



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

RONALD REY TAN TISMO,
Petitioner,

G.R. No. 228055

- versus -

Present:
LEONEN, J., Chairperson,
LAZARO-JAVIER,
LOPEZ, M.
LOPEZ, J., and
KHO, JR., JJ.

OFFICE OF THE
OMBUDSMAN, BASHER
SARIP NOOR, AND MANUEL
CASTRODES FELICIA,
Respondents.

Promulgated:

JAN 23 2023

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DECISION

KHO, JR., J.:

Assailed in this Petition for *Certiorari*¹ under Rule 65 of the Rules of Court are the Joint Resolution² dated October 26, 2015 and the Joint Order³ dated June 20, 2016 rendered by the Office of the Ombudsman (Ombudsman) in OMB-M-C-15-0171 and OMB-M-A-15-0195 *dismissing* the criminal and administrative aspects of the complaint filed by petitioner Ronald Rey Tan Tismo (petitioner) against private respondents Basher Sarip Noor (Noor) and Manuel Castrodes Felicia (Felicia; collectively, private respondents) because of the existence of a prejudicial question.

¹ *Rollo*, pp. 3-18.

² *Id.* at 21-27. Signed by Graft Investigation and Prosecution Officer I Marianne M. Macayra and approved by Ombudsman Conchita Carpio Morales.

³ *Id.* at 28-30.

The Facts

It appears that a piece of land identified as Lot 4, located in Ala-e, Manolo Fortich, Bukidnon was registered under Transfer Certificate of Title (TCT) No. T-9438⁴ (subject property) in the name of “ALFRED LARSEN III, ET AL.” “Et al.” refers to Alfred Larsen III’s (Alfred) siblings namely, Lily Evelyn Larsen-Tismo (Evelyn) and Douglas Roland Larsen (Douglas).⁵ On March 27, 2003, Alfred sold the subject property to Noor for ₱1,300,000.00 without the consent of his co-owners, Evelyn and Douglas, via a Deed of Absolute Sale of Real Property⁶ (Deed of Sale). Thereafter, Felicia, as Registrar of Deeds, cancelled TCT No. T-9438 and issued TCT No. T-88286⁷ in the name of Noor.⁸

Believing that the sale was fraudulent and void, as it was sold by Alfred without the consent of his siblings, petitioner, as the attorney-in-fact of Evelyn and Douglas, filed a case for *Recovery of Ownership and Possession of Real Property, Quieting of Title, thereof, Annulment of Deed/s, Certificates of Title, and Other Documents, and Damages with Prayer for Writ of Preliminary Injunction*⁹ on February 18, 2013 with the Regional Trial Court of Manolo Fortich, Bukidnon, Branch 11, (RTC), which was docketed as Civil Case No. 13-02-117.¹⁰

After the case was filed at the RTC, petitioner, on May 13, 2015,¹¹ filed an Affidavit-Complaint¹² dated May 7, 2015 against Noor, former Director III of the Department of Agriculture and Fisheries – Autonomous Region in Muslim Mindanao, and Felicia, Registrar of Deeds for Malaybalay City, before the Ombudsman for: (a) violation of Section 3 (a) and (e) of Republic Act No. (RA) 3019,¹³ or the “Anti-Graft and Corrupt Practices Act,” and Section 8, in relation to Section 11 of RA 6713,¹⁴ or the “Code of Conduct

⁴ Id. at 49-51.

⁵ See id. at 31 and 35.

⁶ Id. at 56-57.

⁷ Id. at 58-59.

⁸ See id. at 22-23.

⁹ Entitled, “*ARNOLD S. LARSEN as SOLE HEIR of ALFRED C. LARSEN, III, LILY EVELYN C. LARSEN-TISMO and DOUGLAS ROLAND C. LARSEN, represented by their Attorney/s-in-Fact RONALD REY T. TISMO and/or MARIA CRISTY T. TISMO, Plaintiffs, v. Spouses BASHER NOOR and FARHANA NOOR, ALA-E CENTRAL ELEMENTARY SCHOOL represented by its Principal SALOME NIERE and/or BUKIDNON SCHOOLS DIVISION SUPERINTENDENT INGRID RACOMA, PH. D., CESO V, and/or DEPARTMENT OF EDUCATION represented by SECRETARY BRO. ARMIN LUISTRO, FSC, ALA-E, MANOLO FORTICH, BUKIDNON POLICE COMMUNITY PRECINCT represented by CHIEF OF POLICE MANOLO FORTICH, BUKIDNON P/SUPT. BENBU JUMALON and/or PHILIPPINE NATIONAL POLICE represented by PNP CHIEF POLICE DIRECTOR ALAN PURISIMA and/or ALL PERSONS CLAIMING RIGHTS FROM THEM, e.g., ELIZER ALCAYDE and FRITZ RAYMOND RUBIATO, Defendants*”; id. at 38-44.

¹⁰ See id. at 22-23.

¹¹ See id. at 22 and 25.

¹² Id. at 31-34.

¹³ Approved on August 17, 1960.

¹⁴ Entitled “AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS

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and Ethical Standards for Public Officials and Employees,” docketed as OMB-M-C-15-0171; and (b) conduct prejudicial to the best interest of the service, grave misconduct, and violation of RA 6713, docketed as OMB-M-A-15-0195.¹⁵

Petitioner alleged that Noor and Felicia conspired with each other for the cancellation of TCT No. T-9438 and for the subsequent issuance of TCT No. T-88286 under Noor’s name despite lack of presentation of the owner’s duplicate copy¹⁶ considering that the same is in the possession of Evelyn and Douglas, and without paying capital gains and documentary taxes.¹⁷ Hence, petitioner alleged that Noor, a public official, connived with Felicia, who took advantage of his position in exchange for pecuniary consideration, to allow and facilitate such illegal transaction of cancelling TCT No. T-9438 and the issuance of TCT No. T-88286.¹⁸ Moreover, petitioner alleged that Noor did not include the subject property in his Statement of Assets, Liabilities, and Net Worth (SALN) for 2003 and in fact has not filed his SALNs for several years thereafter.¹⁹

In his defense, Noor denied that the Deed of Sale was falsified and claimed that he acted in good faith considering that he relied on the representation of Alfred that the subject property was solely owned by him as reflected in the tax declaration, and that the “ET AL.” in TCT No. T-9438 was a clerical error. Further, he alleged that the transfer of title was all processed by Alfred through his representative and that he had no knowledge of any fact that would invalidate the transaction. He also claimed to have retired from the service on January 12, 2015.²⁰

On the other hand, Felicia admitted that TCT No. T-9438 was cancelled even without the owner’s duplicate copy. However, this was done because Alfred executed an Affidavit of Loss, which he later withdrew, to give due course to the issuance of a new owner’s copy of lost title with TCT No. T-88286. Moreover, the transfer and cancellation of TCT No. T-9438 is in order since Alfred is the legitimate owner of the subject property based on TCT No. T-9438 and the approved survey. He added that the issue of validity of the transaction subject of Civil Case No. 13-02-117 with the RTC is a prejudicial question in the instant case.²¹ He also narrated that Noor is an employee of the Department of Agriculture in Cotabato City while he is a Registrar of Deeds in Malaybalay City; hence they belong to different agencies in different localities.²²

AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES,” approved on February 20, 1989.

¹⁵ See *rollo*, p. 22.

¹⁶ *Id.* at 23.

¹⁷ See petitioner’s Affidavit-Complaint; *id.* at 32.

¹⁸ *Id.* at 33.

¹⁹ *Id.* at 32.

²⁰ See Noor’s Counter-Affidavit dated July 4, 2015; *id.* at 111-114.

²¹ *Id.* at 23-24. See also Felicia’s Counter-Affidavit dated July 22, 2015; *id.* at 116-118.

²² *Id.* at 117.

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The Ombudsman Ruling

In a Joint Resolution²³ dated October 26, 2015, the Ombudsman dismissed both the criminal and administrative aspects of the complaint against respondents on the ground of the existence of a prejudicial question.²⁴

In so doing, the Ombudsman stated that Civil Case No. 13-02-117 pending before the RTC involves the recovery of the subject property. The Ombudsman found that the contents of the Amended Complaint in Civil Case No. 13-02-117 are similar to the allegations in the Affidavit-Complaint filed before the Ombudsman. Since the issues in the civil case are intimately related to the main issue in the Ombudsman case, the Ombudsman opined that it would have to defer to the ruling of the court which has jurisdiction over it. The Ombudsman ruled that if the trial court finds that the transfer of ownership is valid, then there is no prohibited act or violation of the law, rules and regulations committed by respondents that would constitute a violation of Section 3 (a) of RA 3019. There would also be no basis for undue injury to any party or unwarranted benefit that would constitute a violation of Section 3 (e) of RA 3019.²⁵

The Ombudsman did not tackle the issue relating to Noor's non-filing of SALNs as this issue was raised in an earlier filed case (OMB-M-C-14-0185, *Maria Cristy T. Tismo v. Basher Sarip Noor*).²⁶

Further, as regards the administrative complaint against Noor, the same was dismissed because he was already separated from government service in view of his retirement on January 12, 2015, before the filing of complaint on May 13, 2015. And as to the administrative complaint against Felicia, the same was dismissed without prejudice also on the ground of the existence of the aforescribed prejudicial question.²⁷

Petitioner sought for reconsideration, but was, however, denied in a Joint Order²⁸ dated June 20, 2016. Hence, this petition.

The Issue before the Court

Whether the Ombudsman committed grave abuse of discretion when it dismissed the criminal and administrative aspects of the complaint on the ground of the existence of prejudicial question.

²³ Id. at 21-27.

²⁴ Id. at 25-26.

²⁵ See id. at 25.

²⁶ See id. at 22.

²⁷ Id. at 25.

²⁸ Id. at 28-30.

The Court's Ruling

The petition is partly granted.

I.

At the outset, it is well to note that petitioner raised *both* the criminal aspect (OMB-M-C-15-0171) and administrative aspect (OMB-M-A-15-0195) of his complaint before the Court via the instant Rule 65 petition.

In *Yatco v. Office of the Deputy Ombudsman for Luzon*²⁹ (*Yatco*), the Court, through Associate Justice Estela M. Perlas-Bernabe, reiterated the rules on the proper remedy to assail Ombudsman rulings, to wit:

With respect to administrative charges, there is a delineation between appealable and unappealable Ombudsman rulings. Pursuant to Section 27 of the Ombudsman Act, any order, directive or decision of the Ombudsman "imposing the penalty of public censure or reprimand, [or] suspension of not more than one (1) month's salary shall be final and unappealable." Case law has explained that Ombudsman rulings which exonerate the respondent from administrative liability are, by implication, also considered final and unappealable. In these instances, the Court has ruled that even though such rulings are **final and unappealable**, it is still subject to judicial review on the ground of grave abuse of discretion, and the correct procedure is to file a **petition for certiorari under Rule 65 of the Rules of Court before the CA.**

In contrast, in cases where the respondent is not exonerated and the penalty imposed is not merely public censure or reprimand, or suspension of not more than one (1) month's salary, the Ombudsman's decision is appealable, and the proper remedy is to file an **appeal under Rule 43 of the Rules of Court before the Court of Appeals.** x x x

x x x x

Meanwhile, with respect to **criminal charges**, the Court has settled that the remedy of an aggrieved party from a **resolution of the Ombudsman finding the presence or absence of probable cause** is to file a **petition for certiorari under Rule 65 of the Rules of Court** and the petition should be filed not before the CA, but before the **Supreme Court.** x x x

x x x x

Thus, it is evident from the foregoing that the remedy to assail the ruling of the Ombudsman in non-administrative/criminal cases (*i.e.*, file a petition for *certiorari* under Rule 65 of the Rules of Court **before the Supreme Court**) is well-entrenched in our jurisprudence.³⁰ (Emphases in the original)

²⁹ G.R. No. 244775, July 6, 2020 [Second Division].

³⁰ *Id.*; citations omitted.

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At this juncture, it bears clarifying that “the fact that the Ombudsman had rendered a consolidated ruling does not x x x alter the nature of the prescribed remedy corresponding to the aspect of the Ombudsman ruling being assailed.”³¹ “Consolidation is an act of judicial discretion when several cases are already filed and pending before it.”³²

Thus, pursuant to *Yateo*, petitioner erroneously elevated the dismissal of OMB-M-A-15-0195 (the administrative aspect) to the Court. With this, the Court is constrained to dismiss the administrative aspect of the petition for being the wrong remedy. There being no proper remedy filed on the part of petitioner insofar as OMB-M-A-15-0195 is concerned, it is deemed to have lapsed into finality. On the other hand, petitioner was correct in assailing the Ombudsman’s dismissal of OMB-M-C-15-0171 (the criminal aspect) before the Court; hence, the Court shall now look into the same.

II.

It is well-settled that “[t]he Ombudsman has the discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not.”³³ “The Ombudsman may dismiss the complaint should the Ombudsman find the complaint insufficient in form or substance, or the Ombudsman may proceed with the investigation if, in the Ombudsman’s view, the complaint is in due form and substance. Hence, the filing or non-filing of the information is primarily lodged within the ‘full discretion’ of the Ombudsman.”³⁴ In *Arroyo v. Sandiganbayan*,³⁵ the Court, through Associate Justice Marvic M.V.F. Leonen, held:

“The Ombudsman is endowed with a wide latitude of investigatory and prosecutory prerogatives in the exercise of its power to pass upon criminal complaints.” As a general rule, this Court does not interfere with the Office of the Ombudsman’s exercise of its constitutional mandate. It is an executive function, which must be respected consistent with the principle of separation of powers x x x[.]³⁶

Nonetheless, the Court is not precluded from reviewing the Ombudsman’s action when it is tainted with grave abuse of discretion — which implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction — in which case, the Court’s *certiorari* jurisdiction pursuant to paragraph 2, Section 1, Article VIII of the Constitution may be invoked. In order to properly invoke the same, it must be shown that the

³¹ Id.

³² Id.

³³ *Vergara v. Ombudsman*, 600 Phil. 26, 41 (2009) [Per J. Carpio, *En Banc*].

³⁴ Id.

³⁵ G.R. No. 210488, January 27, 2020 [Third Division].

³⁶ Id.; citations omitted.

Ombudsman's exercise of its powers must have been done in an arbitrary or despotic manner, which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.³⁷

Guided by the foregoing considerations, the Court rules that the Ombudsman gravely abused its discretion when it ordered the dismissal of OMB-M-C-15-0171 on the ground of existence of a prejudicial question, as will be explained hereunder.

Section 7, Rule 111 of the Revised Rule on Criminal Procedure provides for the elements of prejudicial question, to wit:

Section 7. *Elements of prejudicial question.* – The elements of a prejudicial question are: (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed.

Here, it readily appears that the first element has been satisfied, considering that the civil case (Civil Case No. 13-02-117) was instituted on February 18, 2013,³⁸ while the criminal case was filed only on May 13, 2015,³⁹ or almost two (2) years and three (3) months after the filing of the civil case.

As to the second element, the Court agrees with the Ombudsman's findings that the civil case is determinative of whether the criminal action against private respondents may proceed. Petitioner's allegations are essentially the same as shown below:

Complaint before the Ombudsman ⁴⁰	Complaint before the RTC ⁴¹
1. x x x LILY EVELYN LARSEN-TISMO and DOUGLAS ROLAND CAMOMOT LARSEN are co-owners with their brother ALFRED LARSEN, III, presently deceased, of that parcel of land certain Lot 4, (LRC) Psd-214142 with an area of 72,093 square meters located at Ala-e, Manolo Fortich, Bukidnon covered by the Transfer Certificate of Title # T-9438 issued by the Registry of Deeds for the Province of Bukidnon;	4. The aforementioned Lily Evelyn Larsen-Tismo and Douglas Roland C. Larsen are co-owners with their brother Alfred Larsen, III, presently deceased, of that parcel of land certain, Lot 4, (LRC) Psd-214142 with an area of 72,093 square meters located at which is now Ala-e, Manolo Fortich, Bukidnon covered by the Transfer Certificate of Title # T-9438 issued by the Registry of Deeds for the Province of Bukidnon,

³⁷ See *Ciron v. Ombudsman*, 758 Phil. 354, 362 (2015) [Per J. Perlas-Bernabe, First Division], citing *Soriano v. Marcelo*, 610 Phil. 72, 79 (2009) [Per J. Carpio, First Division].

³⁸ See *rollo*, p. 38.

³⁹ See *id.* at 22 and 25.

⁴⁰ *Id.* at 31-34.

⁴¹ *Id.* at 38-44.

2. The said Transfer Certificate of Title # T-9438 is registered under the name of "ALFRED LARSEN, III, ET AL." with the "ET AL." referring to the 2 other siblings of said Alfred Larsen, III, namely: Lily Evelyn Larsen-Tismo and Douglas Roland Larsen;

3. The said Transfer Certificate of Title # T-9438 is a transfer from Transfer Certificate of Title # T-7011 registered in the name of "*HEIRS OF BASILISA CAMOMOT married to Frank Bogan: LILY EVELYN LARSEN-TISMO married to Pantaleon Tismo, a resident of Cagayan de Oro City, ALFRED LARSEN, III, married to Norma Saring, a resident of Manila City, c/o Elizalde Rope Factory, Inc. and DOUGLAS CAMOMOT LARSEN, single, a resident of Cagayan de Oro City, all of legal age and Filipino citizens*";

4. Per (LRC) Psd-214142, that lot certain located at, which is now, Alae, Manolo Fortich Bukidnon with a total area of 230,601 square meters covered by the said Transfer Certificate of Title # T-7011 was subdivided and partitioned into 4 lots: Lot 1 with an area of 52,832 square meters going to Douglas Roland Larsen, Lot 2 with an area of 52,838 square meters going to Lily Evelyn Larsen-Tismo and Lot 3 with an area of 52,838 square meters going to Alfred Larsen, III, but the aforementioned Lot 4 was owned in common by the 3 siblings and covered by the aforementioned Transfer Certificate of Title # T-9438;

5. Recently it was discovered that per Deed of Absolute Sale of Real Property, dated March 27, 2003, which is Doc. # 31; Page # 6; Book # III; Series of 2003 of the Notarial Register of Atty. Dulcisimo G. Hinanay Jr. the aforementioned Lot 4 was purportedly sold by Alfred Larsen, III to one BASHER S. NOOR for ₱1,300,000.00, which document however is falsified;

copy of which is herewith integrally attached as Annex "C";

5. The said Transfer Certificate of Title # T-9438 is registered under the name of "ALFRED LARSEN, III, *ET AL.*" with the "*ET AL.*" referring to the 2 other siblings of said Alfred Larsen, III, namely: Lily Evelyn Larsen-Tismo and Douglas Roland Larsen;

6. The said Transfer Certificate of Title # T-9438 is a transfer from **Transfer Certificate of Title # T-7011**, copy of which is herewith integrally attached as Annex "D", registered in the name of "*HEIRS OF BASILISA CAMOMOT married to Frank Bogan: LILY EVELYN LARSEN-TISMO married to Pantaleon Tismo, a resident of Cagayan de Oro City, ALFRED LARSEN, III, married to Norma Saring, a resident of Manila City, c/o Elizalde Rope Factory, Inc. and DOUGLAS CAMOMOT LARSEN, single, a resident of Cagayan de Oro City, all of legal age and Filipino citizens*";

7. Per (LRC) Psd-214142, copy of which is herewith integrally attached as Annex

"E", that lot with a total area of 230,601 square meters covered by the said Transfer Certificate of Title # T-7011 was subdivided and partitioned into 4 lots: Lot 1 with an area of 52,832 square meters going to Douglas Roland Larsen, Lot 2 with an area of 52,838 square meters going to Lily Evelyn Larsen-Tismo and Lot 3 with an area of 52,838 square meters going to Alfred Larsen, III, but the aforementioned Lot 4 was owned in common by the 3 siblings;

8. Recently it was discovered that per Deed of Absolute Sale of Real Property, dated March 27, 2003, which is Doc. # 31; Page # 6; Book # III; Series of 2003 of the Notarial Register of Atty. Dulcisimo G. Hinanay Jr., copy of which is herewith integrally attached as Annex "F", the aforementioned Lot 4 was

6. Granting even for the sake of argument that Alfred Larsen, III signed the deed of sale, the entire Lot 4 could not be sold without the conformity of Lily Evelyn Larsen-Tismo and Douglas Roland Larsen who did not sign the Deed of Absolute Sale of Real Property in favor of Basher Noor and were neither party to the said contract;

7. Stranger still is the fact that said Basher Noor was able to cause the cancellation of Transfer Certificate of Title # T-9438 before the Registry of Deeds for the Province of Bukidnon and the issuance of Transfer Certificate of Title # T-88286 in his name covering the aforementioned Lot 4 without presenting the owner's duplicate of Transfer Certificate of Title # T-9438 which was in the possession of Lily Evelyn Larsen-Tismo and Douglas Roland Larsen and without paying the capital gains and documentary taxes;

8. Eventually a case for Recovery of the Ownership and the Possession of Real Property, Quieting of Title thereof, Annulment of Deed/s, Certificates of Title and Other Documents and Damages With prayer for Writ of Preliminary Injunction entitled ARNOLD S. LARSEN as SOLE HEIR of ALFRED C. LARSEN, III, LILY EVELYN C. LARSEN-TISMO and DOUGLAS C. ROLAND LARSEN, represented by their Attorney/s-in-Fact RONALD REY T. TISMO and/or MARIA CRISTY T. TISMO, Plaintiffs, v. Spouses BASHER S. NOOR and FARHANA B. NOOR, ALA-E CENTRAL ELEMENTARY SCHOOL represented by its Principal SALOME NEIRE and/or BUKIDNON SCHOOLS DIVISION SUPERINTENDENT INGRID RACOMA, PH. D., CESO V, and/or DEPARTMENT OF EDUCATION represented by Secretary BRO. ARMIN LUISTRO, FSC, ALA-E, MANOLO FORTICH, BUKIDNON POLICE

purportedly sold by Alfred Larsen, III to Defendant Basher Noor for ₱1,300,000.00 when in truth and in fact, there was no such sale;

9. The aforementioned Lot 4 **could not be sold without the conformity** of Lily Evelyn Larsen-Tismo and Douglas Roland Larsen who did not sign the Deed of Absolute Sale of Real Property in favor of Basher Noor and were neither party to the said contract;

10. Stranger still is the fact that said Basher Noor was able to cause the cancellation of Transfer Certificate of Title # T-9438 before the Registry of Deeds for the Province of Bukidnon and the issuance of **Transfer Certificate of Title # T-88286** in his name, copy of which is herewith integrally attached as Annex "G" covering the aforementioned Lot 4 without presenting the owner's duplicate of Transfer Certificate of Title # T-9438 which is in the possession of the Plaintiffs or paying the capital gains and documentary stamp taxes;

11. Lately without presenting a deed, of partition or otherwise, Basher Noor surreptitiously cause the complete cancellation of Transfer Certificate of Title # T-88286 and the issuance of Transfer Certificate of Title # T-128518, Transfer Certificate of Title # T-128519, Transfer Certificate of Title # T-128520, Transfer Certificate of Title # T-128521, Transfer Certificate of Title # T-128522, Transfer Certificate of Title # T-128523, Transfer Certificate of Title # T-128524, Transfer Certificate of Title # T-128525, Transfer Certificate of Title # T-128526 Transfer Certificate of Title # T-128527, and Transfer Certificate of Title # T-128528, copies which are herewith integrally attached as Annexes "G-1", "G-2", "G-3", "G-4", "G-5", "G-6", "G-7", "G-8", "G-9", "G-10", and "G-11", respectively;

12. Basher Noor was also able to cause the cancellation of the previous

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COMMUNITY PRECINCT represented by CHIEF OF POLICE MANOLO FORTICH, BUKIDNON P/SUPT. BENBU JUMALON and/or PHILIPPINE NATIONAL POLICE represented by PNP CHIEF POLICE DIRECTOR ALAN PURISIMA and/or ALL PERSONS CLAIMING RIGHTS FROM THEM, e. g., ELIZER ALCAYDE and FRITZ RAYMOND RUBATO, Defendants, docketed as Civil Case # 13-02-117 before the Regional Trial Court, 10th Judicial Region, Branch 11, Manolo Fortich, Bukidnon as evidenced by the Amended Complaint, dated February 15, 2013, (Annex "A" of the Affidavit-Complaint);

x x x x

11. As already adverted to, aside from failing to get the conformity of Lily Evelyn Larsen-Tismo and Douglas Roland Larsen who did not sign the Deed of Absolute Sale of Real Property in favor of Basher Noor and were neither party to the said contract, said Basher Noor was able to cause the cancellation of Transfer Certificate of Title # T-9438 before the Registry of Deeds for the Province of Bukidnon and the issuance of Transfer Certificate of Title # T-88286 in his name without presenting the **owner's duplicate** of Transfer Certificate of Title # T-9438 which was in the possession of Lily Evelyn Larsen-Tismo and Douglas Roland Larsen, copy of which is herewith integrally attached as **ANNEX "C"**;

x x x x

13. Clearly said Basher Noor, a public official, **connived** with the Registrar of Deeds for the Province of Bukidnon Atty. MANUEL C. FELICIA, another public official **who took advantage of his position in exchange for pecuniary consideration to allow and facilitate such illegal**

Tax Declaration # 02-15-25961, copy of which is herewith integrally attached as Annex "H", and the issuance of the latest **Tax Declaration # 02-15, 27230**, copy of which is herewith integrally attached as Annex "I" which shows the assessed value of the subject lot to be [P100,800.00];⁴²

13. Basher Noor despite demands, the latest of which is dated September 4, 2012, and copy of which is herewith integrally attached as Annex "J", refused and/or failed to reconvey and/or vacate the same and continues to refuse and/or fail to reconvey and/or vacate;

x x x x

⁴² See id. at 94.

<p>transaction of cancelling Transfer Certificate of Title # T-9438 and issuing a new one based on a sale when on the face of Transfer Certificate of Title # T-9438 there are other co-owners who are not included and did not sign the Deed of Absolute Sale of Real Property and worse, without surrendering the owner's duplicate of Transfer Certificate of Title # T-9438 and paying the capital gains tax and documentary tax thereon as should be evidenced by a certificate authorizing registration (CAR) issued by the BIR as required by law;</p>	
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x x x x

As correctly reasoned out by the Ombudsman, if the RTC finds that the transfer of ownership is valid, then there is no prohibited act or violation of the law, rules, and regulations committed by respondents that would constitute a violation of Section 3 (a) or (e) of RA 3019. If the RTC does not cancel TCT No. T-88286 in the name of Noor, then private respondents cannot be held criminally liable for the alleged irregularities made by Felicia in issuing the said title.

Notwithstanding the existence of a prejudicial question in OMB-M-C-15-0171, the Ombudsman should *not* have ordered the *outright dismissal* of the same, as it directly contravenes Section 6, Rule 111 of the Revised Rules on Criminal Procedure, which the Rules of Procedure of the Office of the Ombudsman⁴³ expressly provides shall apply in a suppletory character or by analogy.⁴⁴ Hence, the provision on the Revised Rules on Criminal Procedure finds applicability in this case.

Section 6, Rule 111 of the Revised Rules on Criminal Procedure reads:

Section 6. *Suspension by reason of prejudicial question.* – A petition for **suspension of the criminal action** based upon the pendency of a prejudicial question in a civil action may be filed in the office of the prosecutor or the court conducting the preliminary investigation. When the criminal action has been filed in court for trial, the petition to suspend shall be filed in the same criminal action at any time before the prosecution rests. (Emphasis and underscoring supplied)

⁴³ Administrative Order No. 07 (April 10, 1990).

⁴⁴ Section 3, Rule V of the Rules of Procedure of the Office of the Ombudsman provides:

Section 3. Rules of Court, application. – In all matters not provided in these rules, the Rules of Court shall apply in a suppletory character, or by analogy whenever practicable and convenient.

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As may be readily gleaned from the above provision, the existence of a prejudicial question only operates to *suspend* the criminal action and should not result in its outright dismissal. Thus, by ordering the outright dismissal of OMB-M-C-15-0171 on such ground, the Ombudsman effectively evaded its duty to determine whether there exists probable cause on the part of respondents for the crimes they are accused to have committed, and hence, constitutes grave abuse of discretion which is correctible by a writ of *certiorari*. Therefore, OMB-M-C-15-0171 should be reinstated and remanded to the Ombudsman.

It is important to point out that a dismissal of criminal proceedings has a different consequence from that merely of suspension of criminal proceedings. In the dismissal of a case for reasons not constituting double jeopardy, prescription of the crime will run again,⁴⁵ while in suspension of criminal proceedings, the case is still considered pending hence prescription continues to be tolled.

It bears significance especially in this case because the issuance of TCT No. T-88286 in the name of Noor, which was made the basis of the charge for violation of Anti-Graft and Corrupt Practices Act, was made on December 16, 2003.⁴⁶ Hence, prescription started to run from December 16, 2003, the day of the commission of the violation of the law.⁴⁷ Petitioner filed the criminal complaint on May 13, 2015 before the Ombudsman and the latter finally dismissed it on June 20, 2016. From the day of the commission of the crime up to the filing of complaint, eleven (11) years, four (4) months, and twenty-seven (27) days have lapsed, which means the crime charged will prescribe in three (3) years, seven (7) months, and three (3) days considering that violations of the Anti-Graft and Corrupt Practices Act prescribes in 15 years.⁴⁸ Therefore, with the dismissal of the Ombudsman of OMB-M-C-15-0171 on June 20, 2016, the crime charged already prescribed on January 23, 2020. However, with the suspension of OMB-M-C-15-0171, as the Ombudsman should have done, the crime will not prescribe because of the pendency of the case. Therefore, OMB-M-C-15-0171 should be reinstated and remanded to the Ombudsman.

ACCORDINGLY, the petition is **PARTLY GRANTED**. The Ombudsman's Joint Resolution dated October 26, 2015 and the Joint Order dated June 20, 2016, which dismissed petitioner's complaint before it is **PARTIALLY ANNULLED** and **SET ASIDE** insofar as OMB-M-C-15-0171 is concerned. OMB-M-C-15-0171 is hereby **REINSTATED** and **REMANDED** to the Ombudsman.

⁴⁵ See Section 2 of Act No. 3326 entitled, "AN ACT TO ESTABLISH PERIODS OF PRESCRIPTION FOR VIOLATIONS PENALIZED BY SPECIAL ACTS AND MUNICIPAL ORDINANCES AND TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO RUN" [December 4, 1926].

⁴⁶ See *rollo*, pp. 58-59.


⁴⁷ See *id.* See also *Lim v. People*, 830 Phil. 669, 680-694 (2018) [Per J. A. Reyes, Jr., Second Division].

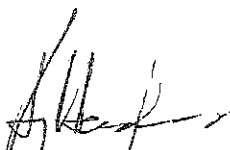
⁴⁸ See Section 11 of RA 3019, as amended by Batas Pambansa Blg. 195.

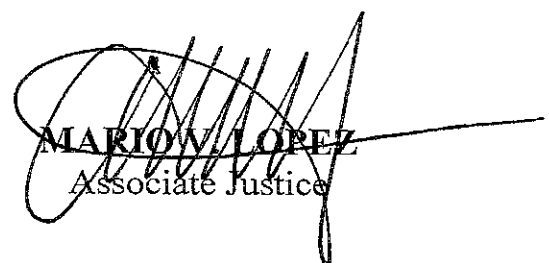
SO ORDERED.


ANTONIO T. KHO, JR.
Associate Justice

WE CONCUR:


MARVIC M.V.F. LEONEN
Senior Associate Justice
Division Chairperson



AMY C. LAZARO-JAVIER
Associate Justice


MARION LOPEZ
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice