



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ELOISA M. ELEAZAR and GR. No. 224399
VIRGELIO M. ELEAZAR,

Petitioners,

Present:

- versus -

PERLAS-BERNABE, S.A.J.,
Chairperson,

HERNANDO,

INTING,

DELOS SANTOS, and

BALTAZAR-PADILLA,* JJ.

OFFICE OF THE OMBUDSMAN,
PSI LODOVICO M. ELEAZAR,
JR., PO2 JOMAR B. CAMAT,
PO2 BILLY JOE M. COLLADO,
PO3 ERWIN E. LOPEZ, BRGY.
CAPTAIN EDGAR M. ELEAZAR,
and BRGY. KAGAWAD
ROGELIO E. LOPEZ,

Respondents.

Promulgated:

24 AUG 2020

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DECISION

INTING, J.:

This Petition¹ for Review on *Certiorari* under Rule 45 of the Rules of Court assails the Decision² dated May 28, 2015 and the Resolution³ dated March 29, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 131985 which dismissed petitioners' petition for *certiorari* for lack of jurisdiction.

* On official leave.

¹ *Rollo*, pp. 10-29.

² *Id.* at 163-171; penned by Associate Justice Ricardo R. Rosario with Associate Justices Andres B. Reyes, Jr. (now a retired member of the Court) and Edwin D. Sorongon, concurring.

³ *Id.* at 187.

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The Antecedents

Eloisa M. Eleazar⁴ filed an administrative complaint⁵ for Grave Misconduct before the Office of the Ombudsman (Ombudsman) against: Police Senior Inspector Lodovico M. Eleazar, Jr. (PSI Lodovico), Police Officer II Jomar B. Camat (PO2 Camat), PO2 Billy Joe M. Collado (PO2 Collado), PO3 Erwin E. Lopez (PO3 Lopez), *Barangay* Captain Edgar M. Eleazar (Brgy. Capt. Eleazar), and *Barangay Kagawad* Rogelio E. Lopez (*Kagawad* Lopez) (collectively, respondents).

The allegations of the complaint are summarized as follows:

In the afternoon of 19 June 2011, private respondents appeared at the residential compound of Rodrigo C. Eleazar (hereinafter Rodrigo) – the husband of petitioner Eloisa and father of petitioner Virgelio – and his son, Gener M. Eleazar (hereinafter Gener). Private respondents were at the time armed with long rifles. Said residential compound is situated in Laoac, Pangasinan.

Upon his arrival at the compound, [PSI Lodovico] initiated a verbal argument between him and Gener. When petitioner Eloisa saw that the two were already arguing, she approached Gener and instructed him to stop.

Petitioner Eloisa then called petitioner Virgelio to come and assist her in bringing Gener to his house located inside the compound. Rodrigo then arrived and directed Gener to stop arguing with respondent [PSI Lodovico].

Petitioners and Gener were in the process of bringing Gener home when [Brgy. Capt. Eleazar] and Kagawad Lopez came from the opposite direction.

According to petitioners, for no reason at all, [Brgy. Capt. Eleazar] and Kagawad Lopez started to attack Gener, punching and kicking him at the same time. The mauling continued despite petitioner Virgelio's attempt to pacify both [Brgy. Capt. Eleazar] and Kagawad Lopez.

Fearing for the safety of petitioner Eloisa, Rodrigo instructed her to proceed home, but even before she could leave the scene, [PSI Lodovico] purportedly shot Rodrigo while his (Rodrigo's) back was turned away from him ([PSI Lodovico]).

⁴ Only Eloisa Eleazar's name appeared in the complaint, but in the Position Paper for the Complainants filed before the Ombudsman, it is stated therein that she is joined as co-complainant by her son, Virgelio M. Eleazar. Further, the Ombudsman treated them both as complainants as can be seen in its Order dated October 10, 2012, *id.* at 155-159.

⁵ *Id.* at 73-74.

Rodrigo fell to the ground, and petitioner Eloisa checked on him. Several gunshots coming from the company of private respondents then rang out, and petitioner Eloisa noticed Gener running to hide behind a nearby tree inside their compound.

Meanwhile, petitioner Virgelio ran inside his house which was located only 25 meters away from the scene.

Petitioner Eloisa thereafter left Rodrigo to seek help from her brother-in-law, Marcelino Eleazar.

Meanwhile, Gener, who was then still hiding behind the tree, was approached from behind by [PSI Lodovico] who, at point blank range, then proceeded to shoot the former on the chest. Petitioner Virgelio said that from inside his residence, he witnessed how [PSI Lodovico] shot Gener at close-blank range.⁶

For respondents, their contentions are summed up as follows:

x x x [T]he deaths of Rodrigo and Gener came as a result of a legitimate shoot-out. They narrate that on the day of the incident, they went to the place of the incident to respond to a report of indiscriminate firing being committed by Gener.

Upon reaching the place, [PSI Lodovico] confronted Gener, warning him to cease from indiscriminately firing his gun.

During the confrontation, Rodrigo sided with his son, Gener, prompting [Brgy. Capt. Eleazar] to admonish him too.

Rodrigo and Gener resented the admonition and reacted violently thereto by shooting private respondents, hitting [Brgy. Captain Edgar Eleazar], Kagawad Lopez and PO3 Lopez.

An exchange of gunfire thereafter ensued which resulted in the death of Rodrigo and Gener.

They contend that two caliber .45 firearms belonging to the two fatalities were recovered from the scene of the incident, along with several spent shells coming from said handguns.⁷

In the Decision⁸ dated January 17, 2012, the Ombudsman

⁶ *Id.* at 164-165.

⁷ *Id.* at 165-166.

⁸ *Id.* at 132-137; penned by Graft Investigation & Prosecution Officer Kathryn Rose A. Hitalia-

dismissed the complaint. It held that respondents were able to adduce clear, convincing, and credible evidence to rebut petitioners' charges. Further, the Ombudsman declared that the following circumstances lent credence to respondents' averments: (a) respondents merely responded to a report that someone was firing his gun indiscriminately; (b) the request for police assistance was recorded in the logbook; (c) [PO3 Lopez], Brgy. Capt. Eleazar, and *Kagawad* Lopez sustained injuries during the incident; (d) petitioners failed to refute respondents' claim that Rodrigo C. Eleazar (Rodrigo) and Gener M. Eleazar (Gener) were responsible for the injuries sustained by the respondents; and (e) the Office of the Provincial Prosecutor, Lingayen, Pangasinan, in its Joint Resolution dated September 1, 2011, found that respondents were justified in shooting Rodrigo and Gener as respondents were acting in the lawful exercise of their duty.⁹ The Ombudsman disposed of the case as follows:

WHEREFORE, premises considered, it is respectfully recommended that the administrative complaint for Grave Misconduct against respondents PSI LODOVICO M. ELEAZAR, JR. (a.k.a. P/SInsp. Lodovico Mensigos Ellazar Jr.), PO2 JOMAR CAMAT (a.k.a. PO2 Jomar Bernabe Camat), PO2 BILLY JOE COLLADO (a.k.a. PO2 Billy Joe Marinas Collado), PO3 ERWIN LOPEZ (a.k.a. SPO1 Erwin Ellazar Lopez), BARANGAY CAPTAIN EDGAR ELEAZAR (a.k.a. Edgar Mensigos Ellazar) and BARANGAY KAGAWAD ROGELIO LOPEZ (a.k.a. Rogelio Ellazar Lopez) be DISMISSED.

SO ORDERED.¹⁰

Petitioners sought a reconsideration of the Ombudsman's Decision. However, the Ombudsman denied it in the Order¹¹ dated October 10, 2012.

Aggrieved, petitioners filed before the CA a Petition¹² for *Certiorari* under Rule 65 of the Rules of Court ascribing grave abuse of discretion to the Ombudsman for dismissing the administrative complaint for Grave Misconduct.¹³

Baliatan, concurred in by Director Dennis L. Garcia, and approved by Overall Deputy Ombudsman Orlando C. Casimiro.

⁹ *Id.* at 135-136.

¹⁰ *Id.* at 136.

¹¹ *Id.* at 155-159.

¹² *Id.* at 31-49.

¹³ *Id.* at 38.

In the Decision¹⁴ dated May 28, 2015, the CA dismissed the case for lack of jurisdiction ratiocinating as follows:

Much as We would like to delve on the merits of the instant petition, We are left with no recourse but to dismiss the instant case for lack of jurisdiction. It appears that in filing the instant petition for certiorari, petitioners availed of the wrong remedy from public respondent's decision.

Since public respondent absolved private respondents of the administrative complaint against them, said decision partook of a final and executory character. Under Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman and applicable jurisprudence, the jurisdiction of this Court, insofar as decisions of the Office of the Ombudsman in administrative cases are concerned, is limited to those in which the penalty imposed is not of a final and executory character. In such case, the decision is appealable, but the same should be filed in this Court through a petition for review under Rule 43 of the Revised Rules of Court, and not through a petition for certiorari under Rule 65. x x x

x x x x

To reiterate, the decision sought to be reviewed is final and executory, owing to the fact that private respondents were absolved therein. Being final and executory, it is unappealable, and is thus outside the jurisdiction of this Court, as it is clearly laid down in Section 7, Rule III of the Ombudsman Rules of Procedure and the ruling of the Supreme Court in *Villasenor*.¹⁵

The CA pronounced that since the Ombudsman dismissed the administrative case, the dismissal is final and executory and therefore not appealable. As a result, it has no jurisdiction over the petition for *certiorari* assailing the Ombudsman's ruling.¹⁶

The CA further held that the remedy available to petitioners from the dismissal of the administrative case was to file a petition for *certiorari* under Rule 65 of the Rules of Court, not with it, but before the Court.¹⁷

¹⁴ *Id.* at 163-171.

¹⁵ *Id.* at 167-168.

¹⁶ *Id.* at 168.

¹⁷ *Id.* at 168-169.

Petitioners moved for a reconsideration¹⁸ of the CA Decision, but the CA denied it in a Resolution¹⁹ dated March 29, 2016.

Hence, the petition for review.

The Court's Ruling

The case is remanded to the CA. The CA procedurally erred in dismissing petitioners' petition for *certiorari* on the ground of lack of jurisdiction.

Previously, as provided in Section 27 of Republic Act No. 6770 or The Ombudsman Act of 1989, judicial review of decisions of the Office of the Ombudsman in administrative cases was directed to the Court.²⁰ Section 27 reads:

Section 27. *Effectivity and Finality of Decisions.* — (1) All provisional orders of the Office of the Ombudsman are immediately effective and executory.

A motion for reconsideration of any order, directive or decision of the Office of the ombudsman must be filed within five (5) days after receipt of written notice and shall be entertained only on any of the following grounds:

- (1) New evidence has been discovered which materially affects the order, directive or decision;
- (2) Errors of law or irregularities have been committed prejudicial to the interest of the movant. The motion for reconsideration shall be resolved within three (3) days from filing: Provided, That only one motion for reconsideration shall be entertained.

Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable.

In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the

¹⁸ See Motion for Reconsideration dated June 30, 2015, *id.* at 172-178.

¹⁹ *Id.* at 187.

²⁰ *Joson v. The Office of the Ombudsman, et al.*, 816 Phil. 288, 311 (2017).

Supreme Court by filing a petition for certiorari within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.

The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require. (Italics supplied.)

However, in the case of *Fabian v. Hon. Desierto*²¹ (*Fabian*), the Court declared Section 27 unconstitutional for increasing the Court's appellate jurisdiction in violation of the proscription under Section 30,²² Article VI of the Constitution.²³ It was further ruled in *Fabian* that "appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under the provisions of Rule 43."²⁴

In the recent case of *Joson v. The Office of the Ombudsman, et al.*,²⁵ petitioner therein filed a petition for *certiorari* under Rule 65 before the Court assailing the Ombudsman's rulings dismissing the administrative and criminal charges against respondents in that case. The Court held therein:

With respect to the dismissal of the administrative charge for gross misconduct, the Court finds that the same has already attained finality because Joson failed to file a petition for *certiorari* before the Court of Appeals (CA).

The assailed ruling of the Ombudsman absolving the private respondents of the administrative charge possesses the character of finality and, thus, not subject to appeal. Section 7, Rule III of the Ombudsman Rules provides:

SECTION 7. Finality 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 and unappealable. In all other cases, the

²¹ 356 Phil. 787 (1998).

²² Section 30, Article VI of the Constitution provides:

Section 30. No law shall be passed increasing the appellate jurisdiction of the Supreme Court as provided in this Constitution without its advice and concurrence.

²³ *Joson v. The Office of the Ombudsman, et al.*, *supra* note 20 at 312, citing *Fabian v. Hon. Desierto*, *supra* note 21 at 810.

²⁴ *Fabian v. Hon. Desierto*, *supra* note 21 at 808.

²⁵ 784 Phil. 172 (2016).

decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for certiorari shall have been filed by him as prescribed in Section 27 of RA 6770. [Emphasis supplied]

In *Reyes, Jr. v. Belisario*, the Court wrote:

The clear import of Section 7, Rule III of the Ombudsman Rules is to deny the complainant in an administrative complaint the right to appeal where the Ombudsman has exonerated the respondent of the administrative charge, as in this case. The complainant, therefore, is not entitled to any corrective recourse, whether by motion for reconsideration in the Office of the Ombudsman, or by appeal to the courts, to effect a reversal of the exoneration. Only the respondent is granted the right to appeal but only in case he is found liable and the penalty imposed is higher than public censure, reprimand, one-month suspension or fine a equivalent to one month salary.

Though final and unappealable in the administrative level, the decisions of administrative agencies are still subject to judicial review if they fail the test of arbitrariness, or upon proof of grave abuse of discretion, fraud or error of law, or when such administrative or quasi-judicial bodies grossly misappreciate evidence of such nature as to compel a contrary conclusion. Specifically, the correct procedure is to file a petition for *certiorari* before the CA to question the Ombudsman's decision of dismissal of the administrative charge. Josen, however, failed to do this. Hence, the decision of the Ombudsman exonerating the private respondents from the charge of grave misconduct had already become final. In any event, the subject petition failed to show any grave abuse of discretion or any reversible error on the part of the Ombudsman to compel this Court to overturn its assailed administrative ruling.²⁶

Thus, the proper procedure to assail the Ombudsman's dismissal of an administrative case or the administrative aspect of its decision, is *via* a petition for *certiorari* under Rule 65 of the Rules of Court, ascribing grave abuse of discretion, to be filed with the CA. This is exactly what the petitioners did in the instant case. However, the CA wrongly held that petitioners' petition for *certiorari* filed before it was an improper mode to question the Ombudsman's dismissal of the administrative case. What is more, the CA erroneously ruled that the remedy available to petitioners was the filing of a Rule 65 petition before the Court.

²⁶ *Id.* at 189-191. Emphasis and citations omitted.

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Inasmuch as the CA has jurisdiction over petitioners' petition for *certiorari*, the case is remanded to the CA for further proceedings, and resolution on its merits.

WHEREFORE, the Decision dated May 28, 2015 and the Resolution dated March 29, 2016 of the Court of Appeals in CA-G.R. SP No. 131985 are **REVERSED AND SET ASIDE**. Accordingly, the case is **REMANDED** to the Court of Appeals for further proceedings and disposition on its merits

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

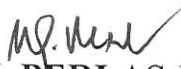

RAMON PAUL L. HERNANDO
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice

(On official leave)
PRISCILLA J. BALTAZAR-PADILLA
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.


ESTELA M. PERLAS-BERNABE
Senior 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.


DIOSDADO M. PERALTA
Chief Justice