



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **June 15, 2022** which reads as follows:*

“G.R. Nos. 228304-05 (*Development Bank of the Philippines Employees Union and Association of DBP Career Officials, petitioners vs. Office of the Ombudsman and Donna Pervera Shotwell, respondents*). - This resolves the petition for *certiorari* under Rule 65 of the Rules of Court seeking to nullify the April 11, 2016 Joint Resolution¹ and the July 11, 2016 Joint Order² of the Office of the Ombudsman (*OMB*), which dismissed the criminal and administrative cases against private respondent Donna Pervera Shotwell (*Shotwell*) for falsification of public document, usurpation of authority, perjury and dishonesty.

Shotwell is the Senior Vice President (*SVP*) and Head of the Human Resources Management Group (*HRMG*) of the Development Bank of the Philippines (*DBP*) – a government-owned and controlled corporation – having been appointed to the position on February 14, 2013.³ On February 13, 2013, she submitted the required Personal Data Sheet (*PDS*) or Civil Service Form No. 212.⁴ Within thirty (30) days from the date of her appointment, Shotwell also submitted a notarized Biographical Data Sheet (*BDS*) to the *Bangko Sentral ng Pilipinas* (*BSP*) Monetary Board for the confirmation of her appointment.⁵

- over – eighteen (18) pages ...

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¹ *Rollo*, pp. 37-45; prepared by Graft Investigation and Prosecution Officer II Rose F. Ventayen-Vallejo, reviewed by Director Nellie P. Boguen-Golez, with Assistant Ombudsman Marilou B. Ancheta-Mejica recommending approval; approved by Ombudsman Conchita Carpio Morales.

² *Id.* at 46-49.

³ *Id.* at 43 and 91-92.

⁴ *Id.* at 71-74.

⁵ *Id.* at 38.

On March 23, 2015, DBP Employees' Union, represented by its President, Rudelito L. Tirado, Jr., and the Association of DBP Career Officials, represented by its President, Francis Romulo I. Badilla (hereinafter, *petitioners*), filed criminal and administrative cases against Shotwell before the OMB, docketed as OMB-C-C-15-0085 (for: violation of Article 172,⁶ in relation to Arts. 171(4),⁷ 177⁸ and 183⁹ of the Revised Penal Code [RPC]) and OMB-C-A-15-0085 (for: Dishonesty) respectively.

In their Complaint-Affidavit,¹⁰ petitioners alleged that by indicating in her PDS and BDS that she is a Filipino, Shotwell committed falsification of public or official document (Art. 172 in relation to Art. 171 of the RPC) because in reality, she is a Canadian citizen. They further claimed that from Shotwell's continued use of her Canadian passport in her travels from January 2013 to December 2014, it appears that she has not renounced her Canadian citizenship. Neither is there documentary proof in her records that she complied

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⁶ Art. 172. *Falsification by private individuals and use of falsified documents.* — The penalty of *prision correccional* in its medium and maximum periods and a fine of not more than 5,000 pesos shall be imposed upon:

1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document; and

2. Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in the next preceding article.

⁷ Art. 171. *Falsification by public officer, employee or notary or ecclesiastic minister.* — The penalty of *prision 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:

x x x x

4. Making untruthful statements in a narration of facts;

x x x x

⁸ Art. 177. *Usurpation of authority or official functions.* — Any person who shall knowingly and falsely represent himself to be an officer, agent or representative of any department or agency of the Philippine Government or of any foreign government, or who, under pretense of official position, shall perform any act pertaining to any person in authority or public officer of the Philippine Government or of any foreign government, or any agency thereof, without being lawfully entitled to do so, shall suffer the penalty of *prision correccional* in its minimum and medium periods. (*As amended by Rep. Act No. 379, approved June 14, 1949*) (Restored by E.O. No. 187).

⁹ Art. 183. *False testimony in other cases and perjury in solemn affirmation.* — The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed upon any person who, knowingly making untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.

Any person who, in case of a solemn affirmation made in lieu of an oath, shall commit any of the falsehoods mentioned in this and the three preceding articles of this section, shall suffer the respective penalties provided therein.

¹⁰ *Rollo*, pp. 52-63.

with the provisions of Republic Act (*R.A.*) No. 9225¹¹ for re-acquiring Filipino citizenship. They asserted that Shotwell is not qualified for her present position as Head of DBP's HRMG as she cannot serve dual allegiance to two countries. Not being lawfully entitled to said government position, she is likewise liable for violation of Usurpation of Authority or Official Function (Art. 177 of the RPC).¹²

Petitioners claimed that they have repeatedly informed Shotwell of her lack of qualification for her position and called for her resignation due to her Canadian citizenship. While her appointment may have been validated by the Civil Service Commission (*CSC*), and confirmed by the Monetary Board, it must be stressed that during that time, the issue regarding her citizenship had not yet been brought to light. Such confirmation may have been based solely on Shotwell's misrepresentation in her BDS that she is a Filipino citizen.¹³

Further, petitioners contended that Shotwell is liable under Section 13¹⁴ of R.A. No. 3019¹⁵ which covers "any offense involving fraud upon government." Fraud upon the government was committed by Shotwell when she willfully, unlawfully and knowingly assumed the position as Head of DBP's HRMG, and performed acts pertaining to the same under the pretense of official position despite her lack of qualification. These acts are also grounds for suspension or dismissal of Shotwell for dishonesty and for falsification of official document, in accordance with Executive Order (*E.O.*) No. 292.¹⁶

In her Counter-Affidavit,¹⁷ Shotwell claimed that petitioners' complaint is an act of harassment aimed at inconveniencing her and getting back at her for the reforms she and the Management of DBP

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¹¹ AN ACT MAKING THE CITIZENSHIP OF PHILIPPINE CITIZENS WHO ACQUIRE FOREIGN CITIZENSHIP PERMANENT. AMENDING FOR THE PURPOSE COMMONWEALTH ACT. NO. 63, AS AMENDED, AND FOR OTHER PURPOSES; cited in Vital Legal Documents, Vol. 18, page 4.

¹² *Rollo*, pp. 53-57.

¹³ *Id.* at 57.

¹⁴ Section 13. *Suspension and loss of benefits.* — Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as a complex offense and in whatever stage of execution and mode of participation, is pending in court shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

In the event that such convicted officer, who may have already been separated from the service, has already received such benefits shall be liable to reconstitute the same to the Government. (*As amended by BP Blg. 195, March 16, 1982.*)

¹⁵ Anti-Graft and Corrupt Practices Act. (*As amended*)

¹⁶ See E.O. No. 292, Book V, Title I, Subtitle A, Chapter 7, Sec. 46(b)(1) and Sec. 46(b)(13).

¹⁷ *Rollo*, pp. 75-89.

instituted, which most likely did not sit well with some employees and officers of DBP. While admitting that she was naturalized as a Canadian citizen on November 29, 2010, Shotwell asserted that she took her Oath of Allegiance to the Republic of the Philippines on July 12, 2012, and has re-acquired Philippine citizenship. In Order TO-RA9225-476-12¹⁸ issued by Consul General Junever M. Mahilum-West, Consulate General of the Philippines in Toronto, Canada, she was deemed to have retained her Philippine citizenship. Also, she has been issued Identification Certificate No. 560-07-12¹⁹ recognizing her Philippine citizenship. Thus, at the time she assumed office, she was already deemed to have retained her Philippine citizenship, which matter she had rightfully and truthfully declared in her PDS. By then, she was already in full possession of civil and political rights as a Filipino citizen pursuant to Secs. 3²⁰ and 5²¹ of R.A. No. 9225. Clearly, the allegation that she had committed material misrepresentation in her PDS is without factual basis.

Shotwell argued that for those who seek an appointment to public office, Sec. 5(3)²² of R.A. No. 9225 only requires the

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¹⁸ Id. at 98.

¹⁹ Id. at 97.

²⁰ SEC. 3. *Retention of Philippine Citizenship.* — Any provision of law to the contrary notwithstanding, natural-born citizens of the Philippines who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country are hereby deemed to have reacquired Philippine citizenship upon taking the following oath of allegiance to the Republic:

“I _____, solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion.”

Natural-born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath.

²¹ SEC. 5. *Civil and Political Rights and Liabilities.* — Those who retain or reacquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:

- (1) Those intending to exercise their right of suffrage must meet the requirements under Section 1, Article V of the Constitution, Republic Act No. 9189, otherwise known as “The Overseas Absentee Voting Act of 2003” and other existing laws;
- (2) Those seeking elective public office in the Philippines shall meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath;
- (3) Those appointed to any public office shall subscribe and swear to an oath of allegiance to the Republic of the Philippines and its duly constituted authorities prior to their assumption of office: *Provided*, That they renounce their oath of allegiance to the country where they took that oath;

²² SEC. 5. *Civil and Political Rights and Liabilities.* — x x x x

- (3) Those appointed to any public office shall subscribe and swear to an oath of allegiance to the Republic of the Philippines and its duly constituted authorities prior to their assumption of office: *Provided*, That they renounce their oath of allegiance to the country where they took that oath[.]

renunciation of their oath of allegiance to the country where they took that oath, which is different for persons seeking elective position, for which Sec. 5(2)²³ requires a personal and sworn renunciation of any and all foreign citizenship. Citing *Cordora v. COMELEC*,²⁴ Shotwell contended that based on excerpts of Congressional discussion quoted in the cases decided by this Court, it is clear that by swearing supreme authority to the Republic of the Philippines, the person implicitly renounces his or her foreign citizenship, and for that matter, his or her oath of allegiance to said foreign country. Thus, her Oath of Allegiance to the Republic of the Philippines effectively complied with the requirement of renouncing her oath of allegiance to the country where she took said oath.

Shotwell cited CSC Memorandum Circular (MC) No. 07,²⁵ series of 2015, which allows Filipinos who have been naturalized as citizens of a foreign country to apply for and take the Civil Service Examinations. Under the said circular, holders of dual citizenship under R.A. No. 9225 are required to present their certification of retention/re-acquisition of Philippine citizenship when applying to take the exams. It should be noted that civil service eligibility is a major requirement for appointment to any government position. By requiring only the said certificate of retention/re-acquisition, the CSC implicitly recognizes that for a dual citizen to be eligible for an appointive position, he or she is not required to make a sworn renunciation of his or her allegiance to other countries.

In any case, Shotwell maintained that she acted in good faith and with all sincerity when she accomplished her PDS and declared therein being a Filipino citizen. At the time, she rightfully believed that she was a Filipino citizen based on available documents, and she had no reason not to rely on those official documents legitimately issued by authorized officers of the government. There was no attempt to conceal or distort the truth about her citizenship. Accordingly, there is no basis to hold her criminally and administratively liable as wrongfully alleged in the complaint-affidavit.

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²³ SEC. 5. *Civil and Political Rights and Liabilities.* — x x x x

x x x x

(2) Those seeking elective public office in the Philippines shall meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath[.]

²⁴ 599 Phil. 168 (2009).

²⁵ *Rollo*, pp. 85-86; Policy Governing the Filing and Taking of Civil Service Examinations of Those Holding Dual Citizenship.

The OMB Ruling

The OMB found no probable cause to prosecute Shotwell for violation of Art. 172(1),²⁶ in relation to Arts. 171(4),²⁷ 177²⁸ and 183²⁹ of the RPC, and no substantial evidence either to charge her administratively of dishonesty.³⁰

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²⁶ Article 172. *Falsification by private individuals and use of falsified documents.* - The penalty of *prision correccional* in its medium and maximum periods and a fine of not more than 5,000 pesos shall be imposed upon:

1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document; x x x

The elements of falsification of documents under Article 172(1) of the Revised Penal Code are:

- a. That the offender is a private individual or a public officer or employee who did not take advantage of his official position;
- b. That he committed any of the acts of falsification enumerated in Article 171 of the RPC, and
- c. The falsification was committed in a public, official or commercial document. (*Rollo*, p. 42; citing *Atienza v. People*, 726 Phil. 570, 583-584 (2014).

In relation thereto, the elements of falsification of official documents under Article 171(4) are:

- a. The offender makes in a document untruthful statements in a narration of facts;
- b. He has a legal obligation to disclose the truth of the facts narrated by him; and
- c. The facts narrated by him are absolutely false. (*Rollo*, p. 42; citing *People v. Sandiganbayan*, 765 Phil. 560 (2015).

²⁷ Article 171. *Falsification by public officer, employee or notary or ecclesiastic minister.* - The penalty of *prision 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:

x x x x

4. Making untruthful statements in a narration of facts[.]

²⁸ Article 177. *Usurpation of authority or official functions.* - Any person who shall knowingly and falsely represent himself to be an officer, agent or representative of any department or agency of the Philippine Government or of any foreign government, or who, under pretense of official position, shall perform any act pertaining to any person in authority or public officer of the Philippine Government or of any foreign government, or any agency thereof, without being lawfully entitled to do so, shall suffer the penalty of *prision correccional* in its minimum and medium periods. (*As amended by Republic Act No. 379, approved June 14, 1949.*) (*Restored by EO No. 187.*)

²⁹ Article 183. *False testimony in other cases and perjury in solemn affirmation.* - The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed upon any person who, knowingly making untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.

Any person who, in case of a solemn affirmation made in lieu of an oath, shall commit any of the falsehoods mentioned in this and the three preceding articles of this section, shall suffer the respective penalties provided therein.

³⁰ *Rollo*, pp. 41-42.

The OMB said that Shotwell did not misrepresent herself as a Filipino citizen at the time she submitted her PDS on February 13, 2013, given that she re-acquired her Philippine citizenship on July 12, 2012 as shown by the following documents: 1) Oath of Allegiance,³¹ dated July 12, 2012; and 2) Identification Certificate No. 560-07-12,³² recognizing her Philippine citizenship. Consequently, when Shotwell was appointed on February 14, 2013 as SVP of DBP, she was already a Filipino citizen, and her appointment was validated and approved by the CSC on June 13, 2013.³³

For similarly lacking any basis, the other charges of perjury, usurpation of authority or official functions, and dishonesty were dismissed as well.³⁴

Petitioners filed a motion for reconsideration which was likewise denied by the OMB.

Issue

Whether the OMB committed grave abuse of discretion in not finding probable cause to file criminal charges against Shotwell for falsification of public or official document, usurpation of authority and perjury.

Petitioners' Arguments

Petitioners assail the OMB for completely ignoring all their allegations regarding Shotwell being a dual citizen – which she had admitted – and the fact that dual citizens cannot hold any public office under the law. The OMB did not make a definite finding on whether or not, based on the evidence adduced by the parties, Shotwell is indeed a dual citizen, and how this affects her fitness or qualification for appointive public office.³⁵

Petitioners reiterate that taking the Oath of Allegiance to the Republic of the Philippines did not necessarily result in Shotwell's renunciation of her Canadian citizenship but merely allowed her to re-acquire or retain her Philippine citizenship while at the same time

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³¹ Id. at 339.

³² Id. at 340.

³³ Id. at 43.

³⁴ Id.

³⁵ Id. at 17.

maintaining her Canadian citizenship. Curiously, Shotwell was silent on the matter of possession of a Canadian passport, neither admitting nor denying the same. By her silence, she is deemed to have admitted that she still possesses her Canadian passport and is still using the same for her travels.³⁶

Thus, even assuming that Shotwell had renounced her Canadian citizenship, petitioners assert that such renunciation, if any, had already been recanted by her continued use of her Canadian passport. Put differently, by her continued use of her Canadian passport, she represented herself to be a Canadian citizen to the authorities concerned, which should be viewed as a clear and positive act of possession of Canadian citizenship. This is contradictory to her position that she “impliedly” renounced her Canadian citizenship, and further affirms her status as a Canadian citizen. Citing *Reyes v. COMELEC*,³⁷ petitioners point out that Shotwell’s continued use of a foreign passport casts doubt on her Philippine citizenship.³⁸

Petitioners argue that there is no implied renunciation under Sec. 5(3) of R.A. No. 9225. Said law expressly declares that those appointed to public office should renounce their oath of allegiance to the country where they took that oath. Shotwell’s distorted interpretation of the said provision is meant to rationalize her actions. It also reveals that she was aware of such requirement because she stated that she re-acquired her Philippine citizenship through R.A. No. 9225. Indeed, there is no jurisprudence to support Shotwell’s position that Sec. 5(3) allows the implied renunciation of one’s foreign citizenship.³⁹

Respondents’ Arguments

The OMB, in a Comment⁴⁰ filed on its behalf by the Office of the Solicitor General, maintains that it did not act with grave abuse of discretion in finding no probable cause to charge Shotwell with the crimes of falsification of public documents, usurpation of authority or official functions, and perjury. It stresses that in the determination of the existence of probable cause in this case, the OMB is not bound to look at collateral matters that do not relate to the commission of the actual offenses being charged, *i.e.*, issue on dual citizenship. For

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³⁶ Id. at 18-19.

³⁷ 720 Phil. 174 (2013).

³⁸ Id. at 20-21.

³⁹ Id. at 24-27.

⁴⁰ *Rollo*, pp. 190-207.

clarity, the case filed before the OMB is not a petition to disqualify Shotwell as SVP of DBP on the basis of her alleged dual citizenship. Instead, the issue in the complaint filed before the OMB revolves only around whether Shotwell committed acts that would constitute the crimes of falsification, perjury, or usurpation of authority or official functions, as well as the supposed violation of Sec. 13 of R.A. No. 3019.⁴¹

Undeniably, the available records before the OMB all confirm that Shotwell is a Filipino citizen. Reading the contents of Shotwell's Oath of Allegiance, executed on July 12, 2012, will show that such oath, which includes allegiance to the authority of the Republic of the Philippines, serves as an implicit renunciation of a naturalized citizen's foreign citizenship, without prejudice to any subsequent determination of her alleged dual citizenship. Hence, her act of indicating Filipino citizenship in the PDS and BDS are truthful narrations of fact as supported by the documents on record. Necessarily, the elements of the crime of falsification of public documents are absent in the light of the facts and circumstances established before the OMB.⁴²

No evidence likewise exists to support the charge of usurpation of authority or official functions. Shotwell did not knowingly and falsely represent herself to be an officer, agent or representative of any department or agency of the Philippine government or foreign government. Her appointment was validated by the CSC and the Monetary Board. As to her supposed flagrant disregard of her lack of qualification and her continued performance of the functions of the Head of the HRMG of DBP, such does not amount to false assertion or pretense of being a public official.⁴³

The allegation of violation of Sec. 13 of R.A. No. 3019 is also baseless. Said provision does not define a specific offense with a separate penalty. The provision merely provides the mechanisms or accessory penalties in case a public officer faces a pending criminal prosecution in court or has been convicted by final judgment for offenses or crimes defined under R.A. No. 3019, Title 7, Book II of the RPC, or for any offense involving fraud upon government or public funds or property. In case of a pending criminal prosecution, the public officer shall be suspended, while in the event of conviction

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⁴¹ Id. at 220-221.

⁴² Id. at 222-224.

⁴³ Id. at 225-226.



by final judgment, the public officer shall lose all retirement or gratuity benefits under any law, among others. Clearly, there is no basis to charge Shotwell with a separate violation of Sec. 13 of R.A. No. 3019.⁴⁴

In her Comment,⁴⁵ Shotwell argues that the OMB did not err in dismissing petitioners' complaint-affidavit, which charged her with falsification of public or official document, perjury and usurpation of authority, for claiming in her 2013 PDS that she is a Filipino citizen. She contends that there can be no misrepresentation or false narration of facts as she is indeed a Filipino. In fact, it was only in 2016 that the CSC issued a circular governing dual-citizens in government service.⁴⁶

Shotwell invokes the rule that "there can be no conviction for falsification of a public document if the acts of the accused are consistent with good faith."⁴⁷ Since good faith is always presumed, more so in the case of public officers who are presumed to have acted in good faith in the performance of their duties, mistakes committed by these officers are not actionable absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith.⁴⁸

Having acted in good faith and with all sincerity when she accomplished said PDS form on February 13, 2013, Shotwell asserts that she rightfully believed that she was a Filipino citizen, as shown by the documents she submitted before the OMB, which all recognized her Philippine citizenship. The filling up of the PDS was thus made in good faith and she should be absolved from the charge of falsification of public document. Accordingly, there was no capricious and whimsical exercise of judgment when the OMB held that the element of making untruthful statements is absent.⁴⁹

As to the charge of usurpation of authority, Shotwell argues that the punishable act is false and knowing representation, *i.e.*, malicious misrepresentation, as an agent, officer, or representative of the government. She points out that her appointment was at the instance of the DBP Board of Directors, and was validated and approved by

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⁴⁴ Id. at 226-227.

⁴⁵ *Rollo*, pp. 277-306.

⁴⁶ Id. at 297-298.

⁴⁷ *Relucio v. Civil Service Commission*, 440 Phil. 981, 989 (2002).

⁴⁸ Id. at 289-290.

⁴⁹ Id. at 292.

the CSC and confirmed by the Monetary Board. Even assuming that she is not qualified for the position, such is not tantamount to acting under pretense of official position. Shotwell reiterates that she was lawfully entitled to act as Head of HRMG of DBP.⁵⁰

In the light of the foregoing, Shotwell prays that this Court denies the present petition for *certiorari* and sustains the Joint Resolution, dated April 11, 2016, and Joint Order, dated July 11, 2016, issued by the OMB.

The Court's Ruling

The petition has no merit.

In reviewing the OMB's exercise of its constitutionally mandated powers, We bear in mind that *certiorari* is an extraordinary prerogative writ that is not demandable as a matter of right.⁵¹ Indeed, this Court has adopted a policy of non-interference with the OMB's exercise of its investigatory and prosecutory powers.⁵² For this Court to entertain a petition for *certiorari* questioning the OMB's findings regarding probable cause, the petition must clearly and convincingly show that the OMB gravely abused its discretion, thus warranting the exercise of Our jurisdiction under the Constitution and the Rules of Court.⁵³ In these controversies, the *only* justiciable issue to be resolved is the presence or absence of grave abuse of discretion.

While the OMB's findings as to whether probable cause exists are generally not reviewable by this Court, where there is an allegation of grave abuse of discretion, the OMB's act cannot escape judicial scrutiny under the Court's own constitutional power and duty "to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."⁵⁴

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⁵⁰ Id.

⁵¹ *Clave v. Office of the Ombudsman (Visayas)*, 801 Phil. 967, 975 (2016), citing *Angeles v. Gutierrez*, 685 Phil. 183, 193 (2012).

⁵² *Presidential Ad Hoc Committee on Behest Loans v. Tabasondra*, 579 Phil. 312, 324-325 (2008); *Republic v. Ombudsman*, G.R. No. 198366, June 26, 2019.

⁵³ *Clave v. Office of the Ombudsman (Visayas)*, supra, citing Sec. 1, Art. VIII of the 1987 Constitution.

⁵⁴ *Republic v. Ombudsman*, G.R. No. 198366, June 26, 2019, citing *Casing v. Ombudsman*, 687 Phil. 468, 475-476 (2012).

After a conscientious review, We hold that no such grave abuse exists in the OMB's finding of lack of probable cause against Shotwell for falsification of public document, perjury and usurpation of authority.

*No Probable Cause for
Falsification of Public Document
or Perjury*

The crime of falsification of public documents has the following elements: 1) the offender is a public officer, employee, or notary public; 2) he takes advantage of his official position; and 3) he falsifies a document by committing any of the acts enumerated in Art. 171 of the RPC.⁵⁵ For one to be convicted of falsification of public documents by *making untruthful statements in a narration of facts* under Art. 171, paragraph 4, the prosecution must establish beyond reasonable doubt the following elements: 1) the offender makes in a public document untruthful statements in a narration of facts; 2) he has a legal obligation to disclose the truth of the facts narrated by him; and 3) the facts narrated by him are absolutely false; and 4) it was made with a wrongful intent to injure a third person.⁵⁶

The accomplishment of the PDS is a requirement under the Civil Service Rules and Regulations for employment in the government. After filling up the information required in said form, the applicant or employee signs the same, declaring under oath "that this Personal Data Sheet has been accomplished by me, and is a true, correct and complete statement pursuant to the provisions of pertinent laws, rules and regulations of the Republic of the Philippines," and authorizing "any agency head/authorized representative to verify/validate the contents stated herein."⁵⁷ Thus, there is an obligation for individuals accomplishing the PDS to provide truthful statements therein.

In *Civil Service Commission v. Sta. Ana*,⁵⁸ We held that a court employee's act of indicating in his PDS that he passed the career service professional examination when in fact he did not, makes him liable for falsification of a document by making an untruthful statement in a narration of facts, as defined under Art. 171, par. 4 of the RPC. Such untruthful statement was made by respondent therein

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⁵⁵ *Office of the Ombudsman v. Santidad*, G.R. Nos. 207154 & 222046, December 5, 2019.

⁵⁶ *Id.*; *Laurel v. Francisco*, 638 Phil. 1, 75 (2010).

⁵⁷ CS Form 212 (Revised 2005).

⁵⁸ 435 Phil. 1 (2002).



knowing fully well that it was not true. Being an aspirant for promotion to a higher position, respondent had a legal obligation to disclose the truth because the PDS is required in connection with the promotion to a higher position.

In this case, prior to her appointment and as one of the requirements for her appointment, Shotwell submitted her PDS indicating that she is a Filipino citizen. Relevant to her appointment, are the provisions of Sec. 5 (3) of R.A. No. 9225, *viz.*:

SECTION 5. *Civil and Political Rights and Liabilities.* — Those who retain or reacquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:

x x x x

(3) Those appointed to any public office shall subscribe and swear to an oath of allegiance to the Republic of the Philippines and its duly constituted authorities prior to their assumption of office: *Provided*, That they renounce their oath of allegiance to the country where they took that oath;

x x x x

Shotwell admitted that she was naturalized as a Canadian citizen on November 29, 2010. Thereafter, on July 12, 2012, she availed of the provisions of R.A. No. 9225 by taking an Oath of Allegiance to the Republic of the Philippines before the Consul General, Philippine Consulate in Toronto, Canada. As per Order TO-RA9225-476-12, issued by Consul General Junever M. Mahilum-West, her petition filed under the said law was granted and she was “deemed to have retained her Philippine citizenship.” In recognition of her Filipino citizenship after complying with the procedure and requirements of R.A. No. 9225 as implemented by Administrative Order No. 91, series of 2004 and MC Nos. AFF-2004-01 and AFF-05-002 issued by the Department of Foreign Affairs (*DFA*), she was issued Identification Certificate No. 560-07-12.

Given her previous compliance with the procedure and requirements of R.A. No. 9225 as implemented by the *DFA*, and the latter’s declaration that she had thereby retained her Philippine citizenship, even issuing an Identification Certificate for that purpose, Shotwell had all the reason to believe that she is a Filipino citizen

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when she made the statement in her PDS in connection with her application for the position with the DBP on February 13, 2013. And despite petitioners' questions regarding the validity of her re-acquisition of Philippine citizenship, which involve the interpretation of Sec. 5(3) of R.A. No. 9225, it cannot be said that Shotwell's statement as to her Filipino citizenship in the PDS is absolutely false, or that she "knowingly made an untruthful statement."

It must be mentioned that when Shotwell applied for and was appointed to a government position in 2013, existing jurisprudence interpreting Sec. 5 of R.A. No. 9225 all involved cases falling under Sec. 5(2), or those persons who have retained or re-acquired their Philippine citizenship and are seeking **elective** positions in government. Such situation was recognized by the CSC when it issued CSC Resolution No. 1600908 dated August 11, 2016, entitled *Policy on Employment in the Government Service of Filipino Citizens with Dual Citizenships*. Pertinent portions of its whereas clauses read:

x x x x

WHEREAS, Item 3, Section 5 of Republic Act No. 9225, otherwise known as the Citizenship Retention and Re-Acquisition Act of 2003 states that those appointed to any public office shall subscribe and swear to an oath of allegiance to the Republic of the Philippines and its duly constituted authorities prior to their assumption of office; provided that they renounce their oath of allegiance to the country where they took that oath;

WHEREAS, a review of the jurisprudence involving cases of government officials and employees with dual citizenships showed that such cases are limited to elective officials only;

WHEREAS, despite the implementation of RA 9225, there are no cases filed against dual citizens appointed in the government service; and that there are no monitoring mechanisms installed to identify government officials and employees with dual citizenships;

WHEREAS, the Commission has received queries and clarifications on the employment status of those with dual citizenships working in the government;

x x x x (emphasis supplied)

There being no executive issuance or jurisprudence on the correct application and interpretation of Sec. 5(3) concerning those seeking appointive positions in government at the time, Shotwell's

reliance on the regulations then being implemented by the DFA indicate good faith on her part and lack of malicious intent in declaring herself as a Filipino citizen. Thus, the elements that the facts narrated in the document be absolutely false, and that the narration be made with intent to injure, are not present.

As to the charge of perjury under Art. 183 of the RPC, the elements of the crime are: 1) that the accused made a statement under oath or executed an affidavit upon a material matter; 2) that the statement or affidavit was made before a competent officer, authorized to receive and administer oath; 3) that in the statement or affidavit, the accused made a willful and deliberate assertion of a falsehood; and 4) that the sworn statement or affidavit containing the falsity is required by law or made for a legal purpose.⁵⁹ Again, not all elements of the offense are present in this case. For the same reasons discussed above, We do not find that Shotwell made a willful and deliberate assertion of a falsehood as to her nationality.

As correctly pointed out by the Solicitor General, the case filed before the OMB is not a petition to disqualify Shotwell as SVP of DBP on the basis of her alleged dual citizenship, but a criminal complaint which called for the determination of probable cause against her for falsification of public document, usurpation of authority or official functions, and perjury. Hence, the inquiry revolves only around whether Shotwell committed acts that would constitute the elements of each crime as defined in the RPC.

*No probable cause for
Usurpation of Authority*

As to the alleged usurpation of authority or official functions, We also sustain the OMB's finding of no probable cause against Shotwell. This crime is defined in Art. 177 of the RPC, which states:

ARTICLE 177. *Usurpation of authority or official functions.* — Any person who shall **knowingly and falsely represent himself to be an officer**, agent or representative of **any department or agency of the Philippine Government** or of any foreign government, **or who, under pretense of official position**, shall perform any act pertaining to any person in authority or public officer of the Philippine Government or of any foreign government, or any agency thereof, without being lawfully entitled to do so, shall suffer the penalty of *prision correccional* in its minimum and medium periods. (emphases supplied)

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⁵⁹ *Union Bank of the Philippines. v. People*, 683 Phil. 108, 117 (2012).

This provision contemplates two ways of committing this crime: first, by knowingly and falsely representing oneself to be an officer, agent or representative of any department or agency of the Philippine Government or of any foreign government; or second, under pretense of official position, performing any act pertaining to any person in authority or public officer of the Philippine Government or any foreign government, or any agency thereof, without being lawfully entitled to do so. The former constitutes the crime of *usurpation of authority*, while the latter act constitutes the crime of *usurpation of official functions*.⁶⁰ It has been held that good faith is a defense against a charge of violation of said provision.⁶¹

The punishable act in usurpation of authority is false and knowing representation, *i.e.*, the *malicious misrepresentation* as an agent, officer, or representative of the government.⁶² Here, Shotwell did not maliciously misrepresent herself as an agent, officer or representative of the government. She is a public official herself having been appointed to such position by the government agency which employed her, and her appointment duly confirmed by both the CSC and the Monetary Board.

Likewise, as to the offense of usurpation of official functions, regardless of whether Shotwell was lawfully entitled to perform the duties of SVP and HRMG Head of DBP, her actual appointment and confirmation clothed her with apparent good faith in carrying out such functions.

Sec. 13 of R.A. No. 3019

Lastly, petitioners maintain that Shotwell “violated” Sec. 13 of R.A. No. 3019, which reads:

Sec. 13. *Suspension and loss of benefits.* — Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as a complex offense and in whatever stage of execution and mode of participation, is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted,

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⁶⁰ *Ruzol v. Sandiganbayan*, 709 Phil. 708, 749-750 (2013).

⁶¹ *Degamo v. Office of the Ombudsman*, G.R. No. 212416, December 5, 2018, 888 SCRA 345, 357.

⁶² *Id.*

he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

In the event that such convicted officer, who may have already been separated from the service, has already received such benefits shall be liable to restate the same to the Government.
(As amended by BP Blg. 195, March 16, 1982)

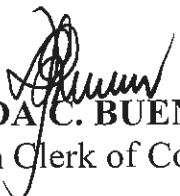
The Court is utterly baffled as to petitioners' insistence on its strained reading of the said provision. As correctly pointed out by the Solicitor General, Sec. 13 merely provides a mechanism for the suspension of a public officer during or after a criminal prosecution involving certain offenses. It cannot be interpreted as to constitute a distinct penal offense with which Shotwell may be independently charged.

In sum, petitioners failed to establish, clearly and convincingly, the grave abuse of discretion allegedly committed by the OMB in finding no probable cause against private respondent Shotwell for the offenses complained of.

WHEREFORE, the petition is **DISMISSED** for lack of merit.

SO ORDERED."

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *716*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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JUL 05 2022

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