



SUPREME COURT OF THE PHILIPPINES  
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Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

EDENISON F. FAINSAN, G.R. No. 233446  
LEONILA D. QUERIJERO,  
ROLANDO E. JOSEF,  
CLEOFE A. ABLOG and  
ROBERT C. NACIANCENO,  
*Petitioners,*

Present:

HERNANDO, J., Acting Chairperson  
ZALAMEDA,  
ROSARIO,  
MARQUEZ, and  
KHO, JR.,\* JJ.

- versus -

FIELD INVESTIGATION  
OFFICE (OFFICE OF THE  
OMBUDSMAN),  
*Respondent.*

Promulgated:

FEB 22 2023

X-----X

DECISION

ZALAMEDA, J.

The Case

This is a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court (Rules) assailing the Resolutions dated 21 February 2017<sup>2</sup>

\* Gesmundo, CJ., recused due to his prior assignment as Solicitor handling MMDA cases; Kho, J., designated additional Member per Raffle dated 08 February 2023.

<sup>1</sup> *Rollo*, Vol. 1, pp. 10-35.

<sup>2</sup> *Rollo*, Vol. 2, p. 613; Signed by Division Clerk of Court Abigail S. Domingo-Laylo.

and 09 August 2017<sup>3</sup> of the Court of Appeals (CA) in CA G.R. SP No. 149355. The case stems from a complaint filed by the Field Investigation Office of the Office of the Ombudsman (respondent) against Bayani F. Fernando (Fernando), Chairperson of the Metro Manila Development Authority (MMDA) from 2002 to 2009; petitioners Edenison F. Fainsan (Fainsan), MMDA Assistant General Manager; Leonila D. Querijero (Querijero), MMDA Director III, Accounting Service from 2002 to 2004; Rolando E. Josef (Josef), MMDA Consultant in 2004; Cleofe A. Ablog (Ablog), MMDA Chief Revenue Officer IV from 1994 to 2010; Robert Nacianceno (Nacianceno), MMDA General Manager from 2007 to 2010, (collectively, petitioners) for violation of Section 3(e) of Republic Act No. (RA) 3019,<sup>4</sup> or the "Anti-Graft and Corrupt Practices Act." Petitioners, aside from being MMDA officials, were members of the Metro Manila Film Festival (MMFF) Executive Committee at the time of the commission of the alleged offenses.

### Antecedents

In 2009, then Senator Jose "Jinggoy" Estrada (Sen. Estrada) delivered a privilege speech regarding purported mismanagement of the MMFF Funds.<sup>5</sup> He narrated that when the MMFF was created, its sole beneficiary was the Movie Workers Welfare Foundation Fund (Mowelfund). Mowelfund was founded by former President Joseph Ejercito Estrada, Sen. Estrada's father, to help the workers in the local film industry.<sup>6</sup> Under Executive Order (EO) No. 85-04, Mowelfund was authorized to manage the MMFF. However, it was slowly eased out of the MMFF's management, and simply became the festival's beneficiary.<sup>7</sup>

In 1986, the Film Academy of the Philippines and the Anti-Film Piracy Council were added as MMFF beneficiaries.<sup>8</sup> After Fernando became Chairperson of the MMFF Executive Committee in 2002, the Presidential

<sup>3</sup> Id. at 627-629; penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Samuel H. Gaerlan (now a Member of this Court) and Ma. Luisa C. Quijano-Padilla.

<sup>4</sup> Section 3. *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

<sup>5</sup> *Rollo*, Vol. 1, pp. 446-476.

<sup>6</sup> Id. at 447.

<sup>7</sup> Id. at 448-449.

<sup>8</sup> Id. at 450.

Social Fund, the Film Development Council of the Philippines, and the Optical Media Board likewise became MMFF beneficiaries.<sup>9</sup>

Sen. Estrada further claimed that as the gross income from the MMFF increased through the years, the percentage allotted to the beneficiaries decreased.<sup>10</sup> Apparently, this was brought about by the multiple disbursements made by the MMFF Executive Committee to Fernando in the form of birthday cash gifts, expenses for cultural projects, and payment of incentives.<sup>11</sup> He also accused Fernando of spending festival funds for non-existent expenditures.<sup>12</sup>

Subsequently, the Commission on Audit (COA), through its Fraud Audit and Investigation Office (FAIO), conducted a special audit pursuant to COA Office Order No. 2009-602 dated 17 August 2009. As a result of thereof, FAIO-COA issued Notices of Disallowance (NDs) of the MMFF Executive Committee's expenses. Respondent tabulated<sup>13</sup> the NDs, quoted below as follows:

ND No./Date	DV No./Check No./Date	Amount (Php)	Payee	Reason for Disallowance
2009-11-001 (2003) Nov. 17, 2009	115 00062728 July 24, 2003	Php500,000.00	Cash	Cash gift for Fernando on his birthday. Violation of Sec. 3(b), RA 3019
2009-11-002 (2004) Nov. 17, 2009	393 00062939 July 15, 2004	Php500,000.00	Fernando	Cash gift for Fernando on his birthday. Violation of Sec. 3(b), RA 3019
2009-11-003 (2005) Nov. 17, 2009	618 97601 July 21, 2005	Php100,000.00	Fernando	Cash gift for Fernando on his birthday. Violation of Sec. 3(b), RA 3019
2009-11-004 Nov. 17, 2009	077 897794 July 25, 2006	Php500,000.00	Fernando	Cash gift for Fernando on his birthday. Violation of Sec. 3(b), RA 3019
2009-11-005 (2004) Nov. 18, 2009	259 62850 February 17, 2004	Php1,000,000.00	Fernando	Payment for Fernando's cultural projects. Disallowed because checks were encashed by the payee himself and was not issued an official receipt by the MMDA collecting officer

<sup>9</sup> Id. at 451.

<sup>10</sup> Id. at 452-454.

<sup>11</sup> Id. at 455-457.

<sup>12</sup> Id. at 457.

<sup>13</sup> *Rollo*, Vol. 2, pp. 561-563.

2009-11-005 (2004) Nov. 18, 2009	332 62912 April 28, 2004	Php1,000,000.00	Fernando	Payment for Fernando's cultural projects. Disallowed because checks were encashed by the payee himself and was not issued an official receipt by the MMDA collecting officer
2009-11-006 (2003) Nov. 20, 2009	091 52611 January 27, 2003	Php1,500,000.00	Ablog	Cash advance of Ablog for the Metro Manila Mayors' Cultural projects. Ablog merely issued an undated certification that such was disbursed to the respective public officials. Violation of Sec. 77 of the Government Accounting and Auditing Manual (GAAM) Vol. I
2009-11-007 (2004) Nov. 20, 2009	257 62851 February 17, 2000	Php1,500,000.00	Cash	Payment of funds for the Metro Manila Mayors' Cultural Projects. Constitutes irregular transaction as defined under COA Circular No. 85-55A. Violated Sec. 77 of GAAM
2009-11-008 (2005) Nov. 20, 2009	586 97647 Dec. 12, 2005	Php2,300,000.00	Cash	Payment of funds for the Metro Manila Mayors' Cultural Projects. Constitutes irregular transaction as defined under COA Circular No. 85-55A. Violated Sec. 77 of GAAM
2009-11-009 (2006) Nov. 20, 2009	0818 97848 Dec. 15, 2006	Php1. 5 million	Cash	Payment of funds for the Metro Manila Mayors' Cultural Projects. Constitutes irregular transaction as defined under COA Circular No. 85-55A. Violated Sec. 77 of GAAM
2009-11-010 (2003) Nov. 20, 2009	089 52614 Jan. 29, 2003	Php1,718,000.00	Ablog	Payment of cash advance of Ablog for the incentive bonus of the Executive Committee, Board of Jurors, screening and other

				members of the MMFF 2002/2003 working committees. Ablog merely issued an undated certification that such was distributed to the respective payees but not supported by approved payroll duly signed by the payees.
2009-11-011 (2003) Nov. 20, 2009	209 62800 Dec. 16, 2003	Php1,761,000.00	Cash	Payment of incentives. No approved payrolls duly received by the payees which constitutes irregular transaction as defined under COA Circular No. 85-55A
2009-11-012 (2003) Nov. 20, 2009	258 62852 Feb. 17, 2004	Php1,733,100.00	Cash	Payment of incentives. No approved payrolls duly received by the payees which constitutes irregular transaction as defined under COA Circular No. 85-55A
2009-11-013 (2004) Nov. 20, 2009	350 63703 Dec. 1, 2004	Php1,720,500.00	Cash	Payment of incentives. No approved payrolls duly received by the payees which constitutes irregular transaction as defined under COA Circular No. 85-55A
2009-11-014 (2005) Nov. 20, 2009	583 97645 Dec. 1, 2004	Php1,654,500.00	Cash	Payment of incentives. No approved payrolls duly received by the payees which constitutes irregular transaction as defined under COA Circular No. 85-55A
2009-11-015 (2005) Nov. 20, 2009	579 97644 Dec. 1, 2004	Php865,600.00	Cash	Payment of incentives. No approved payrolls duly received by the payees which constitutes irregular transaction as defined under COA Circular No. 85-55A
2009-11-016 (2006) Nov. 20, 2009	817 97849 Dec. 18, 2006	Php1,389,500.00	Cash	Payment of incentives. No approved payrolls duly received by the payees which constitutes irregular transaction as

				defined under COA Circular No. 85-55A
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Based on the foregoing, respondent filed a complaint<sup>14</sup> against petitioners for violation of Section 3(e) of RA 3019, as amended. Respondent alleged that all checks of the mentioned disbursements were signed and approved by Fainsan, as Chairman of the Finance Committee, and Fernando, as Over-all Chairman. Meanwhile, the disbursement vouchers (DVs) were certified correct by then members of the MMFF Finance Committee: Querijero (for DV Nos. 259, 332, 174, 175, 091, 257, 258, 089 and 209); one Wilson Tieng (DV No. 510); and Josef (for DV Nos. 586, 818, 583, 579, and 817). These DVs were likewise approved by Fainsan and Fernando.<sup>15</sup>

Further, respondent alleged that these disbursements were irregular, unauthorized, extravagant, unlawful, and excessive, particularly the ₱ 1.6 Million cash birthday gifts to Fernando, and the ₱22,642,200.00 doled out for his cultural projects.<sup>16</sup> These expenses had no legal bases and supporting documents. Having failed to observe sound fiscal management and administration resulting to unnecessary disposition of public funds, petitioners should be held liable for violation of Section 3(e) of RA 3019.<sup>17</sup>

In their Joint Counter-Affidavit,<sup>18</sup> Fainsan, Querijero, Josef, Ablog and Nacienceno, cited the DOJ Opinion dated 11 November 2006, signed by former Secretary of Justice Raul M. Gonzalez, stating that the MMFF Executive Committee is not a public office and is, therefore, not subject to the COA's audit jurisdiction.

On the other hand, Fernando argued that, as *Ex-Officio* Chairperson of the MMFF Executive Committee, he merely performed a proprietary function for the benefit of a private entity.<sup>19</sup> He contended that MMFF's funds were private since they came from amusement taxes collected by local government units (LGUs) outside Metro Manila. Moreover, he received these funds in payment for actual services rendered. Despite the justifications he offered, Fernando returned the ₱1.6 Million cash gift he received to the government.

### Ruling of the Ombudsman

<sup>14</sup> *Rollo*, Vol. 1, pp. 40-55.

<sup>15</sup> *Id.* at 44.

<sup>16</sup> *Id.* at 53.

<sup>17</sup> *Id.* at 53.

<sup>18</sup> *Id.* at 479-491.

<sup>19</sup> *Rollo*, Vol. 2, pp. 566-567.

In its Resolution<sup>20</sup> dated 04 February 2016, the Ombudsman found probable cause and recommended the filing of Informations against petitioners for violation of Sec. 3(e) of RA 3019.

The Ombudsman held that petitioners were all public officials discharging administrative or official functions at the time the offense was committed. Further, petitioners' manifest partiality and evident bad faith were shown by their irregular and unauthorized expenses from 2003 to 2006, depleting the MMFF funds, thereby causing it injury.

Subsequently, the Ombudsman denied petitioners' Motion for Reconsideration in its Order dated 15 August 2016.<sup>21</sup>

Aggrieved, petitioners filed a Petition for *Certiorari*<sup>22</sup> before the CA, praying for the dismissal of the criminal complaint against them.

### **Ruling of the CA**

The CA, in its Resolution<sup>23</sup> dated 21 February 2017, dismissed the petition for formal defects and lack of jurisdiction. Likewise, the CA denied petitioners' motion for reconsideration of its earlier Resolution<sup>24</sup> dated 09 August 2017, where it ruled that it had no jurisdiction over the criminal aspect of the Ombudsman's decision.

Hence, the instant Petition.

### **Issues**

Petitioners raise the following grounds in support of the petition:

- I. Whether or not the Honorable Court of Appeals erred when it resolved that it had lack of jurisdiction over this case;
- II. Whether or not the Office of the Ombudsman gravely abused its discretion when it declared that Executive Order No. 86-09 is considered law;

<sup>20</sup> Id. at 558-576.

<sup>21</sup> Id. at 577, 586-590.

<sup>22</sup> Id. at 591-608.

<sup>23</sup> Id. at 613.

<sup>24</sup> Id. at 627-629.

- III. Whether or not the Office of the Ombudsman gravely abused its discretion when it found that petitioners are public officials, while working as members of the MMFF Executive Committee;
- IV. Whether or not the Office of the Ombudsman gravely abused its discretion when it took cognizance of this case, when in fact, said Office does not have the jurisdiction over this case;
- V. Whether or not the Office of the Ombudsman gravely abused its discretion when it declared the money of the MMFF handled by the Executive Committee as public funds; and
- VI. Whether or not the Office of the Ombudsman gravely abused its discretion when it found that there is probable cause against petitioners.<sup>25</sup>

Citing the cases of *Dagan v. Office of the Ombudsman*,<sup>26</sup> *Acuña v. Deputy Ombudsman*,<sup>27</sup> and *Tirol, Jr., v. Del Rosario*,<sup>28</sup> petitioners argue that the CA has jurisdiction over the Ombudsman's finding of probable cause to charge them for violation of Sec. 3(e) of RA 3019.<sup>29</sup>

As to the substantive aspect of the case, petitioners question the Ombudsman's authority over them, contending that they should not be considered public officials, and the funds involved were private in nature.<sup>30</sup> Specifically, petitioners allege that the MMFF Executive Committee was not created by law, and they were not discharging official functions as MMDA officials when they were working in the committee.<sup>31</sup>

Finally, petitioners assail the Ombudsman's findings that there was probable cause to hold them criminally liable for violation of Section 3(e) of RA 3019. They contend that the Resolution dated 04 February 2016 of the Ombudsman did not establish the existence of all the elements of the offense.<sup>32</sup> They argue that the disbursements were made in good faith and in accordance with the purpose for which the committee was created. Further, the disbursements from 2002 to 2008 were all in the nature of necessary operating expenses incurred in the performance of their assigned tasks, and related to the preparation, promotion, holding, and management of the annual film festival.<sup>33</sup>

<sup>25</sup> *Rollo*, Vol. 1, pp. 14-15.

<sup>26</sup> 721 Phil. 400 (2013).

<sup>27</sup> 490 Phil. 640 (2005).

<sup>28</sup> 376 Phil. 115 (1999).

<sup>29</sup> *Rollo*, Vol. 1, pp. 15-19.

<sup>30</sup> *Id.* at 20-29.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 31-34.

<sup>33</sup> *Id.*



### Ruling of the Court

*Bayani Fernando is dropped as a petitioner*

Preliminarily, this Court notes that while Fernando was one of the respondents identified by the Ombudsman in its Resolution<sup>34</sup> dated 04 February 2016, and included as one of the petitioners in the caption of the instant petition,<sup>35</sup> his signature does not appear in the petition's Verification and Certification<sup>36</sup> dated 29 September 2017.

Jurisprudence<sup>37</sup> provides the rules on the submission of verification and certification against forum-shopping, *viz.*:

1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.

2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.

3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.

4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."

5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the

<sup>34</sup> Id. at 558-576.

<sup>35</sup> Id. at 10.

<sup>36</sup> Id. at 36.

<sup>37</sup> *Tendenilla v. Purisima*, G.R. No. 210904, 24 November 2021, citing *Altres v. Empleo*, 594 Phil. 246 (2008).

signature of only one of them in the certification against forum shopping substantially complies with the Rule.

6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf. (emphasis supplied)

In the instant case, despite the petitioners sharing a similar risk of being held criminally accountable for the alleged unauthorized expenses from 2003 to 2006, this Court deems it prudent to drop Fernando considering his lack of participation in the instant petition. In addition, this Court acknowledges that he has filed a separate petition, docketed as G.R. No. 228728 assailing the aforesaid Resolution of the Ombudsman dated 4 February 2016.

*The proper remedy against the Ombudsman's order or resolutions in criminal cases is a petition for certiorari under Rule 65 of the Rules filed with this Court*

In *Gatchalian v. Office of the Ombudsman*,<sup>38</sup> We clarified the proper remedies against the adverse findings of the Ombudsman. The orders, directives, or decisions of the Ombudsman in administrative cases should be brought to the CA, either through an appeal under Rule 43 or a petition for *certiorari* under Rule 65 of the Rules. On the other hand, the orders, directives, or decisions of the Ombudsman in criminal or non-administrative cases should be brought to this Court through a petition for *certiorari* under Rule 65 of the Rules.

In this case, petitioners question the Ombudsman's finding of probable cause against them for violation of Section 3(e) of RA 3019, a criminal offense. Hence, the CA was correct in dismissing the case for lack of jurisdiction. Petitioners should have challenged the Ombudsman's Resolutions dated 04 February 2016 and 15 August 2016 through a petition for *certiorari* directly filed with this Court within 60 days from receipt of the assailed resolution or order.

<sup>38</sup> 838 Phil. 140 (2018).

Since petitioners received the Resolution denying their Motion for Reconsideration on 01 December 2016,<sup>39</sup> they had until 30 January 2017 within which to file the petition for *certiorari*. However, petitioners only filed the instant petition on 29 September 2017,<sup>40</sup> or eight months beyond the deadline. Their erroneous filing of the petition with the CA did not toll the running of the period.<sup>41</sup>

On this score alone, the instant petition already suffers a fatal flaw, and is dismissible.<sup>42</sup> The 60-day period to file a petition for *certiorari* is non-extendible to avoid any unreasonable delay that would violate the constitutional rights of parties to a speedy disposition of their case.<sup>43</sup> This Court emphasizes that provisions on reglementary periods are strictly applied, indispensable as they are to the prevention of needless delays, and are necessary to the orderly and speedy discharge of judicial business. The timeliness of filing a petition for *certiorari* is mandatory and jurisdictional, and should not be trifled with.<sup>44</sup>

However, jurisprudence acknowledges exceptional circumstances justifying relaxation of the 60-day reglementary period, such as: (1) for the most persuasive and weighty reasons; (2) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (3) good faith of the defaulting party by immediately paying within a reasonable time from the time of the default; (4) the existence of special or compelling circumstances; (5) the merits of the case; (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) a lack of any showing that the review sought is merely frivolous and dilatory; (8) the other party will not be unjustly prejudiced thereby; (9) fraud, accident, mistake, or excusable negligence without appellant's fault; (10) peculiar legal and equitable circumstances attendant to each case; (11) in the name of substantial justice and fair play; (12) importance of the issues involved; and (13) exercise of sound discretion by the judge guided by all the attendant circumstances.<sup>45</sup>

In this case, this Court gives due course to the petition and will discuss the issues raised by petitioners notwithstanding the belated filing considering the novelty of the issue and its effects on other controversies<sup>46</sup> involving the acts of MMFF Executive Committee members.

<sup>39</sup> *Rollo*, Vol. 1, p. 11.

<sup>40</sup> *Id.* at 10.

<sup>41</sup> *Kuizon v. Desierto*, 406 Phil. 611, 626 (2001).

<sup>42</sup> *See Kuizon v. Desierto*, 406 Phil. 611 (2001); *Jimenez v. Tolentino*, 490 Phil. 367 (2005).

<sup>43</sup> *See Aguinaldo v. Aquino III*, 801 Phil. 492 (2016).

<sup>44</sup> *Communication and Information Systems Corp. v. Mark Sensing Australia Pty. Ltd.*, 804 Phil 233, 238 (2017).

<sup>45</sup> *See Gabriel v. Petron Corp.*, 839 Phil. 454 (2018); *Labao v. Flores*, 649 Phil 213 (2010).

<sup>46</sup> *See Fernando v. Commission on Audit*, 844 Phil. 644 (2018) involving disallowances issued in 2010 and 2017 by the Commission on Audit.

*The MMFF: its creation,  
composition, nature, and purpose*

The Executive Committee of the MMFF was created by Proclamation No. 1459:

MALACAÑANG  
Manila

BY THE PRESIDENT OF THE PHILIPPINES  
PROCLAMATION NO. 1459

DECLARING THE PERIOD FROM SEPTEMBER 10 TO 21, 1975 AS METROPOLITAN FILM FESTIVAL, AND CREATING AN EXECUTIVE COMMITTEE TO TAKE CHARGE OF ITS OBSERVANCE AND AUTHORIZING THE SAME TO CONDUCT FUND-RAISING CAMPAIGN FOR THE PURPOSE.

WHEREAS, the cinema, being a mass art and an effective tool of communication that influences the thoughts and changes the attitudes of people, should serve as a vehicle for moral regeneration, social development and cultural reawakening in the New Society;

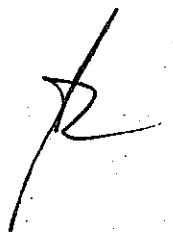
WHEREAS, the movies should depict seriously and artistically our history, traditions, cultures, aspirations and struggles as a nation through the lives of both men of reknown and the man in the street or on the farm;

WHEREAS, it is the commitment of the New Society to enrich Philippine culture, to reawaken the people to their historical heritage and traditional values, and to clarify the Filipino image, through the revival and refurbishment of native arts, among which is the Filipino cinema which should rediscover itself by upholding its inherent artistic and social responsibility;

WHEREAS, this administration has always been guided by the principal of social justice and has pursued efforts to protect the workingman in all fields of human endeavor, thus making it imperative to support welfare groups like the MOWELFUND; and

WHEREAS, in recognition of the value and importance of the local movie industry in the over-all developmental effort for the country, a fitting celebration to encourage quality film production both in substance and in form, as well as provide incentives to the performing artists and the technicians in the industry, is most opportune;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by law, do hereby declare the period from September 10 to 21, 1975, and henceforth, as "Metropolitan Film Festival." I urge all citizens of the Greater Manila Area as well as all its local officials and movie organizations to celebrate the

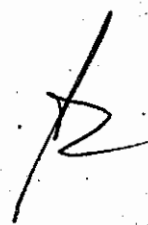


festival appropriately to encourage Filipinos to appreciate Filipino cinema and make it form part of their cultural life.

In order to insure the successful celebration of this festival throughout the Greater Manila Area, an Executive Committee is hereby formed to take charge of the arrangement for its observance, composed of the following:

Dr. Guillermo C. de Vega Chairman, Board of Censors for Motion Pictures	Chairman
Mayor Joseph Estrada President Philippine Motion Pictures Producers Association	Co-Chairman
The Mayors of Metro Manila	Vice- Chairman
Atty. Lazaro R. Banag, Jr. President, Filipino Academy of Movie Arts and Sciences (FAMAS)	Member
Mr. Johnny Litton Manila Theatre Owners Association	Member
Atty. Espiridion Laxa Philippine Motion Pictures Producers Association	Member
Director Gregorio Cendaña National Media Production Center	Member
Director Florentino Dauz Department of Public Information	Member
Jose Bautista Board of Censors for Motion Pictures	Member
Brig. Gen. Prospero Olivas Metro Manila Police Force	Member

The Executive Committee is authorized to engage in fund raising campaign among all sectors of society including the local governments concerned which may donate their amusement tax shares to the MOWELFUND during the period of the celebration to make it a success. Pursuant to the agreement among the participating film producers, the theme of the Festival will center on the Achievements under the New



Society, and the best picture is thus to be conferred the "Dangal ng Bagong Lipunan" award.

All departments, bureaus and agencies of the government are hereby directed to give their full support and assistance to the said Committee to ensure the success of the Metropolitan Film Festival.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 9th day of July, in the year of Our Lord, nineteen hundred and seventy-five.

(SGD.) FERDINAND E. MARCOS  
President  
Republic of the Philippines<sup>47</sup>

Meanwhile, the mechanism of the MMFF Executive Committee finds its basis in Executive Order No. (EO) 86-09 issued by Jose D. Lina, Jr., then Governor/Officer-In-Charge of the Metro Manila Commission (MMC), viz.:

Executive Order No. 86-09

DECLARING THE HOLDING OF AN ANNUAL METRO MANILA FILM FESTIVAL ORGANIZING AN EXECUTIVE COMMITTEE TO ASSIST THE METRO MANILA COMMISSION TO MANAGE THE SAME AND AUTHORIZING THE ACCRUAL/ ALLOCATION OF AMUSEMENT TAXES AND OTHER PROCEEDS DERIVED FROM THE TEN (10) DAY FILM FESTIVAL.

WHEREAS, the Metro Manila Commission has annually granted authority for the holding of a Metro Manila Film Festival pursuant to the spirit and intents of Presidential Proclamation Nos. 1459, 1485, 1533, 1533-A and 1647;

WHEREAS, the Metro Manila Film Festival **has been traditionally celebrated annually to promote and enhance the preservation, growth and development of the local film industry;**

WHEREAS, the film as a popular entertainment and educational medium is a potent force in the formation of the society's value system which can be utilized to effectively fight social ills such as prostitution, drug addiction, criminality and the like;

WHEREAS, the present national leadership is cognizant of the vital role of the film industry in the effort towards national reconstruction in all sectors of society;

<sup>47</sup> Rollo, Vol. 2, pp. 492-494.

WHEREAS, it is imperative that the film industry, which plays a significant role in providing a serious and artistic depiction of our people's history, traditions, culture, aspirations; and struggles, be given due recognition and that efforts be undertaken to promote the economic upliftment and professional development of its members;

NOW, THEREFORE, I, JOSE D. LINA, JR., Governor/Officer In Charge of Metro Manila, by virtue of the powers vested in me by law and after a series of consultations with the Metro Manila Mayors and the representatives of the movie industry do hereby order:

Section 1. That the Metro Manila Film Festival shall be held for the period December 24-January 3 every year.

Section 2. *Executive Committee* - **An Executive Committee shall be organized to assist the Metro Manila Commission in the task of holding, managing and supervising the annual Metro Manila Film Festival** to be composed of representatives of the donor cities and municipalities of Metro Manila, the movie industry and such other government agencies as may be chosen by the Governor, Metro Manila Commission.

Section 3. *Donation of Amusement Taxes* - All city and municipal mayors and treasurers are hereby directed to exempt all theaters from the computation and remittance of amusement taxes during the ten (10) day period, including taxes from films rated by the Film Rating Board as mentioned in Executive Order No. 84-06, all said taxes to accrue to the Metro Manila Film Festival Executive Committee as TRUSTEE pending identification of beneficiaries.

Section 4. *Period of Payment* - Amusement taxes referred to in Section 3 hereof shall be paid by the proprietor, lessee or theater operator concerned directly to the Executive Committee not later than twenty (20) days after the last day of the festival.

Section 5. *Penalties* - If the tax is not paid within the time fixed herein above, the proprietor, lessee or theater operator shall be subject to the surcharges, interests and penalties prescribed by Section 51 of the Metropolitan Manila Revenue Code. In case of willful neglect to file the return and pay the tax within the time required or in case a fraudulent return is filed or a false return is willfully made, the proprietor, lessee or theater operator shall be subject to a surcharge of fifty (50%) percent of the correct amount of the tax due in addition to the interest and penalties provided in Section 169 of the same Code.

Section 6. *Secretariat* - a Metro Manila Film Festival Secretariat shall be created in the Metro Manila Commission to assist the Executive Committee as the central coordinating body;

Section 7. *Implementing Guidelines* - The Metro Manila Commission shall issue the necessary guidelines, rules and regulations for the proper and effective implementation of the Executive Order.

Section 8. Accordingly, all previous authorities granted concerning the supervision, management and holding of the Metro Manila Film Festival which are inconsistent herewith are hereby superseded.

Section 9: *Effectivity*- This Executive Order shall take effect immediately.

Done in Quezon City, this 13th day of August, 1986.

(SGD.) JOSE D. LINA, JR.  
Officer-in-Charge  
Governor/General Manager<sup>48</sup>  
(Emphasis supplied.)

Under EO 86-09, the Executive Committee was organized to assist the MMC [now MMDA] in the task of holding, managing and supervising the annual MMFF. The EO also authorized the MMC's Governor to appoint members to the Executive Committee coming from the local government units of Metro Manila and the movie industry.

EO 392, on the other hand, transferred most of the functions of the MMC to the Metro Manila Authority (MMA), while RA 7924<sup>49</sup> replaced the MMA with the MMDA. Despite these changes, the Executive Committee remained in charge of the organization and execution of the MMFF.

*The MMFF Executive Committee is a public office and its members, including petitioners, are public officers.*

Petitioners assert that the members of the MMFF Executive Committee are not public officers. Instead, they are "private individuals performing proprietary functions for the local movie industry."<sup>50</sup> Furthermore, the MMFF Executive Committee was created for the sole purpose of organizing and holding the MMFF. In pursuance of its functions, the MMFF Executive Committee was authorized to retain the amusement tax revenues of the Metro Manila LGUs during the duration of the film festival. Some of its members, such as petitioners, were also employees of the MMDA. The Executive Committee members were not paid a regular

<sup>48</sup> Id. at 499-500; Emphases supplied.

<sup>49</sup> Entitled "AN ACT CREATING THE METROPOLITAN MANILA DEVELOPMENT AUTHORITY, DEFINING ITS POWERS AND FUNCTIONS, PROVIDING FUNDING THEREFOR AND FOR OTHER PURPOSES," approved on 01 March 1995.

<sup>50</sup> *Rollo*, Vol. 1, p. 22.



salary for their services; they were merely given *honoraria* during their meetings.<sup>51</sup>

**We disagree with petitioners.**

In the case of *Laurel v. Desierto*,<sup>52</sup> this Court discussed the term “public office:”

A public office is the right, authority and duty, created and conferred by law, by which, for a given period, either fixed by law or enduring at the pleasure of the creating power, **an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public. The individual so invested is a public officer.**

The characteristics of a public office, according to Mechem, include the delegation of sovereign functions, its creation by law and not by contract, an oath, salary, continuance of the position, scope of duties, and the designation of the position as an office.

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Mechem describes the **delegation to the individual of the sovereign functions of government** as “[t]he most important characteristic” in determining whether a position is a public office or not.

*The most important characteristic which distinguishes an office from an employment or contract is that the creation and conferring of an office involves a delegation to the individual of some of the sovereign functions of government to be exercised by him for the benefit of the public; – that some portion of the sovereignty of the country, either legislative, executive, or judicial, attaches, for the time being, to be exercised for the public benefit. Unless the powers conferred are of this nature, the individual is not a public officer. (Emphasis added)*

This Court further declared in the same case that the National Centennial Commission (NCC) is a public office discharging executive functions. This Court explained that executive power includes the implementation of the policies set forth by law. Based on the NCC’s undertaking to implement “programs and projects on the utilization of culture, arts, literature and media as vehicles for history, economic endeavors, and reinvigorating the spirit of national unity and sense of accomplishment in every Filipino in the context of the Centennial Celebrations,” this Court concluded that the NCC was carrying out the

<sup>51</sup> *Id.*; *Rollo*, Vol. 2, p. 560.

<sup>52</sup> 430 Phil. 658 (2002).

avowed policy of the State under Section 15, Article XIV of the Constitution, to wit:

Sec. 15. Arts and letters shall enjoy the patronage of the State. The State shall conserve, promote, and popularize the nation's historical and cultural heritage and resources, as well as artistic creations.

The MMFF Executive Committee is similarly situated as the NCC. The whereas clauses of EO 86-09 reveal that the conduct of the film festival is a recognition of the contribution of films in entertaining and educating the public about the country's history, tradition, and struggles. It also acknowledges the role of films in instilling a value system in the society. The MMFF Executive Committee was created to ensure that these objectives are accomplished. Accordingly, this Court rules that, as the State's vehicle to promote the local film industry, the MMFF Executive Committee is a public office.


This Court is cognizant of the definition of "public officer" under RA 3019, which "includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exemption service receiving compensation, even nominal, from the government." Hence, even if this Court accepts petitioners' assertion that they do not receive a salary, or that they are only operational once every year, these circumstances do not automatically convert their status to private persons. Receipt of salaries is not the sole determinant of the public nature of an office. As explained above, the distinguishing characteristic of a public office is the performance of sovereign functions for the benefit of the public.

Petitioners correctly state that as of yet, there is no Congressional enactment which establishes the existence, rights, and functions of the MMFF Executive Committee. Such fact, however, does not detract from this Court's conclusion that the MMFF Executive Committee is a public office, and thus subject to the Ombudsman's jurisdiction.

Verily, in *Fernando v. Commission on Audit*<sup>53</sup> and reiterated in *Oriondo v. Commission on Audit*,<sup>54</sup> this Court already ruled that the MMFF Executive Committee, despite not being organized either as a stock or non-stock corporation is nevertheless subject to the audit jurisdiction of the Commission on Audit because it receives funds from the government. Being subject to the COA's audit jurisdiction reinforces the conclusion that the MMFF Executive Committee is certainly not a private body.

<sup>53</sup> 844 Phil. 644 (2018).

<sup>54</sup> G.R. No. 211293, 4 June 2019.



Furthermore, as what this Court succinctly explained in *Fernando v. Commission on Audit*,<sup>55</sup> the MMFF Executive Committee should not be treated separately from the Metro Manila Development Authority, viz.:

**Such finding notwithstanding, We find that the Executive Committee is subject to COA jurisdiction, considering its administrative relationship to the Metro Manila Development Authority, a government agency tasked to perform administrative, coordinating and policy-setting functions for the local government units in the Metropolitan Manila area.**

The public nature of MMDA is apparent in its charter, Republic Act (R.A.) No. 7924, particularly in the following provision:

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Going back to the factual circumstances of the instant case, **the Executive Committee, having been created to assist the MMDA in the conduct of the annual Manila Film Festival, cannot be treated separately from the legal existence and nature of the agency it is tasked to give assistance to.**

It is likewise apparent that the observance of the annual film festival entails activities which impacts some, if not all local government units of the Metropolitan Manila. The "Parade of the Stars," for instance, which is normally conducted along Roxas Boulevard, affects the traffic situation in the cities it traverses. The traffic situation in Metro Manila is undoubtedly within the authority of the MMDA to manage.

The link between MMDA and the Executive Committee is likewise evident from the establishment of a Secretariat within the MMDA, which will assist the committee in the discharge of its function. To recall, Section 6 of E.O. No. 86-09 states:

**Section 6. Secretariat-** A Metro Manila Film Festival Secretariat shall be created in the Metro Manila Commission to assist the Executive Committee as the central coordinating body.

In addition, this Court notes that the multi-sectoral membership of the executive committee mirrors the network MMDA is authorized to establish under its Charter, viz.:

**Sec. 9. Institutional Linkages of the MMDA.-** The MMDA shall, in carrying out its functions, consult, coordinate and work closely with the LGUs, the National Economic and Development Authority (NEDA) and other national government agencies mentioned in Section 4 hereof, and accredited people's organization (POs), nongovernmental organizations (NGOs), and the private sector operating in

<sup>55</sup> Supra note 53.

Metro Manila. The MMDA chairman or his authorized representative from among the Council members, shall be ex-officio member of the boards of government corporations and committees of the departments and offices of government whose activities are relevant to the objectives and responsibilities of the MMDA which shall include but not limited to Metropolitan Waterworks and Sewerage System (MWSS), DOTC, DPWH, HUDCC and Department of the Interior and Local Government (DILG).

The MMDA shall have a master plan that shall serve as the framework for the local development plans of the component LGUs.

The MMDA shall submit its development plans and investments programs to the NEDA for integration into the Medium-Term Philippine Development Plan (MTPDD) and public investment program.

The implementation of the MMDA's plans, programs, and projects shall be undertaken by the LGUs, the concerned national governments agencies, the Pos, NGOs and the private sector and the MMDA itself where appropriate. For this purpose, the MMDA may enter into contracts, memoranda of agreement and other cooperative agreements with these bodies for the delivery of the required services within Metropolitan Manila.

The MMDA shall, in coordination with the NEDA and the Department of Finance, interface with the foreign, assistance agencies for purposes of obtaining financing support, grants and donations in support of its programs and projects.

**Based from the aforesaid provisions, this Court cannot accord merit to petitioner's arguments which seek to treat separately the Executive Committee from the MMDA. Certainly, that would amount to creating another entity without basis in law and in fact.** The records simply establish that the Executive Committee is an office under the MMDA, a public agency, subject to the audit jurisdiction of the COA. (Emphasis supplied.)

Indeed, as an indispensable adjunct of the MMDA, particularly during the period of the MMFF, the MMFF Executive Committee partakes of the nature of a public office.

*The Ombudsman did not commit grave abuse of discretion in finding probable cause against petitioners*

The courts' non-interference with the Ombudsman's exercise of investigative and prosecutorial powers in criminal cases is settled doctrine.<sup>56</sup> In recognition of the constitutional mandate of the Ombudsman, the courts generally defer to the Ombudsman's finding of probable cause.<sup>57</sup>

However, in a limited case, this Court is authorized to review the Ombudsman's findings when there is a clear showing that there exists grave abuse of discretion.<sup>58</sup> An act of a court or tribunal can only be considered as tainted with grave abuse of discretion when such act is done in a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction.<sup>59</sup> In order to properly assail an act, the abuse must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility."<sup>60</sup>

The burden of proof to establish that there was grave abuse of discretion on the part of the Ombudsman, in accordance with the definition and standards set by law and jurisprudence, lies with petitioners.<sup>61</sup> Mere disagreement with the Ombudsman's findings is not enough to constitute grave abuse of discretion.<sup>62</sup> Not every error in the proceedings, or every erroneous conclusion of law or fact, constitutes grave abuse of discretion.<sup>63</sup> In order to justify interference by the court, petitioners must clearly show that the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction in making its determination and in arriving at the conclusion it reached.<sup>64</sup> In the context of the Ombudsman's investigative powers, petitioners must establish that based on the facts presented to the Ombudsman at the time of the preliminary investigation, there is no reasonable basis to believe that a crime has been committed and the accused is probably responsible for it.<sup>65</sup>

Section 3(e) of RA 3019 has three elements: (1) the accused is a public officer discharging administrative, judicial, or official functions; (2) he or she must have acted with manifest partiality, evident bad faith, or gross and inexcusable negligence; and (3) his or her action caused any undue

<sup>56</sup> *Villarosa v. Ombudsman*, G.R. No. 221418, 23 January 2019; *Dichaves v. Office of the Ombudsman*, 802 Phil. 564 (2016).

<sup>57</sup> *Degamo v. Office of the Ombudsman*, 844 Phil. 794, 805 (2018).

<sup>58</sup> *Jabinal v. Overall Deputy Ombudsman*, G.R. No. 232094, 24 July 2019.

<sup>59</sup> *Chua v. People of the Philippines*, 821 Phil. 271, 279 (2017).

<sup>60</sup> *Digital Paradise, Inc. v. Casimiro*, G.R. No. 209608, 13 February 2019.

<sup>61</sup> *Joson v. Ombudsman*, 784 Phil. 172, 188 (2016).

<sup>62</sup> *Reyes v. Office of the Ombudsman*, 810 Phil. 106, 115 (2017).

<sup>63</sup> *Montejo v. Commission on Audit*, 837 Phil. 193, 202 (2018), citing *Espinosa v. Commission on Audit*, 731 Phil. 67, 76-78 (2014).

<sup>64</sup> *Gatchalian v. Office of the Ombudsman*, 838 Phil. 140, 155 (2018).

<sup>65</sup> *Reyes v. Ombudsman*, 783 Phil. 304, 333 (2016).

injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his or her functions.<sup>66</sup>

This Court examined the records and found that the Ombudsman evaluated the findings made by the COA and considered the allegations and counter-arguments of the parties in determining whether there is probable cause to indict petitioners.

In its assailed Resolution dated 04 February 2016, the Ombudsman explained that the elements of the offense are present in this case. The first element of Section 3(e) of RA 3019 is present since petitioners are public officials. As to the second element, the Ombudsman found that the lack of approved payrolls and committee resolutions authorizing the disbursements, and the failure to comply with auditing regulations, were indicative of petitioners' bad faith and partiality. Lastly, the Ombudsman found that the government suffered injury because of the depletion of MMFF's funds was occasioned by petitioners' irregular and illegal spending.

Certainly, the decision of the Ombudsman to indict petitioners for violation of RA 3019 cannot be characterized as arbitrary, capricious, whimsical, or despotic. The COA report detailing the acts and violations of petitioners, unless sufficiently rebutted, qualifies as evidence justifying probable cause.<sup>67</sup> On this note, it should be underscored that the conduct of a preliminary investigation is only for the determination of probable cause, and "probable cause merely implies probability of guilt and should be determined in a summary manner."<sup>68</sup>

It is equally important to note that petitioners never denied the COA's findings in its report, nor did they present evidence of compliance with legal and auditing requirements in making the questioned disbursements. Instead, petitioners merely tried to justify the questioned disbursements, arguing that the disbursements made from CY 2002 to 2008 were in the nature of necessary operating expenses incurred by the Executive Committee in relation to the preparation, promotion, holding, and management of the MMFF. They also argued that the checks were issued "Pay to Cash" in order to facilitate the disposition of funds to the different LGUs and working committees. In other words, for petitioners, there was no manifest partiality, bad faith, or negligence because they acted in good faith in disbursing the amounts contained in the COA Report.

<sup>66</sup> *Jaca v. People of the Philippines*, 702 Phil. 210, 245 (2013).

<sup>67</sup> *See Garcia vs. Ombudsman*, 747 Phil. 445 (2014).

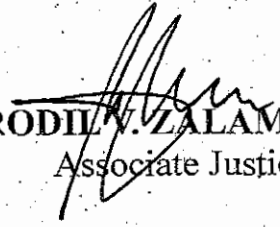
<sup>68</sup> *Senator Jinggoy Ejercito Estrada v. Ombudsman*, 751 Phil. 821, 863 (2015).

Petitioners' defenses cannot override the Ombudsman's finding of probable cause, at least at this stage. The presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits.<sup>69</sup>

All told, this Court finds that the Ombudsman did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Resolution dated 04 February 2016 finding probable cause to indict petitioners for violation of Section 3(e) of RA 3019.


**WHEREFORE**, the instant Petition for Review on *Certiorari* is hereby **DENIED**. The Resolutions dated 21 February 2017 and 09 August 2017 issued by the Court of Appeals in CA-G.R. SP No. 149355 dismissing petitioners' Petition for *Certiorari*, are **AFFIRMED**.

**SO ORDERED.**


  
**RODIL V. ZALAMEDA**  
Associate Justice

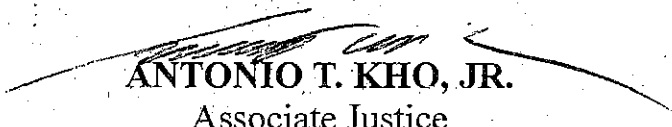
<sup>69</sup> *Braza v. Sandiganbayan*, 704 Phil. 476, 499 (2013).

**WE CONCUR:**

  
**RAMON PAUL L. HERNANDO**  
Associate Justice  
Acting Chairperson

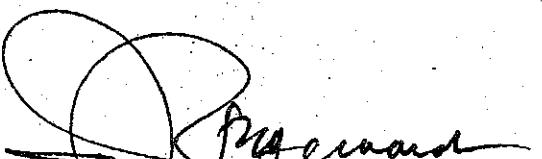
  
**RICARDO R. ROSARIO**  
Associate Justice

  
**JOSE MIDAS P. MARQUEZ**  
Associate Justice

  
**ANTONIO T. KHO, JR.**  
Associate Justice

**ATTESTATION**

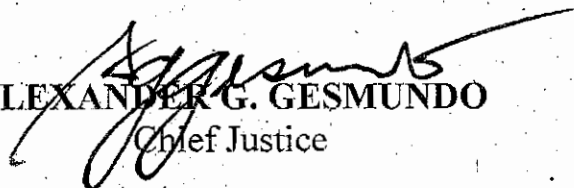
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**RAMON PAUL L. HERNANDO**  
Acting Chairperson



## CERTIFICATION

Pursuant to the Section 13, Article VIII of the Constitution and the Division Acting 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

