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[G.R. Nos. 212593-94. March 15, 2016]

JESSICA LUCILA G. REYES, PETITIONER, VS. THE HONORABLE OMBUDSMAN, RESPONDENT.

[G.R. Nos. 213163-78]

JESSICA LUCILA G. REYES, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN (THIRD DIVISION) AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

[G.R. Nos. 213540-41]

JANET LIM NAPOLES, PETITIONER, VS. CONCHITA CARPIO MORALES IN HER OFFICIAL CAPACITY AS OMBUDSMAN, PEOPLE OF THE PHILIPPINES, AND SANDIGANBAYAN, RESPONDENTS.

[G.R. Nos. 213542-43]

JO CHRISTINE NAPOLES AND JAMES CHRISTOPHER NAPOLES, PETITIONERS, VS. CONCHITA CARPIO MORALES, IN HER CAPACITY AS OMBUDSMAN, PEOPLE OF THE PHILIPPINES, AND SANDIGANBAYAN, RESPONDENTS.

[G.R. Nos. 215880-94]

JO CHRISTINE NAPOLES AND JAMES CHRISTOPHER NAPOLES, PETITIONERS, VS. SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

[G.R. Nos. 213475-76]

JOHN RAYMUND DE ASIS, PETITIONER, VS. CONCHITA CARPIO MORALES, IN HER OFFICIAL CAPACITY AS OMBUDSMAN, PEOPLE OF THE PHILIPPINES, AND SANDIGANBAYAN (THIRD DIVISION), RESPONDENTS.

D E C I S I O N

PERLAS-BERNABE, J.:

> "In dealing with probable cause[,] as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. The standard of proof is accordingly correlative to what must be proved."[1]

Before this Court are consolidated[2] petitions[3] which commonly assail the Joint Resolution[4] dated March 28, 2014 and the Joint Order[5] dated June 4, 2014 of the Office of the Ombudsman (Ombudsman) in OMB-C-C-13-0318 and OMB-C-C-13-0396 finding probable cause for the crimes of Plunder[6] and/or violation of Section 3 (e) of Republic Act No. (RA) 3019[7] against petitioners Jessica Lucila "Gigi" G. Reyes (Reyes), Janet Lim Napoles (Janet Napoles), Jo Christine L. Napoles (Jo Christine Napoles) and James Christopher L. Napoles (James Napoles; collectively, the Napoles siblings), and John Raymund De Asis (De Asis), together with several others. Further assailed are: by Reyes,[8] the Resolution[9] dated July 3, 2014 of the Sandiganbayan, which directed the issuance of warrants of arrest against her, and several others, as well as the Resolution[10] dated July 4, 2014 issued by the same tribunal, which denied her Urgent Motion to Suspend the Proceedings;[11] and by the Napoles siblings,[12] the Resolution[13] dated September 29, 2014 and the Resolution[14] dated November 14, 2014 of the Sandiganbayan, which found the existence of probable cause against them, and several others, and consequently, set their arraignment.

The Facts

Petitioners are all charged as co-conspirators for their respective participations in the anomalous Priority Development Assistance Fund (PDAF) scam, involving, as reported[15] by whistleblowers Benhur Luy (Luy), Marina Sula (Sula), and Merlina Suñas (Suñas), the illegal utilization and pillaging of public funds sourced from the PDAF of Senator Juan Ponce Enrile (Senator Enrile) for the years 2004 to 2010, in the total amount of P172,834,500.00.[16] The charges are contained in two (2) complaints, namely: (1) a Complaint[17] for Plunder filed by the National Bureau of Investigation (NBI) on September 16, 2013, docketed as OMB-C-C-13-0318 (NBI Complaint); and (2) a Complaint[18] for Plunder and violation of Section 3 (e) of RA 3019 filed by the Field Investigation Office of the Ombudsman (FIO) on November 18, 2013, docketed as OMB-C-C-13-0396 (FIO Complaint). Tersely put, petitioners were charged for the following acts:

(a) Reyes, as Chief of Staff of Senator Enrile during the times material to this case, for fraudulently processing the release of Senator Enrile's illegal PDAF disbursements – through: (1) project identification and cost projection;[19] (2) preparation and signing of endorsement letters,[20] project reports,[21] and pertinent documents addressed to the Department of Budget and Management (DBM) and the Implementing Agencies (IAs);[22] and (3) endorsement of the preferred JLN[23]-controlled Non-Government Organizations (NGOs)[24] to undertake the PDAF-funded project – and for personally[25] receiving significant portions of the diverted PDAF funds representing Senator Enrile's "share," "commissions," or "kickbacks" therefrom,[26] as well as her own;[27]

(b) Janet Napoles, as the alleged mastermind of the entire PDAF scam, for facilitating the illegal utilization, diversion, and disbursement of Senator Enrile's PDAF – through: (1) the commencement via "business propositions"[28] with the legislator regarding his allocated PDAF;[29] (2) the creation and operation of the JLN-controlled NGOs purposely to serve as "conduits" of government funds, in this case, Senator Enrile's PDAF;[30] (3) the use of spurious receipts and liquidation documents to make it appear that the projects were implemented by her NGOs;[31] (4) the falsification and machinations used in securing the funds from the IAs and liquidating disbursements;[32] and (5) the remittance of the PDAF funds to Janet Napoles from her JLN controlled-NGOs to the JLN Corporation[33] to be misappropriated by her and Senator Enrile;[34]

(c) the Napoles siblings,[35] as high ranking officers of the JLN Corporation,[36] for continuously diverting the sums sourced from Senator Enrile's PDAF to Janet Napoles's control[37] – through: (1) falsification and forgery of the signatures of the supposed recipients on the Certificates of Acceptance and Delivery Reports, as well as the documents submitted in the liquidation of PDAF funds;[38] and (2) handling of the PDAF proceeds after being deposited in the accounts of the JLN-controlled NGOs; and[39]

(d) De Asis, as Janet Napoles's driver, body guard, or messenger,[40] for assisting in the fraudulent releases of the PDAF funds to the JLN-controlled NGOs and eventually remitting the funds to Janet Napoles's control – through: (1) preparation and use of spurious documents to obtain checks from the IAs;[41] (2) picking up and receiving[42] the checks representing the PDAF "commissions" or "kickbacks," and depositing them to bank accounts in the name of the JLN-controlled NGOs concerned;[43] and (3) withdrawing and delivering the same to their respective recipients[44] – also, for having been appointed as member/incorporator[45] and President[46] of certain JLN-controlled NGOs.

As alleged, the systemic pillaging of Senator Enrile's PDAF commences with Janet Napoles meeting with a legislator – in this case, Senator Enrile himself or through his Chief of Staff, Reyes, or Ruby Tuason (Tuason)[47] – with the former rendering an offer to "acquire" his PDAF allocation in exchange for a "rebate," "commission," or "kickback" amounting to a certain percentage of the PDAF.[48] Upon their agreement on the conditions of the "PDAF acquisition," including the "project" for which the PDAF will be utilized, the corresponding IA tasked to "implement" the same, and the legislator's "rebate," "commission," or "kickback" ranging from 40-60% of either the "project" cost or the amount stated in the Special Allotment Release Order (SARO),[49] the legislator would then write a letter addressed to the Senate President for the immediate release of his PDAF, who in turn, will endorse such request to the DBM for the release of the SARO.[50] By this time, the initial advance portion of the "commission" would be remitted by Janet Napoles to the legislator.[51] Upon release of the SARO, Janet Napoles would then direct her staff – including whistleblowers Luy, Sula, and Suñas – to prepare PDAF documents containing, *inter alia*, the preferred JLN-controlled NGO that will be used for the implementation of the "project," the project proposals of the identified NGO, and the indorsement letters to be signed by the legislator and/or his staff, all for the approval of the legislator;[52] and would remit the remaining portion or balance of the "commission" of the legislator,[53] which is usually delivered by her staff, De Asis and Ronald John Lim.[54] Once the documents are approved, the same would be transmitted to the IA which will handle the preparation of the Memorandum of Agreement (MOA) to be executed by the legislator's office, the IA, and the chosen NGO.[55] Thereafter, the DBM would release the Notice of Cash Allocation (NCA) to the IA concerned, the head of which, in turn, would expedite the transaction and release of the corresponding check representing the PDAF disbursement, in exchange for a ten percent (10%) share in the project cost.[56] Among those tasked by Janet Napoles to pick up the checks and deposit them to the bank accounts of the NGO concerned were Luy, Suñas, De Asis, and the Napoles siblings.[57] Once the funds are in the account of the JLN-controlled NGO, Janet Napoles would then call the bank to facilitate the withdrawal thereof.[58] Upon withdrawal of the said funds by Janet Napoles's staff, the latter will bring the proceeds to the office of the JLN Corporation where it will be accounted. Janet Napoles will then decide how much will be left in the office and how much will be brought to her residence in Taguig City.[59] De Asis, Luy, and Suñas were the ones instructed to deliver the money to Janet Napoles's residence.[60] Finally, to liquidate the disbursements, Janet Napoles and her staff, *i.e.*, the Napoles siblings and De Asis, would manufacture fictitious lists of beneficiaries, liquidation reports, inspection reports, project activity reports, and similar documents that would make it appear that the PDAF-related project was implemented.[61] Under this *modus*

operandi, Senator Enrile, with the help of petitioners, among others, allegedly tunneled his PDAF amounting to around P345,000,000.00[62] to the JLN-controlled NGOs and, in return, received "rebates," "commissions," or "kickbacks" amounting to at least P172,834,500.00.[63]

In her defense, Reyes filed her Consolidated Counter-Affidavit[64] on January 3, 2014, contending that the letters and documents which she purportedly signed in connection with the allocation of the PDAF of Senator Enrile were all forged, and that none of the three (3) witnesses – Luy, Suñas, and Nova Kay B. Macalintal – who mentioned her name in their respective affidavits, directly and positively declared that she received money from the PDAF in question.[65]

For their part, the Napoles siblings filed their Joint Counter-Affidavit[66] on February 24, 2014, opposing their inclusion as respondents in the FIO Complaint. They claimed that the said Complaint: (a) is insufficient in form and substance as it failed to state in unequivocal terms the specific acts of their involvement in the commission of the offenses charged, as required in Section 6, Rule 110 of the 2000 Rules of Criminal Procedure;[67] and (b) failed to allege and substantiate the elements of the crime of Plunder and violation of Section 3 (e) of RA 3019.[68] They likewise argued that the affidavits and statements of the whistleblowers contain nothing more than mere hearsay and self-serving declarations, which are, therefore, inadmissible evidence unworthy of credence.[69]

On the other hand, while De Asis admitted[70] that he was an employee of the JLN Corporation from 2006-2010 in various capacities as driver, bodyguard or messenger, and that he received a salary of P10,000.00 a month for serving as the personal driver and "errand boy" of Janet Napoles, he denied the allegations against him, and maintained that he was merely following instructions from Janet Napoles when he picked-up checks for the JLN-controlled NGOs; that he had no knowledge in setting up or managing the corporations which he supposedly helped incorporate (namely, *Kaupdanan Para sa Mangunguma* Foundation, Inc. [KPMFI], as President,[71] and Countrywide Agri and Rural Economic Development Foundation, Inc. [CARED], as Member/Incorporator)[72]; and that he did not personally benefit from the alleged misuse of the PDAF.[73]

Meanwhile, despite due notice, Janet Napoles failed to file her counter-affidavits to the foregoing Complaints. Thus, the Ombudsman considered her to have waived her right to file the same.[74]

While preliminary investigation proceedings were ongoing before the Ombudsman, Tuason,

who was likewise charged under OMB-C-C-13-0318 and OMB-C-C-13-0396, surfaced as an additional witness and offered her affidavit[75] implicating Reyes in the PDAF scam. This prompted Reyes to file before the Ombudsman an Omnibus Motion[76] dated March 27, 2014, requesting that: (a) she be furnished copies of: (1) Tuason's affidavit, which supposedly contained vital information that was described by Department of Justice Secretary Leila M. De Lima as "slam dunk evidence";[77] (2) the transcript of the alleged 12-hour clarificatory hearing on February 11, 2014[78] where Tuason was said to have substantiated the allegations in her affidavit; and (3) the additional documents the latter submitted thereat; and (b) she be given a period of time to comment on Tuason's affidavit or to file a supplemental counter-affidavit, if deemed necessary.[79] On even date, the Ombudsman denied[80] Reyes's Omnibus Motion on the ground that "there is no provision under [the said office's Rules of Procedure] which entitles [Reyes] to be furnished filings by the other parties, including the other respondents."[81]

The following day, the Ombudsman issued the assailed 144-page Joint Resolution[82] dated March 28, 2014 finding probable cause against, *inter alia*, Reyes, Janet Napoles, and De Asis of one (1) count of Plunder, and against Reyes, Janet Napoles, De Asis, and the Napoles siblings for fifteen (15) counts of violation of Section 3 (e) of RA 3019. Accordingly, separate motions for reconsideration were timely filed by Reyes,[83] Janet Napoles,[84] the Napoles siblings,[85] and De Asis.[86]

Pending the resolution of the aforesaid motions, the Ombudsman issued a Joint Order[87] dated May 7, 2014 granting Reyes's request for copies of the respective Counter-Affidavits of Tuason and Dennis Cunanan (Cunanan), and directing her to file a comment thereon. Among the documents allegedly attached to the said Joint Order were copies of the Supplemental Sworn Statement[88] of Tuason dated February 21, 2014 and the Sworn Statement[89] of Cunanan dated February 20, 2014,[90] to which Reyes submitted separate Comments[91] on May 13, 2014. However, Tuason's earlier Sworn Statement dated February 4, 2014[92] and the transcripts of the clarificatory hearing[93] – both of which were requested by Reyes – were not included. Hence, Reyes filed another Motion[94] on May 9, 2014 requesting copies of said documents. Subsequently, on May 13, 2014, she filed a Reiterative Motion[95] for the same purpose. The Ombudsman denied the aforesaid motions on the ground that "the Affidavit dated 4 February 2014 does not form part of the records of the preliminary investigation and neither was [it] mentioned/referred to in the Joint Resolution dated 28 March 2014."[96] It was further stated that the Special Panel of Investigators "did not conduct clarificatory hearings at any stage during the preliminary investigation."[97]

Due to reports[98] that Tuason was officially declared a state witness and granted immunity[99] from criminal prosecution for the PDAF scam-related cases, Reyes wrote a letter[100] dated May 7, 2014 to the Ombudsman, requesting a copy of the immunity agreement that it entered into with Tuason. Again, the Ombudsman denied Reyes's request for the reason that the immunity agreement is a "privileged communication which is considered confidential under Section 3, Rule IV of the Rules and Regulations Implementing [RA] 6713,"[101] otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees."[102]

On June 4, 2014, the Ombudsman issued a Joint Order[103] denying, among others, the motions for reconsideration filed by herein petitioners. This led to the filing of the petitions before this Court, docketed as **G.R. Nos. 212593-94**,[104] **G.R. Nos. 213540-41**,[105] **G.R. Nos. 213542-43**,[106] and **G.R. Nos. 213475-76**,[107] commonly assailing the March 28, 2014 Joint Resolution[108] and the June 4, 2014 Joint Order[109] of the Ombudsman in OMB-C-C-13-0318 and OMB-C-C-13-0396.

Consequently, a total of sixteen (16) Informations[110] were filed by the the Ombudsman before the Sandiganbayan, charging, *inter alia*, Reyes, Janet Napoles, and De Asis with one (1) count of Plunder, docketed as Criminal Case No. SB-14-CRM-0238;[111] and Reyes, Janet Napoles, the Napoles siblings, and De Asis with fifteen (15) counts of violation of Section 3 (e) of RA 3019, docketed as Criminal Case Nos. SB-14-CRM-0241 to 0255,[112] which were raffled to the Sandiganbayan's Third Division.[113]

To forestall the service of a warrant of arrest against her, on June 13, 2014, Reyes filed an Urgent Motion to Suspend Proceedings[114] before the Sandiganbayan until after this Court shall have resolved her application for the issuance of a temporary restraining order and/or writ of preliminary injunction in G.R. Nos. 212593-94. On July 1, 2014, she filed a Manifestation and Reiterative Motion to Suspend Proceedings Against Accused Reyes.[115] Similarly, the Napoles siblings filed a Motion for Judicial Determination of Probable Cause with Urgent Motion to Defer the Issuance of Warrant of Arrest and Suspend Proceedings[116] dated June 13, 2014 before the Sandiganbayan.

On July 3, 2014, resolving Criminal Case No. SB-14-CRM-0238, "along with several other related cases," the Sandiganbayan issued a Resolution[117] finding probable cause for the issuance of warrants of arrest against "all the accused," opining therein that the filing of a motion for judicial determination of probable cause was a mere superfluity given that it was its bounden duty to personally evaluate the resolution of the Ombudsman and the

supporting evidence before it determines the existence or non-existence of probable cause for the arrest of the accused.[118] In view, however, of the Separate Opinion[119] issued by Justice Samuel R. Martires, dissenting to the issuance of warrants of arrest against the Napoles siblings, aiong with several others, upon the premise that the Office of the Special Prosecutor (OSP) still needs to present additional evidence with respect to the aforementioned persons, pursuant to Section 5, Rule 112 of the 2000 Rules of Criminal Procedure,[120] a Special Third Division of the Sandiganbayan, composed of five (5) members, was created.

A day later, or on July 4, 2014, the Sandiganbayan issued another Resolution[121] dated July 4, 2014 in Criminal Case Nos. SB-14-CRM-0238 and SB-CRM-0241 to 0255, denying Reyes's Motion to Suspend Proceedings for lack of merit. In view of the foregoing developments, Reyes voluntarily surrendered to the Sandiganbayan on even date, and accordingly, underwent the required booking procedure for her arrest and detention.[122] This prompted Reyes to file the petition docketed as **G.R. Nos. 213163-78**,[123] assailing the July 3, 2014[124] and July 4, 2014[125] Resolutions of the Sandiganbayan.

On September 29, 2014, the Special Third Division of the Sandiganbayan issued a Resolution[126] in Criminal Case Nos. SB-14-CRM- 0241 to 0255, finding the existence of probable cause against them, and several others, and consequently, setting their arraignment. The Napoles siblings urgently moved for the reconsideration[127] of the judicial finding of probable cause against them and requested that their arraignment be held in abeyance pending the resolution of their motion. However, the Napoles siblings alleged[128] that the Sandiganbayan acted on their motion for reconsideration through the latter's Resolution[129] dated November 14, 2014, declaring that the presence of probable cause against them had already been settled in its previous resolutions.[130] Hence, the Napoles siblings caused the filing of the petition, docketed as **G.R. Nos. 215880-94**,[131] assailing the September 29, 2014[132] and November 14, 2014[133] Resolutions of the Sandiganbayan.

The Issue Before the Court

The core issue in this case is whether or not the Ombudsman and/or the Sandiganbayan committed any grave abuse of discretion in rendering the assailed resolutions ultimately finding probable cause against petitioners for the charges against them.

The Court's Ruling

I. The Petitions Assailing the Resolution and Order of the Ombudsman.

In **G.R. Nos. 212593-94**, Reyes imputes grave abuse of discretion against the Ombudsman in finding probable cause against her for Plunder and violations of Section 3 (e) of RA 3019 on the basis of: (a) Tuason's Sworn Statement dated February 4, 2014, which was not furnished to Reyes despite her repeated requests therefor, thereby violating her right to due process;[134] (b) Tuason's Supplemental Sworn Statement dated February 21, 2014 that did not mention Reyes's name at all;[135] (c) documentary evidence that were forged, falsified, and fictitious;[136] and (d) hearsay declarations of the whistleblowers who merely mentioned Reyes's name in general terms but did not positively declare that they saw or talked with her at any time or had seen her receive money from Janet Napoles or the latter's employees.[137]

In **G.R. Nos. 213540-41**, Janet Napoles claims that the Ombudsman committed grave abuse of discretion in finding probable cause to indict her for Plunder and violations of Section 3 (e) of RA 3019, notwithstanding the failure of the NBI and the FIO to allege and establish the elements of Plunder;[138] and the insufficiency, in form and in substance, of both the NBI and FIO Complaints as they lacked certain particularities such as the time, place, and manner of the commission of the crimes charged.[139] Janet Napoles further contends that as a private individual, she cannot be held liable for Plunder, considering that the said crime may only be committed by public officers; and that conspiracy was not established.[140]

In **G.R. Nos. 213542-43**, the Napoles siblings assert that the Ombudsman gravely abused its discretion in finding probable cause against them for violations of Section 3 (e) of RA 3019, mainly arguing that there is no evidence to show that they conspired with any public officer to commit the aforesaid crime.[141] Likewise, the Napoles siblings asseverate that the whistleblowers' testimonies were bereft of probative value and are, in fact, inadmissible against them.[142]

Finally, in **G.R. Nos. 213475-76**, De Asis accuses the Ombudsman of gravely abusing its discretion in finding probable cause against him for Plunder and violations of Section 3 (e) of RA 3019, contending that he was a mere driver and messenger of Janet Napoles, and not the "cohort" that the Ombudsman found him to be;[143] that he did not benefit from the illegal transactions of Janet Napoles, nor was he ever in full control and possession of the funds involved therein; and that the whistleblowers admitted to being the "real cohorts" of Janet

Napoles, and as such, should have been the ones charged for the crimes which were ascribed to him instead.[144]

The petitions are bereft of merit.

At the outset, it must be stressed that the Court has consistently refrained from interfering with the discretion of the Ombudsman to determine the existence of probable cause and to decide whether or not an Information should be filed. Nonetheless, **this Court is not precluded from reviewing the Ombudsman's action when there is a charge of grave abuse of discretion**. Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power 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.[145] In *Ciron v. Gutierrez*,[146] it was held that:

> **[T]his Court's consistent policy has been to maintain non-interference in the determination of the Ombudsman of the existence of probable cause, provided there is no grave abuse in the exercise of such discretion. This observed policy is based not only on 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 Court will be seriously 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 with cases if they could be compelled to review the exercise of discretion on the part of the flscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.[147] (Emphasis and underscoring supplied)

In assessing if the Ombudsman had committed grave abuse of discretion, attention must be drawn to the context of its ruling – that, is: **preliminary investigation is merely an inquisitorial mode of discovering whether or not there is reasonable basis to believe that a crime has been committed and that the person charged should be held responsible for it**.[148] Being merely based on opinion and belief, "a finding of probable cause does not require an inquiry as to whether there is sufficient evidence to secure a conviction."[149] In *Fenequito v. Vergara, Jr.*,[150] "[p]robable cause, for the purpose

of filing a criminal information, has been defined as **such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof**. The term does not mean 'actual or positive cause nor does it import absolute certainty. It is merely based on opinion and reasonable belief. **Probable cause does riot require an inquiry x x x whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged.**"[151]

Thus, in determining the elements of the crime charged for purposes of arriving at a finding of probable cause, "**only facts sufficient to support a *prima facie* case against the [accused] are required, not absolute certainty**."[152] In this case, petitioners were charged with the crimes of Plunder and violations of Section 3 (e) of RA 3019.

Plunder, defined and penalized under Section 2[153] of RA 7080, as amended, has the following elements: (a) that the offender is a public officer, who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons; (b) that he amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts described in Section 1 (d)[154] thereof; and (c) that the aggregate amount or total value of the ill-gotten wealth is at least Fifty Million Pesos (P50,000,000.00).[155]

On the other hand, the elements of violation of Section 3 (e)[156] of RA 3019 are: (a) that the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (b) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (c) that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his functions.[157]

Owing to the nature of a preliminary investigation and its purpose, all of the foregoing elements need not be definitively established for it is en6ugh that their presence becomes reasonably apparent. This is because probable cause – the determinative matter in a preliminary investigation implies mere probability of guilt; thus, a finding based on more than bare suspicion but less than evidence that would justify a conviction would suffice.[158]

Also, it should be pointed out that a preliminary investigation is not the occasion for the full and exhaustive display of the prosecution's evidence, and that 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.[159] Therefore, "**the validity and merits of a party's defense or accusation, as well as the admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level**."[160]

Furthermore, owing to the initiatory nature of preliminary investigations, the "**technical rules of evidence should not be applied**" in the course of its proceedings,[161] keeping in mind that "**the determination of probable cause does not depend on the validity or merits of a party's accusation or defense or on the admissibilitv or veracity of testimonies presented**."[162] Thus, in *Estrada v. Ombudsman*[163] (*Estrada*), the Court declared that since a preliminary investigation does not finally adjudicate the rights and obligations of parties, "**probable cause can be established with hearsay evidence, as long as there is substantial basis for crediting the hearsay**."[164]

Guided by these considerations, the Court finds that the Ombudsman did not gravely abuse its discretion in finding probable cause to indict Reyes, Janet Napoles, and De Asis of one (1) count of Plunder, and Reyes, Janet Napoles, the Napoles siblings, and De Asis of fifteen (15) counts of violation of Section 3 (e) of RA 3019, as will be explained hereunder.

First, records reveal that there is substantial basis to believe that Reyes, as Chief of Staff of Senator Enrile, dealt with the parties involved; signed documents necessary for the immediate and timely implementation of the Senator's PDAF-funded projects that, however, turned out to be "ghost projects"; and repeatedly received "rebates," "commissions," or "kickbacks" for herself and for Senator Enrile representing portions of the latter's PDAF. As correctly pointed out by the Ombudsman, such participation on the part of Reyes was outlined by whistleblowers Luy, Sula, and Suñas as follows:

> [O]nce a PDAF allocation becomes available to Senator Enrile, his staff, in the person of either respondent **Reyes** or Evangelista, would inform Tuason of this development. Tuason, in turn, would relay the information to either Napoles or Luy. Napoles or Luy would then prepare a listing of the projects available where Luy would specifically indicate the implementing agencies. This listing would be sent to **Reyes** who would then endorse it to the DBM under her authority as Chief-of-Staff of Senator Enrile. After the listing is released by the Office of Senator Enrile to the DBM, Janet Napoles would give Tuason a down payment for delivery to Senator Enrile through **Reyes**. After the SARO and/or NCA is

released, Napoles would give Tuason the full payment for delivery to Senator Enrile through **Atty. Gigi Reyes**.[165]

This was corroborated in all respects by Tuason's verified statement, the pertinent portions of which read:

11. x x x It starts with a call or advise from **Atty. Gigi Reyes** or Mr. Jose Antonio Evangelista (also from the Office of Senator Enrile) informing me that a budget from Senator Enrile's PDAF is available. I would then relay this information to Janet Napoles/Benhur Luy.

12. Janet Napoles/Benhur Luy would then prepare a listing of the projects available indicating the implementing agencies. This listing would be sent to **Atty. Gigi Reyes** who will endorse the same to the DBM under her authority as Chief-of-Staff of Senator Enrile.

13. After the listing is released by the Office of Senator Enrile to the DBM, Janet Napoles would give me a down payment for delivery for the share of Senator Enrile through **Atty. Gigi Reyes**.

14. After the SARO and/or NCA is released, Janet Napoles would give me the full payment for delivery to Senator Enrile through **Atty. Gigi Reyes**.

15. Sometimes Janet Napoles would have the money for Senator Enrile delivered to my house by her employees. At other times, I would get it from her condominium in Pacific Plaza or from Benhur Luy in Discovery Suites. When Benhur Luy gives me the money, he would make me scribble on some of their vouchers [or] even sign under the name "Andrea Reyes," [Napoles's] codename for me. This is the money that I would deliver to Senator Enrile through **Atty. Gigi Reyes**.

16. I don't count the money I receive for delivery to Senator Enrile. I just receive whatever was given to me. The money was all wrapped and ready for delivery when I get it from Janet Napoles or Benhur Luy. For purposes of recording the transactions, I rely on the accounting records of Benhur Luy for the PDAF of Senator Enrile, which indicates the date, description and amount of money I received for delivery to Senator Enrile.

x x x x

18. As I have mentioned above, I personally received the share of Senator Enrile from Janet Napoles and Benhur Luy and I personally delivered it to Senator Enrile's Chief-of-Staff, **Atty. Gigi Reyes**. Sometimes she would come to my house to pick up the money herself. There were also instances when I would personally deliver it to her when we would meet over lunch. There were occasions when Senator [Enrile] would join us for a cup of coffee when he would pick her up. For me, his presence was a sign that whatever **Atty. Gigi Reyes** was doing was with Senator Enrile's blessing.

x x x x

25. Initially, I was in-charge of delivering the share of Senator Enrile to **Atty. Gigi Reyes**, but later on, I found out that Janet Napoles dealt directly with her. Janet Napoles was able to directly transact business with **Atty. Gigi Reyes** after I introduced them to each other. This was during the Senate hearing of Jocjoc Bolante in connection with the fertilizer fund scam. Janet Napoles was scared of being investigated on her involvement, so she requested me to introduce her to **Atty. Gigi Reyes** who was the Chief of Staff of the [sic] Senate President Enrile.[166] (Emphases supplied)

Indeed, these pieces of evidence are already sufficient to engender a well-founded belief that the crimes charged were committed and Reyes is probably guilty thereof as it remains apparent that: (a) Reyes, a public officer, connived with Senator Enrile and several other persons (including the other petitioners in these consolidated cases as will be explained later) in the perpetuation of the afore-described PDAF scam, among others, in entering into transactions involving the illegal disbursement of PDAF funds; (b) Senator Enrile and Reyes acted with manifest partiality and/or evident bad faith by repeatedly endorsing the JLN-controlled NGOs as beneficiaries of his PDAF without the benefit of public bidding and/or negotiated procurement in violation of existing laws, rules, and regulations on government procurement;[167] (c) the PDAF-funded projects turned out to be inexistent; (d) such acts caused undue injury to the government, and at the same time, gave unwarranted benefits, advantage, or preference to the beneficiaries of the scam; and (e) Senator Enrile, through Reyes, was able to accumulate and acquire ill-gotten wealth amounting to at least P172,834,500.00.

In an attempt to exculpate herself from the charges, Reyes contends that the Ombudsman gravely abused its discretion when it: (a) relied upon hearsay and unsubstantiated declarations of the whistleblowers who merely mentioned her name in general terms but did not positively declare that they saw or talked with her at any time or that they had seen her receive money from Janet Napoles or anyone else connected with the latter;[168] (b) granted immunity to the whistleblowers and Tuason;[169] (c) denied her of due process When she was deprived of the opportunity to rebut and disprove the statements of Tuason as she was never furnished a copy of the latter's Sworn Statement[170] dated February 4, 2014 despite repeated requests therefor;[171] and (d) disregarded the fact that her signatures found on the documentary evidence presented were forged, falsified, and fictitious.[172]

Such contentions deserve scant consideration.

Assuming *arguendo* that such whistleblower accounts are merely hearsay, it must be reiterated that – as held in the *Estrada* case – probable cause can be established with hearsay evidence, so long as there, is substantial basis for crediting the same.[173] As aforestated, the *modus operandi* used in advancing the PDAF scam as described by the whistleblowers was confirmed by Tuason herself, who admitted to having acted as a liaison between Janet Napoles and the office of Senator Enrile.[174] The Ombudsman further pointed out that the collective statements of Luy, Sula, Suñas, and Tuason find support in the following documentary evidence: (a) the business ledgers prepared by witness Luy, showing the amounts received by Senator Enrile, through Tuason and Reyes, as his "commission" from the so-called PDAF scam; (b) the 2007-2009 Commission on Audit (COA) Report documenting the results of the special audit undertaken on PDAF disbursements – that there were serious irregularities relating to the implementation of PDAF-funded projects, including those endorsed by Senator Enrile; and (c) the reports on the independent field verification conducted in 2013 by the investigators of the FIO which secured sworn statements of local government officials and purported beneficiaries of the supposed projects which turned out to be inexistent.[175] Clearly, these testimonial and documentary evidence are substantial enough to reasonably conclude that Reyes had, in all probability, participated in the PDAF scam and, hence, must stand trial therefor.

In this relation, the Court rejects Reyes's theory that the whistleblowers and Tuason are the "most guilty" in the perpetuation of the PDAF scam and, thus, rebuffs her claim that the Ombudsman violated Section 17, Rule 119[176] of the 2000 Rules of Criminal Procedure by granting immunity to them. To begin with, "[t]he authority to grant immunity is not an inherent judicial function. Indeed, Congress has vested such power in the Ombudsman[,] as

well as in the Secretary of Justice. Besides, the decision to employ an accused as a state witness must necessarily originate from the public prosecutors whose mission is to obtain a successful prosecution of the several accused before the courts. The latter do not, as a rule[,] have a vision of the true strength of the prosecution's evidence until after the trial is over. Consequently, courts should generally defer to the judgment of the prosecution and deny a motion to discharge an accused so he can be used as a witness only in clear cases of failure to meet the requirements of Section 17, Rule 119 [of the 2000 Rules of Criminal Procedure]."[177] As explained in *Quarto v. Marcelo*:[178]

> The decision to grant immunity from prosecution forms a constituent part of the prosecution process. It is essentially a tactical decision to forego prosecution of a person for government to achieve a higher objective. It is a deliberate renunciation of the right of the State to prosecute all who appear to be guilty of having committed a crime. Its justification lies in the particular need of the State to obtain the conviction of the more guilty criminals who, otherwise, will probably elude the long arm of the law. **Whether or not the delicate power should be exercised, who should be extended the privilege, the timing of its grant, are questions addressed solely to the sound judgment of the prosecution. The power to prosecute includes the right to determine who shall be prosecuted and the corollary right to decide whom not to prosecute. In reviewing the exercise of prosecutorial discretion in these areas, the jurisdiction of the respondent court is limited. For the business of a court of justice is to be an impartial tribunal, and not to get involved with the success or failure of the prosecution to prosecute.** Every now and then, the prosecution may err in the selection of its strategies, but such errors are not for neutral courts to rectify, any more than courts should correct the blunders of the defense.[179] (Emphasis and underscoring supplied)

As earlier mentioned, Tuason admitted to having acted merely as a liaison between Janet Napoles and the Office of Senator Enrile. It is in this capacity that she made "direct arrangements" with Janet Napoles concerning the PDAF "commissions," and "directly received" money from Janet Napoles for distribution to the participants of the scam. In the same manner, Luy and Suñas, being mere employees of Janet Napoles, only acted upon the latter's orders. Thus, the Ombudsman simply saw the higher value of utilizing them as witnesses instead of prosecuting them in order to fully establish and strengthen her case

against those mainly responsible for the scam.[180] The Court has previously stressed that the discharge of an accused to be a state witness is geared towards the realization of the deep-lying intent of the State not to let a crime that has been committed go unpunished by allowing an accused who appears not to be the most guilty to testify, in exchange for an outright acquittal, against a more guilty co-accused. It is aimed at achieving the greater purpose of securing the conviction of the most guilty and the greatest number among the accused for an offense committed.[181] In fact, whistleblower testimonies – especially in corruption cases, such as this – should not be condemned, but rather, be welcomed as these whistleblowers risk incriminating themselves in order to expose the perpetrators and bring them to justice. In Re: *Letter of Presiding Justice Conrado M. Vasquez, Jr. on CA-G.R. SP No. 103692* (*Antonio Rosete, et al. v. Securities and Exchange Commission, et al.*),[182] the Court gave recognition and appreciation to whistleblowers in corruption cases, considering that corruption is often done in secrecy and it is almost inevitable to resort to their testimonies in order to pin down the crooked public officers.[183]

For another, Reyes erroneously posits that under Section 4,[184] Rule II of the Rules of Procedure of the Office of the Ombudsman, she is entitled to copies of Tuason's affidavit, as well as the transcripts of the clarificatory hearings conducted by the Ombudsman with Tuason, and that the Ombudsman's denial of such copies constitutes a violation of due process on her part. In *Estrada*, the Court had already resolved in detail that under both Rule 112 of the 2000 Rules of Criminal Procedure and Section 4, Rule II of the Rules of Procedure of the Office of the Ombudsman, a respondent to a preliminary investigation proceeding (such as Reyes in this case) is only entitled to the evidence submitted by the complainants, and not to those submitted by a co-respondent[185] (such as Tuason in this case, prior to her grant of immunity as a state witness). It must also be noted that by virtue of the Ombudsman's Joint Order[186] dated May 7, 2014, Reyes was even provided with copies of Tuason and Cunanan's respective Counter-Affidavits,[187] and directed to file a comment thereon. In fact, Reyes even submitted separate Comments[188] on May 13, 2014. Thus, there is more reason to decline Reyes's assertion that the Ombudsman deprived her of due process. Time and again, it has been said that the touchstone of due process is the opportunity to be heard,[189] which was undeniably afforded to Reyes in this case.

Finally, anent Reyes's claim that her signatures in the documentary evidence presented were false, falsified, and fictitious, it must be emphasized that "[a]s a rule, forgery cannot be presumed and must be proved by clear, positive[,] and convincing evidence and the burden of proof lies on the party alleging forgery. The best evidence of a forged signature in the instrument is the instrument itself reflecting the alleged forged signature. The fact of

forgery can only be established by comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized upon to have been forged."[190] Here, Reyes has yet to overcome the burden to present clear and convincing evidence to prove her claim of forgery, especially in light of the following considerations pointed out by the Office of the Solicitor General in its Comment on the petition in **G.R. Nos. 212593-94**:[191] (a) in a letter dated March 21, 2012 addressed to the COA, Senator Enrile himself admitted that his signatures, as well as those of Reyes, found on the documents covered by the COA's Special Audit Report are authentic;[192] and (b) Rogelio Azores, the supposed document examiner who now works as a freelance consultant, aside from only analyzing photocopies of the aforesaid documents and not the originals thereof, did not categorically state that Reyes's signatures on the endorsement letters were forged.[193] As there is no clear showing of forgery, at least at this stage of the proceedings, the Court cannot subscribe to Reyes's contrary submission. Notably, however, she retains the right to raise and substantiate the same defense during trial proper.

In sum, the Ombudsman did not gravely abuse its discretion in finding probable cause to indict Reyes of one (1) count of Plunder and fifteen (15) counts of violation of Section 3 (e) of RA 3019.

Anent Janet Napoles's complicity in the abovementioned crimes, records similarly show that she, in all reasonable likelihood, played an integral role in the calculated misuse of Senator Enrile's PDAF. As exhibited in the *modus operandi* discussed earlier, once Janet Napoles was informed of the availability of a PDAF allocation, either she or Luy, as the "lead employee"[194] of the JLN Corporation, would prepare a listing of the available projects specifically indicating the IAs. After said listing is released by the Office of Senator Enrile to the DBM, Janet Napoles would give a down payment from her own pockets for delivery to Senator Enrile through Reyes, with the remainder of the amount given to the Senator after the SARO and/or NCA is released. Senator Enrile would then indorse Janet Napoles's NGOs to undertake the PDAF-funded projects,[195] which were "ghost projects" that allowed Janet Napoles and her cohorts to pocket the PDAF allocation.[196]

Based on the evidence in support thereof, the Court is convinced that there lies probable cause against Janet Napoles for the charge of Plunder as it has *prima facie* been established that: (a) she, in conspiracy with Senator Enrile, Reyes, and other personalities, was significantly involved in the afore-described *modus operandi* to obtain Senator Enrile's PDAF, who supposedly abused his authority as a public officer in order to do so; (b) through this *modus operandi*, it appears that Senator Enrile repeatedly received ill-gotten wealth in

the form of "kickbacks" in the years 2004-2010; and (c) the total value of "kickbacks" given to Senator Enrile amounted to at least P172,834,500.00.

In the same manner, there is probable cause against Janet Napoles for violations of Section 3 (e) of RA 3019, as it is ostensible that: (a) she conspired with public officials, *i.e.*, Senator Enrile and his chief of staff, Reyes, who exercised official functions whenever they would enter into transactions involving illegal disbursements of the PDAF; (b) Senator Enrile, among others, has shown manifest partiality and evident bad faith by repeatedly indorsing the JLN-controlled NGOs as beneficiaries of his PDAF-funded projects – even without the benefit of a public bidding and/or negotiated procurement, in direct violation of existing laws, rules, and regulations on government procurement;[197] and (c) the "ghost" PDAF-funded projects caused undue prejudice to the government in the amount of P345,000,000.00.

At this juncture, the Court must disabuse Janet Napoles of her mistaken notion that as a private individual, she cannot be held answerable for the crimes of Plunder and violations of Section 3 (e) of RA 3019 because the offenders in those crimes are public officers. While the primary offender in the aforesaid crimes are public officers, private individuals may also be held liable for the same if they are found to have conspired with said officers in committing the same.[198] This proceeds from the fundamental principle that in cases of conspiracy, the act of one is the act of all.[199] In this case, given that the evidence gathered perceptibly shows Janet Napoles's engagement in the illegal hemorrhaging of Senator Enrile's PDAF, the Ombudsman rightfully charged her, with Enrile and Reyes, as a co-conspirator for the aforestated crimes.

Furthermore, there is no merit in Janet Napoles's assertion that the complaints are insufficient in form and in substance for the reason that it lacked certain particularities such as the time, place, and manner of the commission of the crimes charged. "According to Section 6, Rule 110[200] of the 2000 Rules of Criminal Procedure, the complaint or information is sufficient if it states the names of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed. **The fundamental test in determining the sufficiency of the averments in a complaint or information is, therefore, whether the facts alleged therein, if hypothetically admitted, constitute the elements of the offense.**"[201] In this case, the NBI and the FIO Complaints stated that: (a) Senator Enrile, Reyes, and Janet Napoles, among others, are the ones responsible for the PDAF scam; (b)

Janet Napoles, *et al*. are being accused of Plunder and violations of Section 3 (e) of RA 3019; (c) they used a certain *modus operandi* to perpetuate said scam, details of which were stated therein; (d) because of the PDAF scam, the Philippine government was prejudiced and defrauded in the approximate amount of P345,000,000.00; and (e) the PDAF scam happened sometime between the years 2004 and 2010, specifically in Taguig City, Pasig City, Quezon City, and Pasay City.[202] The aforesaid allegations were essentially reproduced in the sixteen (16) Informations – one (1) for Plunder[203] and fifteen (15) for violation of RA 3019[204] – filed before the Sandiganbayan. Evidently, these factual assertions already square with the requirements of Section 6, Rule 110 of the Rules of Criminal Procedure as above-cited. Upon such averments, there is no gainsaying that Janet Napoles has been completely informed of the accusations against her to enable her to prepare for an intelligent defense.[205] The NBI and the FIO Complaints are, therefore, sufficient in form and in substance.

In view of the foregoing, the Ombudsman did not gravely abuse its discretion in finding probable cause to indict Janet Napoles of the crimes of Plunder and violations of Section 3 (e) of RA 3019.

As regards the finding of probable cause against the Napoles siblings and De Asis, it must be first highlighted that they are placed in the same situation as Janet Napoles in that they are being charged with crime/s principally performed by public officers (specifically, of Plunder and/or multiple violations of Section 3 [e] of RA 3019) despite their standing as private individuals on account of their alleged conspiracy with public officers, Senator Enrile and Reyes. It is a fundamental legal axiom that "**[w]hen there is conspiracy, the act of one is the act of all**."[206] Thus, the reasonable likelihood that conspiracy exists between them denotes the probable existence of the elements of the crimes above-discussed equally as to them.

"Conspiracy can be inferred from and established by the acts of the accused themselves when said acts point to a joint purpose and design, concerted action and community of interests."[207]

With respect to the Napoles siblings, it must be clarified that while it appears from the evidence on record that: (a) they did not serve as officers or incorporators of the JLN-controlled NGOs designated as "project partners" in the implementation of Senator Enrile's PDAF projects;[208] (b) their names did not appear in the table of signatories to the MOAs;[209] and (c) they did not acknowledge receipt of the checks issued by the I As in payment of

Senator Enrile's "ghost" PDAF-funded projects, they were nonetheless involved in various phases of the PDAF scam. Their respective participations, from which a unity of purpose and design with the acts of their mother, Janet Napoles, resonates, were uncovered in the sworn statement[210] of whistleblower Luy, as will be shown hereunder.

For its proper context, it should be first pointed out that Luy specifically mentioned that Janet Napoles transacted with Senator Enrile regarding his PDAF, among other legislators:

50. T: *Nabanggit mo na may mga pulitiko na madalas nakikipag-transact kay* JANET LIM NAPOLES, *maaari mo bang sabihin kung sinu-sino ang mga pulitiko na nagpapagamit sa mga PDAF nila*?

S: *Opo. Sa mga Senador po ang madalas pong makuha ni Madame Janet na PDAF nila ay sina Senador JINGGOY ESTRADA,* ***Senador*** **JUAN PONCE ENRILE**, *at si Senador* BONG REVILLA. *Sa* Congressman *naman ay sina*, Congresswoman RIZALINA LANETE *ng* 3rd District *ng Benguet*, Congressman RODOLFO PLAZA *ng* lone District *ng Agusan Del Sur*, Congressman CONSTANTINO JARAULA *ng* lone District *ng Cagayan De Oro, at si* Congressman EDGAR VALDEZ *ng* APEC Party List. *Meron pa rin mga iba pero nasa records ko po iyon. Itong mga nabanggit ko po ay familiar na sa akin kasi regular silang nakaka*-transact *ng* JLN Corporation.[211] (Emphasis supplied)

He then explained that the share of the involved legislators in the PDAF were termed as "rebates," and their disbursement from JLN Corporation were reflected in "vouchers," which were, after his initial preparation, checked by, among others, Jo Christine Napoles:

51. T: *Papaano mo naman nalaman na madalas na nagagamit o nakukuha ni* JANET LIM NAPOLES *ang* PDAF *ng mga nabanggit mong pulitiko*?

S: *Kasi po bukod sa nakikita ko sila sa opisina ng* JLN Corporation *o sa mga parties ni* Madame JANET LIM NAPOLES *o madalas na kausap sa telepono, ay sila rin lagi ang nasa records ko na pinagbibigyan ng pera ni Madam* JANET LIM NAPOLES. *Gaya po ng sinabi ko, ako po ang inuutusan ni Madame* JANET LIM NAPOLES *na gumawa ng mga dokumento at maghanda ng pera para sa rebates ng mga Senador o Congressman na mga ito. May* **VOUCHER** *po kasi ang mga pera na lumalabas sa* JLN Corporation. *Doon sa voucher ay nakalagay ang pangalan ng taong pagbibigyan gaya ng Senador, o* Chief-of-Staff *nila, o* Congressman, *o sinumang* public official *na kumukuha ng* **REBATES** *sa mga* government projects *na ipinatutupad ng* NGOs *o* foundations *ni* Madame JANET LIM NAPOLES.

52. T: *Sino naman ang gumagawa ng sinasabi mong* voucher?

S: *Ako po.*

53. T: *Maaari mo bang sabihin kung papaano itong paghahanda mo ng* voucher *at ang proseso nito*?

S: *Noong ako ay nasa* JLN Corporation *pa, ang una po ay sasabihan ako ni* Madame JANET LIM NAPOLES *na may pupuntang tao sa opisina ng* JLN Corporation *na kukuha nang pera. Maghahanda ako ng* VOUCHER *kung saan naka-indicate ang pangalan ng politiko, iyong petsa, iyong control number ng voucher at iyong amount na ibibigay.* ***Pipirmahan ko ito at ipapa-check ko ito sa anak ni*** **Madame JANET LIM NAPOLES** ***na si*** **JO CHRISTINE** ***o di kaya ay kay*** **REYNALD "JOJO" LIM.** *Kapag nasuri na nila na tama* [*ang*] *ginawa ko ay pipirmahan na nila ito at ibibigay kay* Madame JANET LIM NAPOLES *at siya ang rcag-a-approve nito. Babalik sa akin ang voucher para maihanda ko iyong pera. Kukuha ako ng pera sa vault na nasa opisina ng* JLN Corporation*. Kapag nandoon si* Madame JANET LIM NAPOLES *sa opisina ay siya mismo ang nag-aabot ngpera sa tao. Kung wala naman siya kami na ang nag-aabot ng pera. Bago pa man iabot ang pera ay bibilangin pa muna sa harap noong taong tatanggap ng pera at papapirmahin siya sa voucher para katunayan na natanggap ng ganoon halaga ng pera.*[212] (Emhpases supplied)

Luy further revealed that these "vouchers" do not actually contain the names of the legislators to whom the PDAP shares were disbursed as they were identified by the use of "codenames." These "codenames," which were obviously devised to hide the identities of the legislators involved in the scheme, were known by a select few in the JLN Corporation, among others, the Napoles siblings:

57. T: *Sinabi mo na inilalagay mo sa voucher iyong pangalan ng kung sino man ang kulaiha ng per a, may mga pagkakataon ba na iyong sinabi sa iyo ni* JANET LIM NAPOLES *na kukuha ng pera ay iba sa tatanggap*?
S: *Meron po. Kunwari po sa mga Senador, sasabihin ni* Madame JANET LIM NAPOLES *na kinukuha na ni ganitong Senador ang kanyang kickback pew ang pera ay kukunin ng kanyang* Chief-of Staff *o* representative *niya. Ilalagay ko iyong pangalan o* codename ng Senador *tapos i*-indicate *ko na* "care of" *tapos iyon pangalan* o codename *ng kung sinuman ang tumanggap.*
58. T: *Maaari mo bang linawin itong sinasabi mong* "codename"?
S: *Ang pangalan po ng taong tumanggap ngpera ang nilalagay ko sa* "voucher" *pero minsan po ay* codename *ang nilalagay ko.*
59. T: *Sino ang nagbigay ng* "codename"?
S: *Si* Madame JANET LIM NAPOLES *po ang nagbigay ng* codename *kasi daw po ay sa gobyerno kami nagta-transact.*
60. T: *Maaari mo bang sabihin kung anu-ano ang mga* "codenames" *ng mga ka-*transact *ni* JANET LIM NAPOLES *na pulitiko o kanilang* Chief-of-Staff?
S: *Opo.* "TANDA" *kay* Senator Juan Ponce Enrile, "SEXY/ANAK/KUYA" *kay* Senator Jinggoy Estrada, "POGI" *kay* Senator Bong Revilla, "GUERERA" *kay* Congressman Rizalina Seachon-Lanete, "BONJING" *kay* Congressman RODOLFO PLAZA, "BULAKLAK" *kay* Congressman SAMUEL DANGWA, "SUHA" *kay* Congressman ARTHUR PINGOY, at "KURYENTE" *kay* Congressman EDGAR VALDEZ. *Mayroon pa po ibang codename nasa records ko. Sa ngayonpo ay sila langpo ang aking naalala.*
61. T: ***Bukod sa iyo, may ibans tao ba na nakakaalam ng mga sinasabi mong codenames?***
S: ***Opo.***
62. T: ***Sinu-sino itong mga nakakaalam ng* codenames *na nabanggit mo?***

S: *Si* Madame JANET LIM NAPOLES, ***ang anak niyang sina* JO CHRISTINE at JAMES CHRISTOPHER**, *at mga* seniors *ko sa* JLN Corporation *na sina* MERLINA SUÑAS [sic], MARINA SULA, EVELYN DE LEON, RONALD JOHN LIM *at ako*.[213] (Emphases and underscoring supplied)

As mentioned by Luy, the Napoles siblings' standing in the JLN Corporation were as follows:

13. T: *Bago ang sinasabi mong iligal na pagkakakulong mo noong* December 2012, ***sinu-sino ang mga ibans emyleyado ni* JANET LIM NAPOLES?**

S: *Si* Madame JANET LIM NAPOLES *po ang* President/CEO, JAIME G. NAPOLES *po ang* Consultant, **JO CHRISTINE L. NAPOLES *ang* Vice-President for Admin and Finance, JAMES CHRISTOPHER L. NAPOLES Vice-President for Operations**, x x x.[214]
x x x x (Emphases and underscoring supplied)

Subsequently, Luy shed light on the process through which the "rebates" were received by the legislators, again identifying the Office of Senator Enrile, through Tuason, as one of the recipients:

66. T: *Papaano naman ibinigay ni* JANET LIM NAPOLES *ang* "rebates" *ng Senador o* Congressman?

S: *Sa mga ibang* transaction *ay pumupunta sa opisina ng* JLN Corporation *ang* Chief of Staff *o pinagkakatiwalaan na tao ng* Congressman *o Senador. Ikalawa po, mayroon din po na pagkakataon na* bank transfer *na mula sa* account *ng* foundation *o* JLN Corporation *o* JO CHRIS Trading *patungo sa* account *ng* legislator *o pinagkakatiwalang tao ng* Congressman *o Senador. Ikatlong sistema po ay si* Madame NAPOLES *o kaming mga empleyado na po ang nagdadala ng* cash *sa mga kausap niya*.

67. T: *Mayroon bang pagkakataon na ikaw mismo ay nakapagbigay ng pera na* "rebates" *ng* transaction *sa Senador o* Congressman *o sa kung sino mang* representative *ng pulitiko*?

S: *Opo. Sa mga* Chief-of-Staff *ng mga Senador at sa mga* Congressman *mismo ay nakapag-abot na po ako ng* personal. *Pero sa mga senador po ay wala pong pagkakataon na ako mismo ang nag-abot. Naririnig ko lang kay* Madame JANET LIM NAPOLES *na nagbibigay daw sa mga Senador*.

68. T: *Maaari mo bang sabihin kung sinu-sino itong mga tinutukoy mong* Chief-of-Staff *ng Senador na tumanggap ng pera na* "rebates" *sa* transaction *kay* JANET LIM NAPOLES?

S: *Opo, sina* Atty. RICHARD CAMBE *sa opisina ni Senador* BONG REVILLA, Ms. PAULINE LABAYEN, *sa opisina ni Senador* JINGGOY ESTRADA, Ms. RUBY TUASON ***sa opisina nina Senador* JUAN PONCE ENRILE** *at Senador* JINGGOY ESTRADA.

69. T: *Sinu-sino naman sa mga* Congressman *ang pinagbigyan mo ng pera na* "rebates" *ng* transaction *nila ni* JANET LIM NAPOLES?

S: *Sina* Congressman EDGAR VALDEZ, Congressman RODOLFO PLAZA, Congressman CONSTANTINO JARAULA *po*. *Nakapag-abot din po ako kay* Mr. JOSE SUMALPONG *na* Chief of Staff *ni* Congresswoman RIZALINA LANETE.[215] (Emphasis and underscoring supplied)

When asked if Luy was the only one involved in the disbursement of "rebates," he clarified that the children of Janet Napoles, among others, were also into the act:

70. T: *Maaari mo bang sabihin kung bakit ikaw ang nag-abot ng pera na* "rebates" *sa* transaction *ni* JANET LIM NAPOLES *sa mga pinangalanan mong* Chief-of-Staff *o* representative *ng Senador at mga* Congressman? *Ganoon naman ang kalakaran sa opisina kung wala si* Madame JANET LIM NAPOLES. *Kapag may pumupuntang tao sa opisina para kumuha ng pera ay sinasabihan na kami ni* Madame JANET LIM NAPOLES *para*
S: *maghanda ng pera at kami na mismo ang nag-aabot ngpera. Binibilang namin ito sa harap ng tatanggap bago namin iabot at pinapapirma namin sila para ipakila kay* Madame JANET LIM NAPOLES *kapag pinag-report niya kami*.

71. T: *Sinasabi mo na "kami", ibig mo bang sabihin ay bukod sa iyo ay mayroon pang iba na nakapag-abot ng pera sa mga pinangalanan mong tumanggap ng pera na* "rebates" *sa* transaction *ni* JANET LIM NAPOLES?
S: *Opo, iyong mga ibang* seniors *ko sa opisina na* trusted *na tauhan ni* Madame JANET LIM NAPOLES *na sina* MERLINA SUÑAS [sic], EVELYN DE LEON, at JOHN LIM. ***Pati iyong mga* ANAK *at kapatid ni* Madame JANET LIM NAPOLES *ay nag-aabot din ng personal sa mga kumukuha ng pera sa opisina ng* JLN Corporation.**[216] (Emphases supplied)

Meanwhile, Suñas testified that the Napoles siblings were previously involved in the forging of documents and signatures which were, however, related, to illegal disbursements involving funds allotted to the Department of Agrarian Reform (DAR). She also stated that the Napoles siblings were employees of the JLN Corporation who always held office thereat, and, similar to Luy, knew their positions in the office:

91. T: *Maaalala mo pa ba kung sinu-sino ang mga kasama mo sa sinabi mong pagpupulong kung saan nabanggit ni* Madame JENNY *na may nakuha siyang pondo mula sa* DAR?
S: ***Opo, andun po iyong mga empleyado ng*** JLN Corporation *na sina* BENHUR LUY, EVELYN DE LEON, LAARNI UY, ARTHUR LUY, JR., JOHN LIM, MARINA SULA *at mga anak ni* Madam JENNY LIM *na sina* **JO CHRISTINE a.k.a "NENENG" at JAMES CHRISTOPHER a.k.a "BUTSOY."** *Tapos noong bandang* October 2009 *ay pinulong ulit kami ni* Madame JENNY *at dito niya sinabi na ang pondo ay nagkakahalaga ng* Php 900 million *mula sa* DAR.[217]

x x
x x

111. **T:** ***Nabanggit mo na kasama ang mga anak ni* Madame JENNY *na sina* JO CHRISTINE *at* JAMES CHRISTOPHER *sa paggawa ng mga pekeng dokumento at pamemeke ng mga pirma, sila ba ay nasa opisina ng* JLN Corporation *lagi*?**

S: ***Opo. Dahil empleyado din sila at doon nag-oopisina sa* JLN Corporation.**

x x
x x

149. T: *Bilang dating empleyado ng* JLN Corporation *mula taong* 2000 *hanggang* 2013, ***natatandaan mo pa ba kung sino-sino ang mga nakatrabaho mo sa* JLN Corporation**?

S: *Opo*. *Sila ay* [*sina*] JANET LIM NAPOLES *na* president and CEO, *asawa niyang si* JAIME G. NAPOLES *bilang* consultant, ***mga anak niyang sina* JO-CHRISTINE L. NAPOLES *ang* VP for admin and finance *at* JAMES CHRISTOPHER NAPOLES *na* VP for operations** x x x.[218]
(Emphases and underscoring supplied)

Notably, the JLN Corporation, as per whistleblower Sula's account, had no income from business transactions aside from the PDAF coming from the legislators involved that go through Janet Napoles's conduit NGOs:

12) T: *Nabanggit mo sa iyong sinumpaang salaysay na may petsang* 29 Agosto 2013 *na ikaw ay nagtrabaho kay* JANET LIM NAPOLES *mula pa noong taong* 1997, *ano ba ang uri ng negosyo ng* JLN Corporation?

S: *Ayon po sa* SEC paper ng JLN Corporation *ay* trading *ng mga* marine supplies and equipment *at* construction materials ang line of business ***subalit sa papel lamang po iyon dahil pakikipag-transact po sa mga* lawmakers, government agency heads *at* LGU officials *para sa* implementation *ng mga* government funded projects *ang naging negosyo* ng JLN Corporation *gamit ang mga* NGOs *o* foundations *na itinatag ni* Madam JANET NAPOLES**.

13) T: *Paano naman kumikita ang* JLN Corporation *sa mga* PDAF *ng* lawmakers?

S: *Sa katotohanan po ay hindi naman po kumikita ang* JLN Corporation *dahil wala naman po hong anumang* business transactions. *Ang mga pondo po na nagmumula sa* PDAF ng mga lawmakers *ay* ***pumapasok sa mga* NGOs *ni* Madam JANET NAPOLES. *Mula po sa mga* bank accounts ng NGOs *ay winiwidraw po ang pera at inire-remit po kay* Madam JANET NAPOLES. *Kay* Madam JANET NAPOLES *po napupunta ang pera at hindi sa* JLN Corporation**.

14) T: Sa paragraph No. 21 *ng iyong sinumpaang salaysay na may petsang* 29 Agosto 2013 *ay may mga listahan ng miyembro ng pamilya* NAPOLES *at mga tao na may kaugnayan sa kanyang mga negosyo, makikita dito na coded at mga alyas lamang ang* ID names, *maari mo bang ibigay ang mga kumpletong pangalan nila*?

S: *Opo, ang mga katumbas po ng mga codes/alyas na nakasaad sa aking* notebook *ay ang mga sumusunod*:

x x
x x

3) N 1 **JO CHRISTINE L. NAPOLES**

4) N 2 **JAMES CHRISTOPHER L. NAPOLES**

x x x x[219] (Emphases and underscoring supplied)

Based on the foregoing, it may be gathered that the Napoles siblings: (a) worked at the JLN Corporation, which was apparently shown to be at the forefront of the PDAF scam, as it was even revealed that it received no other income outside of the PDAF transactions; (b) do not work as mere regular employees but as high-ranking officers, being the Vice-President for Administration and Finance and Vice-President for Operations, respectively of JLN Corporation; and (c) as high-ranking officers of the JLN Corporation, were ostensibly privy to and/or participated in the planning and execution of the company's endeavors, which, as claimed, include illegal activities concerning the misappropriation of various government funds, which, as specifically pointed out by Luy, included, among others, Senator Enrile's PDAF. To recount, Luy stated that Jo Christine Napoles, as part of the scheme, checked the "vouchers" he had prepared; that the Napoles siblings knew of the "codenames" of the legislators in the illicit "vouchers"; and that they were also included in the actual disbursement of "rebates" to the legislators, among others. Senator Enrile. More so, although Suñas's testimony that the Napoles siblings forged documents and signatures pertaining to the disbursement of the DAR funds which does not directly prove that they had committed the same with respect to Senator Enrile's PDAF, such evidence, when juxtaposed with Luy's testimony, gains relevance in ascertaining the illegal plan, system or scheme to which they were alleged to be involved. It also tends to directly prove the fact that they had knowledge of JLN Corporation's illegal activities.[220] The Court notes that these accounts gain more credibility not only in view of the whistleblowers' allegations that they worked closely with the Napoles siblings in JLN Corporation for a considerable length of time.[221] but also that Sula, Suñas, and particularly Luy as "lead employee," were among the most trusted workers of Janet Napoles in the furtherance of the PDAF scam.[222] Also, there appears to be no motive for any of these whistleblowers, particularly, Luy, to incredulously implicate the Napoles siblings in this case. With all these factors together, there is, at least, some substantial basis to conclude, that the Napoles siblings were, in all reasonable likelihood, involved in the entire con.

Neither can the Napoles siblings discount the testimonies of the whistleblowers based on their invocation of the *res inter alios acta* rule under Section 28, Rule 130 of the Rules on

Evidence, which states that the rights of a party cannot be prejudiced by an act, declaration, or omission of another, unless the admission is by a conspirator under the parameters of Section 30 of the same Rule.[223] To be sure, the foregoing rule constitutes a technical rule on evidence which should not be rigidly applied in the course of preliminary investigation proceedings. In *Estrada*, the Court sanctioned the Ombudsman's appreciation of hearsay evidence, which would otherwise be inadmissible under technical rules on evidence, during the preliminary investigation "as long as there is substantial basis for crediting the hearsay."[224] This is because "such investigation is merely preliminary, and does not finally adjudicate rights and obligations of parties."[225] Applying the same logic, and with the similar observation that there lies substantial basis for crediting the testimonies of the whistleblowers herein, the objection interposed by the Napoles siblings under the evidentiary *res inter alios acta* rule should falter. Ultimately, as case law edifies, "[t]he technical rules on evidence are not binding on the fiscal who has jurisdiction and control over the conduct of a preliminary investigation,"[226] as in this case.

Therefore, on account of the above-mentioned acts which seemingly evince the Napoles siblings' participation in the conspiracy involving Senator Enrile's PDAF, no grave abuse of discretion may be ascribed against the Ombudsman in finding probable cause against them for fifteen (15) counts of violation of Section 3 (e) of RA 3019 as charged.

In the same vein, the evidence on record exhibits probable cause for De Asis's involvement as a co-conspirator for the crime of Plunder, as well as violations of Section 3 (e) of RA 3019. A perusal thereof readily reveals that De Asis is the President[227] of KPMFI and a member/incorporator[228] of CARED – two (2) among the many JLN-controlled NGOs that were used in the perpetuation of the scam particularly involved in the illegal disbursement of Senator Enrile's PDAF.[229] Moreover, in the *Pinagsamang Sinumpaang Salaysay*[230] of whistleblowers Luy and Suñas, as well as their respective *Karagdagang Sinumpaang Salaysay*[231] they tagged De Asis as one of those who prepared money to be given to the lawmaker;[232] that he, among others, received the checks issued by the IAs to the NGOs and deposited the same in the bank;[233] and that, after the money is withdrawn from the bank, De Asis was also one of those tasked to bring the money to Janet Napoles's house.[234] With these, the Court finds that there are equally well-grounded bases to believe that, in all possibility, De Asis, thru his participation as President of KPMFI and member/incorporator of CARED, as well as his acts of receiving checks in the name of said NGOs, depositing them in the NGOs' bank accounts, delivering money to Janet Napoles, and assisting in the delivery of "kickbacks" and "commissions" of the legislators, conspired with the other petitioners to commit the crimes charged against them.

Certainly, De Asis's defenses, which are anchored on the want of criminal intent, as well as the absence of all the elements of the crime of Plunder on his part, are better ventilated during trial and not during preliminary investigation. At the risk of belaboring the point, a preliminary investigation is not the occasion for the full and exhaustive display of the prosecution's evidence; and the presence or absence of the elements of the crime charged is evidentiary in nature and is a matter of defense that may be passed upon only after a full-blown trial on the merits.[235]

Hence, for De Asis's apparent participation in the PDAF scam, the Ombudsman did not gravely abuse its discretion in finding probable cause against him for one (1) count of Plunder and fifteen (15) counts of violation of Section 3 (e) of RA 3019 as charged.

In totality, **G.R. Nos. 212593-94, G.R. Nos. 213540-41, G.R. Nos. 213542-43,** and **G.R. Nos. 213475-76** questioning the March 28, 2014 Joint Resolution and June 4, 2014 Joint Order of the Ombudsman finding probable cause against Reyes, Janet Napoles, the Napoles siblings, and De Asis should all be dismissed for lack of merit.

II. Petitions Assailing the Resolutions of the Sandiganbayan.

In **G.R. Nos. 213163-78**, Reyes ascribes grave abuse of discretion on the part of the Sandiganbayan for allegedly failing to perform its duty of personally evaluating the evidence on record and, instead, merely adopting the findings of the Ombudsman in the Joint Resolution dated March 28, 2014.[236] She argues that, had the Sandiganbayan conducted a judicious and independent evaluation of the evidence on record, it would have determined that there is no probable cause against her for plunder and violations of Section 3 (e) of RA3019.[237]

On the other hand, in **G.R. Nos. 215880-94**, the Napoles siblings impute grave abuse of discretion against the Sandiganbayan in issuing its Resolutions dated September 29, 2014[238] and November 14, 2014[239] finding probable cause for the issuance of warrants of arrest against them.[240] They claim that the challenged Resolutions which were concluded without any additional evidence presented by the OSP were hastily issued and decided; that the documents submitted by the prosecution, which were used as bases in resolving the challenged Resolutions, were mere bare allegations of witnesses that did not relate to the crime charged and most of them even made no mention of them; that the NBI Complaint submitted by the prosecution creates serious doubt on their participation; that not even one of the essential elements of Section 3 (e) of RA 3019 is present in the case in so far as they

are concerned; and that there is no proof to show that they conspired with any of the accused public officers.[241]

Their arguments fail to persuade.

Once the public prosecutor (or the Ombudsman) determines probable cause and thus, elevates the case to the trial court (or the Sandiganbayan), a judicial determination of probable cause is made in order to determine if a warrant of arrest should be issued ordering the detention of the accused. The Court, in *People v. Castillo*,[242] delineated the functions and purposes of a determination of probable cause made by the public prosecutor, on the one hand, and the trial court, on the other:

> There are two kinds of determination of probable case: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. Whether or not that function has been correctly discharged by the public prosecutor, *i.e.*, whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.
>
> **The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.**[243]
> (Emphasis and underscoring supplied)

As above-articulated, the executive determination of probable cause concerns itself with whether there is enough evidence to support an Information being filed. The judicial determination of probable cause, on the other hand, determines whether a warrant of arrest should be issued.[244]

This notwithstanding, the Court in *Mendoza v. People*[245] (*Mendoza*) clarified that the trial court (or the Sandiganbayan) is given three (3) distinct options upon the filing of a criminal information before it, namely to: (a) dismiss the case if the evidence on record clearly failed to establish probable cause; (b) issue a warrant of arrest if it finds probable cause; and (c) order the prosecutor to present additional evidence in case of doubt as to the existence of probable cause.[246] The Court went on to elaborate that "the option to order the prosecutor to present additional evidence is not mandatory" and reiterated that "the court's first option x x x is for it to 'immediately dismiss the case if the evidence on record clearly fails to establish probable cause.'"[247]

Verily, when a criminal Information is filed before the trial court, the judge, *motu proprio* or upon motion of the accused, is entitled to make his own assessment of the evidence on record to determine whether there is probable cause to order the arrest of the accused and proceed with the trial; or in the absence thereof, to order the immediate dismissal of the criminal case.[248] This is in line with the fundamental doctrine that "once a complaint or information is filed in court, any disposition of the case, whether as to its dismissal or the conviction or the acquittal of the accused, rests in the sound discretion of the court."[249] Nevertheless, the Court, in *Mendoza* cautions the trial courts in proceeding with dismissals of this nature:

> Although jurisprudence and procedural rules allow it, a judge must always proceed with caution in dismissing cases due to lack of probable cause, considering the preliminary nature of the evidence before it. It is only when he or she finds that the evidence on hand absolutely fails to support a finding of probable cause that he or she can dismiss the case. On the other hand, if a judge finds probable cause, he or she must not hesitate to proceed with arraignment and trial in order that justice may be served.[250]

A careful study of the records yields the conclusion that the requirement to personally evaluate the report of the Ombudsman, and its supporting documents, was discharged by the Sandiganbayan when it explicitly declared in its Resolution[251] dated July 3, 2014 that it had "personally [read] and [evaluated] the Information, the Joint Resolution dated March 28, 2013 and Joint Order dated June 4, 2013 of the [Ombudsman], together with the above-enumerated documents, including their annexes and attachments, which are all part of the records of the preliminary investigation x x x."[252] A similar pronouncement was made by the

Sandiganbayan in its Resolution[253] dated September 29, 2014, wherein it was said that "[a]fter further considering the records of these cases and due deliberations, the Court finds the existence of probable cause against the said accused x x x."[254] Later on, in a Resolution[255] dated November 14, 2014, the Sandiganbayan affirmed its earlier findings when it held that the presence of probable cause against all the accused "was already unequivocally settled x x x in its [Resolution] dated July 3, 2014 x x x."[256] Besides, the Sandiganbayan should be accorded with the presumption of regularity in the performance of its official duties.[257] This presumption was not convincingly overcome by either Reyes or the Napoles siblings through clear and convincing evidence, and hence, should prevail.[258] As such, the Ombudsman's finding of probable cause against, *inter alia*, Reyes and the Napoles siblings was judicially confirmed by the Sandiganbayan when it examined the evidence, found probable cause, and issued warrants of arrest against them.[259]

Also, the Court cannot lend any credence to Reyes's protestations of haste on the part of the Sandiganbayan in issuing the assailed Resolutions, absent any clear showing that the presumed regularity of the proceedings has been breached. Reyes would do well to be reminded of the Court's ruling in *Leviste v. Alameda*[260] wherein it was instructed that "[s]peed in the conduct of proceedings by a judicial or quasi-judicial officer cannot *per se* be instantly attributed to an injudicious performance of functions. For one's prompt dispatch may be another's undue haste. The orderly administration of justice remains as the paramount and constant consideration, with particular regard of the circumstances peculiar to each case."[261]

Finally, no grave abuse of discretion may be imputed on the part of the Sandiganbayan in denying Reyes's motion to suspend proceedings against her in view of her filing of a petition for *certiorari* questioning the Ombudsman's issuances before the Court, *i.e.*, **G.R. Nos. 212593-94**. Under Section 7, Rule 65[262] of the Rules of Court, a mere pendency of a special civil action for *certiorari* in relation to a case pending before the court *a quo* does not *ipso facto* stay the proceedings therein, unless the higher court issues a temporary restraining order or a writ of preliminary injunction against the conduct of such proceedings. Otherwise stated, a petition for *certiorari* does not divest the lower courts of jurisdiction validly acquired over the case pending before them. Unlike an appeal, a petition for *certiorari* is an original action; it is not a continuation of the proceedings in the lower court. It is designed to correct only errors of jurisdiction, including grave abuse of discretion amounting to lack or excess of jurisdiction. Thus, under Section 7 of Rule 65, the higher court should issue against the public respondent a temporary restraining order or a writ of preliminary injunction in order to interrupt the course of the principal case. The petitioner in a Rule 65

petition has the burden of proof to show that there is a meritorious ground for the issuance of an injunctive writ or order to suspend the proceedings before the public respondent. She should show the existence of an, urgent necessity for the writ or order, so that serious damage may be prevented.[263] In this case, since the Court did not issue any temporary restraining order and/or a writ of preliminary injunction in **G.R. Nos. 212593-94**, then the Sandiganbayan cannot be faulted for continuing with the proceedings before it.

Hence, overall, the Sandiganbayan did not gravely abuse its discretion in judicially determining the existence of probable cause against Reyes and the Napoles siblings; and in denying Reyes's Urgent Motion to Suspend Proceedings. Perforce, the dismissal of **G.R. Nos. 213163-78** and **G.R. Nos. 215880-94** is in order.

WHEREFORE, the petitions are **DISMISSED** for lack of merit. Accordingly, the assailed Resolutions and Orders of the Office of the Ombudsman and the Sandiganbayan are hereby **AFFIRMED**.

SO ORDERED.

Sereno, C. J., Carpio, Velasco, Jr., Leonardo-De Castro, Peralta, Bersamin, Del Castillo, Perez, Mendoza, Reyes, and *Caguioa, JJ.*, concur.
Brion, J., on leave.
Leonen, J., I concur. see separate opinion.
Jardeleza, J., no part.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on March 15, 2016 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled cases, the original of which was received by this Office on April 18,2016 at 3:45 p.m.

Very truly yours,
(SGD)FELIPA G. BORLONGAN-ANAMA
Clerk of Court

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[1] *Brinegar v. United States*, 338 U.S. 160 (1949).

[2] See orders of consolidation in Court Resolutions dated July 22, 2014 (*rollo* [G.R. Nos. 213163-78], Vol. I, pp. 220-221); September 30, 2014 (*rollo* [G.R. Nos. 213542-43], pp. 480-481); October 7, 2014 (*rollo* [G.R. Nos. 213475-76], Vol. 1, pp. 570-571); October 14, 2014 (*rollo* [G.R. Nos. 213540-41], Vol. I, pp. 484-485); and February 24, 2015 (*rollo* [G.R. Nos. 215880-94], Vol. III, pp. 1248-1250).

[3] Pertains to the following petitions: (a) petition in **G.R. Nos. 212593-94**, which was filed on June 9, 2014 by Reyes (*rollo* [G.R. Nos. 212593-94], Vol. I, pp. 3-83); (b) petition in **G.R. Nos. 213540-41**, which was filed on August 13, 2014 by Janet Napoles (*rollo* [G.R. Nos. 213540-41], Vol. I, pp. 3-41); (c) petition in **G.R. Nos. 213542-43**, which was filed on August 13, 2014 by the Napoles siblings (*rollo* [G.R. Nos. 213542-43], Vol. I, pp. 3-22); and (d) petition in **G.R. Nos. 213475-76**, which was filed on August 8, 2014 by De Asis (*rollo* [G.R. Nos. 213475-76], Vol. I, pp. 3-70).

[4] *Rollo* (G.R. Nos. 212593-94), Vol. 1, pp. 87-230; *rollo* (G.R. Nos. 213540-41), Vol. I, pp. 43-186; *rollo* (G.R. Nos. 213542-43), Vol. I, pp. 25-168; and *rollo* (G.R. Nos. 213475-76), Vol. I, pp. 74-217. Signed by Special Panel of Graft Investigation and Prosecution Officers M.A. Christian O. Uy, Ruth Laura A. Mella, Francisca M. Serfino, Anna Francesca M. Limbo, Jasmine Ann B. Gapatan, and approved by Ombudsman Conchita Carpio Morales.

[5] *Rollo* (G.R. Nos. 212593-94), Vol. I, pp. 231-296; *rollo* (G.R. Nos. 213540-41), Vol. I, pp. 360-425; *rollo* (G.R. Nos. 213542-43), Vol. I, pp. 342-407; *rollo* (G.R. Nos. 215880-94), Vol. II, pp. 419-484; and *rollo* (G.R. Nos. 213475-76), Vol. I, pp. 391-456, some pages are apparently misarranged.

[6] Defined and penalized under Section 2 of RA 7080, entitled "AN ACT DEFINING AND PENALIZING THE CRIME OF PLUNDER," approved on July 12, 1991, as amended by, among others, Section 12 of RA 7659, entitled "AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES," approved on December 13, 1993.

[7] Entitled "ANTI-GRAFT AND CORRUPT PRACTICES ACT," approved on August 17, 1960.

[8] This pertains to Reyes's petition in **G.R. Nos. 213163-78**, which was filed on July 18, 2014 (*rollo* [G.R. Nos. 213163-78], Vol. I, pp. 3-23).

[9] *Rollo* (G.R. Nos. 213163-78), Vol. I, pp. 26-45. Issued by Presiding Justice and Chairperson

Amparo M. Cabotaje-Tang and Associate Justice Alex L. Quiroz. Associate Justice Samuel R. Martires issued a Separate Opinion dated July 4, 2014 (see *rollo* [G.R. Nos. 215880-94], Vol. II, pp. 629-645).

[10] *Rollo* (G.R. Nos. 213163-78), Vol. I, pp. 46-52. See also Associate Justice Samuel R. Martires's July 4, 2014 Separate Opinion (see *rollo* [G.R. Nos. 215880-94], Vol. II, pp. 629-645).

[11] Dated June 13, 2014, *Rollo* (G.R. Nos. 213163-78), Vol. I, pp. 101-111.

[12] This pertains to the Napoles sibling's petition in **G.R. Nos. 215880-94**, which was filed on January 30, 2015 (*rollo* [G.R. Nos. 215880-94], Vol. I, pp. 3-42).

[13] *Rollo* (G.R. Nos. 215880-94), Vol. I, pp. 46-48. Composed by the Sandiganbayan (Special Third Division). Penned by Presiding Justice and Chairperson Amparo M. Cabotaje-Tang with Associate Justices Samuel R. Martires, Alex L. Quiroz, Jose R. Hernandez, and Maria Cristina J. Cornejo concurring. Prior to the issuance of this Resolution, Justice Maria Cristina J. Cornejo issued a Separate Opinion dated September 11, 2014 (*rollo* [G.R. Nos. 215880-94], Vol. II, pp. 646-648) which was concurred in by Associate Justice Jose R. Hernandez on September 17, 2014 (*rollo* [G.R. Nos. 215880-94], Vol. II, p. 649).

[14] *Rollo* (G.R. Nos. 215880-94), Vol. I, pp. 49-60. Penned by Presiding Justice and Chairperson Amparo M. Cabotaje-Tang with Associate Justices Samuel R. Martires and Alex L. Quiroz concurring.

[15] See *Pinagsamang Sinumpaang Salaysay* (*rollo* [G.R. Nos. 212593-94], Vol. II, pp. 481-491); *Karagdagang Sinumpaang Salaysay ni* Suñas before the NBI (*rollo* [G.R. Nos. 212593-94], Vol. II, pp. 503-533); *Karagdagang Sinumpaang Salaysay ni* Luy before the NBI (*rollo* [G.R. Nos. 212593-94], Vol. II, pp. 538-578); and *Karagdagang Sinumpaang Salaysay ni* Sula (*rollo* [G.R. Nos. 215880-94), Vol. III, pp. 1027-1051).

[16] See **NBI Complaint**; *rollo* (G.R. Nos. 212593-94), Vol. I, pp. 305-306; **March 28, 2014 Joint Resolution**; *rollo* (G.R. Nos. 212593-94), Vol. I, pp. 114-115; **July 3, 2014 Resolution**; *rollo* (G.R. Nos. 213163-78), Vol. I, p. 31; **Information in Criminal Case No. SB-14-CRM-0238**; *rollo* (G.R. Nos. 213163-78), Vol. I, pp. 53-54; and **Ombudsman's Consolidated Comment** dated December 19, 2014; *rollo* (G.R. Nos. 213542-43), Vol. I, pp. 547-548 and *rollo* (G.R. Nos. 213475-76), Vol. I, pp. 618-619.

[17] *Rollo* (G.R. Nos. 212593-94), Vol. I, pp. 297-316; *rollo* (G.R. Nos. 213540-41), Vol. I, pp. 340-359; *rollo* (G.R. Nos. 213542-43), Vol. I, pp. 322-341; *rollo* (G.R. Nos. 215880-94), Vol. I, pp. 72-91; and *rollo* (G.R. Nos. 213475-76), Vol. I, pp. 371-390. Signed by Assistant Director Arty. Medardo G. De Lemos.

[18] *Rollo* (G.R. Nos. 212593-94), Vol. I, pp. 318-470; *rollo* (G.R. Nos. 213540-41), Vol. I, pp. 187, 339; *rollo* (G.R. Nos. 213542-43), Vol. I, pp. 169-321; *rollo* (G.R. Nos. 215880-94), Vol. I, pp. 92-242; and *rollo* (G.R. Nos. 213475-76), Vol. I, pp. 218-370. Signed by Associate Graft Investigation Officers Karen Rose C. Tamayo, Julber P. Tadiaman, Corinne Joie M. Garillo, Ann Germaine L. Constantino, and Myrene Q. Suetos, and Graft Investigation and Prosecution Officers Ronald Allan D. Ramos, John Sernan T. Sambajon, R. Epicurus Charlo S. Salcedo, and Ryan P. Medrano, and certified by Assistant Ombudsman, FIO Atty. Joselito P. Fangon.

[19] *Rollo* (G.R. Nos. 212593-94), Vol. I, pp. 181-182.

[20] *Rollo* (G.R. Nos. 212593-94), Vol. II, pp. 471-478.

[21] Id. at 479-480.

[22] *Rollo* (G.R. Nos. 212593-94), Vol. I, pp. 155 and 187.

[23] "JLN" stands for "Janet Lim Napoles."

[24] *Rollo* (G.R. Nos. 212593-94), Vol. I, p. 177.

[25] See Sworn Statement of Ruby Tuason before the FIO Investigation; *rollo* (G.R. Nos. 215880-94), Vol. II, p. 689.

[26] *Rollo* (G.R. Nos. 212593-94), Vol. I, pp. 164 and 184.

[27] See id. at 303.

[28] Id. at 152.

[29] Id. at 158.

[30] Id. at 329 and 450.

[31] Id. at 447-448.

[32] Id. at 450.

[33] Referred to as "JLN Group of Companies" in some parts of the *rollos*. See id. at 330.

[34] Id. at 452.

[35] Charged under the FIO Complaint only.

[36] Jo Christine Napoles is the "CFO" or more commonly known as the "Vice-President for Administration and Finance," while James Christopher Napoles is the "COS" or the "Vice-President for Operations" of the JLN Corporation. *Rollo* (G.R. Nos. 213542-43), Vol. I, p. 616.

[37] Id. at 104.

[38] *Rollo* (G.R. Nos. 213542-43), Vol. I, p. 616. See also *rollo* (G.R. Nos. 212593-94), Vol. I, p. 451.

[39] *Rollo* (G.R. Nos. 213542-43), Vol. I, p. 616.

[40] *Rollo* (G.R. Nos. 213475-76), Vol. I, p. 124.

[41] Id. at 321-322.

[42] See table showing receipt of payments by De Asis; id. at 297-299.

[43] Id. at 137.

[44] Id. at 171 and 331.

[45] De Asis is an incorporator of the Countrywide Agri & Rural Economic Development Foundation, Inc. (CARED). Id. at 237 and 243.

[46] De Asis is the President of *Kaupdanan Para sa Mangunguma Foundation, Inc.* (KPMFI). Id. at 378-379.

[47] Tuason acted as the "agent" of Senator Enrile, in-charge of delivering the share of Senator Enrile through Reyes. *Rollo* (G.R. Nos. 215880-94), Vol. II, p. 705; and *rollo* (G.R. Nos. 212593-94), Vol. I, p. 120.

[48] See *Rollo* (G.R. Nos. 212593-94), Vol. I, pp. 148 and 419.

[49] In this case, Senator Enrile agreed to a 50% "commission" (see *Pinagsamang Sinumpaang Salaysay*; *rollo* [G.R. Nos. 212593-94], Vol. II, p. 488). *Rollo* (G.R. Nos. 212593-94), Vol. I, p. 302.

[50] See *rollo* (G.R. Nos. 212593-94), Vol. I, pp. 148 and 420.

[51] Id. at 149, 302-303, and 420.

[52] Id. at 149.

[53] Id. at 149, 303, and 421.

[54] Id. at 184.

[55] See id. at 149-150 and 303.

[56] See id. at 303-304.

[57] Id. at 150 and 188.

[58] Id. at 151 and 304.

[59] See id. at 304 and 421. See also id. at 188.

[60] See id. at 310 and 421.

[61] Id. at 188.

[62] See id. at 417.

[63] See id. at 183-185.

[64] Dated December 26, 2013. *Rollo* (G.R. Nos. 212593-94), Vol. II, pp. 591-673.

[65] Id. at 645 and 650-651.

[66] Dated February 21, 2014. *Rollo* (G.R. Nos. 215880-94), Vol. I, pp. 243-259.

[67] Id. at 245.

[68] Id. at 247 and 251.

[69] Id. at 255.

[70] See *rollo* (G.R. Nos. 213475-76), Vol. I, p. 124. See also id. at 13.

[71] See id. at 372.

[72] See id. at 237.

[73] Id. at 124.

[74] Id. at 72 and 382.

[75] See Supplemental Sworn Statement of Tuason; *rollo* (G.R. Nos. 215880-94), Vol. II, pp. 704-709.

[76] *Rollo* (G.R. Nos. 212593-94), Vol. II, pp. 712-717.

[77] Id. at 713.

[78] *Rollo* (G.R. Nos. 215880-94), Vol. II, pp. 685-691.

[79] *Rollo* (G.R. Nos. 212593-94), Vol. II, pp. 715.

[80] See Order dated March 27, 2014 signed by Graft Investigation and Prosecution Officer IV and Chairperson M.A. Christian O. Uy; id. at 718-721.

[81] Id. at 721.

[82] *Rollo* (G.R. Nos. 212593-94), Vol. I, pp. 87-230; *rollo* (G.R. Nos. 213540-41), Vol. I, pp. 43-186; *rollo* (G.R. Nos. 213542-43), Vol. I, pp. 25-168; *rollo* (G.R. Nos. 215880-94), Vol. I, pp. 260-403; and *rollo* (G.R. Nos. 213475-76), Vol. I, pp. 74-217.

[83] See Motion for Reconsideration dated April 4, 2014; *rollo* (G.R. Nos. 212593-94), Vol. II, pp. 722-778.

[84] See Motion for Reconsideration dated April 7, 2014; *rollo* (G.R. Nos. 213540-41), Vol. I, pp. 426-459.

[85] See Motion for Reconsideration dated April 7, 2014; *rollo* (G.R. Nos. 213542-43), Vol. I, pp. 408-422.

[86] See Motion for Reconsideration and/or Reinvestigation dated April 21, 2014; *rollo* (G.R. No. 213475-76), Vol. I, pp. 457-469.

[87] *Rollo* (G.R. Nos. 212593-94), Vol. II, pp. 791-792.

[88] *Rollo* (G.R. Nos. 215880-94), Vol. II, pp. 704-709.

[89] Not attached to the *rollos*.

[90] *Rollo* (G.R. Nos. 212593-94), Vol. I, pp. 16-17.

[91] See Reyes's respective Comments on Tuason's Supplemental Sworn Statement filed on May 13, 2014; *rollo* (G.R. Nos. 212593-94), Vol. II, pp. 798-802; and on Cunanan's Counter-Affidavit filed on May 13, 2014; *rollo* (G.R. Nos. 212593-94), Vol. II, pp. 803-821.

[92] *Rollo* (G.R. Nos. 215880-94), Vol. II, pp. 656-670.

[93] See id. at 685-691.

[94] Dated May 8, 2014. *Rollo* (G.R. Nos. 212593-94), Vol. II, pp. 793-797.

[95] Dated May 12, 2014. Id. at 822-825.

[96] See Joint Order dated May 13, 2014; id. at 826-827.

[97] Id.

[98] Id. at 784-788. See also <http://newsinfo.inquirer .net/599180/ruby-tuason-gets-immunity-for-pdaf-scam-not-yet-for-malampaya-fund> (last accessed February 10, 2016).

[99] See Immunity Agreement dated April 23, 2014; *rollo* (G.R. Nos. 215880-94), Vol. II, pp. 650-654.

[100] *Rollo* (G.R. Nos. 212593-94), Vol. II, pp. 789-790.

[101] See Letter dated May 15, 2014 signed by Graft Investigation and Prosecution Officer IV M.A. Christian O. Uy; id. at 828-829.

[102] 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 AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES," approved on February 20, 1989.

[103] *Rollo* (G.R. Nos. 212593-94), Vol. I, pp. 231-296; *rollo* (G.R. Nos. 213540-41), Vol. I, pp. 360-425; *rollo* (G.R. Nos. 213542-43), Vol. I, pp. 342-407); *rollo* (G.R. Nos. 215880-94), Vol. II, pp. 419-484; and *rollo* (G.R. Nos. 213475-76), Vol. I, pp. 391-456; some pages are apparently misarranged.

[104] *Rollo* (G.R. Nos. 212593-94), Vol. I, pp. 3-83.

[105] *Rollo* (G.R. Nos. 213540-41), Vol. I, pp. 3-41.

[106] *Rollo* (G.R. Nos. 213542-43), Vol. I, pp. 3-22.

[107] *Rollo* (G.R. Nos. 213475-76),Vol. 1, pp. 3-70.

[108] *Rollo* (G.R. Nos. 212593-94), Vol. I, pp. 87-230; *rollo* (G.R. Nos. 213540-41), Vol. I, pp. 43-186; *rollo* (G.R. Nos. 213542-43), Vol. I, pp. 25-168; *rollo* (G.R. Nos. 215880-94), Vol. I, pp. 260-403; and *rollo* (G.R. Nos. 213475-76), Vol. I, pp. 74-217.

[109] *Rollo* (G.R. Nos. 212593-94), Vol. I, pp. 231-296; *rollo* (G.R. Nos. 213540-41), Vol. I, pp. 360-425; *rollo* (G.R. Nos. 213542-43), Vol. I, pp. 342-407); *rollo* (G.R. Nos. 215880-94), Vol. II, pp. 419-484; and *rollo* (G.R. Nos. 213475-76), Vol. I, pp. 391-456, some pages are apparently misarranged.

[110] *Rollo* (G.R. Nos. 213163-78), Vol. I, pp. 53-100; and *rollo* (G.R. Nos. 215880-94), Vol. II, pp. 508-554.

[111] *Rollo* (G.R. Nos. 213163-78), Vol. II, pp. 516-517.

[112] Id. at 518-563.

[113] *Rollo* (G.R. Nos. 213163-78), Vol. I, p. 6.

[114] Id. at 101-111.

[115] Id. at 203-207.

[116] *Rollo* (G.R. Nos. 215880-94), Vol. II, pp. 555-601.

[117] *Rollo* (G.R. Nos. 213163-78), Vol. I, pp. 26-45; *rollo* (G.R. Nos. 215880-94) Vol. II, pp. 602-621.

[118] *Rollo* (G.R. Nos. 213163-78), Vol. I, pp. 27-28; *rollo* (G.R. Nos. 215880-94), Vol. II, pp. 603-604.

[119] *Rollo* (G.R. Nos. 215880-94), Vol. II, pp. 629-645.

[120] Id. at 644.

[121] *Rollo* (G.R. Nos. 213163-78), Vol. I, pp. 46-52; *rollo* (G.R. Nos. 215880-94), Vol. II, pp. 622-628.

[122] *Rollo* (G.R. Nos. 213163-78), Vol. I, p. 9.

[123] Id. at 3-21.

[124] Id. at 26-45. Signed by Associate Justice and Chairperson Amparo M. Cabotaje and Associate Justice Alex L. Quiroz.

[125] Id. at 46-52.

[126] *Rollo* (G.R. Nos. 215880-94), Vol. I, pp. 46-48.

[127] See Urgent Motion for Reconsideration (with Request to Hold in Abeyance the Arraignment of the Accused) dated October 8, 2014; id. at 61-71.

[128] See id. at 11.

[129] It appears from the records that the November 14, 2014 Resolution pertains to the denial of the motions for reconsideration of accused Mario L. Relampagos, Antonio U. Ortiz, and Ronald John Lim. Id. at 49-60.

[130] Id. at 56.

[131] Id. at 3-42.

[132] Id. at 46-48.

[133] Id. at 49-60.

[134] See *rollo* (G.R. Nos. 212593-94), Vol. I, pp. 25-33.

[135] See id. at 29.

[136] See id. at 42-56.

[137] See id. at 56-60.

[138] See *rollo* (G.R. Nos. 213540-41), Vol. I, pp. 25-36.

[139] See id. at 38-40.

[140] See id. at 26-31 and 40.

[141] See *rollo* (G.R. Nos. 213542-43), Vol. I, pp. 12-19.

[142] See Reply dated February 12, 2015; id. at 655.

[143] See *rollo* (G.R. Nos. 213475-76), Vol. I, pp. 40-48.

[144] See id. at 48-49.

[145] See *Ciron v. Gutierrez*, G.R. Nos. 194339-41, April 20, 2015, citing *Soriano v. Marcelo*, 610 Phil. 72, 79 (2009).

[146] See id.

[147] See id., citing *Tetangco v. Ombudsman*, 515 Phil. 230, 234-235 (2006), further citing *Roxas v. Vasquez*, 411 Phil. 276, 288 (2011).

[148] See *Encinas v. Agustin, Jr.*, G.R. No. 187317, April 11, 2013, 696 SCRA 240, 263-264, citing *Bautista v. Court of Appeals*, 413 Phil. 159, 168-169 (2001).

[149] *Clay & Feather International, Inc. v. Lichaytoo*, 664 Phil. 764, 771 (2011).

[150] 691 Phil. 335 (2012).

[151] Id. at 345-346, citing *Reyes v. Pearlbank Securities, Inc.*, 582 Phil. 505, 518-519 (2008); emphases and underscoring supplied.

[152] *Shu v. Dee*, G.R. No. 182573, April 23, 2014, 723 SCRA 512, 523; emphases and

underscoring supplied.

[153] Section 2 of RA 7080 reads in full:

> Section 2. *Definition of the Crime of Plunder; Penalties*. – Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1 (d) hereof in the aggregate amount or total value of at least Fifty Million Pesos (P50,000,000.00) shall be guilty of the crime of plunder and shall be punished by *reclusion perpetua* to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State.

[154] Section 1 (d) of RA 7080, as amended provides:

> Section 1. Definition of Terms. – As used in this Act, the term –
>
> x x x x
>
> d) "*Ill-gotten wealth*" means any asset, property, business enterprise or material possession of any person within the purview of Section Two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:
>
> 1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
>
> 2) By receiving, directly or indirectly, any commission, gift, share,

percentage, kickbacks, or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;

3) By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivision, agencies or instrumentalities or government-owned or -controlled corporations and their subsidiaries;

4) By obtaining, receiving or accepting directly, or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;

5) By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or

6) By taking undue advantage of official position, authority, relationship, connection, or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

[155] See *Enrile v. People*, G.R. No. 213455, August 11, 2015.

[156] Section 3 (e) of RA 3019 reads:

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.

[157] See *Presidential Commission on Good Government v. Navarro-Gutierrez*, G.R. No. 194159, October 21, 2015.

[158] *Shu v. Dee*, supra note 152.

[159] *Lee v. KBC Bank N. V.*, 624 Phil. 115, 126 (2010), citing *Andres v. Cuevas*, 499 Phil. 36, 49-50 (2005).

[160] Id. at 126-127; emphasis and underscoring supplied.

[161] See *De Chavez v. Ombudsman*, 543 Phil. 600, 619-620 (2007); emphasis and underscoring supplied.

[162] See *Estrada v. Ombudsman*, G.R. Nos. 212140-41, January 21, 2015, citing *Unilever Philippines, Inc. v. Tan*, G.R. No. 179367, January 29, 2014, 715 SCRA 36, 49-50, emphasis and underscoring supplied.

[163] See id.

[164] See id.

[165] *Rollo* (G.R. Nos. 212593-94), Vol. I, p. 176.

[166] See Supplemental Sworn Statement of Tuason dated February 21, 2014; *rollo* (G.R. Nos. 215880-94), Vol. II, pp. 704-709.

[167] "As correctly pointed out by the FIO, the [Revised] Implementing Rules and Regulations of RA 9184 states that an NGO may be contracted only when so authorized by an appropriation law or ordinance:

> 53.11. NGO *Participation*. When an appropriation law or ordinance earmarks an amount to be specifically contracted out to [NGOs], the procuring entity may enter into a [MQA] with an NGO, subject to guidelines to be issued by the

[Government Procurement Policy Board (GPPB)].

National Budget Circular (NBC) No. 476, as amended by NBC No. 479, provides that PDAF allocations should be directly released only to those government agencies identified in the project menu of the pertinent General Appropriations Act (GAAs). The GAAs in effect at the time material to the charges, however, did not authorize the direct release of funds to NGOs, let alone the direct contracting of NGOs to implement government projects. This, however, did not appear to have impeded Senator Enrile's direct selection of the [JLN-controlled NGOs]. and which choice was accepted in *toto* by the IAs.

Even assuming *arguendo* that the GAAs allowed the engagement of NGOs to implement PDAF-funded projects, such engagements remain subject to ***public bidding*** requirements. Consider GPPB Resolution No, 012-2007:

> 4.1 When an appropriation law or ordinance specifically earmarks an amount for projects to be specifically contracted out to NGOs, *the procuring entity may select on NGO through competitive bidding or negotiated procurement under Section 53[(j)] of the [IRR-A].* x x x.

The aforementioned laws and rales, however, were disregarded by public respondents, Senator Enrile having just chosen the JLN-controlled NGOs." (Emphases and underscoring in the original; see *rollo* [G.R. Nos. 212593-94], Vol. 5, pp. 159-160.)

[168] See id. at 56-60.

[169] See id. at 33-34 and 38-42.

[170] *Rollo* (G.R. Nos. 215880-94), Vol. II, pp. 656-670.

[171] See *rollo* (G.R. Nos. 212593-94), Vol. I, pp. 25-33.

[172] See id. at 42-56.

[173] See *Estrada v. Ombudsman*, supra note 162.

[174] *Rollo* (G.R. Nos. 212593-94), Vol. I, pp. 152-153.

[175] Id. at 154.

[176] Section 17, Rule 119 of the 2000 Rules of Criminal Procedure states:

> Section 17. *Discharge of accused to be state witness*. — When two or more persons are jointly charged with the commision of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when, after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that:
>
> (a) There is absolute necessity for the testimony of the accused whose discharge is requested;
>
> (b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;
>
> (c) The testimony of said accused can be substantially corroborated in its material points;
>
> (d) **Said accused does not appear to be the most guilty**; and
>
> (e) Said accused has not at any time been convicted of any offense involving moral turpitude.
>
> x x x x (Emphasis supplied)

[177] *People v. Sandiganbayan*, G.R. Nos. 185729-32, June 26, 2013, 699 SCRA 713, 720.

[178] 674 Phil. 370 (2011).

[179] Id. at 392-393.

[180] See id. at 402.

[181] *People v. Feliciano*, 419 Phil. 324, 341 (2001).

[182] 590 Phil. 8 (2008).

[183] See id. at 49-50.

[184] Section 4, Rule II of the Rules of Procedure of the Office of the Ombudsman reads:

> Section 4. Procedure – The preliminary investigation of cases falling under the jurisdiction of the Sandiganbayan and Regional Trial Courts shall be conducted in the manner prescribed in Section 3, Rule 112 of the Rules of Court, subject to the following provisions:
>
> a) If the complaint is not under oath or is based only on official reports, the investigating officer shall require the complainant or supporting witnesses to execute affidavits to substantiate the complaints.
>
> b) After such affidavits have been secured, the investigating officer shall issue an order, attaching thereto a copy of the affidavits and other supporting documents, directing the respondents to submit, within ten (10) days from receipt thereof, his counter-affidavits and controverting evidence with proof of service thereof on the complainant. The complainant may file reply affidavits within ten (10) days after service of the counter-affidavits.
>
> c) If the respondents [sic] does not file a counter-affidavit, the investigating officer may consider the comment filed by him, if any, as his answer to the complaint. In any event, the respondent shall have access to the evidence on record.
>
> d) No motion to dismiss shall be allowed except for lack of jurisdiction. Neither may a motion for a bill of particulars be entertained. If respondents [sic] desires any matter in the complainant's affidavit to be clarified, the particularization thereof may be done at the time of clarificatory questioning in the manner provided in paragraph (f) of this section.

e) If the respondents [sic] cannot be served with the order mentioned in paragraph 6 hereof, or having been served, does not comply therewith, the complaint shall be deemed submitted for resolution on the basis of the evidence on the record.

f) If, after the filing of the requisite affidavits and their supporting evidences, there are facts material to the case which the investigating officer may need to be clarified on, he may conduct a clarificatory hearing during which the parties shall be afforded the opportunity to be present but without the right to examine or cross-examine the witness being questioned. Where the appearance of the parties or witnesses is impracticable, the clarificatory questioning may be conducted in writing, whereby the questions desired to be asked by the investigating officer or a party shall be reduced into writing and served on the witness concerned who shall be required to answer the same in writing and under oath.

g) Upon the termination of the preliminary investigation, the investigating officer shall forward the records of the case together with his resolution to the designated authorities for their appropriate action thereon.

No information may be filed and no complaint may be dismissed without the written authority or approval of the Ombudsman in cases falling within the jurisdiction of the Sandiganbayan, or of the proper Deputy Ombudsman in all other cases.

[185] See *Estrada v. Ombudsman*, supra note 162.

[186] *Rollo* (G.R. Nos. 212593-94), Vol. II, pp. 791-792.

[187] Among the documents allegedly attached to the May 7, 2014 Joint Order were copies of the Supplemental Sworn Statement of Tuason dated February 21, 2014 and the Sworn Statement of Cunanan dated February 20, 2014 (see *rollo* [G.R. Nos. 212593-94], Vol. I, pp. 16-17).

[188] *Rollo* (G.R. Nos. 212593-94), Vol. II, pp. 798-802 and 803-821.

[189] *Republic v. Transunion Corporation*, G.R. No. 191590, April 21, 2014, 722 SCRA 273, 286.

[190] *Heir of Bucton v. Gonzalo*, G.R. No. 188395, November 20, 2013, 710 SCRA 457, 465-466.

[191] *Rollo* (G.R. Nos. 212593-94), Vol. III, pp. 1172-1214.

[192] See id. at 1188.

[193] See id. at 1187.

[194] *Rollo* (G.R. Nos. 213540-41), Vol. I, p. 52.

[195] See id. at 132-133.

[196] See id. at 138-139.

[197] See *rollo* (G.R. Nos. 212593-94), Vol. I, pp. 159-160.

[198] See *People v. Balao*, 655 Phil. 563, 572-573 (2011), citing *Dela Chica v. Sandiganbayan*, 462 Phil. 712, 720 (2003).

[199] See *People v. Nazareno*, 698 Phil. 187, 193 (2012).

[200] Section 6, Rule 110 of the Rules of Criminal Procedure states in full:

> Section 6. *Sufficiency of complaint or information*. – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.
>
> When an offense is committed by more than one person, all of them shall be included in the complaint or information.

[201] See *Enrile v. Manalastas*, G.R. No. 166414, October 22, 2014, citing *People v. Balao*, supra note 198, at 571-572; emphasis and underscoring supplied.

[202] See NBI and FIO Complaints; *rollo* (G.R. Nos. 212593-94), Vol. I, pp. 301-306, 417-421, and 438.

[203] See *rollo* (G.R. Nos. 213163-78), Vol. I, pp. 53-54.

[204] Id. at 55-57, 58-60, 61-63, 64-66, 67-69, 70-72, 73-75, 76-78, 79-81, 82-85, 86-88, 89-91, 92-94, 95- 97, and 98-100.

[205] *Estrada v. Sandiganbayan*, 421 Phil. 290, 347 (2001).

[206] *Quidet v. People*, 632 Phil. 1, 11 (2010); emphasis and underscoring supplied.

[207] *People v. Cadevida*, G.R. No. 94528, March 1, 1993, 219 SCRA 218, 228.

[208] See *rollo* (G.R. Nos. 213542-43), Vol. I, pp. 38-39 and 192-198.

[209] Id. at 40-41.

[210] *Rollo* (G.R. Nos. 215880-94), Vol. III, pp. 1136-1176.

[211] Id. at 1150.

[212] Id. at 1150-1151.

[213] Id. at 1139-1140 and 1151-1152.

[214] Id. at 1139-1140.

[215] Id. at 1153-1154.

[216] Id. at 1155.

[217] Id. at 1122.

[218] Id. at 1122, 1125, and 1133.

[219] Id. at 1031-1032.

[220] Section 34, Rule 130 of the 2000 Rules of Court states:

> Section. 34. *Similar acts as evidence*. – Evidence that one did or did not do a

> certain thing at one time is not admissible to prove that he did or did not do the same or a similar thing at another time; but it may be received to prove a specific intent or knowledge, identity, plan, system, scheme, habit, custom or usage, and the like.

[221] Sula worked, with Janet Napoles for sixteen (16) years (*rollo* [G.R. Nos. 215880-94], Vol. III, p. 922). Suñas worked with Janet Napoles for twelve (12) years (*rollo* [G.R. Nos. 215880-94], Vol. III, p. 897). Luy worked with Janet Napoles for ten (10) years (*rollo* [G.R. Nos. 215880-94], Vol. III. pp. 896 and 1139).

[222] *Rollo* (G.R. Nos. 213475-76), Vol. I, pp. 83,136, and 351.

[223] "An exception to the *res inter alios acta* rule is an admission made by a conspirator under Section 30, Rule 130 of the Rules of Court. This provision states that the act or declaration of a conspirator relating to the conspiracy, and during its existence, may be giver, in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration. Thus, in order that the admission of a conspirator may be received against his or her co-conspirators, it is necessary that: (a) the conspiracy be first proved by evidence other than the admission itself; (b) the admission relates to the common object; and (c) it has been made while the declarant was engaged in carrying out the conspiracy." (*People v. Ibañez*, G.R. No. 191752, June 10, 2013, 698 SCRA 161, 174-175.)

[224] See *Estrada v. Ombudsman*, supra note 162.

[225] See id.

[226] See id.

[227] See NBI Complaint; *rollo* (G.R. Nos. 213475-76), Vol. I, pp. 378-379.

[228] See FIO Complaint; id. at 243.

[229] See NBI Complaint (id. at 379-380) and FIO Complaint (id. at 222 and 228).

[230] *Rollo* (G.R. Nos. 215880-94), Vol. III, pp. 1016-1026.

[231] For Suñas, id. at 1106-1135; for Luy, id. at 1136-1176.

[232] Id. at 1018.

[233] Id. at 1020.

[234] Id. at 1020-1021.

[235] See *Lee v. KBC Bank N.V.*, supra note 159, at 126.

[236] *Rollo* (G.R. Nos. 213163-78), Vol. I, pp. 12-13.

[237] Id. at 15.

[238] *Rollo* (G.R. Nos. 215880-94), Vol. I, pp. 46-48.

[239] Id. at 49-60.

[240] Id. at 4.

[241] Id. at 16.

[242] 607 Phil. 754 (2009).

[243] Id. at 764-765.

[244] *Mendoza v. People*, G.R. No. 197293, April 21, 2014, 722 SCRA 647, 656.

[245] Id. at 659.

[246] Id., citing *People v. Dela Torre-Yadao*, G.R. Nos. 162144-54, November 13, 2012, 685 SCRA 264, 287-288.

[247] Id.

[248] See id. at 659-660.

[249] Id. at 659, citing *Leviste v. Alameda*, 640 Phil. 620, 638 (2010).

[250] Id. at 660-661.

[251] *Rollo* (G.R. Nos. 213163-78), Vol. I, pp. 26-45.

[252] Id. at 35-36.

[253] *Rollo* (G.R. Nos. 215880-94), Vol. I, pp. 46-48.

[254] Id. at 47.

[255] Id. at 49-60.

[256] Id. at 56.

[257] See Section 3 (m), Rule 131 of the Rules on Evidence.

[258] "In sum, the petitioners have in their favor the presumption of regularity in the performance of official duties which the records failed to rebut. The presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty. The presumption, however, prevails until it is overcome by no less than clear and convincing evidence to the contrary. Thus, unless the presumption in rebutted, it becomes conclusive. Every reasonable intendment will be made in support of the presumption and in case of doubt as to an officer's act being lawful or unlawful, construction should be in favor of its lawfulness." (*Bustillo v. People*, 634 Phil. 547, 556 (2010), citing *People v. De Guzman*, G.R. No. 106025, February 9, 1994, 299 SCRA 795, 799.)

[259] See *Estrada v. Ombudsman*, supra note 162.

[260] 640 Phil. 620 (2010).

[261] Id. at 645, citing *Santos-Concio v. Department of Justice*, 567 Phil. 70, 89 (2008).

[262] Section 7, Rule 65 of the Rules of Court reads:

> Section. 7. *Expediting proceedings; injunctive relief*. – The court in which the petition is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. The petition shall not interrupt the course of the principal case, unless a temporary restraining order or a writ of preliminary injunction has been issued, enjoining the public respondent from further proceeding with the case.
>
> The public respondent shall proceed with the principal case within ten (10) days from the filing of a petition for *certiorari* with a higher court or tribunal, absent a temporary restraining order or a preliminary injunction, or upon its expiration.

> Failure of the public respondent to proceed with the principal case may be a ground for an administrative charge.

[263] *Trajano v. Uniwide Sales Warehouse Club*, G.R. No. 190253, June 11, 2014, 726 SCRA 298, 312.

CONCURRING OPINION

LEONEN, J:

I concur with the ponencia of my esteemed colleague Associate Justice Estela M. Perlas-Bernabe. The Petitions should be dismissed. The Ombudsman did not act in grave abuse of discretion when it found probable cause to charge petitioners with Plunder under Republic Act No. 7080[1] and violation of Section 3(e)[2] of Republic Act No. 3019.[3]

In addition, the Petitions before us could also be dismissed for being moot and academic. When the Sandiganbayan issued warrants of arrest against petitioners after finding probable cause, all petitions questioning the Ombudsman's finding of probable cause, including these Petitions before us, have already become moot.

The determination of probable cause by the prosecutor is different from the determination of probable cause by the trial court.[4] A preliminary investigation is conducted by the prosecutor to determine whether there is probable cause to file an information or whether the complaint should be dismissed. Once the information is filed, the trial court acquires jurisdiction over the case. The trial court then determines the existence of probable cause for the issuance of a warrant of arrest. Any question relating to the disposition of the case should be addressed to the trial court.[5] In *Crespo v. Mogul*:[6]

> The rule therefore in this jurisdiction is that once a complaint or information is filed in Court, any disposition of the case as to its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court.[7]

Similarly, in *People v. Castillo and Mejia*:[8]

> There are two kinds of determination of probable cause: executive and judicial.

> The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. *Whether or not that function has been correctly discharged by the public prosecutor, i.e., whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.*
>
> The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.[9] (Emphasis supplied)

Although both the prosecutor and the trial court may rely on the same records and evidence, their findings are arrived at independently. Executive determination of probable cause is outlined by the Rules of Court,[10] Republic Act No. 6770,[11] and various issuances by the Department of Justice.[12] It is the Constitution, however, that mandates the conduct of judicial determination of probable cause:

> ARTICLE III
> BILL OF RIGHTS
>
> Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and *no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce and particularly describing the place to be searched and the persons or things to be seized*. (Emphasis supplied)

In *Ho v. People*:[13]

> Lest we be too repetitive, we only wish to emphasize three vital matters once more: First, as held in *Inting*, the determination of probable cause by the prosecutor is for a purpose different from that which is to be made by the judge. Whether there is reasonable ground to believe that the accused is guilty of the offense charged and should be held for trial is what the prosecutor passes upon. The judge, on the other hand, determines whether a warrant of arrest should be issued against the accused, i.e. whether there is a necessity for placing him under immediate custody in order not to frustrate the ends of justice. Thus, even if both should base their findings on one and the same proceeding or evidence, there should be no confusion as to their distinct objectives.
>
> Second, since their objectives are different, *the judge cannot rely solely on the report of the prosecutor in finding probable cause to justify the issuance of a warrant of arrest*. Obviously and understandably, the contents of the prosecutor's report will support his own conclusion that there is reason to charge the accused of an offense and hold him for trial. However, *the judge must decide independently. Hence, he must have supporting evidence, other than the prosecutor's bare report, upon which to legally sustain his own findings on the existence (or nonexistence) of probable cause to issue an arrest order. This responsibility of determining personally and independently the existence or nonexistence of probable cause is lodged in him by no less than the most basic law of the land.* Parenthetically, the prosecutor could ease the burden of the judge and speed up the litigation process by forwarding to the latter not only the information and his bare resolution finding probable cause, but also so much of the records and the evidence on hand as to enable His Honor to make his personal and separate judicial finding on whether to issue a warrant of arrest.
>
> Lastly, it is not required that the complete or entire records of the case during the preliminary investigation be submitted to and examined by the judge. We do not intend to unduly burden trial courts by obliging them to examine the complete records of every case all the time simply for the purpose of ordering the arrest of an accused. What is required, rather, is that the judge must have sufficient supporting documents (such as the complaint, affidavits, counter-affidavits, sworn statements of witnesses or transcripts of stenographic notes, if

> any) upon which to make his independent judgment or, at the very least, upon which to verify the findings of the prosecutor as to the existence of probable cause. The point is: he cannot rely solely and entirely on the prosecutor's recommendation, as Respondent Court did in this case. *Although the prosecutor enjoys the legal presumption of regularity in the performance of his official duties and functions, which in turn gives his report the presumption of accuracy, the Constitution we repeat, commands the judge to personally determine probable cause in the issuance of warrants of arrest*. This Court has consistently held that a judge fails in his bounden duty if he relies merely on the certification or the report of the investigating officer.[14] (Emphasis provided)

The conduct of a preliminary investigation is also not a venue for an exhaustive display of petitioners' evidence. It is merely preparatory to a criminal action. In *Drilon v. Court of Appeals*:[15]

> Probable cause should be determined in a summary but scrupulous manner to prevent material damage to a potential accused's constitutional right of liberty and the guarantees of freedom and fair play. *The preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence. It is for the presentation of such evidence as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof.* It is a means of discovering the persons who may be reasonably charged with a crime. The validity and merits of a party's defense and accusation, as well as admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level.[16] (Emphasis supplied)

Thus, in *People v. Narca*,[17] this court pointed out that any alleged irregularity in the preliminary investigation does not render the information void or affect the trial court's jurisdiction:

> It must be emphasized that the preliminary investigation is not the venue for the full exercise of the rights of the parties. This is why preliminary investigation is not considered as a part of trial but merely preparatory thereto and that the records therein shall not form part of the records of the case in court. Parties

> may submit affidavits but have no right to examine witnesses though they can propound questions through the investigating officer. In fact, a preliminary investigation may even be conducted ex-parte in certain cases. Moreover, in Section 1 of Rule 112, the purpose of a preliminary investigation is only to determine a well grounded belief if a crime was probably committed by an accused. *In any case, the invalidity or absence of a preliminary investigation does not affect the jurisdiction of the court which may have taken cognizance of the information nor impair the validity of the information or otherwise render it defective.*[18] (Emphasis supplied)

A trial court's finding of probable cause does not rely on the prosecutor's finding of probable cause. Once the trial court finds the existence of probable cause, which results in the issuance of a warrant of arrest, any question on the prosecutor's conduct of preliminary investigation has already become moot.

In *De Lima v. Reyes*,[19] we dismissed a Petition for Review on Certiorari questioning the Secretary of Justice's finding of probable cause against the accused. Once probable cause has been judicially determined, any question on the executive determination of probable cause is already moot:

> Here, the trial court has already determined, independently of any finding or recommendation by the First Panel or the Second Panel, that probable cause exists to cause the issuance of the warrant of arrest against respondent. Probable cause has been judicially determined. Jurisdiction over the case, therefore, has transferred to the trial court. *A petition for certiorari questioning the validity of the preliminary investigation in any other venue has been rendered moot by the issuance of the warrant of arrest and the conduct of arraignment.*
>
> The Court of Appeals should have dismissed the Petition for Certiorari filed before them when the trial court issued its warrant of arrest. Since the trial court has already acquired jurisdiction over the case and the existence of probable cause has been judicially determined, a petition for *certiorari* questioning the conduct of the preliminary investigation ceases to be the "plain, speedy, and adequate remedy" provided by law. Since this Petition for Review is an appeal from a moot Petition for Certiorari, it must also be rendered moot.

> The prudent course of action at this stage would be to proceed to trial. Respondent, however, is not without remedies. He may still file any appropriate action before the trial court or question any alleged irregularity in the preliminary investigation during pre-trial.[20] (Emphasis supplied)

In its July 3, 2014 Resolution, the Sandiganbayan categorically states that "it had 'personally [read] and [evaluated] the Information, the Joint Resolution dated March 28, 2013 and Joint Order dated June 4, 2013 of the [Ombudsman] together with the above-enumerated documents, including their annexes and attachments, which are all part of the records of the preliminary investigation.'"[21] In its Resolution dated September 29, 2014, the Sandiganbayan reiterated that "[a]fter further considering the records of these cases and due deliberations, the [Sandiganbayan] finds the existence of probable cause against said accused."[22] Warrants of arrest have already been issued against petitioners.[23] Thus, these Petitions questioning the Ombudsman's determination of probable cause have already become moot and academic.

ACCORDINGLY, I vote to **DISMISS** the Petitions.

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[1] An Act Defining and Penalizing the Crime of Plunder (1991).

[2] Rep. Act No. 3019 (1960), sec. 3 provides:

SEC. 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:

> . . . .
>
> (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.

[3] Anti-Graft and Corrupt Practices Act (1960).

[4] *See People v. Castillo and Mejia*, 607 Phil. 754 (2009) [Per J. Quisumbing, Second Division].

[5] *See Crespo v. Mogul*, 235 Phil. 465 (1987) [Per J. Gancayco, En Banc].

[6] 235 Phil. 465 (1987) [Per J. Gancayco, En Banc].

[7] Id.

[8] 607 Phil. 754 (2009) [Per J. Quisumbing, Second Division].

[9] Id. at 764-765, *citing Paderanga v. Drilon*, 273 Phil. 290, 296 (1991) [Per J. Regalado, En Banc]; *Roberts, Jr. v. Court of Appeals*, 324 Phil. 568, 620-621 (1996) [Per J. Davide, Jr., En Banc]; *Ho v. People*, 345 Phil. 597, 611 (1997) [Per J. Panganiban, En Banc].

[10] *See* RULES OF COURT, Rule 112.

[11] The Ombudsman Act of 1989.

[12] The most common of these issuances is the 2000 NPS Rules on Appeal.

[13] 345 Phil. 597 (1997) [Per J. Panganiban, En Banc].

[14] Id. at 611-612, *citing* RULES OF COURT, Rule 112, Section 6(b) and J. Reynato S. Puno, Dissenting Opinion in *Roberts Jr. vs. Court of Appeals*, 324 Phil. 568, 623-642 (1996) [Per J. Davide, Jr., En Banc].

[15] 327 Phil. 916 (1995) [Per J. Romero, Second Division].

[16] Id. at 923, *citing Salonga v. Cruz-Paño*, 219 Phil. 402 (1985) [Per J. Gutierrez, En Banc]; *Hashim v. Boncan*, 71 Phil. 216 (1941) [Per J. Laurel, En Banc]; *Paderanga v. Drilon*, G.R. No. 96080, April 19, 1991, 196 SCRA 86, 92 [Per J. Regalado, En Banc]; J. Francisco, Concurring Opinion in *Webb v. De Leon*, 317 Phil. 758, 809-811 (1995) [Per J. Puno, Second Division].

[17] 341 Phil. 696 (1997) [Per J. Francisco, Third Division].

[18] Id. at 705, *citing Lozada v. Hernandez*, 92 Phil. 1051 (1953) [Per J. Reyes, En Banc];

RULES OF COURT, Rule 112, sec. 8; RULES OF COURT, Rule 112, sec. 3(e); RULES OF COURT, Rule 112, sec. 3(d); *Mercado v. Court of Appeals*, 315 Phil. 657 (1995) [Per J. Quiason, First Division]; *Rodriguez v. Sandiganbayan*, 306 Phil. 567 (1983) [Per J. Escolin, En Banc]; *Webb v. De Leon*, 317 Phil. 758 (1995) [Per J. Puno, Second Division]; *Romualdez v. Sandiganbayan*, 313 Phil. 870 (1995) [Per C.J. Narvasa, En Banc]; and *People v. Gomez*, 202 Phil. 395 (1982) [Per J. Relova, First Division].

[19] G.R. No. 209330, January 11, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/209330.pdf> [Per J. Leonen, Second Division].

[20] Id. at 20, *citing* RULES OF COURT, Rule 65, sec 1.

[21] Ponencia, p. 38.

[22] Id.

[23] See ponencia, p. 3.

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