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**SUPREME COURT
THIRD DIVISION**

**EFREN O. LOQUIAS, ANTONIO V. DIN,
JR., ANGELITO L. MARTINEZ II,
LOVELYN J. BIADOR, GREGORIO
FACIOL, JR.,**

Petitioners,

-versus-

**G.R. No. 139396
August 15, 2000**

**OFFICE OF THE OMBUDSMAN, and
DR. JOSE PEPITO H. DALOGDOG, DR.
AURORA BEATRIZ A. ROMANO, MA.
TERESITA C. ABASTAR, JESSICA S.
ALLAN, MA. TERESA ANIVERSARIO,**

Respondents.

X-----X

RESOLUTION

GONZAGA-REYES, J.:

Before this Court is a Petition for *Certiorari* under Rule 65 assailing the Resolution dated June 29, 1998 charging herein petitioners for violation of Section 3, paragraph e of R.A. No. 3019 (Anti-Graft and Corrupt Practices Act) which was issued by the Office of the Ombudsman for Mindanao and approved by Ombudsman Aniano A. Desierto, and the Memorandum dated June 11, 1999 wherein

Ombudsman Desierto disapproved the recommendation of the Special Prosecutor dismissing Criminal Case No. 24852.

The antecedent facts are as follows: In a sworn complaint filed with the Office of the Ombudsman-Mindanao, private respondents Dr. Jose Pepito H. Dalogdog, Dr. Aurora Beatriz A. Romano, Maria Teresita C. Abastar, Jessica S. Allan and Maria Teresa Aniversario charged herein petitioners Efren O. Loquias, Antonio V. Din, Jr., Angelito I Martinez II Lovelyn J. Biador and Gregorio Faciol, Jr. with violation of Republic Act No . 3019 for their alleged failure to give the salary increases and benefits provided in Section 20 of the Magna Carta of Public Health Workers (R.A. 7305) and Local Budget Circulars Nos. 54, 54-A, 56, 60 and 64 for the health personnel of the local government of San Miguel, Zamboanga del Sur. Herein private respondents were officers of the Association of Municipal Health Office Personnel of Zamboanga del Sur who instituted the said complaint in behalf of the 490 members of the said Association. Petitioners Efren Loquias and Antonio Din, Jr. are the Mayor and Vice-Mayor, respectively, of San Miguel, Zamboanga del Sur while petitioners Angelito Martinez II, Lovelyn Biador and Gregorio, Jr. are members of the Sangguniang Bayan of the said Municipality.

Docketed as Case No. OMB-MIN-98-0022, herein public respondent Ombudsman Aniano A. Desierto approved on September 4, 1999 the Resolution dated June 29, 1998 of Graft Investigation Officer II Jovito A. Coresis, Jr. of the Office of the Ombudsman-Mindanao finding “probable cause to conclude that the crime of violation of Section 3 (e) of RA 3019 has been committed by respondents Mayor, Vice-Mayor, members of the Sangguniang Bayan and Budget Officer of San Miguel, Zamboanga del Sur” and that accordingly, the appropriate Information be filed with the Sandiganbayan.^[1] The case was docketed as Criminal Case No. 24852.

On March 15, 1999, petitioners filed a Motion for Reinvestigation with prayer to defer arraignment and pre-trial alleging that they recognize the salary increases of the health personnel as a mandatory statutory obligation but the salary increases could not be implemented because of lack of funds and the municipality had incurred overdrafts. They further argue that the failure to give salary increases and other Magna Carta benefits were due to circumstances

beyond their control and not due to any manifest partiality, evident bad faith or gross inexcusable negligence on their part.^[2]

In the Memorandum dated June 11, 1999, Special Prosecution Officer I Jacqueline J. Ongpauco-Cortel recommended the dismissal of the case which recommendation was approved by Deputy Special Prosecutor Robert E. Kallos and concurred in by Special Prosecutor Leonardo P. Tamayo. This recommendation was, however, disapproved by Ombudsman Desierto on June 18, 1999 stating in his handwriting that “(T)he crime had obviously been committed, per OMB Mindanao findings, long before the payment granting that the accused latters’ claim/allegation is true.”^[3]

Meanwhile, petitioners filed a Motion for Reconsideration dated June 14, 1999 of the Resolution of the Office of the Ombudsman-Mindanao dated June 29, 1998 alleging that there is no probable cause in holding that they violated Section 3 (e) of the Anti-Graft and Corrupt Practices Act. They allege that the joint affidavits of waiver executed by private complainants have made the case of the prosecution against the accused “too weak which could not even create a probable cause.”^[4] Petitioners further allege that the order disapproving the dismissal of the case constitutes a denial of their motion for reconsideration.^[5]

Alleging that the order disapproving the dismissal of the case constituted denial of the Motion for Reconsideration,^[6] petitioners filed the present petition assailing the Resolution dated June 29, 1998 and the Memorandum dated June 11, 1999 raising the following assignment of errors:

I.

THE HONORABLE OMBUDSMAN WITH DUE RESPECT,
COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING
TO LACK OR IN EXCESS OF JURISDICTION IN APPROVING
THE RESOLUTION CHARGING THE PETITIONERS FOR
VIOLATION OF SECTION 3 PAR. (E) OF R.A. 3019 ISSUED
AND APPROVED BY OMBUDSMAN FOR MINDANAO.

II.

THE HONORABLE OMBUDSMAN WITH DUE RESPECT, COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN DISAPPROVING THE MEMORANDUM RECOMMENDING THE DISMISSAL OF THE CRIMINAL CASE AGAINST THE PETITIONER(S) ISSUED BY SPECIAL PROSECUTOR, CONCURRED BY SPECIAL PROSECUTOR BUT DISAPPROVED BY THE OMBUDSMAN.”

Petitioners contend that they recognize the salary increases of the health personnel as a mandatory statutory obligation but the same could not be implemented due to lack of funds and the Municipality incurred an overdraft. They further argue that petitioners Loquias, Din, Martinez, Faciol and Biador were not yet elected as local officials during the year 1994; hence, they cannot be held liable for non-payment of salary increases as mandated by the local budget circular which took effect in the year 1994 before their election.

In its Comment,^[7] the Office of the Ombudsman, through the Solicitor General, alleges that the petition does not comply with Section 5, Rule 7 as the Verification and the Certification on Non-Forum Shopping were signed only by petitioner Antonio Din and not by all the petitioners and there is no showing that petitioner Din was authorized by his co-petitioners to represent them in this case; that the petition raise factual issues; and that the municipality had sufficient funds to grant the statutory salary increases and benefits.

In their Reply,^[8] petitioners contend that there was substantial compliance with Section 5, Rule 7 notwithstanding the fact that only one of the petitioners signed the verification and certification on forum shopping; and that the petition does not call for an examination of the probative value of the evidence presented.

At the outset, it is noted that the Verification and Certification was signed by Antonio Din, Jr., one of the petitioners in the instant case. We agree with the Solicitor General that the petition is defective. Section 5, Rule 7 expressly provides that it is the plaintiff or principal party who shall certify under oath that he has not commenced any

action involving the same issues in any court, etc.^[9] Only petitioner Din, the Vice-Mayor of San Miguel, Zamboanga del Sur, signed the certification. There is no showing that he was authorized by his co-petitioners to represent the latter and to sign the certification. It cannot likewise be presumed that petitioner Din knew, to the best of his knowledge, whether his co-petitioners had the same or similar actions or claims filed or pending. We find that substantial compliance will not suffice in a matter involving strict observance by the rules. The attestation contained in the certification on non-forum shopping requires personal knowledge by the party who executed the same. Petitioners must show reasonable cause for failure to personally sign the certification. Utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction.^[10]

Moreover, petitioners question the act of the Ombudsman in disapproving the resolution recommending the dismissal of the criminal case. We have ruled that this Court will not interfere with the Ombudsman's exercise of his constitutionally mandated investigatory and prosecutory powers. Otherwise stated, it is beyond the ambit of this Court to review the exercise of discretion of the Ombudsman in prosecuting or dismissing a complaint filed before it. Such initiative and independence are inherent in the Ombudsman who, beholden to no one, acts as the champion of the people and preserver of the integrity of the public service.^[11] In *Venus vs. Desierto*,^[12] this Court stated that it ordinarily does not determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts. As held in the *Ocampo* case:

“The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on

the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.”^[13]

With respect to the joint affidavits of waiver allegedly executed by private complainants for the purpose of requesting the Special Prosecutor to move for the dismissal of the criminal case,^[14] this Court ruled in *Alba vs. Nitorreda*^[15] that a joint affidavit of desistance is not binding on the Office of the Ombudsman and cannot prevail over the provision of law which categorically allows the Office of the Ombudsman to investigate and prosecute on its own any act or omission of a public officer or employee, office or agency which appears to be illegal, unjust, improper or inefficient.

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

SO ORDERED.

Melo, Vitug, Panganiban and Purisima, JJ., concur.

[1] Annex, “A”, pp. 25-34, Rollo.

[2] Annex “C”, pp. 39-47, Rollo.

[3] Annex “B”, pp. 35-38, Rollo.

[4] Annex “D”, pp. 48-56, Rollo.

[5] 1st par., p. 3, Petition, p. 5, Rollo.

[6] 1st par., p. 3, Petition, p. 5, Rollo.

[7] pp. 132-139, Rollo.

[8] pp. 142-146, Rollo.

[9] SEC. 5. Certification against forum shopping. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

[10] Ortiz vs. Court of Appeals, 299 SCRA 708.

[11] Ocampo vs. Ombudsman, 225 SCRA 725; Alba vs. Nitorreda, 254 SCRA 753; Knecht vs. Desierto, 291 SCRA 292.

[12] 298 SCRA 196.

[13] 225 SCRA 725, 730; see also Morong Water District vs. Office of the Deputy Ombudsman, et al., G.R. No. 116754, March 17, 2000.

[14] 4th par., pp. 12-13, Petition, pp. 14-15, Rollo.

[15] 254 SCRA 753 (En Banc).