



SUPREME COURT OF THE PHILIPPINES  
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Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated November 20, 2019, which reads as follows:*

**“G.R. No. 227949 (Nova Princess E. Parojinog-Echavez and Reynaldo O. Parojinog, Sr. v. Office of the Ombudsman, Field Investigation Unit of Ombudsman Mindanao represented by Dexter B. Dumukmat).** – The Court **NOTES** the Manifestation filed by Atty. Niersen C. Custodio of Custodio Cruz Puno and Camara Law Offices, counsel for petitioners, stating that petitioners are waiving their right to file a reply to the comment on the petition for *certiorari* with temporary restraining order and writ of preliminary injunction with explanation that his failure to comply with the Show Cause Resolution dated November 12, 2018 for non-submission of the said reply as required in the Resolution dated July 5, 2017 was because petitioner Reynaldo O. Parojinog, Sr. and his wife were killed during a police operation on July 30, 2017, and despite diligent efforts of reaching out to other petitioner Nova Princess E. Parojinog-Echavez, he failed to relay the status of this case.

Before Us is a Petition for *Certiorari*<sup>1</sup> with Urgent Prayer for the Issuance of a Temporary Restraining Order (TRO) and/or Writ or Preliminary Injunction (WPI) assailing the Order<sup>2</sup> dated June 30, 2016 of the Office of the Ombudsman (OMB) in OMB-M-C-14-0222, which found probable cause against Nova Princess E. Parojinog-Echavez (Princess) and Mayor Reynaldo O. Parojinog, Sr. (Mayor Reynaldo; collectively, petitioners) for violation of Section 3(h)<sup>3</sup> of Republic Act No. (R.A.) 3019 or the Anti-Graft and Corrupt Practices Act.

<sup>1</sup> *Rollo*, pp. 3-45.

<sup>2</sup> Penned by Graft Investigation and Prosecution Officer II Gil Norman D. Ciudadano; *id.* at 50-59.

<sup>3</sup> Sec. 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:

x x x x

(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

## Antecedents

The OMB-Mindanao Field Investigation Unit (FIU), represented by Dexter B. Dumukmat, filed an Affidavit-Complaint<sup>4</sup> against petitioners and other officials<sup>5</sup> of Ozamis City and the Province of Misamis Occidental relative to the deficiencies in the procurement process in the renovation of the Ramiro Gymnasium (the Project). It alleged that the OMB-Mindanao received an anonymous complaint dated August 3, 2010 requesting for the conduct of an investigation in the biddings of projects undertaken during the term of Mayor Reynaldo. OMB-Mindanao endorsed the matter to the Commission on Audit (COA) which, in its Special Audit Report, found the following irregularities in the Project: (1) no annual procurement plan in relation to Section 7.2. of the Revised Implementing Rules and Regulations (Revised IRR) of R.A. 9184 or the Government Reform Procurement Act; (2) no minutes on pre-bid conference in relation to Section 22.1; and (3) an Affidavit of Disclosure which is defective in relation to Section 47 of the Revised IRR of R.A. 9184.<sup>6</sup> Particularly, the Project was awarded to a bidder who is related within the third civil degree of consanguinity to the head of the end-user unit. The end-user unit is Ozamis City, Misamis Occidental headed by Mayor Reynaldo, while the winning bidder is Parojinog and Sons Construction Company (Parojinog & Sons) managed by Princess, the daughter of Mayor Reynaldo. The relation of Princess and Mayor Reynaldo was shown in the latter's Statement of Assets, Liabilities and Net Worth (SALN) for the year 2001 and in the certified true copy of his Elective Local Official's Personal Data Sheet.<sup>7</sup> For being an illegal transaction, the COA issued Notice of Suspension Number 13-001-0101 (08) dated January 30, 2013 against the Project. Thus, the OMB-Mindanao FIU initiated a complaint for violation of Sections 3(e)<sup>8</sup> and (h) of R.A. 3019, Section 7(a)<sup>9</sup> of R.A. 6713,<sup>10</sup> and an administrative case for grave

<sup>4</sup> Rollo, pp. 74-76.

<sup>5</sup> Id. at 76. Other officials include: District Engineer Efren A. Berba, Accountant III Cynthia R. Trangia, OIC-Assistant District Engineer and BAC Chairman Dario C. Pusod; Engineer II and BAC Member Vivian R. Lumingkit; Engineer II and BAC Member Manuel P. Medina; Engineer II and BAC Member Ramisis Jaimar Y. Bicoy, Engineer II and BAC Member Federico V. Padilla, Jr. and Engineer II and Head, BAC-TWF/Secretariat Sofronia C. Uy.

<sup>6</sup> Id. at 75.

<sup>7</sup> Id.

<sup>8</sup> Sec. 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:

x x x x

(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.

<sup>9</sup> Sec. 7. *Prohibited Acts and Transactions.* – In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

(a) Financial and material interest. - Public officials and employees shall not, directly or indirectly, have any financial or

misconduct and conduct prejudicial to the best interest of the service against petitioners.<sup>11</sup>

In their undated Joint Counter-Affidavit,<sup>12</sup> petitioners countered that at the time of the alleged bidding in 2008, the governing rule on disclosure of relations is the IRR dated October 8, 2003 of R.A. 9184, and not the Revised IRR dated September 2, 2009.<sup>13</sup> Relation of the bidder to the end-user in the third-degree, whether by affinity or consanguinity, is not prohibited prior to the 2009 revision. The OMB-Mindanao FIU's reliance on Section 47 of the Revised IRR was, therefore, misplaced and violated the prohibition against *ex post facto* law. Further, petitioners argued that the elements for violation of Sections 3(e) and (h) of R.A. 3019 were not present.<sup>14</sup> Princess, a private person, was not alleged to have acted in conspiracy with Mayor Reynaldo. Mayor Reynaldo did not act with manifest partiality, evident bad faith, or gross inexcusable negligence in the procurement process because he had no participation or involvement on the same. The procuring entity was the Department of Public Works and Highways (DPWH) while Ozamis City was merely an end-user.<sup>15</sup> In the same vein, there can be no violation of Section 7(a) of R.A. 6713 because the procurement of the Project does not require the approval of the City Government of Ozamis.<sup>16</sup>

### The Ombudsman's Ruling

In its Resolution<sup>17</sup> dated November 27, 2015, the OMB found probable cause to indict petitioners for violation of Section 3(h) of R.A. 3019.<sup>18</sup>

The OMB held that the Instruction to Bidders stated that a bidder may be considered to have conflicting interest if it has a relationship, directly or through third parties, that puts it in a position to have access to information about or influence the decisions of the procuring entity regarding the bidding process. All bidders found to have a conflicting interest shall be disqualified from participating in the procurement. Mayor Reynaldo, as the end user representative and local chief executive, had knowledge of the specifications of the Project. His relationship with Princess puts the latter in a position to have access to material information in the bidding process, to Parojinog & Sons advantage. The OMB also found that in his 2001 SALN, Mayor Reynaldo declared Parojinog & Sons under business interest and financial

material interest in any transaction requiring the approval of their office.

x x x x

<sup>10</sup> Otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees."

<sup>11</sup> *Rollo*, pp. 10-11.

<sup>12</sup> *Id.* at 140-153.

<sup>13</sup> *Id.* at 140-143.

<sup>14</sup> *Id.* at 147-149.

<sup>15</sup> *Id.* at 147-148.

<sup>16</sup> *Id.* at 150.

<sup>17</sup> *Id.* at 60-70.

<sup>18</sup> *Id.* at 69.

connections. The son of Mayor Reynaldo, Reynaldo Parojinog, Jr., is the Assistant Project Manager of the company. Clearly, Parojinog & Sons is a family enterprise, in which Mayor Reynaldo has a financial and material interest.<sup>19</sup> The OMB ruled that the confluence of evidence on record would show that petitioners acted in conspiracy with each another.

Petitioners filed a Motion and Request for Inhibition of the OMB-Mindanao and Motion for Partial Reconsideration, which were both denied in the OMB's Order<sup>20</sup> dated June 30, 2016.

Undaunted, petitioners are now before Us ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the OMB for finding probable cause against them for violation of Section 3(h) of R.A. 3019. In their Petition for *Certiorari*<sup>21</sup> with Urgent Prayer for the Issuance of a TRO and/or WPI dated October 28, 2016, petitioners reiterated that the 2009 Revised IRR of R.A. 9184 does not apply and that the elements of Section 3(h) of R.A. 3019 are wanting. They added that the OMB, in its Decision<sup>22</sup> dated August 16, 2016, dismissed the administrative complaint against them for grave misconduct and conduct prejudicial to the best interest of the service<sup>23</sup> on the finding that: (1) the COA erred in relying on Section 47 of the Revised IRR because the Project was in 2008; (2) Parojinog & Sons merely used the standard form being issued by the DPWH in executing the affidavit of disclosure of no relationship; and (3) the COA issued a Notice of Settlement of Suspension/Disallowance/Charge No. 15-001-101 (08) dated January 28, 2015 stating that the Notice of Suspension on the Project was already settled, hence there is no longer any basis to support the administrative complaint.<sup>24</sup>

To support their prayer for TRO and/or WPI, petitioners averred that the assailed Order of the OMB was based on mere conjectures and assumptions.<sup>25</sup> The damage to their reputation would be immeasurable should the criminal proceedings against them continue.

In their Comment<sup>26</sup> with Opposition to the Issuance of a TRO and/or WPI dated March 3, 2017, the OMB-Mindanao FIU alleged that the petition

<sup>19</sup> Id. at 66-67.

<sup>20</sup> Id. at 50-59. The OMB held that there was no evidence of bias or prejudice on the part of the OMB Mindanao. It reiterated its ruling that Parojinog & Sons has conflicting interest due to Mayor Reynaldo and Princess' relationship as father and daughter. It also clarified that the IRR of R.A. 9184 provides that on the part of the procuring entity, disclosure of relationship shall apply to any of its officers and employees having direct access to information that may substantially affect the result of the bidding, such as but not limited to the members of the Bids and Awards Committee (BAC), the members of the Technical Working Group, the BAC Secretariat, the member of the Project Management Office, and the designers of the project. This enumeration is not exclusive as under Rule V, Section 11.2.1 of the IRR, end user is always a provisional member of the BAC as to such procurement. More, the OMB rejected petitioners' claim that their right to speedy disposition of cases had been violated.

<sup>21</sup> Supra note 1.

<sup>22</sup> Id. at 213-221.

<sup>23</sup> Id. at 19.

<sup>24</sup> Id. at 216-219.

<sup>25</sup> Id. at 20.

<sup>26</sup> Id. at 257-269.

is assailing the correctness of the OMB's appreciation of evidence, which is improper in a *certiorari* proceeding. It invoked the Court's policy not to interfere in the OMB's exercise of its investigatory and prosecutorial powers.<sup>27</sup> It asserted that Mayor Reynaldo has indirect financial interest in Parojinog & Sons because it is a family enterprise. The fact that DPWH is the procuring entity is of no moment because Mayor Reynaldo as the local chief executive was duty bound to intervene or take part in his official capacity in the infrastructure project.<sup>28</sup>

The OMB-Mindanao FIU also alleged that the dismissal of the administrative case does not necessarily bar the filing of a criminal complaint for the same or similar acts. Consequently, it noted that the Sandiganbayan, in its Resolution dated January 31, 2017, issued warrants of arrest against the petitioners. As soon as probable cause is judicially determined, any questions on the executive determination of probable cause are rendered moot.<sup>29</sup>

In their Manifestation<sup>30</sup> dated April 19, 2017, petitioners stated that since the Court did not issue a TRO, the OMB proceeded with the filing of an Information before the Sandiganbayan charging petitioners with violation of Section 3(h) of R.A. 3019.<sup>31</sup> Petitioners filed a Motion to Quash the Information and Dismiss the Criminal Case (Motion to Quash), which the Sandiganbayan granted in its Resolution dated April 7, 2017 on the ground of violation of the accused's right to speedy disposition of cases. Petitioners alleged that they intend to file the appropriate motion or pleading once the reglementary period for availing the appropriate special civil action for the respondent lapses.<sup>32</sup>

We ordered petitioners to file a Reply to the Comment in our Resolutions dated July 5, 2017<sup>33</sup> and November 12, 2018.<sup>34</sup> In the latter Resolution, We required Atty. Niensen C. Custodio (Atty. Custodio), counsel of petitioners, to show cause why he should not be disciplinary dealt with or held in contempt for failing to file a Reply. On February 7, 2019, Atty. Custodio filed a Manifestation (Explanation on the Show Cause),<sup>35</sup> informing the Court of the death of Mayor Reynaldo on July 30, 2017.<sup>36</sup> He claimed that he had not been updated by the personal assistants of Mayor Reynaldo whether to proceed with the present petition.<sup>37</sup> He also maintained that the case was mooted by the Sandiganbayan's quashal of the

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27 Id. at 261-262.  
28 Id. at 262-266.  
29 Id. at 265-266.  
30 Id. at 283-285.  
31 Id. at 283.  
32 Id. at 284.  
33 Id. at 330-331.  
34 Id. at 340.  
35 Id. at 343-350.  
36 Id. at 343-344.  
37 Id. at 346.

Information. He waived his right to file a Reply and submitted the case for decision.<sup>38</sup>

### Issues

The issues before Us are: (1) whether the OMB committed grave abuse of discretion in rendering the assailed Order finding probable cause against petitioners for violation of Section 3(h) of RA No. 3019; and (2) whether the petition before Us became moot when the Information against petitioners was filed in the Sandiganbayan.

### The Court's Ruling

We dismiss the petition and deny the prayer for TRO and/or WPI.

Case law teaches that a case is rendered moot when, because of supervening events, the Court is left with no justiciable controversy to resolve, and a declaration on it would be of no practical use or value.<sup>39</sup>

In this case, the records show that the OMB already filed an Information against petitioners before the Sandiganbayan. The accusatory portion of which reads:

During the period of April to May 2008, or sometime prior or subsequent thereto, in Ozamiz City, Misamis Occidental, Philippines, and within this Honorable Court's jurisdiction; REYNALDO OZAMIZ PAROJINOG, SR. as Mayor (SG 27) o[f] Ozamiz City; while in the performance of his administrative and/or official functions and in conspiracy with his daughter NOVA PRINCESS ENGRACIA PAROJINOG-ECHAVEZ, Managing Partner of Parojinog & Sons Construction Company (PSCC); willfully, unlawfully, and criminally possessed a financial or pecuniary interest in PSCC – a company owned by his family – when it participated as a bidder and was awarded the project for the [I]mprovement/Renovation of Multi-Purpose Building/Ramiro Gymnasium, Lam-an, Ozamiz City and when the local government of Ozamiz City as end user, represented by Parojinog, accepted said project as completed.<sup>40</sup>

In its Resolution<sup>41</sup> dated January 31, 2017, the Sandiganbayan denied petitioners' motion for judicial determination of probable cause for lack of merit and ordered the issuance of warrants of arrest against petitioners. Undaunted, petitioners filed a Motion to Quash the Information on the grounds that (a) the facts charged do not constitute an offense and (b) there

<sup>38</sup> Id. at 348.

<sup>39</sup> *Marantan v. Department of Justice*, G.R. No. 206354, March 13, 2019.

<sup>40</sup> As narrated in the Court's Decision in *People v. Sandiganbayan*, G.R. No. 233063, February 11, 2019.

<sup>41</sup> *Rollo*, pp. 275-281.

was a violation of the constitutional right of the accused to speedy disposition of cases. In its Resolution<sup>42</sup> dated April 7, 2017, the Sandiganbayan found the Motion to Quash meritorious, holding that the second and third elements of the offense charged were not properly alleged. It declared that it can no longer entertain an amendment of the Information in view of its finding that there was also violation of the accused's right to speedy disposition of cases, warranting the quashal of the Information and dismissal of the case. The OMB sought reconsideration which was denied. Hence, it elevated the case to Us via a petition for *certiorari* in G.R. No. 233063 titled *People v. Sandiganbayan*.

In Our Decision dated February 11, 2019, We granted *certiorari* and reversed the Sandiganbayan's Resolution dated April 7, 2017. We ruled that there was no violation of the accused's right to speedy disposition of cases. We also noted that Mayor Reynaldo had already died on July 30, 2017 as shown by his death certificate, thus, the Information should only be filed against Princess. We then gave the prosecution the "chance to amend the Information."

In view of the foregoing developments in the case and our pronouncement in G.R. No. 233063, the case before us shall pertain only to Princess.

In *De Lima v. Reyes*,<sup>43</sup> We ruled that the filing of the Information and the issuance by the trial court of the warrant of arrest mooted the petition assailing the preliminary investigation. Once the Information is filed in court, the court acquires jurisdiction of the case and any motion to dismiss the case or to determine the accused's guilt or innocence rests within the sound discretion of the court. A petition for *certiorari* assailing the conduct of preliminary investigation ceases to be the "plain, speedy, and adequate remedy" provided by law.<sup>44</sup>

Consequently, the petition for *certiorari* before Us is already moot and academic. The Sandiganbayan already acquired jurisdiction over the case. The prudent course of action at this stage would be for Princess to await the prosecution's compliance with Our Decision dated February 11, 2019 in G.R. No. 233063, giving it a chance to amend the Information. Under the second paragraph of Rule 117, Section 4 of the Rules of Court, if

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<sup>42</sup> Id. at 316-328. See also the Court's Decision in *People v. Sandiganbayan*, G.R. No. 233063, February 11, 2019.

<sup>43</sup> 776 Phil. 623 (2016). Here, the Secretary of Justice Leila De Lima (De Lima), through Department Order No. 710 (DO 710), created a second panel of prosecutors (second panel) to conduct a reinvestigation relative to the killing of Dr. Gerardo Ortega and to address the offer of additional evidence against former Palawan Governor Mario Joel T. Reyes (Gov. Reyes) which were denied by the first panel (first panel) of prosecutors. The second panel found probable cause against Gov. Reyes, prompting him to file a Petition for Certiorari and Supplemental Petition before the CA, assailing DO 710 and the resolution finding probable cause against him as null and void. The CA ruled in favor of Gov. Reyes. On appeal to Us, We were confronted with the issue of whether the Petition for *Certiorari* has already been rendered moot by the filing of the Information in court against Gov. Reyes.

<sup>44</sup> Id. at 652.

the motion to quash is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment. The motion shall be granted if the prosecution fails to make the amendment, or the complaint or Information still suffers from the same defect despite the amendment.

In fine, any disposition of the case now rests with the Sandiganbayan's sound discretion. Resolving whether the OMB committed grave abuse of discretion in finding probable cause against Princess would be of no practical use and value.<sup>45</sup>

**WHEREFORE**, the petition is hereby **DISMISSED** for being **MOOT and ACADEMIC**.

**SO ORDERED.**" (Leonen, J., on official business; Gesmundo, J., designated as Acting Chairperson of the Third Division per Special Order No. 2737; Lazaro-Javier, J., designated as Additional Member of the Third Division per Special Order No. 2728, on official leave.)

Very truly yours,

*Misael DC Batt*  
**MISAELO DOMINGO C. BATTUNG III**  
Deputy Division Clerk of Court

*gmw*  
2/10/20

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<sup>45</sup> See *Marantan v. Department of Justice*, supra note 39. In *Marantan*, the Court was confronted with the issue of whether the petition for *certiorari* and prohibition before it was rendered moot by the filing of information in court against therein petitioner.



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