



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **02 March 2022** which reads as follows:*

**“G.R. No. 242730 (Roque Rellon Sarcauga v. Field Investigation Office (FIO) Task Force Abono, Office of the Ombudsman, represented by Associate Graft Investigation Officer II Corrine Joie Garillo).** – In this appeal, Roque Rellon Sarcauga (petitioner) seeks the reversal of the Resolutions dated 23 February 2018<sup>1</sup> and 26 September 2018<sup>2</sup> promulgated by the Court of Appeals (CA) in CA-G.R. SP No. 11521. The CA dismissed his petition for review for being late or premature, and failing to attach necessary documents for appeal.

**Antecedents**

On 28 November 2011, the Field Investigation Office-Task Force Abono (FIO-Task Force Abono) of the Office of the Ombudsman (OMB) filed separate administrative and criminal complaints against petitioner, the Municipal Agriculturist of Carcar (now, Carcar City), Cebu, and the following officials and employees of the same then-municipality: Mayor Mario Patricio P. Barcenas (Barcenas), Bids and Awards Committee (BAC) Chairman Valentino Gamutan, Jr. (Gamutan), Vice Chairman Jose Paninsoro (Paninsoro), Members Aida Cristina Meir Alcontin (Alcontin), Haidee Marie Sebial Avila (Avila), Secretariat Dowie Joy Noel Rodis (Rodis), Gina Yurag Alegado (Alegado), and Napoleon Lopez Canape (Canape). The administrative complaint for dishonesty, grave misconduct and conduct prejudicial to the best interest of service was docketed as OMB-V-A-12-0012-A. Meanwhile, the criminal complaint for violation of Section 3(e) and (g) of Republic Act No. (RA) 3019, the Implementing Rules and Regulations-A (IRR-A) of RA 9184, and Article 171 of the Revised Penal Code (RPC) was docketed as OMB-V-C-12-0010-A.<sup>3</sup>

<sup>1</sup> *Rollo*, pp. 45-48; penned by Associate Justice Gabriel T. Robeniol and concurred in by Associate Justices Marilyn B. Lagura-Yap and Geraldine C. Fiel-Macaraig.

<sup>2</sup> *Id.* at 72-74; penned by Associate Justice Marilyn B. Lagura Yap and concurred in by Associate Justices Gabriel T. Ingles and Emily R. Aliño-Geluz.

<sup>3</sup> *Id.* at 94-127.

The factual antecedents of the case, as summarized by the OMB, are as follows:

The complaint is based on Sun Star newspaper's published article entitled "*Group got Php6Million from Martinez; COA tags fertilizer mess in Bago, Carcar, Argao, Tuburan.*"

On February 2, 2005, the Department of Agriculture Regional Field Unit VII (DA RFU VII) gave the Municipality (now City) of Carcar, Cebu Php250,000.00 to implement its farm inputs/farm implement program.

On May 4, 2005, Sarcauga requested the purchase of 166 liters of foliar fertilizer at Php1,500.00 per liter or for Php249,000.00, which was approved by Barcenas. Later, Barcenas ordered the purchase of 166 liters of foliar fertilizer from MMCGM on May 5, 2005.

On May 6, 2005, Inspection Officer Mercedes P. Bargamento inspected and verified the quantity and specification of the purchased fertilizers upon delivery, which Sarcauga later accepted. The municipal government paid MMCGM Php239,400 (net of taxes) as evidenced by Disbursement Voucher (DV) No. 401-05050-001 and Check No. 0006479606 dated May 6, 2005, duly signed by Barcenas and City Treasurer Annabella N. Rasonable (Rasonable). Upon receipt thereof, MMCGM issued Official Receipt (OR) No. 0006.

Complainant claims that the municipal government, through respondent BAC Members and BAC Secretariat, failed to conduct public bidding for the purchase of the fertilizers as required under Section 10, Article IV of RA 9184; that it failed to comply with Section 12.1, Rule V of the IRR-A of RA 9184 pertaining to the conduct of alternative methods of procurement; that there were overpricing; that the fertilizers [were] not subject to test/laboratory analysis pursuant to Section 117(c), Rule 16 of COA Circular No. 92-386, and that the purchase documents were improperly accomplished contrary to Section 4(6) of Presidential Decree (PD) No. 1445. Thus, complainant is charging respondents for violation of Section 3(e) & (g) of RA 3019, as amended, Article 171 of the RPC, as amended, and Section 65.2(2) & (4) of the IRR-A of RA 9184.

All respondents, except Paninsoro and Castillo, filed their respective counter affidavits in compliance with the Order of this Office dated March 23, 2012. Based on the March 17, 2014 letter of Civil Registration Department Director and Certificate of Death with Registry No. 2008-436, in compliance with this Office's May 9, 2013 Subpoena Duces Tecum, Paninsoro died on August 23, 2008.

In denying the charges against him, respondent Sarcauga explains that initially, the program of work specification was to purchase 166 liters of foliar fertilizer; that due to lack of known DA-accredited supplier of foliar fertilizer, it was changed to common fertilizer; that the bidding thereof failed for lack of bidders; that when he came to know that MMCGM supplies foliar fertilizer that complies with DA's specification,

he decided to revert the program to purchase of (sic) foliar fertilizer; that as the exclusive dealer of a foliar fertilizer of superior quality compared to the other commercially available fertilizers, he recommended to the BAC to qualify MMCGM as the direct contractor for the 166 liters/bottles of foliar fertilizer.

Respondent BAC Members Alcontin and Avila and BAC Secretariat Members Rodis, Alegado, and Canape jointly aver that during the May 4, 2005 BAC meeting, Sarcauga explained that: the original program of work was to purchase foliar fertilizer but since there is no known DA-accredited foliar fertilizer supplier, he changed the program of work specification to common fertilizer; after the first bidding of common fertilizer failed, Sarcauga informed the BAC that a representative from MMCGM came to his office expressing interest to supply the foliar fertilizer; Alcontin suggested to him to write a letter to the BAC for the cancellation of the purchase of common fertilizer and its purchase specifications; he requested that the purchase of fertilizer from MMCGM be made through direct contracting/sole distributorship; the BAC advised MMCGM to submit documents and itself for pre-qualification proceedings; during the BAC proceedings on May 6, 2005, he requested for direct contracting/sole distributorship on the purchase of fertilizers and the re-program of the purchase from common to foliar fertilizer.

They continue that after Sarcauga's explanation, Paninsoro moved to recommend direct contracting as the mode of procurement for the fertilizer and MMCGM as the supplier thereof which the respondent BAC members unanimously approved; on May 9, 2005, the BAC learned that on May 6, 2005, Rasonable and Barcenas paid MMCGM; that the payment was highly irregular because BAC just approved MMCGM's qualification as direct contractor but there was no negotiation or consideration as to the contract price of the foliar fertilizer.

They further claim that the charge of Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service are baseless because the purchase of overpriced foliar fertilizer was not BAC's fault as it was caused by the procuring entity's unilateral act to prematurely purchase the same without BAC's knowledge and recommendation; there is no public bidding because the head of the procuring entity unilaterally and impliedly approved the purchase of fertilizers through direct contracting sans BAC's recommendation; and all BAC procurement documents were properly and duly prepared except for the purchase order, surety bond, official receipts, check, journal entry, inspection and acceptance report, etc.

Respondent Barcenas denies the accusations against him by saying that the purchase of foliar fertilizer from MMCGM was made in the performance of his official functions; the selection and decision from whom the purchase would be made and the eventual award thereof was based on BAC's regular conduct of procedure; there was no overpricing; that assuming the purchase was disadvantageous to the government or the award of the contract thereof was irregular, the same cannot be attributed to him; and the elements of falsification and the circumstances pertaining to the alleged violation of RA 9184 are absent.

Respondent Gamutan contends that the recommendation to qualify MMCGM as direct contractor for the purchase of foliar fertilizer underwent the regular BAC proceedings; he undertook the necessary steps to determine whether direct contracting to purchase the items is viable under the circumstances and whether MMCGM is qualified as a direct contractor; the BAC's decision to qualify MMCGM as the direct contract was made as a collegial body; and the alleged violation of Section 65.2 (2) and (4) of the IRR-A of RA 9184 has no basis since the purchase of fertilizer was made through alternative mode of procurement.

Only Barcenas, Sarcauga and Gamutan filed their joint Position Paper on August 27, 2013 in compliance with this Office's July 19, 2013 Order. They claim that their act of entering into a contract with MMCGM for the purchase of 166 bottles of Ferti King foliar fertilizer (Barcenas), as well as in recommending and approving direct contracting as mode of procurement (Sarcauga and Gamutan) are not attended with fraud or deceit.

Based on records however, it was also established that:

During the BAC's May 4, 2005 pre-qualification of bidder/bidders, Gamutan introduced Castillo and MMCGM for pre-qualification of bidder for direct contracting/sole distributor and required her to hand over her documents to Avila for screening. Avila found that MMCGM is a qualified bidder. The BAC then recommended MMCGM's qualification as direct contractor/sole distributor. Gamutan however informed Castillo that other than her Certificate of Sole Distributorship that she already submitted, she should also submit its Certificate of Sole Distributorship [from the manufacturer of the products sold] and its Exclusive License Agreement [from the manufacturer to sell their products] for her application to qualify as municipality's direct contractor to be approved.

After Avila's verification of Castillo's submitted documents, she declared that MMCGM met all the requirements for it to qualify as direct contractor/sole distributor. After their deliberation and upon Paninsoro's motion, the BAC unanimously approved to recommend direct contracting as the mode of procurement for the foliar fertilizer with MMCGM as [the] supplier to the head of the procuring entity.

On the same day however, the municipal government paid MMCGM Php 239,040 (Php249,000.00 less Php9,960.00 tax withheld) as evidenced by an undated Disbursement Voucher (DV) No. 401-0505-001, Development Bank of the Philippines (DBP) Check No. 6479606 dated May 6, 2005 for Php239,040.00, Accountant's Advice of Local Check Disbursement No. 2005-xxx dated May 6, 2005, and Journal Entry Voucher No. 401-05-05-008 dated May 6, 2005. MMCGM, on the other hand, issued an undated Sales Invoice No. 0002 and Official Receipt No. 0006A dated May 6, 2005 to evidence receipt of payment. It would also appear that the foliar fertilizers were delivered, inspected and accepted by MMCGM, Bargamento and Sarcauga on the same day, respectively, as shown in the Inspection and Acceptance Report. The Notice of Award,

signed solely by Barcenas, was given three (3) days thereafter (May 9, 2005).<sup>4</sup>

### **Ruling of the OMB**

On 11 September 2014, the OMB rendered a Decision in OMB-V-A-12-0012-A holding petitioner, among others, guilty of Grave Misconduct:

**WHEREFORE**, this Office finds former Mayor and now Vice Mayor **MARIO PATRICIO P. BARCENAS**, Municipal Agriculturist **ROQUE BELLON SARCAUGA (retired)**, and Municipal Planning and Development Coordinator **VALENTINO GAMUTAN JR. (retired)** **GUILTY of GRAVE MISCONDUCT** and are hereby **DISMISSED** from government service with corresponding accessory penalties, *i.e.* forfeiture of retirement benefits, perpetual disqualification from holding public office, cancellation of civil service eligibility, and bar from taking civil service examinations.

In the event that the penalty of Dismissal from service can no longer be enforced due to respondents' separation from service, the same shall be converted into FINE in the amount equivalent to respondents' respective salaries for one (1) year, payable to the Office of the Ombudsman, and may be deductible from their retirement benefits, accrued leave credits or any receivable from their office.

The charges against **AIDA CRISTINA MIER ALCONTIN**, **HAIDEE MARIE SEBIAL AVILA**, **DOWIE JOY NOEL RODIS**, **GINA YURAG ALEGADO**, and **NAPOLEON LOPEZ CANAPE** are **DISMISSED** for lack of substantial evidence.

By reason of his death, the charges against **JOSE PANINSORO** are **DISMISSED**.

**SO ORDERED.**<sup>5</sup>

The OMB found the concerted acts of petitioner, Gamutan, and Barcenas in manipulating and synchronizing their actions with the BAC's decision to recommend the purchase of foliar fertilizer from MMCGM through direct contracting equivalent to grave misconduct. The steps they took, coupled with the deficiencies in the documents, as well as the manner and speed by which the transaction was consummated displayed a flagrant disregard of RA 9184 and its implementing rules and regulations. They are also guilty of conduct prejudicial to the best interest of service because their failure to comply with the strict requirements of the procurement law, transparency in government transactions, and accountability of public

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<sup>4</sup> Id. at 96-102.

<sup>5</sup> Id. at 108-109.

officers unduly prejudiced the government. Since grave misconduct is the more serious offense, its penalty shall be imposed upon the erring officers and the charge of conduct prejudicial to the best interest of the service was considered as an aggravating circumstance.<sup>6</sup>

On the same day it issued the above decision, the OMB rendered a Resolution in OMB-V-C-12-0010-A finding probable cause against petitioner for violation of Section 3(e) of RA 3019:

**WHEREFORE**, there being probable cause, let an Information for violation of Section 3(e) of RA 3019 be filed with the Sandiganbayan against **MARIO PATRICIO P. BARCENAS, ROQUE RELLON SARCAUGA, VALENTINO GAMUTAN JR., and MARLYN M. CASTILLO.**

The charges against **AIDA CRISTINA MIER ALCONTIN, HAIDEE MARIE SEBIAL AVILA, DOWIE JOY NOEL RODIS, GINA YURAG ALEGADO, and NAPOLEON LOPEZ CANAPE** are **DISMISSED** for lack of probable cause.

By reason of his death, the charges against **JOSE PANINSORO** are **DISMISSED.**

**SO ORDERED.**<sup>7</sup>

The OMB held that the numerous badges of irregularity in the subject transaction shows there is probable cause that petitioner, Gamutan, Barcenas, and Castillo conspired with each other to prompt the purchase of foliar fertilizer from MMCGM through direct contracting in violation of Section 3(e) of RA 3019.<sup>8</sup>

Petitioner moved for reconsideration, but the OMB denied the same through its Joint Order dated 01 June 2016. Thus, a petition for review under Rule 43 before the CA imputing error on both the Decision dated 11 September 2014 in OMB-V-A-12-0012-A and the Resolution dated 11 September 2014 in OMB-V-C-12-0010-A was filed.<sup>9</sup>

### **Ruling of the CA**

The CA, through the assailed Resolution dated 23 February 2018, dismissed petitioner's appeal for being late or premature, and failing to attach necessary documents for appeal:

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<sup>6</sup> Id. at 102-108.

<sup>7</sup> Id. at 125-126.

<sup>8</sup> Id. at 122-126

<sup>9</sup> Id. at 75-92.

**WHEREFORE**, the *Petition* is DISMISSED.

**SO ORDERED.**<sup>10</sup>

The appellate court did not address whether it had jurisdiction over the criminal aspect of the case since it had yet to secure the OMB's position on the matter. Nonetheless, it dismissed petitioner's appeal for failure to file within the reglementary period. It took note of the fact that petitioner received a copy of the Joint Order dated 01 June 2016 in the first week of October 2017. Since his appeal was filed only on 05 February 2018 or beyond the fifteen-day reglementary period, the same should be dismissed. Petitioner's argument that his counsel has yet to receive a copy of the joint order is also untenable since this means the reglementary period has not yet commenced. Accordingly, petitioner's appeal filed prior to his counsel's receipt of the assailed order, is premature. Further, petitioner failed to attach the affidavit of service pursuant to Section 13, Rule 13 of the Rules of Court, as well as the pertinent pleadings and documents in violation of Section 6, Rule 43 of the same rules.<sup>11</sup>

### **Issues**

Based on petitioner's arguments in the present petition, the following are the main issues of the case:

- a. Whether the CA erred in dismissing petitioner's appeal for being late or premature;
- b. Whether petitioner is guilty of grave misconduct; and
- c. Whether petitioner correctly appealed before the CA the OMB's finding of probable cause for violation of Section 3(e) of RA 3019 against him.

### **Ruling of the Court**

The petition lacks merit.

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<sup>10</sup> Id. at 57.

<sup>11</sup> Id. at 56-57.

*The CA erred in dismissing petitioner's appeal for being late or premature*

At the outset, the Court notes that the CA dismissed petitioner's appeal purely on technical grounds. The dismissal was mainly based on Section 4, Rule 43 of the Rules of Court, which provides:

SEC. 4. *Period of appeal.* – **The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution,** or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*. Only one (1) motion for reconsideration shall be allowed. Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. (Emphasis supplied)

Since petitioner received a copy of the Joint Order dated 01 June 2016 in the first week of October 2017, the CA deemed petitioner's appeal filed only on 05 February 2018 as instituted beyond the reglementary period.

The Court does not agree.

Jurisprudence teaches us that when a party is represented by a counsel on record, service of orders or notices must be made on the counsel on record. Service of orders or notices to the party or to any other lawyer does not bind the party and is not considered as notice under the law.<sup>12</sup> This rule is founded on considerations of fair play as a party engages a counsel precisely because he or she does not feel competent to deal with the intricacies of law and procedure.<sup>13</sup>

In the present case, there was no proof that petitioner's counsel of record received the Joint Order dated 01 June 2016. Respondent merely echoed the justification presented by the CA in dismissing petitioner's appeal without evidence to support its theory of petitioner's late filing.

Notably, the dismissal of cases purely on technical grounds is frowned upon as the rules of procedure should not be applied in a very rigid, technical sense. Indeed, the rules are adopted to help secure and not override substantial justice.<sup>14</sup> Thus, while petitioner also failed to attach pertinent

<sup>12</sup> *Department of Education v. Dela Torre*, 837 Phil. 212 (2018).

<sup>13</sup> *Tan v. Dagpin*, G.R. No. 212111, 15 January 2020 [Per J. Lazaro-Javier].

<sup>14</sup> *Spouses Su v. Bontilao*, G.R. No. 238892, 04 September 2019 [Per J. Perlas-Bernabe].

documents in his appeal, the CA should have considered petitioner's arguments to give him the fullest opportunity to establish the merits of his action or defense rather than for him to lose life, honor, or property on mere technicalities.<sup>15</sup>

*Petitioner was correctly held liable  
for grave misconduct*

Nonetheless, a review of the merits of the case necessitates petitioner's dismissal as he was rightfully found guilty of grave misconduct.

"Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross neglect of duty by a public officer. The misconduct is considered to be *grave* if it also involves other elements such as corruption or the willful intent to violate the law or to disregard established rules, which must be proven by substantial evidence; otherwise, the misconduct is only simple. In grave misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule, must be evident. Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others."<sup>16</sup>

It must be emphasized that all acquisition of goods, consulting services, and the contracting for infrastructure projects by any branch, department, office, agency, or instrumentality of the government, including state universities and colleges, government-owned and/or -controlled corporations, government financial institutions, and local government units shall be done through competitive bidding as mandated by Section 10, Article IV,<sup>17</sup> in relation to Section 5, paragraphs (n) and (o), Article I<sup>18</sup> of RA

<sup>15</sup> Supra note 14.

<sup>16</sup> *Andaya v. Field Investigation Office of the Office of the Ombudsman*, G.R. No. 237837, 10 June 2019 [Per J. Perlas-Bernabe].

<sup>17</sup> SECTION 10. *Competitive Bidding*. — All Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act.

<sup>18</sup> SECTION 5. *Definition of Terms*. — For purposes of this Act, the following terms or words and phrases shall mean or be understood as follows:

x x x x

(n) Procurement — refers to the acquisition of Goods, Consulting Services, and the contracting for Infrastructure Projects by the Procuring Entity. Procurement shall also include the lease of goods and real estate. With respect to real property, its procurement shall be governed by the provisions of Republic Act No. 8974, entitled "An Act to Facilitate the Acquisition of Right-of-Way Site or Location for National Government Infrastructure Projects and for Other Purposes", and other applicable laws, rules and regulations.

(o) Procuring Entity — refers to any branch, department, office, agency, or instrumentality of the government, including state universities and colleges, government-owned and/or -controlled

9184. In line with the law's policy of promoting transparency and competitiveness, public bidding enables the government agency to avoid or preclude anomalies in the execution of public contracts by giving it the best possible advantages through open competition. Accordingly, a strict observance of the rules, regulations, and guidelines in the bidding process is required to safeguard a fair, honest, and competitive public bidding.<sup>19</sup>

While certain alternative methods of procurement are allowed in highly exceptional cases, these modes of purchase must be triggered by specific conditions set forth in RA 9184 as determined by the BAC. Without the BAC's recommendation, the procuring entity or its agents cannot instantly consummate a transaction with a supplier, as in this case.

The Court notes in agreement the following irregularities observed by the OMB:

- a. **Sarcauga changed his program of work specifications from common to foliar fertilizer upon MMCGM and Castillo's representation that it is interested to supply the municipality's required fertilizer and recommended to the BAC to qualify MMCGM as the direct contractor for the 166 liters/bottles of foliar fertilizer.**
- b. Gamutan introduced Castillo and MMCGM for pre-qualification of bidder for direct contracting/sole distributor.
- c. **Sarcauga was required to write a letter to the BAC to cancel the purchase of common fertilizer, change his purchase specifications to foliar fertilizer and specify what mode of procurement method will be used for the BAC to study; the next day, he prepared PO No. 2005-058 for the purchase of 166 liters of foliar fertilizer with unit cost of Php1,500.00 per liter for Php249,000.00 from MMCGM, which was later approved and conformed to by Barcenas and Castillo, respectively.**
- d. **The supposed letter that the BAC required from Sarcauga to write became a Request for Direct Contracting as Mode of Procurement [for the purchase of foliar fertilizer].**

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corporations, government financial institutions, and local government units procuring Goods, Consulting Services and Infrastructure Projects.

<sup>19</sup> Supra note 17.

e. Gamutan facilitated the immediate submission, verification and approval of MMCGM as qualified direct contractor/sole distributor of the municipality.

f. The municipal government entered into and consummated the transaction while the BAC, as a collegial body, just agreed to recommend for the head of the procuring entity to approve MMCGM as its direct contractor/sole distributor for the municipality's required foliar fertilizer, contrary to the provisions of Section 50 of the IRR-A of RA 9184.

g. The supporting documents of the transaction lacked the required/important information, *i.e.*, in the Inspection and Acceptance Report, **Sarcauga failed to describe whether there was a complete or partial delivery of the item**; Box "B" of DV No. 401-0505-0001 was unsigned by the Municipal Accountant Martie F. Tañagras (Tañagras); and the Accountant's Advice of Local Check Disbursement which appears to be spurious because instead of Tañagras, it was certified for and in her behalf, contrary to the strict provisions of Section 4(6) of PD 1445.

h. Castillo received the Notice of Award that Barcenas solely signed as the Committee on Awards, three (3) days after the consummation of the questioned transaction, contrary to Section 106 Rule II of COA Circular No. 92-386.<sup>20</sup> (Emphasis supplied)

Clearly, the numerous irregularities and deviations from the law arising from petitioner's individual acts contributing to the highly questionable and hasty purchase of foliar fertilizer constitutes grave misconduct. Petitioner changed his program specification from ordinary fertilizer to foliar fertilizer. He admitted that he recommended to the BAC the purchase of the foliar fertilizers from MMCGM through direct contracting even before the BAC could come up with a recommendation as to the supplier's qualifications as sole distributor. He also immediately prepared the purchase orders and consummated the transaction with MMCGM without the BAC's formal recommendation and with the notice of award yet to be issued to MMCGM.<sup>21</sup> The deliberate measures he undertook to accommodate MMCGM and to make sure it became the supplier for his chosen kind of fertilizer by direct purchase shows willful intent to violate the

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<sup>20</sup> *Rollo*, p. 103-105.

<sup>21</sup> *Id.* at 106.

law and give undue benefit to the company. Thus, the OMB did not err in finding petitioner guilty of grave misconduct.

*Petitioner erred in assailing the OMB's finding of probable cause before the CA*

Anent the finding of probable cause against petitioner for violation of Section 3(e) of RA 3019, the proper remedy to assail the OMB's findings is by filing a petition for *certiorari* before this Court and not with the CA.

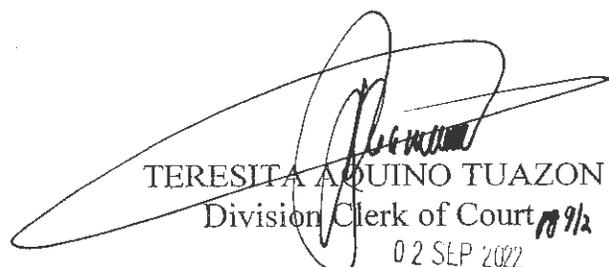
In *Patdu, Jr. v. Carpio-Morales*<sup>22</sup> (*Patdu*), it was reiterated that OMB resolutions on probable cause in criminal cases are assailable by filing a petition for *certiorari* under Rule 65 with this Court. Hence, the Court denied the petition therein for availing of the wrong remedy.

In the same way, petitioner has lost his right to assail the OMB's finding of probable cause against him when he questioned the Resolution dated 11 September 2014 in OMB-V-C-12-0010-A before the CA. Similar to how We proceeded in *Patdu*, it is improper to assume jurisdiction and rule on the merits of the instant case given petitioner's institution of the wrong remedy. Besides, petitioner is not without options as he still has the opportunity to properly defend his case before the Sandiganbayan. After all, the OMB's resolution on the finding of probable cause merely binds over the suspect to stand trial and is not an automatic pronouncement of guilt.<sup>23</sup>

WHEREFORE, the Court DENIES the petition and AFFIRMS the Resolutions dated 23 February 2018 and 26 September 2018 promulgated by the Court of Appeals in CA-G.R. SP No. 11521.

SO ORDERED."

By authority of the Court:

  
TERESITA AQUINO TUAZON  
Division Clerk of Court  
02 SEP 2022

<sup>22</sup> G.R. No. 230171, 27 September 2021 [Per J. Hernandez].

<sup>23</sup> *Cambe v. Office of the Ombudsman*, 802 Phil. 190 (2016).

ATTY. EDGARDO J. MAYOL (reg)  
Counsel for Petitioner  
Room 206, Anecita Bldg.  
Osmeña Blvd., Capitol Site  
Cebu City

FIELD INVESTIGATION OFFICE (reg)  
Office of the Ombudsman  
Agham Rd., Diliman  
Quezon City

OFFICE OF THE OMBUDSMAN (reg)  
4<sup>th</sup> Floor, Ombudsman Building  
Agham Road, Diliman, Quezon City  
(OMB-V-C-12-0010-A;  
OMB-V-A-12-0012-A)

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