



Republic of the Philippines
SANDIGANBAYAN
Quezon City

SIXTH DIVISION

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff,

SB-16-CRM-0438

For: Violation of Section 3 (e) of
Republic Act (R.A.) No. 3019

-versus-

PRESENT:

**EDNA V. OGKA BENITO, et
al.,**

Accused,

FERNANDEZ, SJ, J., *Chairperson*
MIRANDA, &
VIVERO, JJ.

Promulgated:

AUG 28 2019

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RESOLUTION

MIRANDA, J.:

This resolves the suspension *pendente lite* of accused Edna V. Ogka Benito (Benito).

In its Order dated June 18, 2019 and pursuant to Section 4, Rule VIII of the Revised Internal Rules of the Sandiganbayan,¹ the Court directed

¹ Section 4, Rule VIII of the Revised Internal Rules of the Sandiganbayan:

Suspension pendente lite. – After the arraignment of an accused public officer against whom a valid information charging any of the violations referred to in Section 13 of R.A. No. 3019 is filed, the Sandiganbayan shall *motu proprio* give the accused a non-extendible period of ten (10) calendar days from notice within which to explain in writing why he should not be preventively suspended. Thereafter, the Sandiganbayan shall issue an order of preventive suspension of the accused, if found warranted under the aforesaid provision of R.A. No. 3019, as well as applicable decisions of the Supreme Court.

accused Benito, an incumbent Municipal Mayor of Balabagan, Lanao del Sur, to show cause why she should not be suspended *pendente lite* in accordance with Section 13 of R.A. No. 3019.

In her Compliance dated July 26, 2019, accused Benito claimed that she should not be suspended as she can no longer intimidate witnesses, hamper the prosecution of this case, or commit further acts of malfeasance in office. She particularly alleged that: 1) both the Prosecution and Defense had already finished the presentation of evidence; 2) being the Municipal Mayor, she does not participate in the payment of salaries of *Sangguniang Bayan* members, which she was accused of in this case; 3) private complainant Nasser C. Disalongan is not an incumbent *Sangguniang Bayan* member; and 4) she was not even included in the Order of Suspension issued by the Court in its Resolution dated March 20, 2017.

The Court does not find merit in the arguments of accused Benito.

The power of this Court to order the suspension *pendente lite* of an incumbent public official charged with violation of R.A. No. 3019, as amended, or Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property is supported by law and has been steadfastly upheld by the Supreme Court in many of its decisions.

Section 13 of R.A. No. 3019, as amended, provides:

SEC. 13. *Suspension and loss of benefits.* Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as a complex offense and in whatever stage of execution and mode of participation, is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement, and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

In the event that such convicted officer, who may have already been separated from the service, has already received such benefits he shall be liable to retribute the same to the government.

The block contains two handwritten signatures in black ink. The top signature is a cursive scribble, and the bottom signature is more legible, appearing to be 'Edna V. Ogka Benito'.

The following conditions must concur to suspend the accused *pendente lite*: 1) accused is an incumbent public official; and 2) accused must be charged under a valid information for violation of R.A. No. 3019, as amended, or Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property.

In this case, both conditions are present.

First, accused Benito is an incumbent public official. Accused Benito admitted in her Compliance dated July 26, 2019 that she is the incumbent Municipal Mayor of Balabagan, Lanao del Sur.

Second, the Information filed against accused Benito is valid. She was charged with violation of Section 3 (e) of R.A. No. 3019 under the Information dated May 23, 2016. Accused Benito was arraigned on October 13, 2016, during which she entered a plea of “not guilty” to the charge in the said Information.²

Having entered her plea, accused Benito is deemed to have waived any objection she may have on the validity of the Information under which she was charged, except on the following grounds: 1) the Information charges no offense; 2) the Court has no jurisdiction over the offense charged; 3) the penalty or the offense has been extinguished; and 4) double jeopardy has attached. Benito and her co-accused filed a Motion to Dismiss dated August 8, 2016. The said motion was, however, denied with finality by this Court in its Resolution dated October 10, 2016.

In *Miranda v. Sandiganbayan, et al.*,³ the Supreme Court stressed:

It is basic that entering a plea waives any objection the petitioner may have to the validity of the information except on the following grounds: 1) the information charges no offense; 2) the trial court has no jurisdiction over the offense charged; 3) the penalty or the offense has been extinguished; and 4) double jeopardy has attached. Objections to the sufficiency of the allegations in the Amended Information do not fall among the exceptions to the rule. They fall under the objection that the information “does not conform substantially to the prescribed form”. Needless to state, the petition has by his acts acquiesced to the validity and sufficiency of the Amended Information.

With the concurrence of the two conditions, the suspension *pendente lite* of accused Benito becomes mandatory. Once the Information is found to be sufficient in form and substance or its validity is determined, it

² Order dated October 12, 2016, Records, Vol. 1, p. 287.

³ G.R. No. 154098, July 27, 2005.



becomes the ministerial duty of this Court to issue an order of suspension *pendente lite* against the accused and “**there are no ifs and buts about it**”.⁴

In *Beroa v. Sandiganbayan*,⁵ the Supreme Court emphasized:

Section 13 is so clear and explicit that there is hardly room for any extended court rationalization of the law. Section 13 unequivocally mandates the suspension of a public official from office pending criminal prosecution under RA 3019 or Title 7, Book II of the Revised Penal Code or for any offense involving public funds or property or fraud on government. **This Court has repeatedly held that such preventive suspension is mandatory, and there are no ifs or buts about it.**⁶

Section 13 of R.A. No. 3019, as amended, unequivocally provides that the accused public officials “shall be suspended from office” while the criminal prosecution is pending in court. The court has neither discretion nor duty to determine whether suspension *pendente lite* is required to prevent the accused from using his office to intimidate witnesses or frustrate his prosecution or continue committing malfeasance in office.⁷

WHEREFORE, premises considered, accused **EDNA V. OGKA BENITO** is ordered **SUSPENDED** *pendente lite*, for a period of ninety (90) days, as Municipal Mayor of Balabagan, Lanao del Sur, or any other public position she may now or hereafter be holding.

Accused Edna V. Ogka Benito is ordered to **CEASE AND DESIST** from further performing and/or exercising the functions, duties, and privileges of her position upon the implementation of this Order of Preventive Suspension. The suspension of the accused shall be automatically lifted upon the expiration of the 90-day period from the implementation of this resolution.

Let a copy of this Resolution be furnished the Secretary of the Department of the Interior and Local Government (DILG) for the implementation of this order of suspension. The Secretary of the DILG, or his duly authorized representative, is directed to inform the Court of the action

⁴ *Marcelino C. Libanan v. Sandiganbayan*, G.R. No. 112386, June 14, 1994; Emphasis supplied.

⁵ G. R. No. 142456, July 27, 2004.

⁶ Emphasis supplied.

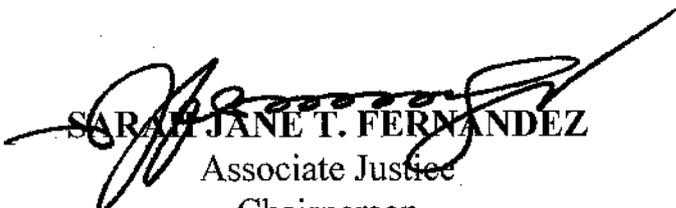
⁷ *Bolastig v. Sandiganbayan*, G.R. No. 110503, August 4, 1994.

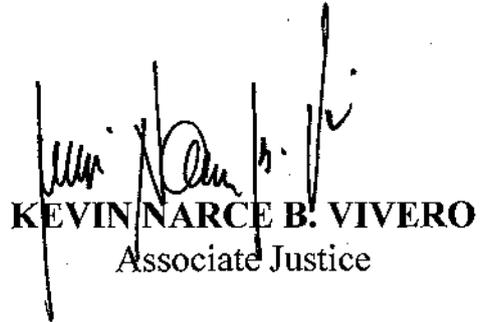
taken thereon, the actual date of the implementation of the suspension, and the expiry date of the 90-day period, within fifteen (15) days from receipt hereof.

SO ORDERED.


KARL B. MIRANDA
Associate Justice

WE CONCUR:


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson


KEVIN NARCE B. VIVERO
Associate Justice