



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 16 February 2022 which reads as follows:

“G.R. Nos. 233059-60 (*People of the Philippines v. Sandiganbayan First (1st) Division, and Abraham Kahlil B. Mitra, Dennis B. Araullo, Lucille E. Odejar, Raymundo Enriquez Braganza, Margie Tajon-Luz)**. – For resolution is a petition for *certiorari*¹ seeking to reverse and set aside the Resolution² dated December 27, 2016 and Resolution³ dated June 8, 2017 of the First Division of the Sandiganbayan in Criminal Case Nos. SB-16-CRM-0694 and SB-16-CRM-0695. The assailed Sandiganbayan resolutions dismissed the criminal cases filed against private respondents Abraham Kahlil B. Mitra (Mitra), Lucille E. Odejar (Odejar), Dennis B. Araullo (Araullo), Raymundo E. Braganza (Braganza), and Margie Tajon-Luz (Tajon-Luz) (collectively, private respondents), for violation of their constitutional right to speedy disposition of cases.

The Antecedent Facts

In 2004, the Department of Agriculture (DA) implemented the *Ginintuang Masaganang Ani* (GMA) program pursuant to Republic Act (R.A.) No. 8435. This program was allotted a budget of ₱728,000,000.00 intended for the purchase of farm inputs and implements in the country to modernize the agriculture and fisheries sector.⁴

The Second District of Palawan, through Mitra, its Representative, received a share of ₱3,000,000.00 from this total budget. On February 20, 2004, Mitra endorsed GabayMasa Development Foundation Incorporated (GabayMasa), a registered non-government organization (NGO), to implement the fund allocation. On March 10, 2004, a Memorandum of Agreement (MOA) was entered into by the Second District of Palawan, represented by Mitra; the DA Regional Field Unit IV, represented by Araullo; and GabayMasa, represented by its president, Tajon-Luz.⁵

* Also spelled as Tajon Luz in some parts of the *rollo*.

¹ *Rollo*, pp. 7-45.

² *Id.* at 46-56. Penned by Associate Justice Efrén N. De la Cruz with Associate Justices Michael Frederick L. Musngi and Reynaldo P. Cruz concurring.

³ *Id.* at 58-64.

⁴ *Id.* at 12.

⁵ *Id.* at 13.

In 2006, based on findings by the Commission on Audit (COA) of overpricing and anomalies in the GMA program, the Office of the Ombudsman (Ombudsman) created Task Force Abono (TFA) to conduct a fact-finding investigation.⁶

On April 18, 2011, the TFA filed a complaint against private respondents for violations of Section 3(e) of R.A. No. 3019 and Malversation of Public Funds. The TFA alleged that the existence of GabayMasa was doubtful and that it was not qualified to be the implementing NGO for the project based on COA Circular No. 96-003. It further claimed that GabayMasa was not shown to have the capability to implement the project.⁷

On July 20, 2011, the Special Panel of the Ombudsman (Special Panel) found sufficient basis to proceed with the preliminary investigation and ordered private respondents to file their counter-affidavits. Araullo, Odejar, and Braganza thus filed their counter-affidavits on August 10, 11, and 22, 2011, respectively.⁸

However, despite diligent efforts, the Special Panel allegedly could not serve a copy of its order to Mitra. It was constrained to issue another order on January 25, 2012 requiring Mitra to file his counter-affidavit, which he eventually received on February 1, 2012. Mitra filed a motion for extension of time to file his counter-affidavit on February 10, 2012. The Special Panel granted his motion on February 14, 2012. Nevertheless, he failed to file his counter-affidavit within the extension granted. On May 2, 2012, he filed a motion to admit counter-affidavit dated April 30, 2012.⁹

On February 6, 2014, the Special Panel issued an order directing Tajon-Luz to file her counter-affidavit. However, despite notice, she failed to do so.¹⁰

On December 4, 2014, the Special Panel issued a resolution recommending that private respondents be indicted for the crimes charged.¹¹

Mitra filed a motion for reconsideration of this resolution on April 21, 2015 and a supplemental motion for reconsideration on May 22, 2015. The Ombudsman denied both his motion and supplemental motion on June 24, 2015, and January 7, 2016, respectively.¹²

Consequently, two separate Informations were filed with the Sandiganbayan on September 23, 2016 charging private respondents with

⁶ Id. at 136.

⁷ Id. at 14.

⁸ Id. at 15.

⁹ Id. at 15-16.

¹⁰ Id. at 16.

¹¹ Id.

¹² Id. at 17.

violations of Section 3(e) of R.A. No. 3019 and Malversation of Public Funds.¹³ The accusatory portion of the Informations state:

SB-16-CRM-0694
(For Violation of Section 3[e], R.A. 3019)

That on 22 April 2004 up to 29 December 2004, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, accused ABRAHAM KAHLIL BLANCO MITRA (SG 31), then Representative of the Second District of Palawan, together with officials of the Department of Agriculture, Regional Field Office IV: DENNIS B. ARAULLO, Executive Director (SG 28), GREGORIO O. SANGALANG, Regional Technical Director (SG 27), BALAGTAS J. TORRES, Regional Technical Director (SG 27), LUCILLE E. ODEJAR, Legislative Coordinator (SG 24), and RAYMUNDO ENRIQUEZ BRAGANZA, Regional Accountant (SG 18), committing the crime as charged herein, while in the performance of, in relation to and/or taking advantage of their official positions and functions, as such, conspiring with one another and mutually confederating with the officers of GabayMasa Development Foundation Incorporated (“GabayMasa”): MARGIE TAJON LUZ, CONCHA INAY IDICA, MA. CRISTINA JIMENO VIZCARRA, CARIDAD M. TAJON, MELENCIO C. PUNZALAN AND RODOLFO M. LUZ, and acting with manifest partiality, evident bad faith, or gross inexcusable negligence, did then and there wilfully, unlawfully and criminally give unwarranted benefits, advantage or preference to GabayMasa and cause undue injury to the government by (a) selecting and accrediting GabayMasa as the collaborating Non-Government Office (NGO) to implement the fertilizer fund in the amount of Three Million Pesos, (Php3,000,000.00), Philippine Currency, allocated for the farm implements program of the Second District of Palawan despite the latter’s lack of qualifications under COA Circular No. 96-003; (b) immediately approving and transferring 65% of the Php3M fertilizer fund or a total of One Million Nine Hundred Fifty Thousand Pesos (Php1,950,000.00), Philippine currency, to GabayMasa upon approval/signing of a Memorandum of Agreement (“MOA”) dated 10 March 2004, when what was agreed upon in the said MOA was a transfer of only 20% of the Php3M fertilizer fund upon its approval/signing; and (c) immediately approving and transferring the final release of payment in the total amount of One Million Fifty Thousand Pesos (Php1,050,000.00), Philippine currency, in favor of GabayMasa in violation of the agreed tranches in MOA and despite the latter’s failure to submit and comply with the required reportorial requirements and/or conditions as specified in the MOA, to the damage and prejudice of the government.

CONTRARY TO LAW.¹⁴

SB-16-CRM-0695
(For Malversation of Public Funds)

That on 22 April 2004 up to 29 December 2004, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction

¹³ Id.

¹⁴ Id. at 11.

of this Honorable Court, accused public officers ABRAHAM KAHLIL BLANCO MITRA (SG 31), then Representative of the Second District of Palawan, and officials of the Department of Agriculture, Regional Field Office IV: DENNIS B. ARAULLO, Executive Director (SG 28), GREGORIO O. SANGALANG, Regional Technical Director (SG 27), BALAGTAS J. TORRES, Regional Technical Director (SG 27), LUCILLE E. ODEJAR, Legislative Coordinator (SG 24), and RAYMUNDO ENRIQUEZ BRAGANZA, Regional Accountant (SG 18), who by reason of their office are accountable for public funds, particularly the Three Million Pesos (Php3M), Philippine currency, Fertilizer Fund received or entrusted to them, allocated for the Farm Implements Program of the Second District of Palawan, acting in conspiracy with one another and mutually confederating with the officers of GabayMasa Development Foundation Incorporated (“GabayMasa”): MARGIE TAJON LUZ, CONCHA INAY IDICA, MA. CRISTINA JIMENO VIZCARRA, CARIDAD M. TAJON, MELENCIO C. PUNZALAN AND RODOLFO M. LUZ, and committing the crime charged herein while in the performance of, in relation to and/or taking advantage of their official positions and functions as such, did then and there wilfully, unlawfully and feloniously, appropriate, take, convert, misappropriate, consent, or through abandonment or negligence, permit and allow GabayMasa to embezzle and take the public funds under their charge and custody by: (a) immediately approving the release and transfer of funds to GabayMasa representing 65% of the total Fertilizer Fund, in the total amount of One Million Nine Hundred Fifty Thousand Pesos (Php1,950,000.00), Philippine currency, through Voucher No. 2004-4-1253 and Check No. 0206575 dated 22 April 2004, in flagrant violation of the provision of a Memorandum of Agreement (“MOA”) entered into on 10 March 2004, which allowed only a transfer of 20% of the Php3M fund to GabayMasa upon approval and signing of the same; and (b) hastily approving the release and transfer of funds to GabayMasa in the amount of One Million Fifty Thousand Pesos (Php1,050,000.00), Philippine currency, through Voucher No. 2004-12-6860 and Check No. 0275313 dated 29 December 2004, despite the latter’s manifest failure to submit and comply with the required reportorial requirements and/or conditions as specified in the MOA, which amounts were subsequently received and acknowledged by GabayMasa as reflected in O.R. No. 0087 and failed to liquidate in the manner set forth in the said MOA, to the damage and prejudice of the government.

CONTRARY TO LAW.¹⁵

Before their arraignment, private respondents assailed the Informations on the ground that the Ombudsman committed unreasonable, vexatious, capricious, and oppressive delay in completing the preliminary investigation which violated their constitutional right to speedy disposition of cases. Mitra filed a Motion to Quash Information dated October 5, 2016 while Odejar filed a Motion to Dismiss the Instant Cases for Violation of Accused’s Constitutional Right to Speedy Disposition of Said Cases (With Prayer to Recall or Defer the Issuance of Warrant of Arrest) dated October 18, 2016. Araullo and Braganza both filed an Urgent Joint Motion to Adopt Motions to

¹⁵ Id. at 11-12.

Quash Information. Tajon-Luz orally manifested in court that she would adopt Mitra's Motion to Quash Information.¹⁶

The State, represented by the Office of the Special Prosecutor (OSP), filed a Consolidated Comment/Opposition¹⁷ to the motions filed by Mitra and Odejar. It also filed a Consolidated Comment/Opposition¹⁸ to Araullo and Braganza's joint motion and Tajon-Luz's manifestation.

Odejar filed a reply dated October 28, 2016 to the consolidated comment/opposition. Mitra and Tajon-Luz likewise filed replies on November 7 and 22, 2016, respectively.¹⁹

The Sandiganbayan Ruling

The Sandiganbayan issued a Resolution²⁰ dated December 27, 2016 granting private respondents' motions and dismissing the criminal cases against them:

WHEREFORE, in light of all the foregoing, accused Mitra's *Motion to Quash Information*, dated October 5, 2016, which was adopted by accused Margie Tajon-Luz, accused Odejar's *Motion to Dismiss the Instant Cases for Violation of Accused's Constitutional Right to Speedy Disposition of Said Cases (With Prayer to Recall or Defer the Issuance of Warrant of Arrest)*, dated October 12, 2016, the *Urgent Joint Motion to Adopt Motions to Quash Information* of accused Araullo and Braganza, are hereby **GRANTED**, and the Informations in Criminal Cases Nos. SB-16-CRM-0694 to -0695, filed against accused Mitra, Odejar, Araullo, Braganza and Tajon Luz are ordered **QUASHED**. Accordingly, the said cases are hereby **DISMISSED** with respect to accused Mitra, Odejar, Araullo, Braganza, and Tajon Luz, for violation of their constitutional rights to speedy disposition of their cases.

The hold-departure orders issued by this Court against the said accused are hereby **LIFTED** and **SET ASIDE**, and the bonds they posted for their provisional liberty are ordered **RELEASED**, subject to the usual accounting and auditing procedures.

SO ORDERED.²¹

The Sandiganbayan explained that even if the period is reckoned from the date of the filing of the complaint on April 18, 2011, it still took the Ombudsman five and a half years to complete the preliminary investigation. This long period constitutes an inordinate, oppressive, and unreasonable delay in violation of private respondents' right to the speedy disposition of their

¹⁶ Id. at 18.

¹⁷ Id. at 66-74.

¹⁸ Id. at 75-78.

¹⁹ Id. at 129.

²⁰ Id. at 46-56.

²¹ Id. at 55-56.

cases.²² It also noted that the Ombudsman's failure to resolve the complaint with reasonable dispatch placed private respondents in a tactical disadvantage and opened the possibility of their defense being impaired.²³

The Sandiganbayan denied the prosecution's argument that it needed to wait for the other private respondents to file their counter-affidavits. This claim contradicted the internal rules of procedure of the Ombudsman which expressly states that when the respondents cannot be served with the order to file a counter-affidavit, or having been served, does not comply, the complaint shall already be deemed submitted for resolution.²⁴

Dissatisfied, the OSP filed a motion for reconsideration²⁵ of the resolution, to which Mitra filed a Comment/Objection.²⁶ The Sandiganbayan eventually denied the motion for reconsideration in a Resolution²⁷ dated June 8, 2017 for lack of merit.

Hence, the instant petition.

The Parties' Arguments

The OSP in the instant petition for *certiorari*²⁸ raised its sole assignment of error:

THE SANDIGANBAYAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN MERELY RESORTING TO A MATHEMATICAL COMPUTATION OF THE PERIOD CONSTITUTING THE ALLEGED DELAY, WITHOUT REGARD TO THE FACTS AND CIRCUMSTANCES SURROUNDING THE CASE AS WELL AS THE PRECEDENTS THAT DEFINE THE PARAMETERS OF INORDINATE DELAY.²⁹

It was argued that in applying the jurisprudentially established balancing test, there was no violation of private respondents' right to speedy disposition of cases. In the application of the balancing test, the accused's assertion or non-assertion of the right has been a significant factor. It is recognized that the accused's failure to assert the right at the earliest instance means a waiver of such right, or at least an implied acquiescence to the delay in the proceedings.³⁰ In this case, private respondents are guilty of inaction as they only invoked their right in 2016, several years after the complaint was

²² Id. at 50.

²³ Id. at 54.

²⁴ Id. at 52-53.

²⁵ Id. at 79-85.

²⁶ Id. at 203-211.

²⁷ Id. at 58-64.

²⁸ Id. at 7-45.

²⁹ Id. at 19.

³⁰ Id. at 23-27.

filed against them. They are therefore deemed to have impliedly acquiesced to any delay.³¹

In the event that there was a delay, the OSP claimed that such was reasonable. It explained that any delay was due to: (1) the difficulty experienced in locating some of private respondents' co-accused and awaiting submission of their counter-affidavits, and (2) the layers of review in the Ombudsman. The Ombudsman cannot be faulted for giving the accused an opportunity to refute the charges against them.³²

Lastly, it asserted that this Court has taken judicial cognizance of the fact that the increasing caseload of courts has affected the speedy disposition of cases. This should similarly be applied to the Ombudsman and accepted as a valid justification for delays in the disposition of some of its cases.³³

In response, Mitra, Odejar, and Tajon-Luz filed their respective Comments.³⁴ Araullo and Braganza filed a Manifestation and Compliance³⁵ that they replead and adopt the foregoing comments.

Private respondents argued that the Ombudsman committed inordinate delay which is evident from the timeline of events. They highlighted that the TFA was created in February 2006 and only filed the complaint in April 2011. The Ombudsman thus took five years and two months just to conduct its fact-finding investigation. Thereafter, from the filing of the complaint to the filing of the Informations with the Sandiganbayan, it again took another five years and four months to complete the preliminary investigation. This combined period of over 10 years is clearly too long and constituted delay that was inordinate, vexatious, capricious, and oppressive.³⁶ They cited the cases of *Tatad v. Sandiganbayan*³⁷ and *Lopez, Jr. v. Office of the Ombudsman*³⁸ where delays in the preliminary investigation of three years and four years were already deemed violations of the accused's right to speedy disposition of cases.³⁹

Moreover, the violation of their right to speedy disposition of cases was timely asserted. Private respondents raised this issue immediately after the Informations were filed against them and before their arraignment and trial. There was no other opportune time to assail the inaction of the Ombudsman before then. The Ombudsman cannot be considered an impartial body to rule upon whether or not there was a delay in the conduct of its own fact-finding

³¹ Id. at 23-29.

³² Id. at 31.

³³ Id. at 32.

³⁴ Id. at 171-195; pp. 217-235; pp. 236-246.

³⁵ Id. at 286-288.

³⁶ Id. at 178.

³⁷ 242 Phil. 563, 575 (1988).

³⁸ 417 Phil. 39, 51 (2001).

³⁹ *Rollo*, pp. 178-179.

process and preliminary investigation. It was not private respondents' duty to remind the Ombudsman of the pendency of the cases against them. On the contrary, the Ombudsman was responsible for resolving and promptly acting on all cases filed before it.

The Ombudsman failed to give an acceptable reason for the delay it committed in completing the preliminary investigation. This delay prejudiced private respondents and impaired their defenses since most documentary evidence had already been lost and most witnesses could no longer be reached.

The OSP filed a Consolidated Reply⁴⁰ to private respondents' comments reiterating that the period that lapsed was justified under the circumstances. Also, private respondents failed to present any evidence to prove and show how they were actually prejudiced by the alleged delay.

The Issue

The issue in this case is whether or not the Sandiganbayan correctly dismissed the criminal cases against the private respondents for violation of their constitutional right to speedy disposition of cases.

The Ruling of this Court

The petition is denied.

The right to speedy disposition of cases is enshrined in Section 16, Article III of the 1987 Philippine Constitution:

Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

This paramount right is broad in scope and may be raised in all civil, criminal, and administrative cases even before quasi-judicial and administrative bodies.⁴¹ It is intended to prevent delay in the administration of justice and prevent oppression of the citizen by holding criminal prosecution over him/her for an indefinite time. This Court in *Corpuz v. Sandiganbayan*⁴² pertinently elucidated:

The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts to proceed with reasonable dispatch in the trial of criminal cases. Such right to a speedy trial and a speedy disposition of a case is violated

⁴⁰ Id. at 269-280.

⁴¹ *Republic v. Sandiganbayan*, G.R. No. 231144, February 19, 2020.

⁴² 484 Phil. 899 (2004).

only when the proceeding is attended by vexatious, capricious and oppressive delays. The inquiry as to whether or not an accused has been denied such right is not susceptible by precise qualification. The concept of a speedy disposition is a relative term and must necessarily be a flexible concept.

While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.⁴³ (Citations omitted)

The right to speedy disposition of cases is violated when the proceedings are “attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or unjustifiable motive, a long period of time is allowed to elapse without the party having his case tried.”⁴⁴

Notably, a mere mathematical reckoning of the period involved is insufficient to determine whether or not there was inordinate delay in the proceedings. The Court must consider the peculiar circumstances and make an evaluation on a case-to-case basis. A “balancing test” has therefore been established for this purpose which laid down the following factors for consideration: (1) the length of delay; (2) the reason for delay; (3) the defendant’s assertion or non-assertion of his or her right; and (4) the prejudice to the defendant as a result of the delay.⁴⁵

This Court in the landmark case of *Cagang v. Sandiganbayan*⁴⁶ (*Cagang*) established guidelines in analyzing cases when the constitutional right to speedy disposition of cases is invoked:

First, the right to speedy disposition of cases is different from the right to speedy trial. While the rationale for both rights is the same, the right to speedy trial may only be invoked in criminal prosecutions against courts of law. The right to speedy disposition of cases, however, may be invoked before any tribunal, whether judicial or quasi-judicial. What is important is that the accused may already be prejudiced by the proceeding for the right to speedy disposition of cases to be invoked.

Second, a case is deemed initiated upon the filing of a formal complaint prior to a conduct of a preliminary investigation. This Court acknowledges, however, that the Ombudsman should set reasonable periods

⁴³ Id. at 917.

⁴⁴ *Republic v. Sandiganbayan*, supra note 41, citing *Ty-Dazo v. Sandiganbayan*, 424 Phil. 945, 950-951 (2002).

⁴⁵ *Martinez III v. People*, G.R. No. 232574, October 1, 2019.

⁴⁶ 837 Phil. 815 (2018).

for preliminary investigation, with due regard to the complexities and nuances of each case. Delays beyond this period will be taken against the prosecution. The period taken for fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay.

Third, courts must first determine which party carries the burden of proof. If the right is invoked within the given time periods contained in current Supreme Court resolutions and circulars, and the time periods that will be promulgated by the Office of the Ombudsman, the defense has the burden of proving that the right was justifiably invoked. If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay.

If the defense has the burden of proof, it must prove first, whether the case is motivated by malice or clearly only politically motivated and is attended by utter lack of evidence, and second, that the defense did not contribute to the delay.

Once the burden of proof shifts to the prosecution, the prosecution must prove first, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; second, that the complexity of the issues and the volume of evidence made the delay inevitable; and third, that no prejudice was suffered by the accused as a result of the delay.

Fourth, determination of the length of delay is never mechanical. Courts must consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised.

An exception to this rule is if there is an allegation that the prosecution of the case was solely motivated by malice, such as when the case is politically motivated or when there is continued prosecution despite utter lack of evidence. Malicious intent may be gauged from the behavior of the prosecution throughout the proceedings. If malicious prosecution is properly alleged and substantially proven, the case would automatically be dismissed without need of further analysis of the delay.

Another exception would be the waiver of the accused to the right to speedy disposition of cases or the right to speedy trial. If it can be proven that the accused acquiesced to the delay, the constitutional right can no longer be invoked.

In all cases of dismissals due to inordinate delay, the causes of the delays must be properly laid out and discussed by the relevant court.

Fifth, the right to speedy disposition of cases or the right to speedy trial must be timely raised. The respondent or the accused must file the appropriate motion upon the lapse of the statutory or procedural periods. Otherwise, they are deemed to have waived their right to speedy disposition of cases.

Guided by the foregoing, this Court affirms the ruling of the Sandiganbayan that there was inordinate delay in the preliminary investigation which violated private respondents' right to speedy disposition of cases.

At the outset, it bears stressing that the prosecution in this case had the burden of proof to justify the long delay in the preliminary investigation. In this regard, Section 3(f), Rule 112 of the Rules of Criminal Procedure⁴⁷ provides that "[w]ithin ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial."

The preliminary investigation in this case took nearly five and a half years and is clearly beyond the permissible period under the governing rules of procedure. Hence, applying *Cagang*, the prosecution must prove that it followed the prescribed procedure in the conduct of preliminary investigation; the complexity of the issues, and the volume of evidence made the delay inevitable; and that no prejudice was suffered by private respondents as a result of the delay.

In this regard, the Ombudsman in its petition sought to justify the delay in the preliminary investigation on the following grounds:

1. There was difficulty locating the whereabouts of some of the private respondents' co-accused;
2. The case had to undergo layers of review in the Office of the Ombudsman;
3. The Court has taken judicial cognizance of the increasing caseload in the courts which should be similarly applied to the Ombudsman; and
4. The private respondents failed to assert their right to speedy disposition of cases at the earliest stage and are therefore deemed to have acquiesced to the delay.

These grounds are bereft of merit.

This Court in several occasions has been critical in determining violations of the right to speedy disposition of cases for persons similarly situated as private respondents allegedly involved in the fertilizer fund scam. In *Javier v. Sandiganbayan*⁴⁸ (*Javier*), it was held that an unexplained delay of five years to complete the preliminary investigation was a violation of the right to speedy disposition of cases. It rejected the Ombudsman's

⁴⁷ See *Daep v. Sandiganbayan*, G.R. No. 244649, June 14, 2021.

⁴⁸ G.R. No. 237997, June 10, 2020.

unsubstantiated justification that the case had voluminous records and that the steady stream of cases reaching its office is endless.

It was similarly held in *Martinez III v. People*⁴⁹ (*Martinez III*) that the Ombudsman violated the accused's right to speedy disposition of cases when it took almost five years to complete the preliminary investigation. This Court rejected the Ombudsman's explanation that the delay was justified "given the number of the personalities and high offices involved."⁵⁰ It similarly denied the claim that it investigated the case in conjunction with other fertilizer fund scam cases because it was not shown how the accused conspired with those from other cases.

In *Catamco v. Sandiganbayan*⁵¹ (*Catamco*), it was held that there was inordinate delay in the preliminary investigation since it took two years, 11 months, and 12 days from the filing of the last counter-affidavit on May 20, 2015 to the filing of the Informations on April 27, 2018. This Court denied the Ombudsman's justification that it needed time to "meticulously evaluate and review numerous records and relied heavily on this Court's recognition in a previous case of the steady stream of cases handled by the Ombudsman."⁵²

In this case, we likewise rule that the Ombudsman failed to prove that its delay in the preliminary investigation was reasonable and justified.

Similar to *Martinez III* and *Catamco*, the Ombudsman in this case took five years, five months, and six days to complete the preliminary investigation of private respondents. To review, the Ombudsman filed the complaint against them on April 18, 2011. It ordered them to submit their counter-affidavits on July 20, 2011. Araullo, Odejar, and Braganza filed their counter-affidavits on August 10, 11, and 22, 2011, respectively. Mitra belatedly filed his counter-affidavit on May 2, 2012. The Ombudsman then issued a resolution to indict private respondents on December 4, 2014. Finally, the corresponding Informations were filed with the Sandiganbayan on September 23, 2016.

It is evident that the preliminary investigation was unjustifiably dormant for more than two and a half years from the filing of their last counter-affidavit to the resolution by the Ombudsman. After the Ombudsman issued its resolution, there was another delay of over one year and nine months before the Informations were filed before the Sandiganbayan. The accumulated delay committed by the Ombudsman remained unjustified and thus constituted inordinate delay in violation of private respondents' right to speedy disposition of cases.

⁴⁹ Supra note 45.

⁵⁰ Id.

⁵¹ G.R. Nos. 243560-62, 243261-63, July 28, 2020.

⁵² Id.

The Ombudsman's reason that the delay was due to the difficulty in locating some of private respondents' co-accused was unsubstantiated. It failed to specify who these persons were and justify why it could not continue with the preliminary investigation without receiving their counter-affidavits. It did not submit proof that these persons truly could not be located and what diligent efforts it exerted to locate them. Without evidence, this claim was self-serving and insufficient to overcome the prosecution's burden of proof.

This alleged cause of delay likewise violated the Ombudsman's own Rules of Procedure which stated "[i]f respondents cannot be served with the order mentioned in paragraph b hereof [in preliminary investigation], or having been served, does not comply therewith, the complaint shall be deemed submitted for resolution on the basis of the evidence on record."⁵³

The delay in the filing of the Informations also violated Section 7 of the Rules of Procedure of the Ombudsman which clearly provides that "[t]he filing of a motion for reconsideration/reinvestigation shall not bar the filing of the corresponding information in Court on the basis of the finding of probable cause in the resolution subject of the motion."

The Ombudsman's reliance on its alleged increased caseload must be denied. This Court in *Javier* pronounced that this excuse cannot be used as a magical phrase to justify its delay in the disposition of cases. The Ombudsman is still required to prove this assertion:

At this juncture, it is well to point out that the Ombudsman cannot repeatedly hide behind the "steady stream of cases that reach their office" despite the Court's recognition of such reality. The Court understands the reality of clogged dockets — from which it suffers as well — and recognizes the current inevitability of institutional delays. However, "steady stream of cases" and "clogged dockets" are not talismanic phrases that may be invoked at whim to magically justify each and every case of long delays in the disposition of cases. Like all other facts that courts take into consideration in each case, the "steady stream of cases" should still be subject to proof as to its effects on a particular case, bearing in mind the importance of the right to speedy disposition of cases as a fundamental right.⁵⁴

In this case, the Ombudsman merely made this claim without any supporting evidence. It failed to explain how and why the exigent circumstances affecting the workload of the Ombudsman at the time caused it to delay the disposition of this specific case.

Lastly, the Court rejects the Ombudsman's argument that private respondents failed to assert their right to speedy disposition of cases at the earliest opportunity and are deemed to have waived it. It was ruled in *Javier*

⁵³ RULES OF PROCEDURE of the Office of the Ombudsman, Rule II, Section 4(e).

⁵⁴ *Javier v. Sandiganbayan*, supra note 48.

that the raising of the right through a motion to quash before arraignment is deemed a timely assertion. It was explained that before such time, the Rules of Procedure of the Ombudsman prohibits motions to dismiss for grounds other than lack of jurisdiction. It was pertinently held:

Moreover, the Court is not unreasonable in its requirements. The Ombudsman's own Rules of Procedure provides that motions to dismiss, except on the ground of lack of jurisdiction, are prohibited. Thus, respondents like Javier and Tumamao have no legitimate avenues to assert their fundamental right to speedy disposition of cases at the preliminary investigation level. It would be unreasonable to hold against them — and treat it as acquiescence — the fact that they never followed-up or asserted their right in a motion duly filed.

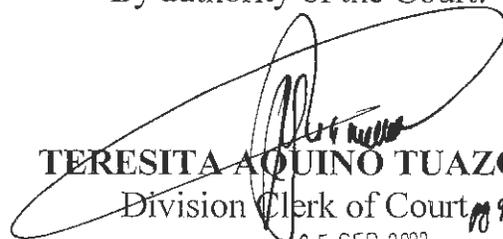
Lastly, the Court holds that Javier and Tumamao timely asserted their rights because they filed the Motion to Quash at the earliest opportunity. Before they were even arraigned, they already sought permission from the Sandiganbayan to file the Motion to Quash to finally be able to assert their right to speedy disposition of cases. To the mind of the Court, this shows that Javier and Tumamao did not sleep on their rights, and were ready to assert the same given the opportunity. Certainly, this could not be construed as acquiescence to the delay.⁵⁵ (Citations omitted)

In all, the Sandiganbayan did not commit any reversible error in ruling that the unjustified delay in private respondents' preliminary investigation violated their constitutional right to speedy disposition of cases. The criminal cases against them were therefore correctly dismissed.

WHEREFORE, the petition for *certiorari* is **DENIED**. The assailed Resolutions dated December 27, 2016 and June 8, 2017 of the First Division of the Sandiganbayan are **AFFIRMED**. Criminal Case Nos. SB-16-CRM-0694 and SB-16-CRM-0695 are **DISMISSED** for violation of the constitutional right to speedy disposition of cases of private respondents Abraham Kahlil B. Mitra, Lucille E. Odejar, Dennis B. Araullo, Raymundo E. Braganza, and Margie Tajon-Luz.

SO ORDERED.”

By authority of the Court:


TERESITA AQUINO TUAZON
 Division Clerk of Court *pp 9/2*
 05 SEP 2022

⁵⁵ Id.

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