

RECORDS
CERTIFIED TRUE PHOTO COPY
FROM THE RECORDS

JUL 18 2019

ANNA M. APOLINAR-BENIGNIN
ANNA MARIE D. CRISPILLO
EXECUTIVE CLERK OF COURT III
SECOND DIVISION

Republic of the Philippines
SANDIGANBAYAN
Quezon City

Second Division

People of the Philippines,
Plaintiff,

Crim. Case No. SB-14-CRM-0357

For: Violation of Section 3(e) of
Republic Act No. 3019, as amended

-versus-

Present:

Herrera, Jr., J. *Chairperson*
Musngi, J. &
Pahimna, J.

Isarme Amarillo Bosque,
Carmelita Capili Marasigan, &
Samson Mutya Ayapana,
Accused.

Promulgated:

July 12, 2019

X-----X

DECISION

HERRERA, JR., J.:

Three former officials of the Municipality of Polillo, Quezon, namely, ISARME AMARILLO BOSQUE ("Bosque"), CARMELITA CAPILI MARASIGAN ("Marasigan") and SAMSON MUTYA AYAPANA ("Ayapana"), stand charged before this Court with **Violation of Section 3(e) of Republic Act 3019, as amended**, otherwise known as the "**Anti-Graft and Corrupt Practices Act**", under an **Information**¹ dated August 17, 2012, filed by the Office of the Ombudsman on September 23, 2014.

The accusatory portion of the **Information** alleges:

¹ Record, Vol. 1, p. 1-3

[Signature]

[Signature]

"That on or about 07 November 2005, or sometime prior or subsequent thereto, in the Municipality of Polillo, Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Isarme A. Bosque, being then the Municipal Mayor and a high-ranking public officer, Carmelita C. Marasigan and Samson M. Ayapana, being then the Municipal Treasurer and Municipal Assessor, respectively, all of the municipal government of Polillo, Quezon, conspiring and confederating with each other, committing the crime herein charged while in the performance of their official or administrative functions, through manifest partiality, evident bad faith and gross inexcusable negligence, did then and there, willfully, unlawfully and criminally purchase or cause the purchase of a parcel of land belonging to spouses Valeriana Tiu Gavira and Jessie Tiu Gavira with an area of 3.3656 hectares covered by Transfer Certificate of Title (TCT) No. T-88507 and located in Barangay Libjo, Polillo, Quezon, in the amount of FOUR HUNDRED ELEVEN THOUSAND PESOS (PhP411,000.00) purportedly for low-cost housing without the requisite authority from the Sangguniang Bayan, and without conducting the requisite feasibility study on the suitability of the land for the housing project, and with the accused knowing fully well that only one (1) hectare of the purchased area is suitable for the housing project while the rest of the land is in truth and in fact swamp or mangrove land, thereby giving unwarranted benefits, preference or advantage to the spouses Valeriano Tiu Gavira and Jessie Tiu Gavira and likewise, causing undue injury to the municipality of Polillo, Quezon in the said amount of FOUR HUNDRED ELEVEN THOUSAND PESOS (PhP411,000.00).

CONTRARY TO LAW."

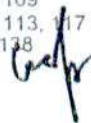
On November 18, 2014, the three accused voluntarily surrendered² and deposited cash in the amount of Thirty Thousand Pesos (P30,000.00) each, under Official Receipt Nos. 5087072, 5087078 and 5087077,³ as bail for their provisional liberty.

Arraignment promptly followed on November 24, 2014 during which the three, assisted by counsel *de officio*, pleaded not guilty to the charge against them.⁴

² Id., pp. 103, 109

³ Id., pp. 107, 113, 117

⁴ Id., pp. 137-138



Pre-trial was thereafter conducted, terminating with the issuance by the Court of a **Pre-Trial Order** ⁵ on March 2, 2015.

Trial of the case ensued.

On August 10, 2017, the prosecution concluded its presentation of evidence and made its oral **Offer of Evidence**. After having heard the comments thereon by the defense, the Court resolved:

“xxx to admit prosecution Exhibits “A”, “B”, “C”, “E”, “F”, “K”, “L”, “J”, “N”, “O”, “P”, “Q”, “R”, “S” and “T”.”⁶

The defendants then presented their evidence and on September 17, 2018, accused Bosque orally offered in evidence Exhibits “1”, “2”, “3”, “7”, “8”, “9”, “10” and “11” which the Court all resolved to admit.⁷ Accused Marasigan and Ayapana, through counsel, earlier offered the document denominated as “*Bilhang Lampasan ng Lupa*” (which is a common Exhibit with the prosecution) as their Exhibit “1”, which was duly admitted by the Court.⁸

No rebuttal evidence was anymore presented by the prosecution.

To substantiate its allegations, the following witnesses were presented by the plaintiff: **1) Efren Azarias Suria**, **2) Amebel Soltura Azagra**, and **3) Marietta Peñaverde-Gurango**. The testimonies of Christialyn Joyce Durante Sandoval and Medicine Curia Asis were dispensed with, following stipulations between the parties as to the authenticity of the documents brought to Court by the said intended witnesses consisting of the following: 1) Tax Declaration No. 28-013-00309-A⁹, 2) Resolution No. 026-2006¹⁰, 3) Committee Report dated September 3, 2007¹¹, and the 4) Committee Report dated January 8,

⁵ Id., pp. 217-228

⁶ Id., p. 365

⁷ Id., p. 509

⁸ Id., p. 405

⁹ Exhibit “C”

¹⁰ Exhibit “F”

¹¹ Exhibit “Q”



2007.¹² As earlier stated, also offered in evidence were documentary Exhibits "A", "B", "C", "E", "F", "K", "L", "J", "N", "O", "P", "Q", "R", "S" and "T".

On the other hand, the following witnesses testified for the defense: 1) *Carmelita Capili Marasigan*, 2) *Samson Ayapana*, 3) *Samuel Mascardo Sardua*, 4) *Rex Mopera Elma* and 5) *Isarme A. Bosque*. Accused Bosque offered Exhibits "1", "2", "3", "7", "8", "9", "10" and "11" for his defense, while accused Marasigan and Ayapana both offered the singular document Exhibit "1"-Marasigan/Ayapana in their defense.

SUMMARY OF THE TESTIMONIES OF THE PROSECUTION WITNESSES

EFREN AZARIAS SURIA is the private complainant in this case. He averred that he filed a complaint before the Office of the Ombudsman against the former Municipal Mayor Isarme Bosque, Municipal Treasurer Carmelita Capili Marasigan and retired Municipal Assessor Samson Mutya Ayapana because it was through them that the Municipality of Polillo, Quezon was able to purchase land in Barangay Libjo, Polillo, despite the lack of authorization from the *Sangguniang Bayan*, and which property is unsuitable for the projects of the Municipality, according to him, since it was host to mangrove-associated tree species. He said the Municipality had intended the property as a site for its low-cost housing project, municipal cemetery and dump site. He testified that he attached to his Complaint Affidavit a copy of the following: "*Kasulatan ng Bilihang Lampasan ng Lupa*", the pertinent Tax Declaration, and the title to the said lot. He said that the seller of the 3.3656-hectare property was Mr. Jessie V. Tiu, Jr. The witness referred to *Sangguniang Bayan* Resolution No. 026-2006 as basis for declaring that the purchase was not supported by the appropriate authorization from the Municipality and the observation that the site was not appropriate for the Municipality's intended projects. Moreover, he testified that he had joined members of the *Sanggunian* in conducting

¹² Exhibit "F"



an ocular inspection of the property and he personally saw that about more than two hectares were covered by mangroves (“bakawanan”). He said that his familiarity with mangrove-associated species was on account of training he had acquired related to coastal resources management. He also affirmed having attended committee hearings of the Municipality during which the matter of the purchase and its intended use were discussed. He conceded, however, that only the Committee Report of January 8, 2007 included his name in the list of attendees. He said he learned about the sale sometime in 2006, but that he was not acquainted with the vendor and neither was he privy about negotiations prior to the sale. He confirmed that the participation of accused Marasigan and Ayapana was limited to witnessing the sale, as indicated in the copy of the deed.¹³

AMEBEL SOLTURA AZAGRA was the Municipal Planning Development Coordinator (MPDC) of Polillo, Quezon from the year 2001 to 2010. Her office, she said, identifies priority projects of the Municipality, prepares project profiles, and provides recommendations on the planning and implementation of the Municipality’s programs. She testified that she likewise functioned as the Zoning Administrator of the Municipality, exercising responsibility over the issuance of locational clearances and zoning certificates. She stated that she only came to know about the purchase of the subject property through Engineer Samuel Sardua, which is out of the ordinary, since their office is usually consulted as part of the planning process. After learning of the acquisition, she conducted an ocular inspection on the property and saw that a significant part of the lot is within the shore easement area, except for around one hectare which had been planted to coconut trees and which may thus be utilized as a site for housing. She testified that her additional basis in declaring that the property was part of the Municipality’s mangrove/swampy area was their zoning maps, culled from their Zoning Code. She had issued a certification to that effect (Exhibit “J”), upon a request from Efren Suria. She recalled that she was instructed by the Mayor to ask for a similar inspection by the

¹³ TSN of September 14, 2015, pp. 3-25; TSN of September 15, 2015, pp. 4-23



x-----x

Mines and Geosciences Bureau as a pre-requisite to the implementation of their *Gawad Kalinga* housing project. She confirmed that the Bureau was able to send an inspection team to the site and that a Committee Hearing followed. She said that, to her knowledge, the market value of the subject property is around Sixty-Two Thousand Pesos. She averred that the property would not be suitable for either of the three projects which the Municipality intended to embark on, i.e., low-cost housing, dumpsite, and public cemetery, because it does not meet the requirements for the same. She had visited the site lately and saw that the area remained essentially unchanged, without any improvement. On cross-examination, she confirmed that her appointment as MPDC was revoked in 2010 upon a finding that she lacked the necessary qualification for the said position. She likewise conceded that the property fell under the general classification of "agricultural" land because both swampy and coccol (planted to coconuts) areas fall under such category.¹⁴

MARIETA PEÑAVERDE GURANGO was an Assistant Land Registration Examiner and the Acting Records Officer of the Registry of Deeds in Infanta, Quezon, at the time she took the witness stand. In compliance to a subpoena issued to her, she brought to Court the original of the Transfer Certificate of Title (TCT) No. T-88507. She testified that she cannot, however, produce the pertinent Deed of Absolute Sale because the same had not been registered in their office. She said that registration cannot be effected inasmuch as TCT No. 88507 was already canceled by virtue of a Decision rendered by Judge Felimon Juntereal on September 29, 1972, with the corresponding registration made on September 16, 1974. Such fact is contained in the Certification issued by the witness, which she identified in Court (Exhibit "T"). Being a records officer, however, she confirmed that she can only identify records in their custody but would not be in a position to equate a specific certificate of title to the actual parcel of land it pertains to.¹⁵

¹⁴ TSN of April 18, 2016, pp. 4-19; TSN of April 19, 2016, pp. 4-55

¹⁵ TSN of June 29, 2016, pp. 4-24



SUMMARY OF THE TESTIMONIES FOR THE DEFENSE

CARMELITA CAPILI MARASIGAN is the Municipal Treasurer of Polillo, Quezon. Her testimony consisted, in the main, of professing that her participation in the purchase of the subject property was limited to witnessing the sale ("*Saksi*"), as indicated by her signature on the contract ("*Bilihang Lampasan ng Lupa*"). She disavowed knowledge of/familiarity with the actual parcel of land involved in the sale and asserted that she had not inquired from then-Mayor Bosque whether authorization had been previously granted to the latter by the *Sangguniang Bayan*.¹⁶

SAMSON M. AYAPANA testified that he is the Municipal Assessor of Polillo, Quezon. He affirmed that he had participated in the contract of sale ("*Bilihang Lampasan ng Lupa*") involving the property covered by TCT No. 88507 as a witness ("*Saksi*"). He said he was familiar with the parcel of land that was the subject of sale and opined that one hectare of it is usable for housing while the rest which was planted to coconut trees could be utilized for livelihood purposes. The entire lot, however, would not be suitable as site for housing, cemetery and dumpsite according to him. Despite that, he confirmed affixing his signature as witness to the contract of sale. He said he neither asked Mayor Bosque what the purpose of the purchase is nor whether the latter had secured authorization from the *Sangguniang Bayan* prior to entering into the contract.¹⁷

SAMUEL MASCARDOS SARDUA, a licensed Geodetic and Civil Engineer, testified that he was the Acting Municipal Planning and Development Coordinator of Polillo, Quezon in 2005. His functions as such include: the formulation of integrated economic, social and other related development plans and policies for the consideration of the Local Development Council; coordination of all sectoral plans and studies; and the monitoring and evaluation of the different development programs, projects and activities of the local government unit. He averred that in the

¹⁶ Judicial Affidavit, Record, Vol. 1, pp. 388-390; TSN of November 29, 2017, pp. 5-9

¹⁷ Judicial Affidavit, Record, Vol. 1, pp. 391-393; TSN of November 29, 2017, pp. 9-16



years 2005 to 2008, the prevailing market price of real property in Polillo's *Barangay* Libjo was about P250 to P300 per square meter. His basis in declaring such was the sale of his property located in the same *Barangay* which sold for P260 per square meter. He testified that he was familiar with the parcel of land in Libjo, Polillo which was purchased by the Municipal Government because he had been instructed by then-Mayor Isarme Bosque to inspect the property sometime in October 2005. Heeding the instruction, he went to inspect the lot and saw that a portion was suitable for housing, while the rest would be appropriate for agricultural plantation, establishment of fishpond, crab fattening and the like. He said he thus recommended to proceed with the purchase of the land and implementation of the socialized housing project. He claimed that, as part of the planning process, he came to know that one hectare of land was needed for the *Gawad Kalinga* housing project. He did not have knowledge, however, whether the purchase of the property was covered by a prior authorization of the *Sangguniang Bayan*.¹⁸

REX MOPERA ELMA testified that he was a Forest Protection Officer at Real, Quezon in 2005. He recalled receiving a Memorandum on April 21, 2006, pertaining to a request from Mayor Isarme Bosque relative to the exemption of land purchased by the Municipal Government from any existing rule that might prohibit any development on the property. In compliance with the Memorandum, he and his colleague, Johnny Orantia, conducted an ocular inspection of the property. Finding that one hectare of the land could be used for socialized housing while the remaining two hectares would be ideal for livelihood activities such as agricultural plantation and the maintenance of fishponds, they recommended that the request of the Municipal Government be granted. Such recommendation was incorporated in a Memorandum they issued dated August 14, 2006. The witness was of the belief that the provision of livelihood opportunities adjunct to the housing project would be effective in elevating the recipients'

¹⁸ Judicial Affidavit, Record, Vol. 1, pp. 413-420, TSN of June 4, 2018, pp. 4-18



standard of living. He averred likewise that swampy areas were common in the Municipality.¹⁹

ISARME AMARILLO BOSQUE is a Civil Engineer who duly admitted that he was the Mayor of Polillo, Quezon in the material year 2005. On that year, one of his administration's priority projects was a socialized housing program that was to be undertaken in cooperation with *Gawad Kalinga, Inc.*, and for which reason the Municipality needed to purchase land. Resolution No. 091-2005 of the *Sangguniang Bayan* and Appropriation Ordinance No. 02-2005 granted him the authority to purchase the land, according to the witness. Moreover, he stated that he had relied on Legal Opinion No. 9, Series of 2006, of the Department of Interior and Local Government (DILG) which bolsters his position that an ordinance is sufficient authorization for the Chief Executive to enter into a contract. The Appropriation Ordinance, he said, allotted a budget of P500,000.00 for the acquisition of land. He computes that this translates to an area of about 2,000 square meters, given what he reckoned as the then-prevailing market price in Polillo of P250.00 to P350.00 per square meter. With such authorization, he thus proceeded to search for potential vendors. He came across the offer of Valeriana Tiu who was willing to sell 33,656 square meters for P411,000.00, or a price of P12.25 per square meter. He testified that he found the same to be a good deal because it was twenty times cheaper than the prevailing market price. He asserted that his office conducted the necessary "due diligence" study of the property by checking on its title and realty tax payment status. He disclosed that he had requested the local office of the Department of Environment and Natural Resources (DENR-CENRO) to evaluate the land with respect to its feasibility as site for the Municipality's socialized housing program and to make recommendations with respect to compliance with environmental laws. Finding that one hectare of the land was suitable as a location for their housing project, while the rest was ideal for livelihood-related undertakings, he said that DENR-CENRO recommended the grant of appropriate permits to the local government. He further testified that he

¹⁹ Judicial Affidavit, Record, Vol. 1, pp. 421-430; TSN of July 2, 2018, pp. 4-13



had similarly instructed then Acting Municipal Planning and Development Coordinator, Samuel Sardua, to do an ocular inspection of the property and verify, among others, the nature and condition of the lot. On the strength of Sardua's recommendation, he pushed through with buying the property. He stated that the subject acquisition remained idle as of the date of his testimony and that the intended beneficiaries of their housing program still remained homeless. He insisted that there was no undue injury to the local government despite only one hectare of the purchased lot being available for housing purposes because the area bought far exceeded the 2,000 square meter projected acquisition given the budget of the Municipality. On cross-examination, he affirmed that no study of the property was conducted prior to its purchase.²⁰

ISSUE SUBMITTED FOR RESOLUTION OF THE COURT

The parties framed and identified the issue as follows: "**Whether or not the accused could be liable for violation of Sec. 3(e) of Republic Act No. 3019 when they purchased in behalf of the Municipality of Polillo, Quezon a parcel of swamp land covered by TCT No. T-88507 amounting to Four Hundred Eleven Thousand Pesos (PhP411,000.00)**".²¹

FINDINGS AND CONCLUSION

Marshalling of the evidence reveals that on September 5, 2005, the *Sangguniang Bayan* of Polillo, Quezon enacted ***Appropriation Ordinance No. 02-2005 approving the proposed Supplemental Budget No. 2 for Calendar Year 2005*** of the said local government.

Among the items included in the ***Ordinance*** was the purchase of a lot with an allocation of P500,000.00, as provided under ***Item (b), Part II, Section 1***.²²

²⁰ Judicial Affidavit, Record, Vol. 1, pp. 474-499; TSN of September 17, 2018, pp. 4-11

²¹ Supra at Note 5, pp. 11-12

²² Common Exhibit of the Parties, i.e., Exhibit "E"/Exhibit "1-Bosque"



Consequently, or on November 7, 2005, Engr. Isarme A. Bosque, as Mayor representing the Municipality of Polillo, Quezon, entered into a contract ("**Bilhang Lampasan ng Lupa**") with Jesse V. Tiu, Jr. governing the sale of a 33,656 square meter property for an amount of P411,000.00.

The parcel of land is technically described as follows:

*"ISANG PALAGAY NA LUPANG-NIYOG/SASAHAN na natatayo sa Brgy. Libjo, Polillo, Quezon, may Tax Dec. #28-013-00128-A; A.V. P21,640.00, may Transfer Certificate of Title Blg. T-88507, may sukat na 33,656 metro cuadrados. Mga kahangga: sa Norte, Heirs of Ricardo Bosque; sa Este, Heirs of Ricardo Bosque; sa Sur, Isabel Pumarada; at sa Weste Public Land at Creek."*²³

The witnesses to the contract of sale were Samson M. Ayapana and Carmelita C. Marasigan, Municipal Assessor and Municipal Treasurer, respectively, of Polillo, Quezon.

The controversy stems from that purchase with the plaintiff alleging that the acquisition was made by the Mayor without due authorization coming from the local *Sanggunian* nor with the requisite feasibility study. Moreover, the nature of the property bought was such that only a third of its area was found suitable for its purpose, i.e., as site for the Municipality's low-cost housing project.

Section 3 of Republic Act No. 3019, as amended, enumerates acts and omissions that constitute corrupt practices of a public officer and are therefore unlawful. Its fifth sub-paragraph specifically 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:

xxx.

²³ Exhibit "B"



(e) Causing 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 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."

For a conviction to be sustained under that provision, the concurrence of the below-listed elements should be established by the prosecution beyond reasonable doubt:

- 1) The accused must be a public officer discharging administrative, judicial or official functions;
- 2) He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
- 3) That his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.²⁴

Doubt as to the existence of the first element is easily cast aside with the admission by all three accused that they were public officers during the time material to the case, serving as then Mayor, Treasurer, and Assessor, respectively, of the Municipality of Polillo, Quezon.²⁵

The remaining questions then are whether the acts of the three accused were attended by manifest partiality, evident bad faith or gross inexcusable negligence and whether their participatory act gave rise to an undue injury to any party or extended an unwarranted benefit, advantage or preference to another.

At this juncture, the Court can readily dispense with the inclusion of accused Carmelita Marasigan and Samson Ayapana in the ensuing discussion on culpability. A studied consideration of the third element shows that the undue injury or the unwarranted benefit should arise as a

²⁴ Jacinto v. Sandiganbayan, G.R. No. 84571, October 2, 1989
²⁵ Supra at Note 5, p.1



result of the discharge of the functions of an accused. Here, what had been clearly established is that the participation of both accused was confined to witnessing the execution of the deed of sale and subscribing to the instrument as such.

A witness is, plainly, an observer to something that transpires.

In serving as witnesses to the sale, Marasigan and Ayapana did so not because the nature of their duties as Treasurer and Assessor called them to be such but because, ostensibly, they have been asked by the Mayor to do so.

The presence of Marasigan and Ayapana, and even their subsequent affixing of signature on the contract of sale, lends no further validity to whatever agreement has already been reached by the parties to the contract.

*Swedish Match, AB v. Court of Appeals*²⁶ reiterates the hornbook doctrine that "Contracts are perfected by mere consent, which is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract."

Indeed, while certain formalities are required to be observed when interest in land is involved,²⁷ such formalities relate more to evidentiary matters than to the contractual rights of the parties. To be sure, even the testimony of prosecution witness Efren Suria affirms that the participatory act attributed to accused Marasigan and Ayapana is limited to being witnesses to the instrument of sale. Without more, and absent a showing that such act was appurtenant to an official duty, the Court finds that the indictment against them cannot prosper further.

The culpability of accused Bosque, however, is another matter.

²⁶ G.R. No. 128120, October 20, 2004
²⁷ Articles 1358 and 1403, Civil Code



The charge against him rests essentially on the allegation that the purchase was made 1) without the requisite authority from the **Sangguniang Bayan**, 2) without conducting the requisite feasibility study on the suitability of the land for the housing project, and 3) upon knowledge that only one hectare of the purchased area was suitable for the housing project while the rest was swampy or mangrove land.

We deal with the enumerated irregularities sequentially.

Absence of Authority from the Sangguniang Bayan

The **Local Government Code**, cognizant of the corporate nature which a local government unit may take, prescribes in **Section 22** thereof that: "xxx no contract may be entered into by the local chief executive in behalf of the local government unit **without prior authorization by the sanggunian concerned.**" [emphasis supplied]

Such requirement is further buttressed in the provision enumerating the powers and duties of the Municipal Mayor, which states:

"Section 444. *The Chief Executive: Powers, Duties, Functions and Compensation.* -

xxx

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality, xxx the municipal mayor shall:

xxx

(1) Exercise general supervision and control over all programs, projects, services, and activities of the municipal government, and in this connection, shall:

xxx

(vi) Upon authorization by the sangguniang bayan, represent the municipality in all its business transactions and sign on its behalf all



bonds, contracts, and obligations, and such other documents made pursuant to law or ordinance;"

The Supreme Court has had occasion, in *Quisumbing v. Garcia*²⁸, to expound on the requirement of prior authorization. Thus, :

"The question of whether a *sanggunian* authorization separate from the appropriation ordinance is required should be resolved depending on the particular circumstances of the case. **Resort to the appropriation ordinance is necessary in order to determine if there is a provision therein which specifically covers the expense to be incurred or the contract to be entered into.** Should the appropriation ordinance, for instance, already contain in sufficient detail the project and cost of a capital outlay such that all that the local chief executive needs to do after undergoing the requisite public bidding is to execute the contract, no further authorization is required, the appropriation ordinance already being sufficient.

On the other hand, should the appropriation ordinance describe the projects in generic terms such as "infrastructure projects," "inter-municipal waterworks, drainage and sewerage, flood control, and irrigation systems projects," "reclamation projects" or "roads and bridges," there is an obvious need for a covering contract for every specific project that in turn requires approval by the *sanggunian*." [highlight and underscore supplied]

The relevant portion of the subject appropriation ordinance of Polillo is reproduced herein for better appreciation:

APPROPRIATION ORDINANCE NO. 02-2005

AN ORDINANCE APPROPRIATING ADDITIONAL FUNDS FOR
THE OPERATION OF THE MUNICIPALITY OF POLILLO,
QUEZON FOR
THE PERIOD FROM JANUARY 01, 2005 TO DECEMBER 31,
2005,
INCLUSIVE AND FOR OTHER PURPOSES

Be it ordained by the Sangguniang Bayan of Polillo, Quezon:

SECTION 1 - There are hereby appropriated/provided for the period from January 01, 2005 to December 31, 2005, the

²⁸ G.R. No. 175527, December 8, 2008



Supplemental Budget No. 02 for CY 2005, to be taken from the following sources of income:

PART I - STATEMENT OF FUND

xxx

PART II - STATEMENT OF SUPPLEMENTAL
APPROPRIATIONS

Office of the Municipal Mayor

xxx

b) **Capital Outlay**

Purchase of Lot	P500,000.00	
Purchase of Dumptruck	750,000.00	
		1,250,000.00

xxx

Clear as day, the line item is couched in such a generic manner that it demands a subsequent specification adequately detailing the terms, bounds and limitations of the intended capital outlay. As the *Quisumbing* case explains:

"To construe Sections 306 and 346 of R.A. No. 7160 as exceptions to Sec. 22(c) would render the requirement of prior *sanggunian* authorization superfluous, useless and irrelevant. There would be no instance when such prior authorization would be required, as in contracts involving the disbursement of appropriated funds. Yet, this is obviously not the effect Congress had in mind when it required, as a condition to the local chief executive's representation of the local government unit in business transactions, the prior authorization of the *sanggunian* concerned. The requirement was deliberately added as a measure of check and balance, to temper the authority of the local chief executive, and in recognition of the fact that the corporate powers of the local government unit are wielded as much by its chief executive as by its council." [highlight and underscore supplied]

Placing emphasis on the absence of imprimatur from the *Sangguniang Bayan* of Polillo, the legislative council consequently issued *Resolution No. 026-2006*²⁹ on April 3, 2006 which, in gist, requests Mayor Isarme Bosque to refrain from proceeding with the improvement of the lot acquired by purchase from the Tiu family on the grounds that, *inter alia*: 1) the *Sangguniang Bayan* did not grant him, as yet, authority to purchase

²⁹ Exhibit "E"



the property and make improvements thereon because the body was still awaiting information on the technical specifications of the property³⁰, and 2) the subject parcel of land was not suitable for the intended projects of the local government, such as *Gawad Kalinga* low-cost housing, municipal cemetery, and dumpsite, having been found the same to be covered by nipa and mangrove³¹.

Remaining insistent, however, accused Bosque seeks to exculpate himself by invoking the opinion rendered by the Department of Interior and Local Government (*DILG Opinion No. 9, S. 2006*) which declares in its penultimate paragraph:

"We are, therefore, of the view that once a budget for a particular contract is already authorized by the sangguniang panlalawigan via an annual or supplemental appropriation ordinance, the governor, as head of the procuring entity, no longer needs to secure any further authorization from his/her sanggunian to enter into a contract with the winning bidder, as it could not have been the intent of our Congress to paralyze local government projects/contracts through circuitous or redundant procedures."

The opinion was founded, however, on the fact that the provincial government therein had commenced the process of bidding - pursuant to *Republic Act No. 9184*³² - for the engagement of security services, found a winning bidder, but could not proceed because the *Sangguniang Panlalawigan* "sat" on the request for authority being sought by the governor prior to signing the contract.

Apart from the fact that the said Opinion fails to persuade this Court in light of the disparate circumstances on which that query and the present issue are premised, it is worth noting that: 1) the matter of prior authorization from the pertinent *Sanggunian* had already been addressed by the *Quisumbing* case earlier cited, and 2) the question therein for the

³⁰ Exhibit "F-1"

³¹ Exhibit "F-2"

³² Otherwise known as the "Government Procurement Reform Act"



DILG involved a process of procurement which is not applicable to the instant case.

This brings the Court to the second and third irregularities alleged in the *Information*.

***Lack of Attendant Feasibility
Study and Unsuitability of
the Acquired Land for its
Purpose***

The Opinion which accused Bosque seeks shelter under involved a procurement under ***Republic Act 9184***. The said law, although amending certain portions of the ***Local Government Code***, relevantly provides:

"Section 5. *Definition of Terms*. - For purposes of this Act, the following words or terms and phrases shall mean or be understood as follows:

xxx

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

The applicable law governing the acquisition of real property, not for national government purposes, is ***Executive Order No. 1035 (Providing the Procedures and Guidelines for the Expeditious Acquisition by the Government of Private Real Properties or Rights Thereon for Infrastructure and Other Government Development Projects)***³³ promulgated on June 25, 1985.

³³ https://www.pppb.gov.ph/laws/laws/EO_1035-1985.pdf (last visited on May 16, 2019)



Title 'A' thereof lists the activities preparatory to the acquisition of property which include: Feasibility Studies, Information Campaign, Detailed Engineering/Surveys, and Project Cost/Funding.

In the instant case, the only claim to compliance with such requirements by accused Bosque is the instruction he supposedly gave to Engr. Samuel Sardua for the latter to conduct an ocular inspection of the lot.

In his testimony³⁴, Sardua professes that he made a personal inspection of the site after receiving a directive from the Mayor sometime in the first week of October 2005. He said he was furnished beforehand with a copy of the pertinent Tax Declaration, a photocopy of the certificate of title, and some photographs for reference. The sale was made on November 7, 2005.

Such haphazard, hasty and seemingly dismissive attempt cannot pass, however, as ample compliance with the requirements of the law. Sardua's feeble narrative pales alongside the testimony of prosecution witness Azagra, the long-standing Municipal Planning Development Coordinator and then-concurrent Zoning Administrator of Polillo, who disavowed prior coordination with their office³⁵, registering surprise after only belatedly learning of the purchase of the land from the Tiu spouses. It was only on November 25, 2005, as a matter of fact, that her office had written³⁶ to the Director of the Mines and Geosciences Bureau (MGB) to request for a certification that the tract of land which was subject of the purchase was indeed suitable as a site for the Municipality's housing project. She had made her own inspection also, after learning of the acquisition, and saw that most of land was within the shore easement area, as confirmed by the Municipality's Zoning Code.

³⁴ Supra at Note 18

³⁵ Exhibit "K"

³⁶ Exhibit "L"



Significantly, defense witnesses Sardua and Elma, and even accused Bosque himself, acknowledge that only around one hectare of the 3.3-hectare property is utilizable as site for housing purposes.

Temporarily what potentially poses as a 2-hectare liability, they attempt to assuage by averring that the remaining two-thirds of the plot may be harnessed for fishpond or other agricultural activities.

However, what is more telling of the absence of a considered study prior to the purchase is the revelation that title to the parcel of land covered by TCT No. T-88507 actually belongs to the state, as certified by the Land Registration Authority³⁷ and evidenced by the copy of the canceled Transfer Certificate of Title³⁸ presented by the prosecution.

The vendors Tiu therefore have neither right nor authority to convey the land to the Municipality - or to any other person or entity - because title has been divested from them as early as 1972 when, in Civil Case No. 0066-M, the Transfer of Certificate of Title was ordered canceled in favor of the Republic of the Philippines.

Such fact was registered on September 16, 1974 under *Entry No. 6671*.

A charge under *Section 3(e) of the Anti-Graft and Corrupt Practices Act* demands that the act complained of was attended by manifest partiality, evident bad faith or gross inexcusable negligence.

Foregoing compliance with the relevant procurement statute and failing to conduct basic due diligence (contrary to accused Bosque's claim that he did so) smack, at the very least, of negligence that is gross and inexcusable, defined in jurisprudence as "characterized by a want of even the slightest care, acting or omitting to act in a situation in which there is a

³⁷ Exhibit "T"

³⁸ Exhibit "N"

UPR

M

duty to act, not inadvertently, but willfully and intentionally, with conscious indifference to consequences insofar as other persons are affected".³⁹

That the extent of accused Bosque's negligence practically amounted to bad faith can, in fact, additionally be gleaned from what appears as foreknowledge on his part that the subject property falls under regulated premises. Thus, in his letter of April 19, 2006 (or five months after the purchase) he asks the local office of the Department of Environment and Natural Resources (DENR-CENRO in Real, Quezon)⁴⁰:

"Incidentally, the purchased lot is at present planted with nipa palm which may fall under the classification of mangrove area as specified in paragraph 52, Section 4 of Republic Act 8550.

Inasmuch as our LGU has identified the purchased lot as a site for our socialized housing program, may we request your good office to facilitate the exemption of the subject lot from any existing rule or regulation prohibiting said area from further development, specifically for our most needed project."

Beyond mere consultation whether the site was suitable for housing purposes, he was already seeking exemption from the coverage of any rule or regulation that might restrict development on the property.

He proceeds by appending to his letter the photocopies of the *Sangguniang Bayan* Resolutions supposedly granting him authority to purchase the property and allocating money for its improvement, yet significantly omitting the fact that only two weeks earlier, the same *Sangguniang Bayan* had resolved⁴¹ to request him to temporarily cease from improving the land owned by the Tiu family which allegedly had been bought by the municipal government for its projects.

³⁹ Bacasmas v. Sandiganbayan, G.R. No. 189343, July 10, 2013, citing Albert v. Sandiganbayan

⁴⁰ Exhibit "7-Bosque"

⁴¹ Supra at Note 29, "Isang Resolusyong Humihiling sa Kgg. Na Punong ayan Isarme A. Bosque na Pansamantalang Ipatigil ang Kasalukuyang 'Improvement' sa Lupang Pag-aari ng Pamilya Tiu sa Nasasakupan ng Barangay Libjo, na di-Umano ay Binili ng Pamahalaang Bayan Para sa Mga Proyekto Nito" [highlight supplied]

ap

M

Without doubt, the irregularity-laden transaction gave unwarranted benefit to the Tius who did not even have an extant right over the parcel of land and, concomitantly, undue injury to the municipal government of Polillo, Quezon which had to pay the purchase price for a property whose conveyance is not even valid.

WHEREFORE, in light of the foregoing, the Court finds accused ISARME AMARILLO BOSQUE guilty beyond reasonable doubt of **Violation of Section 3, par. (e) of Republic Act 3019, as amended**, as charged in the Information dated August 17, 2012.

In accordance with the provisions of the **Indeterminate Sentence Law**, he is hereby sentenced to suffer the penalty of imprisonment of six (6) years and one (1) month, as minimum, to ten (10) years as maximum. The penalty of perpetual disqualification from public office is likewise imposed, as provided by law.

With regard to his civil liability, accused Bosque is ordered to restitute the amount of Four Hundred Eleven Thousand Pesos (P411,000.00) to the Municipality of Polillo, Quezon, with legal interest until its full satisfaction.


Accused CARMELITA CAPILI MARASIGAN and SAMSON MUTYA AYAPANA are hereby ACQUITTED, there being no showing of culpability on their part. As to these two, the Hold Departure Order is LIFTED and SET ASIDE, and the bonds they posted ordered RELEASED, subject to the usual accounting and auditing procedures.

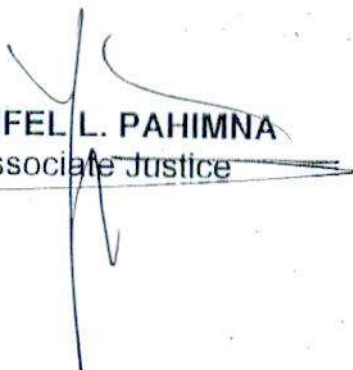
SO ORDERED.


OSCAR C. HERRERA, JR.
Chairperson
Associate Justice



We concur:


MICHAEL FREDERICK L. MUSNGI
Associate Justice


LORIFEL L. PAHIMNA
Associate Justice

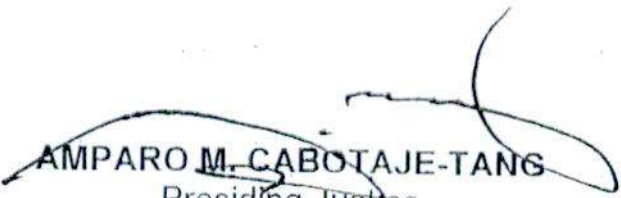
ATTESTATION

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


OSCAR C. HERRERA, JR.
Chairperson
Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


AMPARO M. CABOTAJE-TANG
Presiding Justice