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of the special complex crime of robbery with rape and sentencing him to *reclusion perpetua*, to pay Juditha M. Bautista ₱50,000.00 for moral damages, ₱5,180.00 for actual damages representing the value of the personal properties plus the cash amount of ₱130.00 taken from her is *AFFIRMED* with the *MODIFICATION* that the amount of ₱50,000.00 be added as civil indemnity in conformity with prevailing jurisprudence. Costs against accused-appellant.

SO ORDERED.

Mendoza, Quisumbing, Buena, and *De Leon, Jr., JJ.*, concur.

SECOND DIVISION

[G.R. No. 134990. April 27, 2000]

MANUEL M. LEYSON, JR., *petitioner, vs.* **OFFICE OF THE OMBUDSMAN, TIRSO ANTIPORDA, Chairman, UCPB and CIIF Oil Mills, and OSCAR A. TORRALBA, President, CIIF Oil Mills,** *respondents.*

SYNOPSIS

Petitioner Manuel M. Leyson, Jr., Executive Vice President of International Towage and Tranport Corporation (ITTC) a domestic corporation engaged in the lighterage or shipping business, filed with the Office of the Ombudsman a case against Tirso Antiporda, Chairman of United Coconut Planters Bank (UCPB) and CIIF Oil Mills, and respondent Oscar A. Torralba, President of the Coconut Industry Investment Fund (CIIF) companies, with violation of the Anti-Graft and Corrupt Practices Act. Public respondent Ombudsman dismissed the complaint

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based on its finding that the case was a simple case of breach of contract with damages which should have been filed in the regular court. The Ombudsman said that it had no jurisdiction to determine the legality or validity of the termination of the contract entered into by CIIF and ITTC. Reconsideration of the dismissal of the complaint was denied. Hence, the present petition. Petitioner asserted that private respondents Antiporda and Torralba are public officers subject to the jurisdiction of the Ombudsman.

The Supreme Court denied the petition. The Court ruled that jurisprudential rules invoked by petitioner in support of his claim that the CIIF companies are government owned and/or controlled corporations are incomplete without resorting to the definition of "government owned or controlled corporation" contained in par. (13), Sec. 2, Introductory Provisions of the Administrative Code of 1987, *i.e.*, any agency organized as a stock or non-stock corporation vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock. In the present case, all three (3) corporations comprising the CIIF companies were organized as stock corporations. The UCPB-CIIF owns 44.10% of the shares of LEGASPI OIL, 91.24% of the shares of GRANEXPORT, and 92.85% of the shares of UNITED COCONUT. Obviously, the below 51% shares of stock in LEGASPI OIL removes this firm from the definition of a government owned or controlled corporation. The Court further noted that the two corporations comprising the CIIF Companies were not vested with functions relating to public needs whether governmental of proprietary in nature placing them outside the scope of government-owned or controlled corporations.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987; GOVERNMENT OWNED OR CONTROLLED CORPORATIONS; DEFINED; REQUISITES.— The jurisprudential rules invoked by petitioner in support of his

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claim that the CIIF companies are government owned or controlled corporations are incomplete without resorting to the definition of "government owned or controlled corporation" contained in par. (13), Sec. 2, Introductory Provisions of the Administrative Code of 1987, *i.e.*, any agency organized as a stock or non-stock corporation vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock. The definition mentions three (3) requisites, namely, first, any agency organized as a stock or non-stock corporation; second, vested with functions relating to public needs whether governmental or proprietary in nature; and third, owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock.

2. ID.; **ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; HAS NO JURISDICTION OVER SUBJECT CORPORATIONS; SAID CORPORATIONS NOT VESTED WITH FUNCTIONS RELATING TO PUBLIC NEEDS WHETHER GOVERNMENTAL OR PROPRIETARY IN NATURE.**— In the present case, all three (3) corporations comprising the CIIF companies were organized as stock corporations. The UCPB-CIIF owns 44.10% of the shares of LEGASPI OIL, 91.24% of the shares of GRANEXPORT, and 92.85% of the shares of UNITED COCONUT. Obviously, the below 51% shares of stock in LEGASPI OIL removes this firm from the definition of a government owned or controlled corporation. Our concern has thus been limited to GRANEXPORT and the UNITED COCONUT as we go back to the second requisite. Unfortunately, it is in this regard that petitioner failed to substantiate his contentions. There is no showing that GRANEXPORT and/or UNITED COCONUT was vested with functions relating to public needs whether governmental or proprietary in nature unlike PETROPHIL in *Quimpo*. The Court concludes that the CIIF companies are, as found by public respondent, private corporations not within the scope of its jurisdiction.

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APPEARANCES OF COUNSEL

Dioscoro P. Timtiman, Jr. for petitioner.
The Solicitor General for public respondent.
Lope R. Torres for private respondents.

D E C I S I O N

BELLOSILLO, *J.*:

On 7 February 1996 International Towage and Transport Corporation (ITTC), a domestic corporation engaged in the lighterage or shipping business, entered into a one (1)-year contract with Legaspi Oil Company, Inc. (LEGASPI OIL), Granexport Manufacturing Corporation (GRANEXPORT) and United Coconut Chemicals, Inc. (UNITED COCONUT), comprising the Coconut Industry Investment Fund (CIIF) companies, for the transport of coconut oil in bulk through *MT Transasia.* The majority shareholdings of these CIIF companies are owned by the United Coconut Planters Bank (UCPB) as administrator of the CIIF. Under the terms of the contract, either party could terminate the agreement provided a three (3)-months advance notice was given to the other party. However, in August 1996, or prior to the expiration of the contract, the CIIF companies with their new President, respondent Oscar A. Torralba, terminated the contract without the requisite advance notice. The CIIF companies engaged the services of another vessel, *MT Marilag*, operated by Southwest Maritime Corporation.

On 11 March 1997 petitioner Manuel M. Leyson, Jr., Executive Vice President of ITTC, filed with public respondent Office of the Ombudsman a grievance case against respondent Oscar A. Torralba. The following is a summary of the irregularities and corrupt practices allegedly committed by respondent Torralba: (a) breach of contract — unilateral cancellation of valid and existing contract; (b) bad faith — falsification of documents and reports to stop the operation of *MT Transasia*; (c) manipulation — influenced their insurance to disqualify *MT*

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Transasia; (d) unreasonable denial of requirement imposed; (e) double standards and inconsistent in favor of *MT Marilag*; (f) engaged and entered into a contract with Southwest Maritime Corp. which is not the owner of *MT Marilag*, where liabilities were waived and whose paid-up capital is only ₱250,000.00; and, (g) overpricing in the freight rate causing losses of millions of pesos to Cocochem.[1]

On 2 January 1998 petitioner charged respondent Tirso Antiporda, Chairman of UCPB and CIIF Oil Mills, and respondent Oscar A. Torralba with violation of *The Anti-Graft and Corrupt Practices Act* also before the Ombudsman anchored on the aforementioned alleged irregularities and corrupt practices.

On 30 January 1998 public respondent dismissed the complaint based on its finding that —

> The case is a simple case of breach of contract with damages which should have been filed in the regular court. This Office has no jurisdiction to determine the legality or validity of the termination of the contract entered into by CIIF and ITTC. Besides the entities involved are private corporations (over) which this Office has no jurisdiction.[2]

On 4 June 1998 reconsideration of the dismissal of the complaint was denied. The Ombudsman was unswayed in his finding that the present controversy involved breach of contract as he also took into account the circumstance that petitioner had already filed a collection case before the Regional Trial Court of Manila-Br. 15, docketed as Civil Case No. 97-83354. Moreover, the Ombudsman found that the filing of the motion for reconsideration on 31 March 1998 was beyond the inextendible period of five (5) days from notice of the assailed resolution on 19 March 1998.[3]

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[1] *Rollo*, pp. 21-22.

[2] Resolution of Graft Investigation Officer II David B. Corpuz approved by Director Angel C. Mayoralgo, Assistant Ombudsman Abelardo L. Aportadera and Ombudsman Aniano A. Desierto; *Rollo*, p. 22.

[3] *Rollo*, pp. 56-57.

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Petitioner now imputes grave abuse of discretion on public respondent in dismissing his complaint. He submits that inasmuch as *Philippine Coconut Producers Federation, Inc. (COCOFED) v. PCGG*[4] and *Republic v. Sandiganbayan*[5] have declared that the coconut levy funds are public funds then, conformably with *Quimpo v. Tanodbayan*,[6] corporations formed and organized from those funds or whose controlling stocks are from those funds should be regarded as government owned and/or controlled corporations. As in the present case, since the funding or controlling interest of the companies being headed by private respondents was given or owned by the CIIF as shown in the certification of their Corporate Secretary,[7] it follows that they are government owned and/or controlled corporations. Corollarily, petitioner asserts that respondents Antiporda and Torralba are public officers subject to the jurisdiction of the Ombudsman.

Petitioner alleges next that public respondent's conclusion that his complaint refers to a breach of contract is whimsical, capricious and irresponsible amounting to a total disregard of its main point, *i.e.*, whether private respondents violated *The Anti-Graft and Corrupt Practices Act* when they entered into a contract with Southwest Maritime Corporation which was grossly disadvantageous to the government in general and to the CIIF in particular. Petitioner admits that his motion for reconsideration was filed out of time. Nonetheless, he advances that public respondent should have relaxed its rules in the paramount interest of justice; after all, the delay was just a matter of days and he, a layman not aware of technicalities, personally filed the complaint.

Private respondents counter that the CIIF companies were duly organized and are existing by virtue of the Corporation

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[4] G.R. No. 75713, 2 October 1989, 178 SCRA 236.

[5] G.R. No. 96073, 16 February 1993, *En Banc* Resolution.

[6] G.R. No. 72553, 2 December 1986, 146 SCRA 137.

[7] Annexes "K", "L" to "L-1", and "M" to "M-1" of Petition; *Rollo*, pp. 80-84.

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Code. Their stockholders are private individuals and entities. In addition, private respondents contend that they are not public officers as defined under *The Anti-Graft and Corrupt Practices Act* but are private executives appointed by the Boards of Directors of the CIIF companies. They asseverate that petitioner's motion for reconsideration was filed through the expert assistance of a learned counsel. They then charge petitioner with forum shopping since he had similarly filed a case for collection of a sum of money plus damages before the trial court.

The Office of the Solicitor General maintains that the Ombudsman approved the recommendation of the investigating officer to dismiss the complaint because he sincerely believed there was no sufficient basis for the criminal indictment of private respondents.

We find no grave abuse of discretion committed by the Ombudsman. *COCOFED v. PCGG* referred to in *Republic v. Sandiganbayan* reviewed the history of the coconut levy funds. These funds actually have four (4) general classes: (a) the Coconut Investment Fund created under R. A. No. 6260;[8] (b) the Coconut Consumers Stabilization Fund created under P.D. No. 276;[9] (c) the Coconut Industry Development Fund created under P.D. No. 582;[10] and, (d) the Coconut Industry Stabilization Fund created under P.D. No. 1841.[11]

The various laws relating to the coconut industry were codified in 1976. On 21 October of that year, P.D. No. 961[12] was promulgated. On 11 June 1978 it was amended by P.D. No. 1468[13] by inserting a new provision authorizing the use of the

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[8] Effective 19 June 1971.

[9] Effective 20 August 1973.

[10] Effective 14 November 1974.

[11] Effective 2 October 1981.

[12] Coconut Industry Code.

[13] Revised Coconut Industry Code.

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balance of the Coconut Industry Development Fund for the acquisition of "shares of stocks in corporations organized for the purpose of engaging in the establishment and operation of industries x x x commercial activities and other allied business undertakings relating to coconut and other palm oil indust(ries)."[14] From this fund thus created, or the CIIF, shares of stock in what have come to be known as the "CIIF companies" were purchased.

We then stated in *COCOFED* that the coconut levy funds were raised by the State's police and taxing powers such that the utilization and proper management thereof were certainly the concern of the Government. These funds have a public character and are clearly affected with public interest.

Quimpo v. Tanodbayan involved the issue as to whether PETROPHIL was a government owned or controlled corporation the employees of which fell within the jurisdictional purview of the Tanodbayan for purposes of *The Anti-Graft and Corrupt Practices Act.* We upheld the jurisdiction of the Tanodbayan on the ratiocination that —

> While it may be that PETROPHIL was not originally "created" as a government-owned or controlled corporation, after it was acquired by PNOC, which is a government-owned or controlled corporation, PETROPHIL became a subsidiary of PNOC and thus shed-off its private status. It is now funded and owned by the government as, in fact, it was acquired to perform functions related to government programs and policies on oil, a vital commodity in the economic life of the nation. It was acquired not temporarily but as a permanent adjunct to perform essential government or government-related functions, as the marketing arm of the PNOC to assist the latter in selling and distributing oil and petroleum products to assure and maintain an adequate and stable domestic supply.

But these jurisprudential rules invoked by petitioner in support of his claim that the CIIF companies are government owned and/or controlled corporations are incomplete without resorting

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[14] Sec. 9, PD No. 1468.

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to the definition of "government owned or controlled corporation" contained in par. (13), Sec. 2, Introductory Provisions of the Administrative Code of 1987, *i.e.*, any agency organized as a stock or non-stock corporation vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock. The definition mentions three (3) requisites, namely, first, any agency organized as a stock or non-stock corporation; second, vested with functions relating to public needs whether governmental or proprietary in nature; and, third, owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock.

In the present case, all three (3) corporations comprising the CIIF companies were organized as stock corporations. The UCPB-CIIF owns 44.10% of the shares of LEGASPI OIL, 91.24% of the shares of GRANEXPORT, and 92.85% of the shares of UNITED COCONUT.[15] Obviously, the below 51% shares of stock in LEGASPI OIL removes this firm from the definition of a government owned or controlled corporation. Our concern has thus been limited to GRANEXPORT and UNITED COCONUT as we go back to the second requisite. Unfortunately, it is in this regard that petitioner failed to substantiate his contentions. There is no showing that GRANEXPORT and/or UNITED COCONUT was vested with functions relating to public needs whether governmental or proprietary in nature unlike PETROPHIL in *Quimpo*. The Court thus concludes that the CIIF companies are, as found by public respondent, private corporations not within the scope of its jurisdiction.

With the foregoing conclusion, we find it unnecessary to resolve the other issues raised by petitioner.

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[15] See Note 7.

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A brief note on private respondents' charge of forum shopping. *Executive Secretary v. Gordon*[16] is instructive that forum shopping consists of filing multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. It is readily apparent that the present charge will not prosper because the cause of action herein, *i.e.,* violation of *The Anti-Graft and Corrupt Practices Act*, is different from the cause of action in the case pending before the trial court which is collection of a sum of money plus damages.

WHEREFORE, the petition is *DISMISSED*. The Resolution of public respondent Office of the Ombudsman of 30 January 1998 which dismissed the complaint of petitioner Manuel M. Leyson, Jr., as well as its Order of 4 June 1998 denying his motion for reconsideration, is *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Mendoza, Quisumbing, Buena, and *De Leon, Jr., JJ.*, concur.

SECOND DIVISION

[G.R. No. 124617. April 28, 2000]

PHILIPPINE AEOLUS AUTOMOTIVE UNITED CORPORATION and/or FRANCIS CHUA, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION and ROSALINDA C. CORTEZ,** *respondents.*

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[16] G.R. No. 134171, 18 November 1998, 298 SCRA 736.