongly suggests that private respondent Abella’s actions, like Espenesin’s, fell miserably short of the standards apropos to his office. While he did not act with private respondent Macrina out of a shared malevolent design, he nonetheless relied on manifestly defective and tellingly suspicious documents that private respondent Macrina (or persons acting under and for her) presented.

Hence, as with *Ampil*, where this Court maintained that criminal informations must be filed against the grossly erring registrar of deeds and the private person at whose urging he performed his errant official acts, private respondents must stand trial for violation of the Anti-Graft and Corrupt Practices Act.

From the evidence adduced by petitioner, there is basis to maintain a reasonable belief that private respondent Abella enabled the cancellation of the Original Certificate of Title and issuance of new transfer certificates of title. This was despite manifest and unequivocal deficiencies, most notably in the owner’s duplicate copy, the Certificate Authorizing Registration, and the Deed of Conveyance that had been presented to him.

Private respondent Abella admitted canceling Original Certificate of Title No. 15609 after he was presented an owner’s duplicate that “consists of only two pages which is somewhat defaced/torn.”⁶⁵ In contrast, the original copy, which was on file in his own office, consisted of four (4) pages.⁶⁶

Not only did the duplicate presented to him⁶⁷ not correspond with the original on file; it was also severely mutilated, with the effect—rather curiously—that identifying features could no longer be perused. As pointed out by petitioner, “[a]ll possible markings of the nature and origin”⁶⁸ of the

⁶⁴ Id. at 767.

⁶⁵ *Rollo*, p. 144.

⁶⁶ Id. at 84–87.

⁶⁷ Id. at 77–78.


⁶⁸ Id. at 30.

alleged owner's duplicate were torn off: (1) the serial number of the page in the registry book in which the title is recorded; (2) the free patent number;⁶⁹ (3) the lot number;⁷⁰ (4) the signature of the Survey Division chief who attested to the technical description;⁷¹ and (5) the signature of the "person who verified or checked the technical description[.]"⁷²

It is not just that these were missing. What is more dubious is that *the duplicate Original Certificate of Title presented to Abella had holes and tears exactly where these pieces of information would have been indicated, even as the remainder of the informational portions of the title remained intact.*⁷³ It strains credulity that whatever fortuitous forces occasioned those holes and tears would be so focused on specifically removing only the title's identifying features.

Even as to the intact informational portions, petitioner noted several appreciable differences between the owner's duplicate presented and the original on file. Petitioner's tabulated summary⁷⁴ of these differences reads:

Spurious owner's duplicate certificate of OCT No. 15609 (Annex "F")	Original copy of OCT No. 15609 on file with the ROD (Annex "G")
On page 1, there is NO comma after the word "Filipino".	On page 1, there is a comma after the word "Filipino".
On page 1, the seal is CLEARLY embossed.	On page 1, the seal is NOT CLEARLY embossed.
On page 2, the phrase " from BLLM " is OMITTED .	On page 2, the phrase " from BLLM " is written.
On page 2, the number verb (<i>sic</i>) " IS " is used.	On page 2, the number verb (<i>sic</i>) " WAS " is used.
On page 2, there are multiple spaces between the last line of the technical description and the signature of the survey division.	On page 2, there is only a single space between the last line of the technical description and the signature of the survey division.
Throughout page 2, the number "3" has a flat top.	Throughout page 2, the number "3" has a round top.
On page 2, the numbers "6-2-71" APPEAR between the marking "6-20-71" and "Checked by:"	On page 2, the numbers "6-2-71" DO NOT APPEAR between the marking "6-20-71" and "Checked by:"
The pages are SO DEFACED that key serial numbers, signatures, initials and other entries are MISSING .	The key serial numbers, signatures, initials and other entries are INTACT AND CLEAR . (Emphasis in the original)

Irregularities were also apparent on the Certificate Authorizing 

⁶⁹ Id. at 30 and 145.

⁷⁰ Id. at 145.

⁷¹ Id. at 30 and 145.

⁷² Id. at 145.

⁷³ Id. at 77-78. Annex "F" of the Petition for Certiorari.

⁷⁴ Id. at 146.

Registration that was presented to Abella. Most glaringly, as petitioner points out, it was dated 2011 and referred to a 1972 Deed of Conveyance. Despite this, the certificate did not indicate even the slightest charge or penalty for delayed payment of taxes occasioned by the transfer.⁷⁵ Similarly, it indicated that no capital gains tax was due and that only ₱2,655.00 in documentary stamps taxes and ₱100.00 as certificate fee were paid. This, despite how the commercial property encompassed 100,691 square meters, was located along a provincial road and, as of 2002, had its zonal value fixed at ₱400.00 per square meter, or a total of ₱40,276,400.00.⁷⁶

Petitioner also pointed out that the Deed of Conveyance,⁷⁷ though dated 1972, was presented for registration only after 39 years and only after the death of Hubahib, the purported seller.⁷⁸

None of the plethora of deficiencies across several documents has been disavowed by any of the respondents. Public respondent, in its Comment, merely reiterated the assailed Consolidated Evaluation Report's thesis that "determining first the lawful owner of the subject property is necessary before the Office of the Ombudsman could act on the complaint."⁷⁹ Private respondent Abella's two (2)-page Comment merely adverted to the existence of a "pre-judicial (*sic*) question"⁸⁰ on ownership. In addition, Abella made generic assertions of innocence: "the owner's duplicate . . . appeared to respondent as authentic[;] [h]e did not suspect that it was not genuine."⁸¹ In her Comment,⁸² private respondent Macrina recalled the supposed circumstances through which Genaro was supposed to have acquired ownership and how she, as attorney-in-fact, sought to effect the transfer. However, she did not specifically address any of the deficiencies noted by petitioner.

As things stand, the evidence weighs far more heavily in favor of petitioner's cause. Even granting that he did not act with a deliberately malevolent design, he still appears to have acted with grossly inexcusable negligence that he practically evaded his duties as a registrar of deeds. Private respondent Abella was equipped with skills and training to identify irregularities in property registration. More important, it was his solemn duty to not facilitate registrations attended by manifest aberrations. The palpable defects of the documents presented to him should have prompted him to desist with the cancellation of the Original Certificate of Title. Instead, he went so far as to issue new transfer certificates of title. In so

⁷⁵ Id. at 33–34.

⁷⁶ Id. at 34–35.

⁷⁷ Id. at 89. Annex "I" of the Petition for Certiorari.

⁷⁸ Id. at 35. Petitioner also maintains that Sol Espiña Hubahib's purported signature on this deed is a forgery.

⁷⁹ Id. at 219.

⁸⁰ Id. at 184.

⁸¹ Id.

⁸² Id. at 393–397.


doing, he caused undue injury to Hubahib's heirs and extended unwarranted benefits to Genaro. He, with Macrina, must rightly stand trial for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act.⁸³

WHEREFORE, the Petition is **GRANTED**.

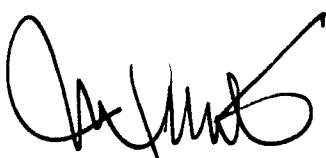
The assailed April 23, 2013 Consolidated Evaluation Report and November 5, 2013 Order issued in OMB-V-C-13-0098 by public respondent Office of the Deputy Ombudsman for the Visayas are **SET ASIDE** insofar as they dismissed the criminal charge against private respondents Atty. Fernando M. Abella and Macrina Espiña for violating Section 3(e) of the Anti-Graft and Corrupt Practices Act.

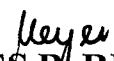
Public respondent is directed to file before the proper court the necessary information for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act against private respondents.


SO ORDERED.


MARVIC M.V.F. LEONEN
 Associate Justice

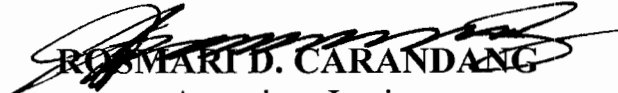
WE CONCUR:


DIOSDADO M. PERALTA
 Associate Justice
 Chairperson


ANDRES B. REYES, JR.
 Associate Justice



RAMON PAUL L. HERNANDO
 Associate Justice

⁸³ In keeping with Section 13 of the Anti-Graft and Corrupt Practices Act, suspension shall ensue once "a valid information under this Act ... is pending in court."


ROS MARI D. CARANDANG
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


DIOSDADO M. PERALTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


LUCAS P. BERSAMIN
Chief Justice