



REPUBLIC OF THE PHILIPPINES  
**Sandiganbayan**  
QUEZON CITY

SPECIAL SEVENTH DIVISION

**PEOPLE OF THE PHILIPPINES,**  
Plaintiff,

Crim. Case No. **SB-14-CRM-0364**


-versus-

Present:

**AMAN MISBAC A. DATUMULOK,**  
Accused.

Gomez-Estoesta, J., *Chairperson*  
Trespeses, J., and  
Jacinto, J.\*

Promulgated:

*October 5, 2018* 

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**DECISION**

**GOMEZ-ESTOESTA, J.:**

Instigated by a complaint filed by a brother against his brother, this case involves the procurement of two (2) heavy equipment, *i.e.*, a Volvo dump truck and a Volvo wheel loader, using the proceeds of a loan from the Philippine National Bank. Since the purchase was made without the conduct of a public bidding, it now became the basis of the indictment of former Municipal Mayor of Binidayan, Lanao del Sur, accused Aman Misbac Datumulok, for violation of Sec. 3(e) of R.A. 3019 or the Anti-Graft and Corrupt Practices Act, in an *Information* which reads:

That on or about February 20, 2008, or sometime prior or subsequent thereto, in the Municipality of Binidayan, Lanao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused **AMAN MISBAC DATUMULOK y AMPUAN**, a high ranking public officer, then Mayor of the Municipality of Binidayan, Lanao del Sur, committing the offense in relation to office, taking advantage of his official position, acting with manifest partiality, evident bad faith and or gross inexcusable negligence, did then and there willfully, unlawfully and criminally give unwarranted benefits, advantage or preference to E.B. Ople

\* Per A.O. No. 284-2017 dated August 18, 2017

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Trading (EBOT), by causing the procurement, through Direct Contracting from EBOT, of the following heavy equipment: a) one (1) unit Volvo Dump Truck worth ELEVEN MILLION PESOS (Php11,000,000.00); and b) one (1) unit Volvo Wheel Loader worth NINE MILLION PESOS (Php9,000,000.00), for the aggregate amount of TWENTY MILLION PESOS (Php20,000,000.00), in violation of Republic Act 9184 which requires competitive/public bidding for the said transaction, thus, depriving the Municipality of Binidayan the lowest calculated responsive bid/price for the same quality/brand of equipment, and thereby causing undue injury, damage and prejudice to the said Municipality.

CONTRARY TO LAW.<sup>1</sup>

A Hold Departure Order was issued against accused Datumulok on October 28, 2014,<sup>2</sup> followed by a Warrant of Arrest on December 5, 2014.<sup>3</sup> On January 5, 2014, he posted cash bail for his provisional liberty.<sup>4</sup>

On March 16, 2015, accused Datumulok filed a *Motion to Quash the Information*<sup>5</sup> on the ground that the facts charged do not constitute an offense. He pointed out that only he was charged for an offense which he could not have committed alone. He also argued that while no public bidding was conducted, direct purchase was made from the equipment's exclusive distributor, hence, there was valid resort to alternative methods of procurement. In its *Comment/Opposition*,<sup>6</sup> the prosecution countered that the facts alleged in the *Information* constitute an offense, which accused Datumulok did not even dispute. The grounds alleged in his *Motion to Quash* pertain to his defense, which would be proper during trial. In a *Resolution*<sup>7</sup> dated May 13, 2015, this Court denied accused Datumulok's *Motion to Quash*, stating that it did not raise the proper grounds for a motion to quash, but instead, alleged his defenses.

When arraigned on June 10, 2015, accused Datumulok pleaded not guilty to the charge.<sup>8</sup>

During pre-trial, accused admitted "his personal identity in the Information in SB-14-CRM-0364." The following issues were defined:

#### ISSUES

1. The prosecution proposes the following issue:
  - a. Whether accused Datumulok is guilty of violation of Section 3(e) [of] RA No. 3019 when he caused the purchase of heavy equipment from EB Ople Trading without conducting public/competitive

<sup>1</sup> Records, Vol. 1, pp. 1-2; initially raffled to the Third Division of this Court

<sup>2</sup> *Id.*, pp. 114-145

<sup>3</sup> *Id.*, pp. 132-133

<sup>4</sup> *Id.*, pp. 141-153

<sup>5</sup> *Id.*, pp. 167-170

<sup>6</sup> *Id.*, pp. 171-173

<sup>7</sup> *Id.*, pp. 190-194

<sup>8</sup> *Id.*, pp. 200-202

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bidding, and caused the disbursement of ₱ 20,000,000.00 for this transaction

2. The accused proposes the following issues:
  - a. Whether or not the Municipality of Bindayan has the available Approved Budget for the Contract of purchasing heavy equipment.
  - b. Whether or not the proceeds of the loan of the Municipality of Binidayan before the PNB is credited to the account of the Municipality of Binidayan.
  - c. Whether or not there was an available appropriation for the purchase of the heavy equipment subject of the alleged contract.
  - d. Whether or not the "Loan Agreement" between the Municipality of Binidayan before the PNB has been ratified by the Sangguniang Bayan of Binidayan, Lanao del Sur.
  - e. Whether or not the Municipality of Binidayan directly procured heavy equipment from the EB OPLE Trading.
  - f. Whether or not the Bids and Awards Committee of the Municipality of Binidayan can have a valid bidding without an Approved Budget for the proposed contract of procuring heavy equipment.<sup>9</sup>

This case was re-raffled to the Seventh Division of this Court<sup>10</sup> before trial commenced.

### **EVIDENCE FOR THE PROSECUTION**

The Prosecution presented six (6) witnesses, who testified as follows:

1. **Susan M. Reyes** ["Reyes"], Assistant Manager at the Philippine National Bank (PNB), Credit Control Department,<sup>11</sup> was the custodian of the bank's collateral documents.<sup>12</sup> The parties stipulated on the authenticity and existence<sup>13</sup> of the documents she was directed under a subpoena to bring, namely, a Loan Agreement between the Municipality of Binidayan, Lanao del Sur and the PNB dated February 14, 2008,<sup>14</sup> a Deed of Assignment dated February 14, 2008 between the same parties,<sup>15</sup> and PNB Promissory Note No. 0915 1136 0371 0003 dated February 20, 2008.<sup>16</sup>

<sup>9</sup> Joint Stipulation of Facts and Issues dated November 3, 2015, *Id.*, pp. 251-263; Pre-Trial Order dated February 12, 2016, *Id.*, pp. 274-282

<sup>10</sup> Per Notice of Raffle dated March 18, 2016, pursuant to R.A. 10660, *Id.*, p. 288

<sup>11</sup> TSN dated June 22, 2016, p. 4

<sup>12</sup> *Id.*, p. 18

<sup>13</sup> Order dated June 22, 2016, *Records*, Vol. 1, p. 333

<sup>14</sup> Exhibit "B"

<sup>15</sup> Exhibit "C"

<sup>16</sup> Exhibit "D"

2. **Cynthia A. Molina** ["Molina"], whose testimony was subject of the following stipulations:

- a. That the witness is the Vice President of the Loans Implementation and Servicing Division of the PNB Financial Center since 2009 who exercises supervision and control over the functions of the said office which includes the release of regular loans, collections of payment, issuance of full payment of loans and custodianship of documents in the said division;
- b. That in the course of the performance of her duties, she issued a Certification dated May 13, 2015 marked as Exhibit "I" certifying the full payment by the Municipality of Binidayan of its Php20 Million loan with the Philippine National Bank incurred in February 14, 2008 through accused Datumulok who was then the Mayor of the said Municipality;
- c. That likewise, in the course of the performance of her duty, she issued a certified copy of the Certification dated May 13, 2015 marked as Exhibit "I" which is a faithful reproduction of the original in her custody.<sup>17</sup>

On cross-examination, Molina clarified that it was not her, but the lending unit of the PNB, that was responsible for the approval of the applications for loans. Also, she was not the one who released the loans subject of this case, but was merely called to testify on its full payment.<sup>18</sup>

3. **Proserfina A. Cruz** ["Cruz"], whose testimony was partially subject of the following stipulations:

- a. That Ms. Proserfina A. Cruz has been a bank officer with the Philippine National Bank since November 2006;
- b. That the same witness in 2008 became the Senior Manager for the Export and Import Division of the Philippine National Bank; and
- c. That as part of her duties and responsibilities, she handles the issuance of the letters of credit and the settlement thereof.<sup>19</sup>

In her direct testimony, Cruz explained how letters of credit are issued and used. A letter of credit is a written undertaking by a bank to pay the beneficiary, as instructed by the applicant, a certain amount of money, within a prescribed period, and against stipulated documents.<sup>20</sup> Some sellers require letters of credit as mode of payment. At PNB, an applicant needs to have an approved credit facility to utilize letters of credit, which he could apply for. In this case, the bank settled the municipality's letter of credit by paying the

<sup>17</sup> Order dated June 23, 2016, *id.*, pp. 336-337. The existence and due execution of Exhibit "I" was likewise admitted by the accused

<sup>18</sup> TSN dated June 23, 2016, pp. 9-11

<sup>19</sup> Order dated July 27, 2016, *Records*, Vol. 1, pp. 355-356

<sup>20</sup> TSN dated July 27, 2016 (p.m.), pp. 11-12

beneficiary, E.B. Ople Trading, *i.e.*, by crediting the amount of ₱20 Million to its Account Number 0072-8116447-7, as shown by the credit ticket in E.B. Ople Trading's name dated February 20, 2008.<sup>21</sup> The letter of credit was settled upon E.B. Ople Trading's submission of the sales invoice<sup>22</sup> and delivery receipt.<sup>23</sup>

The credit ticket states "proceeds of LC No. 0072", which is the reference number issued for the account of the Municipality of Binidayan.<sup>24</sup> This means that the proceeds of the P20 Million loan taken by the municipality did not go to, or pass through its account, but were directly credited to the account of E.B. Ople Trading.<sup>25</sup> The credit ticket likewise indicates "Debit LISD", which means that the credit proceeds were taken from the municipality's loan, which was obtained from PNB's Loans Implementation and Servicing Department.<sup>26</sup>

On cross-examination, Cruz explained that another department of the bank takes care of an applicant's compliance with the requirements for the opening of a letter of credit.<sup>27</sup>

4. **Mcmillan Lucman** ["Lucman"], whose testimony was dispensed with, in view of the following stipulations:

- a. That in March 2016, the witness, Mcmillan Lucman, was the Provincial Director of the Office of the Provincial Director Autonomous Region in Muslim Mindanao, Department of Interior and Local Government;
- b. That the witness issued a Certification dated March 22, 2016<sup>28</sup> certifying that based on the records available in his office, Aman Misbac A. Datumulok was elected Mayor from May 2001 to 2004 and was re-elected again for two terms from May 2004 to 2010;
- c. That the witness can identify the said Certification that he issued, including his signature.<sup>29</sup>

5. **Abdullah D. Datumulok** ["Abdullah"] is the full blood brother of accused Datumulok.<sup>30</sup> He was the Municipal Mayor of Binidayan, Lanao del Sur from 2010 up to the time he testified.<sup>31</sup> Prior to that, he was the Municipal Administrator in 2008,<sup>32</sup> having been appointed to such position by

<sup>21</sup> Exhibit "E",

<sup>22</sup> Exhibit "F"

<sup>23</sup> Exhibit "G"; TSN dated July 27, 2016 (p.m.), pp. 12-19. The defense admitted the existence and due execution of Exhibits "E", "F", and "G" – Order dated July 27, 2016, *Records*, Vol. 1, pp. 355-356

<sup>24</sup> TSN dated July 27, 2016 (p.m.), p. 15

<sup>25</sup> *Id.*, pp. 15-16, 26

<sup>26</sup> *Id.*, p. 16

<sup>27</sup> *Id.*, pp. 23-24

<sup>28</sup> Exhibit "EE"

<sup>29</sup> Order dated September 28, 2016, *Id.*, pp. 362-363

<sup>30</sup> Admitted by the defense – TSN dated September 29, 2016 (p.m.), p. 13

<sup>31</sup> Admitted by the defense – *Id.*, p. 12

<sup>32</sup> Admitted by the defense – *Id.*

then mayor, accused Datumulok, in 2001.<sup>33</sup> As such, he was a member of the Bids and Awards Committee,<sup>34</sup> and was tasked with the preparation of invitations to bid and the conduct of pre-conference with potential bidders.<sup>35</sup>

As Municipal Mayor, he considered it his duty to safeguard the funds and properties of the municipality.<sup>36</sup> After assuming such position, he found out from Acmad L. Tabua, OIC Municipal Treasurer, that deductions were being made from the municipality's IRA, which were being used to pay off a loan taken by the former mayor, accused Datumulok, from PNB. The proceeds of the loan were used to buy heavy equipment.<sup>37</sup> He was not aware that such loan was taken until he became mayor of Binidayan, and was never informed of it in his capacity as Municipal Administrator.<sup>38</sup> Consequently, he filed a complaint<sup>39</sup> against his brother, accused Datumulok before the Deputy Ombudsman in Davao City in 2010.<sup>40</sup>

Abdullah identified the municipality's Financial Statement for the year 2010.<sup>41</sup> Accused Datumulok stipulated on the Summary of Loans Payable as of December 31, 2013<sup>42</sup> showing the municipality's payment of ₱20 Million, plus interest in the amount of ₱6,088,540.68.

The procurement of heavy equipment, namely, a *Volvo* wheel loader worth ₱9 Million and a *Volvo* dump truck worth ₱11 Million, however, did not go through public bidding. As a member of the BAC in 2008, he was not aware of the posting of notices or invitations to bid for these equipment.<sup>43</sup> Worse, what was actually purchased was a second-hand TCM Michigan model wheel loader, not a brand new *Volvo*. He had seen the wheel loader when he was still municipal administrator, but he did not know that it was acquired on a loan.<sup>44</sup> Upon canvass,<sup>45</sup> he learned that the Michigan wheel loader acquired by the municipality cost only ₱1,700,000.00, thus, overpriced.<sup>46</sup>

On cross-examination, Abdullah testified that it was accused Datumulok who proposed the acquisition of heavy equipment.<sup>47</sup> He was not aware of the Resolution of the Sangguniang Bayan authorizing him to secure a loan with the PNB for the purchase of such equipment.<sup>48</sup> Having been authorized by the Sangguniang Bayan to file a case for the cancellation of

<sup>33</sup> TSN dated October 19, 2016, p. 4

<sup>34</sup> Admitted by the defense – TSN dated September 29, 2016 (p.m.), p. 13

<sup>35</sup> TSN dated October 19, 2016, p. 10

<sup>36</sup> TSN dated September 29, 2016 (p.m.), p. 16

<sup>37</sup> *Id.*, pp. 39-41, 50

<sup>38</sup> *Id.*, p. 48; TSN dated October 19, 2016, p. 33

<sup>39</sup> Affidavit Complaint dated August 19, 2010, Exhibit "A", with annexes, *i.e.*, Exhibits "B", "Q" (excluded), "FF" and "FF-1" (excluded), "GG" to "II" (excluded), "H" (excluded),

<sup>40</sup> TSN dated September 29, 2016 (p.m.), pp. 16-19, 40

<sup>41</sup> Exhibit "M", TSN dated September 29, 2016, pp. 43-54

<sup>42</sup> Exhibit "J", *id.*, p. 64

<sup>43</sup> TSN dated September 29, 2016 (p.m.), pp. 70-71

<sup>44</sup> *Id.*, p. 77

<sup>45</sup> Quotations marked as Exhibits "GG", "HH", and "II" (excluded)

<sup>46</sup> TSN dated September 29, 2016 (p.m.), pp. 82-88

<sup>47</sup> TSN dated October 19, 2016, p. 4

<sup>48</sup> *Id.*, p. 6

payment to the PNB, Abdullah was also authorized to file an affidavit of Desistance in the case he filed against the PNB officials.<sup>49</sup>

Answering questions from the Court, Abdullah explained that while he became mayor in 2010, amortizations on the loan continued until 2013 because even as he complained to the PNB,<sup>50</sup> he was advised that under the contract signed by former Mayor accused Datumulok, deductions would have to be made on the IRA. He, however, did not communicate with the DBM, who made the deductions from the IRA, to stop payment on the loan.<sup>51</sup>

Despite the fact that he was the Municipal Administrator from 2001 to 2009, or during the incumbency of accused Datumulok as mayor, who was also his full blood brother, he did not have meetings with him, particularly about the construction project, as he was “powerless”. While they discussed some municipality projects like the construction of farm-to-market roads, they never touched on the possibility of acquiring equipment for this purpose. At the time that he was Municipal Administrator, the municipality did not have heavy equipment, and in his nine (9) years as such, he never discussed the need for heavy equipment with his brother, and was never aware of the transaction entered into involving them in 2008. He revealed that he had a conflict with his brother, which was why they never talked about the procurement of heavy equipment in 2008.<sup>52</sup>

6. **Acmad L. Tabua** [“Tabua”] was the Officer-in-Charge (OIC) Municipal Treasurer of Binidayan in 2008, and as such, he was the custodian of the funds of the municipality.<sup>53</sup> As OIC Municipal Treasurer, Tabua also read and studied the Loan Agreement between PNB and the municipality of Binidayan,<sup>54</sup> and signed it as a witness in 2008.<sup>55</sup> The loan was to be paid from the IRA of the municipal government. In connection with such loan, Tabua signed a Deed of Assignment<sup>56</sup> and a Promissory Note.<sup>57</sup>

Accused Datumulok designated Tabua as OIC Municipal Treasurer, and as such, he assumed the position of Bids and Awards Committee (BAC) member,<sup>58</sup> but he had no written designation as such.<sup>59</sup>

When confronted with Sangguniang Bayan Resolution No. 07-032<sup>60</sup> during cross-examination, Tabua testified that he could not recall if he was the treasurer alluded to, upon whose “intercession x x x it [was] know[n] that the [PNB] has been offering loans to local government units for the acquisition

<sup>49</sup> *Id.*, pp. 13, 17

<sup>50</sup> As authorized under SB Resolution No. 10-010, series of 2010, Exhibit “Q” (excluded)

<sup>51</sup> TSN dated September 29, 2016 (p.m.), pp. 65-67

<sup>52</sup> TSN dated October 19, 2016, pp. 24-30

<sup>53</sup> As admitted by the defense, TSN dated October 20, 2016, pp. 12-13

<sup>54</sup> TSN dated October 20, 2016, pp. 26-28

<sup>55</sup> *Id.*, pp. 22-24

<sup>56</sup> Exhibit “C”

<sup>57</sup> Exhibit “D”; TSN dated October 20, 2016, pp. 28-33

<sup>58</sup> TSN dated October 20, 2016, pp. 21, 33-34

<sup>59</sup> *Id.*, pp. 69-71

<sup>60</sup> Exhibit “1”

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of light and heavy equipment, infrastructure projects and other forms of loan assistance,” as his name was not mentioned.<sup>61</sup> At that time, the municipality did not have sufficient funds to buy heavy equipment, and needed to apply for a loan in order to acquire these. The proceeds of the loan granted by PNB were not credited to the account of the municipal government but were credited directly to E.B. Ople Trading,<sup>62</sup> and he had no participation in its disbursement.<sup>63</sup> The municipality fully paid the loan.<sup>64</sup>

Tabua recalled having executed a Counter-Affidavit during preliminary investigation before the Office of the Ombudsman,<sup>65</sup> wherein he stated that there was no competitive bidding for the heavy equipment. He clarified that he based this conclusion on the certification of exclusive distributorship issued by Civic Merchandising, Inc.

The Prosecution proceeded to offer the following documents:<sup>66</sup>

Exhibit	Document
“A”	Affidavit-Complaint of Abdullah Datumulok dated August 19, 2010
“B”	Loan Agreement between the Municipality of Binidayan and PNB dated February 14, 2008
“C”	Deed of Assignment between the Municipality of Binidayan and PNB dated February 14, 2008
“D”	PNB Promissory Note dated February 20, 2008
“E”	PNB Credit Approval issued to EB Ople Trading dated February 20, 2008
“F”	EB Ople Trading Sales Invoice No. 8988 dated February 20, 2008
“G”	EB Ople Trading Delivery Receipt No. 4345 dated February 20, 2008
“H”	Certification of Achmad Mulok dated August 5, 2010
“I”	PNB Certification dated May 13, 2015
“J”	Summary of Loans Payables as of December 31, 2013
“K”	Statement of Cash Flows of the Municipality of Binidayan as of December 31, 2008
“L”	Financial Statement of the Municipality of Bindayan as of December 31, 2008
“M”	Financial Statement of the Municipality of Binidayan for the year ended December 31, 2010
“N”	Financial Statement of the Municipality of Binidayan for the year ended December 31, 2011
“O”	Financial Statement of the Municipality of Binidayan for the year ended December 31, 2012
“P”	Financial Statement of the Municipality of Binidayan for the year ended December 31, 2013
“Q”	Municipal Resolution 10-010
“EE”	Certification of McMillan Lucman dated March 22, 2016
“FF” and “FF-1”	Pictures of wheel loader Michigan model
“GG” to “II”	Price quotations from Go To Surplus, Inc., C-One Trading Corp. and Magnetic Transport Surplus Corp.

<sup>61</sup> TSN dated October 20, 2016, pp. 44-47

<sup>62</sup> TSN dated October 20, 2016, pp. 75-77; as admitted by the defense, *id.*, p. 18

<sup>63</sup> *Id.*, pp. 76-77

<sup>64</sup> *Id.*, p. 75

<sup>65</sup> Exhibit “18”, TSN dated October 20, 2016, pp. 105-107

<sup>66</sup> Formal Offer of Evidence dated April 21, 2017, *Records*, Vol. 2, pp. 32-297

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In its *Resolution* dated July 5, 2017,<sup>67</sup> this Court admitted only Exhibits “A”, “B”, “C”, “D”, “F”, “G”, “I”, “J”, “K”, “L”, “M”, “N”, “O”, “P”, and “EE”, and excluded Exhibits “Q”, “H”, “FF”, “FF-1”, “GG”, “HH”, and “II”. The prosecution’s *Motion for Partial Reconsideration*<sup>68</sup> of the Resolution was denied.<sup>69</sup>

### EVIDENCE FOR THE ACCUSED

In his defense, accused Datumulok presented three (3) witnesses, who testified by Judicial Affidavit, as follows:

1. **Jamal Mangotara** [“Mangotara”],<sup>70</sup> was elected Municipal Councilor of Binidayan during the 2007 elections, and was thus a member of the Sangguniang Bayan. He was among those who attested to Resolution No. 07-032,<sup>71</sup> which gave authority to accused Datumulok to enter into a contract of loan with PNB, as well as Resolution No. 08-11,<sup>72</sup> which ratified the Loan Agreement signed by accused Datumulok, as required by the PNB.<sup>73</sup>

In Resolution No. 07-032, it was mentioned that “upon the intercession of the *Municipal Treasurer*, [it was known] that the PNB has been offering loans to local government units for the acquisition of light and heavy equipment, infrastructure projects and other forms of loan assistance.” Mangotara identified Acmad Tabua as the municipal treasurer who made this intercession. Part of the undertaking under the same Resolution was also for Tabua to “draw checks monthly against [the municipality’s] IRA deposit account with the PNB/DBP/PVB for deposit to their account with the PNB, until the loan is fully paid.”<sup>74</sup>

Mangotara explained that the municipality entered into the Loan Agreement with PNB as it had no available budget to acquire heavy equipment to construct and repair farm-to-market roads and maintain existing roads and other projects. The Sanggunian, in Resolution No. 07-032, specified that what was to be acquired was equipment from the Volvo/Civic Company. The Loan was later ratified, and during the discussions in said ratification, the matter of competitive public bidding was broached. However,

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<sup>67</sup> *Id.*, pp. 308-310

<sup>68</sup> *Id.*, pp. 315-321

<sup>69</sup> Resolution dated September 7, 2017, *Id.*, pp. 340-343

<sup>70</sup> The same Jamal Mangotara Pangandaman who signed the two resolutions of the Sangguniang Bayan (Exhibits “1” and “3”). His real name is Jamal Pangandaman Mangotara, but his middle name and surname were interchanged in the SB Resolutions – TSN dated November 20, 2017, pp. 8-10

<sup>71</sup> Exhibit “1”

<sup>72</sup> Exhibit “3”

<sup>73</sup> Judicial Affidavit dated November 9, 2017, *Records*, Vol. 2, pp. 357-366, Q&A Nos. 4-8

<sup>74</sup> *Id.*, Q&A No. 10

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as already agreed in the Loan Agreement with PNB, what was required was a certificate of exclusive distributorship of the equipment to be procured.<sup>75</sup>

On cross-examination, Mangotara confirmed that the procurement of the *Volvo* dump truck and *Volvo* wheel loader did not go through the process of public bidding, but were instead procured through direct contracting.<sup>76</sup> This was because there was no funding for these, and “there was only one company who went to the municipality”.<sup>77</sup>

2. **Enserah Olama** [“Olama”] was the Municipal Budget Officer of the Municipality of Binidayan from 2002 to 2010. As such, she read the Budget Ordinance for 2008, and knew that there was no provision therein on an Annual Investment Plan for the acquisition of heavy equipment, or any funds intended for said purpose. The Budget Ordinance is usually kept in the Office of the Budget Officer, but she did not know where to find a copy of the Budget Ordinance for 2008 as Abdullah Datumulok and his men forcibly took over the municipal hall and took documents and other government properties when he was still a candidate for mayor in 2010.<sup>78</sup>

3. **Aman Misbac Datumulok** [“accused Datumulok”] was the Municipal Mayor of Binidayan, Lanao del Sur from 2002 to 2010.<sup>79</sup>

Accused Datumulok claimed that the charge against him was baseless because as Municipal Mayor, he could not enter into any agreement in behalf of the municipality without the authorization of the Sangguniang Bayan. The acquisition of the *Volvo* dump truck and *Volvo* wheel loader was the official act of the Sangguniang Bayan<sup>80</sup> and he was merely authorized to enter into a Loan Agreement with the PNB<sup>81</sup> to finance such purchase.<sup>82</sup>

Under the Loan Agreement, the proceeds of the loan were to be used to finance the acquisition of two (2) heavy equipment for the use of the municipality, namely: a *Volvo* wheel loader and a *Volvo* dump truck, which were to be supplied by E.B. Ople Trading.<sup>83</sup> It was PNB that directly paid E.B. Ople Trading, the exclusive supplier of said heavy equipment,<sup>84</sup> which he merely received.<sup>85</sup>

Accused Datumulok added that he was not the one who conducted competitive bidding as charged in the *Information*, but the municipal government, where he was merely the authorized agent. Further, the

<sup>75</sup> Judicial Affidavit dated November 9, 2017, Q&A Nos. 9-14

<sup>76</sup> TSN dated November 20, 2017, pp. 11-12

<sup>77</sup> *Id.*, p. 13

<sup>78</sup> Judicial Affidavit dated November 7, 2017, *Records*, Vol. 2, pp. 353-355, Q&A Nos. 5-10

<sup>79</sup> Judicial Affidavit dated November 7, 2017, *Records*, Vol. 2, pp. 367-399, Q&A No. 3

<sup>80</sup> Resolution No. 07-032 dated November 12, 2007, Exhibit “1”

<sup>81</sup> Exhibit “2”

<sup>82</sup> Judicial Affidavit dated November 7, 2017, *Records*, Vol. 2, pp. 367-399, Q&A Nos. 7-10

<sup>83</sup> *Id.*, Q&A No. 16

<sup>84</sup> Certification issued by Alfredo Palces, Exhibit “7”

<sup>85</sup> Judicial Affidavit dated November 7, 2017, *Records*, Vol. 2, pp. 367-399, Q&A Nos. 13-16

municipality had no approved budget for the procurement of heavy equipment, and it would be “awkward” to call for a competitive bidding.<sup>86</sup>

The municipality complied with all the conditions imposed by the PNB for the grant of the loan, namely: a Resolution<sup>87</sup> approved by at least two-thirds (2/3) of the Sanggunian authorizing the mayor to negotiate and enter into a contract of loan and mortgage with the PNB, and another Resolution<sup>88</sup> ratifying the documents signed by the Mayor and other documents in the implementation of the loan.<sup>89</sup>

Accused Datumulok explained that the documents he presented were merely certified copies as private complainant Abdullah Datumulok, his brother, took control of the offices in the municipal hall even before he was elected mayor, and was still the Municipal Administrator. In fact, he has been charged with robbery and a warrant of arrest<sup>90</sup> has been issued against him.<sup>91</sup>

On cross-examination, accused Datumulok confirmed that he was the Chief Executive of the Municipality of Binidayan when the heavy equipment was procured. He was authorized by the Sangguniang Bayan to enter into a loan with PNB, which he signed as Municipal Mayor. There was no public bidding conducted on said procurement.<sup>92</sup> It was actually PNB that purchased the heavy equipment under the Loan Agreement.<sup>93</sup>

Accused Datumulok then offered the following documents:<sup>94</sup>

Exhibit	Document
“1”	Sangguniang Bayan Resolution No. 07-032, series of 2007 dated November 12, 2007
“2”	Loan Agreement between the Municipality of Binidayan and PNB dated February 14, 2008 (Exhibit “B”)
“3”	Sangguniang Bayan Resolution No. 08-011, series of 2008 dated February 15, 2008 (also Exhibit “18-c”)
“4”	PNB Credit Approval issued to EB Ople Trading dated February 20, 2008 (Exhibit “E”)
“5”	EB Ople Trading Sales Invoice No. 8988 dated February 20, 2008 (Exhibit “F”)
“6”	EB Ople Trading Delivery Receipt No. 4345 dated February 20, 2008 (Exhibit “G”)
“7”	Certification issued by the Civic Merchandising Inc. dated February 1, 2008 (also Exhibit “18-d”)
“14”	Warrant of Arrest in Crim. Case No. 11-848 before Branch 11 of the RTC of Lanao del Sur
“17” and “17-A”	Official Receipt Nos. 7878025B and 7878431B dated October 5, 2015
“18”	Counter-Affidavit of Acmad L. Tabua dated November 8, 2010

<sup>86</sup> *Id.*, Q&A No. 13

<sup>87</sup> Exhibit “1”

<sup>88</sup> Resolution No. 08-011 dated February 15, 2008, Exhibit “3”

<sup>89</sup> *Id.*, Q&A Nos. 17-19

<sup>90</sup> Crim. Case No. 11-848 before Branch 11 of the RTC of Lanao del Sur, Exhibit “14”

<sup>91</sup> *Id.*, Q&A Nos. 21-24

<sup>92</sup> TSN dated November 20, 2017, pp. 25-27

<sup>93</sup> *Id.*, p. 28

<sup>94</sup> Offer of Exhibits for the Accused dated January 27, 2018, *Records*, Vol. 2, pp. 415-445

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This Court admitted all the exhibits offered by accused Datumulok.<sup>95</sup> With the filing of the parties' respective *Memoranda*,<sup>96</sup> this case is now submitted for Decision.

### **THE COURT'S RULING**

Accused Datumulok has been charged with violation of Sec. 3(e) of R.A. 3019, which provides:

**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.

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(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.

To be found guilty under said provision, the following elements must concur:

- (1) the offender is a public officer;
- (2) the act was done in the discharge of the public officer's official, administrative or judicial functions;
- (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and
- (4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.<sup>97</sup>

Accused Datumulok was charged as Municipal Mayor of Binidayan, Lanao del Sur, having allegedly procured the subject heavy equipment without the requisite public bidding.

<sup>95</sup> Resolution dated March 20, 2018, *Id.*, pp. 454-456

<sup>96</sup> Memorandum for the Prosecution dated May 22, 2018, *Id.*, pp. 465-483; Memorandum for the Accused dated May 31, 2018, *Id.*, pp. 484-502

<sup>97</sup> *Sison v. People*, G.R. Nos. 170339, 170398-403, March 9, 2010.

There is no dispute as to the first element. In fact, in his Judicial Affidavit, accused Datumulok testified that he was the “former Municipal Mayor of Binidayan, Lanao del Sur from the Year 2002 up to Year 2010.”<sup>98</sup> As Municipal Mayor, he was a public officer discharging administrative and official functions.<sup>99</sup>

There is likewise no dispute that no public bidding was conducted in the procurement of the subject heavy equipment. Accused Datumulok’s defenses center on why public bidding was not required in the procurement of the subject heavy equipment. The validity of the purchase of these heavy equipment without public bidding will be discussed in conjunction with the existence of the three other elements.

***The Volvo dump truck and Volvo wheel loader were unlawfully procured directly from E.B. Ople Trading.***

The Local Government Code provides the general rule that acquisition of supplies by local government units shall be through competitive public bidding, viz:

*Section 356. General Rule in Procurement or Disposal.* – Except as otherwise provided herein, acquisition of supplies by local government units shall be through competitive public bidding. Supplies which have become unserviceable or no longer needed shall be sold, whenever applicable, at public auction, subject to applicable rules and regulations.

This is consistent with R.A. 9184, or the Government Procurement Reform Act, which provides:

*Section 10. Competitive Bidding.* — All Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act.

The following are the exceptions to competitive public bidding:

Local Government Code	R.A. 9184
<i>Section 366. Procurement Without Public Bidding.</i> — Procurement of supplies may be made without the benefit of public bidding under any of the following modes:	<i>Section 48. Alternative Methods.</i> — Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in this Act, the Procuring Entity may, in order to promote

<sup>98</sup> Judicial Affidavit of Aman Misbac Datumulok, *Records*, Vol. 2, p. 368, Q&A No. 3

<sup>99</sup> *Cf. Ong v. People*, G.R. No. 176546, September 25, 2009

<p>(a) Personal canvass of responsible merchants;</p> <p>(b) Emergency purchase;</p> <p>(c) Negotiated purchase;</p> <p>(d) Direct purchase from manufacturers or exclusive distributors; and</p> <p>(e) Purchase from other government entities.</p>	<p>economy and efficiency, resort to any of the following alternative methods of Procurement:</p> <p>(a) Limited Source Bidding, otherwise known as Selective Bidding — a method of Procurement that involves direct invitation to bid by the Procuring Entity from a set of pre-selected suppliers or consultants with known experience and proven capability relative to the requirements of a particular contract;</p> <p>(b) Direct Contracting, otherwise known as Single Source Procurement — a method of Procurement that does not require elaborate Bidding Documents because the supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale, which offer may be accepted immediately or after some negotiations;</p> <p>(c) Repeat Order — a method of Procurement that involves a direct Procurement of Goods from the previous winning bidder, whenever there is a need to replenish Goods procured under a contract previously awarded through Competitive Bidding;</p> <p>(d) Shopping — a method of Procurement whereby the Procuring Entity simply requests for the submission of price quotations for readily available off-the-shelf Goods or ordinary/regular equipment to be procured directly from suppliers of known qualification; or</p> <p>(e) Negotiated Procurement — a method of Procurement that may be resorted under the extraordinary circumstances provided for in Section 53 of this Act and other instances that shall be specified in the IRR, whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant.</p> <p>In all instances, the Procuring Entity shall ensure that the most advantageous price for the government is obtained.</p>
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*[Handwritten signature]*

Accused Datumulok alleges that there was valid resort to direct contracting as an alternative method of procurement, since it was clear that the heavy equipment to be procured **should be** from the *Volvo/Civic* company, of which E.B. Ople Trading was the exclusive distributor. In fact, this was specified in Resolution No. 07-032<sup>100</sup> authorizing him to enter into a loan agreement with PNB, and the Loan Agreement itself.<sup>101</sup>

That the equipment in this case, *i.e.*, *Volvo* heavy equipment, were exclusively distributed by one supplier, is of no moment. In fact, in the procurement of goods, reference to brand names is not even allowed. Ironically, accused Datumulok's defense in itself amounts to a violation of procurement laws. Article VI of R.A. 9184 provides:

*Section 18. Reference to Brand Names.* – Specifications for the Procurement of Goods shall be based on relevant characteristics and/or performance requirements. **Reference to brand names shall not be allowed.**

From the start, the procurement intended by the municipality could not have passed the procedure required by law, but obviously, this does not mean that it did not have to. If the intent was to procure a dump truck and a wheel loader, it should have been done through competitive public bidding based only on allowed specifications, not brand names. Instead, competitive public bidding was dispensed with, and the *Volvo* heavy equipment was purchased directly from E.B. Ople Trading.

Accused Datumulok distances himself from the transaction, claiming that he was merely authorized by the Sangguniang Bayan to enter into a loan agreement with PNB for the purchase of heavy equipment from the *Volvo/Civic* company. Under Resolution No. 07-032:<sup>102</sup>

WHEREAS, it was deliberately approved that (*sic*) not to acquire and/or purchase the light and heavy equipments (*sic*) with its previous supplier and purchase with any reputable heavy equipment supplier in Manila, **particularly with the VOLVO/CIVIC Company**, with the approval of Philippine National Bank (PNB) for the acquisition of light and heavy equipments, (*sic*) infrastructure projects and other forms of loan assistance; x x x (emphasis supplied)

While it is true that it was the Sangguniang Bayan that authorized accused Datumulok to enter into the Loan Agreement with PNB, which, in turn, was to finance the purchase of *Volvo* heavy equipment, this mere authorization does not instill validity into an otherwise invalid procurement.

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<sup>100</sup> Exhibit "1"

<sup>101</sup> Exhibit "B" / "2"

<sup>102</sup> Exhibit "1"

As the Supreme Court explained in *Land Bank of the Philippines v. Cacayuran*.<sup>103</sup>

A careful perusal of Section 444 (b) (1) (vi) of the LGC shows that while the authorization of the municipal mayor need not be in the form of an ordinance, the obligation which the said local executive is authorized to enter into must be made pursuant to a law or ordinance, viz.:

Sec. 444. The Chief Executive: Powers, Duties, Functions and Compensation. —

xxx xxx xxx

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall:

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(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**;

In the present case, while Mayor Eriguell's authorization to contract the Subject Loans was not contained — as it need not be contained — in the form of an ordinance, the said loans and even the Redevelopment Plan itself *were not approved pursuant to any law or ordinance but through mere resolutions*. The distinction between ordinances and resolutions is well-perceived. While ordinances are laws and possess a general and permanent character, resolutions are merely declarations of the sentiment or opinion of a lawmaking body on a specific matter and are temporary in nature. 39 As opposed to ordinances, "no rights can be conferred by and be inferred from a resolution." In this accord, it cannot be denied that the SB violated Section 444 (b) (1) (vi) of the LGC altogether. (boldface and underscoring in the original; italics supplied)

The Sangguniang Bayan's authorization given to accused Datumulok to take a loan for purposes of purchasing equipment from "the Volvo/Civic company" was made **contrary** to laws requiring a competitive public bidding **and** proscribing the reference to brand names in the procurement of supplies. The Sangguniang Bayan could not have validly given authority to do what the law does not allow.

Pursuant to Sangguniang Bayan Resolution No. 07-032, accused Datumulok entered into a Loan Agreement with PNB,<sup>104</sup> which provides:

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<sup>103</sup> G.R. No. 191667, April 17, 2013

<sup>104</sup> Exhibit "B" / "2"



**SECTION 1. TERMS OF THE LOAN**

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(c) The proceeds of the Loan shall be used by the Borrower exclusively to finance the acquisition of the equipment, more particularly described as follows (the "Heavy Equipment"):

- i. One (1) unit brand new Volvo Dump Truck  
Model: FM9 6x4  
Engine: Volvo D9B340  
Engine Power Output: 340HP @ 1900 RPM  
Capacity: 13.5 m3  
Transmission: In-line, 6 cylinder, direct injected, turbo charged and intercooler  
Supplier/Distributor: E.B. Ople Trading  
No. 105 Congressional Road,  
Maderam, GMA Cavite  
Unit Price: CIF Balabagan **P11,000,000.00**
  
- ii. One (1) unit brand new Volvo Wheel Loader  
Model: L60D  
Engine: Volvo D6DLCE2  
Type: 6-cylinder, turbo charged  
Engine Power Output: 90KW/122HP @ 1700RPM  
Transmission: Low emission diesel engine step 2 Aircooled intercooler and electronically fuel injected  
Bucket Capacity: 1.8 cu. Meters  
Dumping clearance: 3,050 meters  
Supplier/Distributor: E.B. Ople Trading  
No. 105 Congressional Road,  
Maderam, GMA Cavite  
Unit Price: CIF Balabagan **P9,000,000.00**

**TOTAL P20,000,000.00**

E.B. Ople Trading was selected as supplier of the *Volvo* heavy equipment pursuant to the Certification issued by Civic Merchandising, Inc., the exclusive distributor of Volvo Construction Equipment, appointing it as its authorized distributor in the municipality.<sup>105</sup> Accused Datumulok alleges that direct contracting with E.B. Ople Trading was in order on the strength of this certification.

On direct contracting, the Local Government Code and R.A. 9184 provide:

Local Government Code	R.A. 9184
Section 371. <i>Procurement from Exclusive Philippine Agents or Distributors.</i> - Procurement may, in the case of supplies of foreign origin, preferably be made directly from the exclusive or reputable Philippine distributors or agents, subject to the following conditions:	Section 50. <i>Direct Contracting.</i> - Direct Contracting may be resorted to only in any of the following conditions:  a. Procurement of Goods of propriety nature, which can be obtained only from the propriety source, i.e. when patents,

<sup>105</sup> Exhibit "7"

<p>(a) That the Philippine distributor has no subdealers selling at lower prices; and</p> <p><b>(b) That no suitable substitutes or substantially the same quality are available at lower prices.</b></p>	<p>trade secrets and copyrights prohibit others from manufacturing the same items;</p> <p>b. When the Procurement of critical components from a specific manufacturer, supplier, or distributor is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions his contract; or,</p> <p>c. Those sold by an exclusive dealer or manufacturer, which does not have subdealers selling at lower prices and for which <b>no suitable substitute can be obtained at more advantageous terms to the government.</b></p>
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The Certification states that (a) Civic Merchandising, Inc. was the exclusive distributor of *Volvo* Construction Equipment; and (b) E.B. Ople Trading was its authorized distributor in the province of Lanao Del Sur, among others. While Civic Merchandising, Inc., through E.B. Ople Trading, was the exclusive distributor of the items intended to be procured, *i.e.*, the *Volvo dump truck* and *Volvo wheel loader*, there was no proof that other than *Volvo*, there was no other brand of dump truck and wheel loader that could be obtained at more advantageous terms to the government as suitable substitutes thereto. A *suitable substitute* refers to that kind of article which would serve substantially the same purpose or produce substantially the same results as the brand, type, or make of article originally desired or requisitioned.<sup>106</sup>

That the municipality specified *Volvo heavy equipment* from the very start only showed that suitable substitutes thereto were never even considered. Civic Merchandising, Inc. / E.B. Ople Trading could be *Volvo's* exclusive dealer, but there is no proof that it was the exclusive dealer of all kinds of dump trucks and wheel loaders that could serve the same purpose. Thus, there was improper resort to direct contracting as an alternative mode of procurement.

***The lack of appropriation and funds for the Volvo heavy equipment does not dispense with the requirement of competitive public bidding.***

Another reason put forward by accused Datumulok in dispensing with public bidding is that there was no appropriation for the heavy equipment, which is precisely why they had to take a loan. R.A. 9184 required an Approved Budget for the Contract for purposes of competitive bidding, so

<sup>106</sup> Sec. 357(b), Local Government Code

*bid*

without an approved budget for the contract, they could not have conducted competitive bidding.

Again, accused Datumulok invokes the municipality's inability to comply with the rules on procurement as an exception from so complying. Indeed, under R.A. 9184, no government procurement shall be undertaken unless it is in accordance with the approved Annual Procurement Plan of the Procuring Entity.<sup>107</sup> The Local Government Code also provides:

*Section 344. Certification, and Approval of, Vouchers.* – No money shall be disbursed unless the local budget officer certifies to the existence of appropriation that has been legally made for the purpose, the local accountant has obligated said appropriation, and the local treasurer certifies to the availability of funds for the purpose. Vouchers and payrolls shall be certified to and approved by the head of the department or office who has administrative control of the fund concerned, as to validity, propriety, and legality of the claim involved. Except in cases of disbursements involving regularly recurring administrative expenses such as payrolls for regular or permanent employees, expenses for light, water, telephone and telegraph services, remittances to government creditor agencies such as GSIS, SSS, LDP, DBP, National Printing Office, Procurement Service of the DBM and others, approval of the disbursement voucher by the local chief executive himself shall be required whenever local funds are disbursed.

This notwithstanding, the Local Government Code also provides for the power of local government units to create indebtedness and to enter into credit and other financial transactions.<sup>108</sup> Relevant to this case, it provides:

*Section 298. Deferred-Payment and other Financial Schemes.* – Provincial, city and municipal governments may likewise acquire property, plant, machinery, equipment, and such necessary accessories under a supplier's credit, deferred payment plan, or either financial scheme.

The Approved Budget for the Contract is a necessary bidding document<sup>109</sup> consistent with the rule that all procurement should be within the approved budget of the Procuring Entity.<sup>110</sup> The absence of an approved budget does not negate the purpose of a public bidding as a mode of awarding government contracts, which is to ensure that the people get maximum benefits and quality services from the contracts.<sup>111</sup> This remains imperative whether a project is to be funded under a loan or under an approved budget. Consequently, accused Datumulok had no basis to conclude that no public

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<sup>107</sup> Sec. 7, R.A. 9184

<sup>108</sup> Book II, Title IV, Local Government Code

<sup>109</sup> Sec. 17(a), R.A. 9184

<sup>110</sup> Sec. 7, R.A. 9184

<sup>111</sup> *Manila International Airport Authority, et al. v. Olongapo Maintenance Services, Inc., et al.*, G.R. Nos. 146184-85, 161117 & 167827, January 31, 2008

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bidding was necessary just because the municipality had to take a loan to purchase *Volvo* heavy equipment.

In fact, under the Rules and Regulations Implementing the Local Government Code of 1991:

*Article 396. Deferred-Payment and Other Financial Schemes.* — Provinces, cities, and municipalities may likewise acquire property, plant, machinery, equipment, and such necessary accessories under a supplier's credit, deferred payment plan, or other financial schemes **under the following conditions:**

(a) **That the acquisition of such equipment, machinery, and their accessories shall be governed by the pertinent provisions of Rule XXXV of these Rules, whether such items are to be supplied or purchased from a local or foreign supplier; and**

(b) That the local chief executive, through a sanggunian resolution, is authorized to negotiate the contract executed under the deferred payment scheme.

Rule XXXV, in turn, provides for Local Government Supply and Property Management, which restates the mandate that the acquisition of supplies by LGUs **shall be through competitive public bidding**, except as otherwise provided.<sup>112</sup> As discussed above, the procurement of a dump truck and wheel loader should have been done through public bidding; instead, there was an unwarranted resort to direct contracting in the procurement of *Volvo* heavy equipment.

Accused Datumulok went as far as to posit that it was not the municipality, but PNB, that directly paid E.B. Ople Trading for the *Volvo* heavy equipment, practically attributing the procurement to PNB instead of the municipality. Under the Loan Agreement with PNB, the proceeds of the loan never passed the hands of the municipality, but were directly credited to E.B. Ople Trading's account. This is a strained argument. Notwithstanding the manner of release of the proceeds of the loan, ultimately, it was a loan taken by the municipality from PNB, to procure the *Volvo* heavy equipment, which the municipality eventually paid using government funds.<sup>113</sup>

Finally, the power of local governments to create indebtedness and to enter into credit and other financial transactions is governed by the following:

Section 296. General Policy. -

(a) It shall be the basic policy that any local government unit may create indebtedness, and avail of credit facilities to finance local infrastructure and other socio-economic development projects **in accordance with the approved local development plan and public investment program.**

<sup>112</sup> RULE XXXV, Art. 429, Rules and Regulations Implementing the Local Government Code of 1991

<sup>113</sup> Exhibit "I"

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(b) A local government unit may avail of credit lines from government or private banks and lending institutions for the purpose of stabilizing local finances.

A perusal of Resolution No. 07-032 would suggest that the municipality took the loan from PNB when it learned that it was offering loans to local government units, and not pursuant to approved local development plan and public investment program. Accused Datumulok failed to present the municipality's local development plan, which would necessitate the procurement of the subject heavy equipment on credit. Neither was this mentioned in the Sangguniang Bayan Resolutions and the Loan Agreement with the PNB.

***Unwarranted benefits were given to E.B. Ople Trading as supplier of the procured Volvo heavy equipment.***

Under the *Information*, accused Datumulok was charged with violation of Sec. 3(e) of R.A. 3019 by *giving unwarranted benefits, advantage or preference* to E.B. Ople Trading by causing the procurement, through Direct Contracting from E.B. Ople Trading, of one Volvo Dump Truck (worth ₱11,000,000.00) and one Volvo Wheel Loader (worth ₱9,000,000.00), *causing undue injury, damage and prejudice* to the said Municipality of Binidayan, Lanao del Sur.

The Supreme Court has consistently held that there are two ways by which a public official violates Section 3(e) of R.A. No. 3019 in the performance of his functions, namely: (1) by causing undue injury to any party, including the Government; or (2) by giving any private party any unwarranted benefit, advantage or preference. The accused may be charged under either mode or both. The disjunctive term "or" connotes that either act qualifies as a violation of Section 3(e) of R.A. No. 3019.<sup>114</sup>

The word "unwarranted" means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another. In order to be found guilty under the second mode, it suffices that the accused has given **unjustified favor or benefit to another**, in the exercise of his official, administrative or judicial functions.<sup>115</sup>

<sup>114</sup> *Rivera v. People*, G.R. Nos. 156577, 156587 & 156749, December 3, 2014

<sup>115</sup> *Sison v. People*, G.R. Nos. 170339, 170398-403, March 9, 2010

A competitive public bidding aims to protect public interest by giving it the best possible advantages thru open competition. It is precisely the mechanism that enables the government agency to avoid or preclude anomalies in the execution of public contracts.<sup>116</sup> It has been held that the three principles in public bidding are: (1) the offer to the public; (2) an opportunity for competition; and (3) a basis for the exact comparison of bids. A regulation of the matter which excludes any of these factors destroys the distinctive character of the system and thwarts the purpose of its adoption.<sup>117</sup>

In *Sison v. People*,<sup>118</sup> the Supreme Court ruled that the improper conduct of personal canvass, as an alternative mode of procurement, resulted in unwarranted benefit, advantage or preference being given to the suppliers. It explained:

In order to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions. Petitioner did just that. The fact that he repeatedly failed to follow the requirements of RA 7160 on personal canvass proves that unwarranted benefit, advantage or preference was given to the winning suppliers. **These suppliers were awarded the procurement contract without the benefit of a fair system in determining the best possible price for the government. The private suppliers, which were all personally chosen by respondent, were able to profit from the transactions without showing proof that their prices were the most beneficial to the government.** For that, petitioner must now face the consequences of his acts. (emphasis supplied)

The same is true in this case, where, from the very start, the municipality resolved to purchase a *Volvo* dump truck and a *Volvo* wheel loader to the exclusion of every other brand of dump truck and wheel loader. Since it appears that E.B. Ople Trading was the exclusive distributor of these *Volvo* heavy equipment, its selection as supplier was likewise to the exclusion of every other supplier of all these other brands. Unfortunately, none of these suppliers were given the opportunity to offer their bids to supply these items at a price most advantageous to the government because their procurement was never subject of competitive public bidding. Moreover, direct contracting was resorted to without showing that there was no suitable substitute for these items. Simply put, **E.B. Ople Trading never had to offer the most advantageous bid** in order to be awarded the contract to supply the subject heavy equipment. E.B. Ople Trading was the **only** option from the very beginning, just because it was the exclusive distributor of the *Volvo* heavy equipment that the municipality wanted, and not because compared to other suppliers' offers, it had the most beneficial one.

<sup>116</sup> *Rivera v. People*, G.R. Nos. 156577, 156587 & 156749, December 3, 2014

<sup>117</sup> *Power Sector Assets and Liabilities Management Corporation v. Pozzolanac Philippines Incorporated*, G.R. No. 183789, August 24, 2011

<sup>118</sup> G.R. Nos. 170339, 170398-403, March 9, 2010

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All three principles of public bidding were disregarded in choosing E.B. Ople Trading as the supplier of the subject heavy equipment. Certainly, the possibility of procuring these supplies at lower prices from a different supplier cannot be ruled out. It is thus clear that E.B. Ople Trading, having profited from its anomalous selection as supplier, was given unwarranted benefit and preference over all other potential suppliers that could have made a better offer to the municipality.

Accused Datumulok has likewise been charged with causing undue injury to the government. According to the prosecution, instead of the *Volvo* dump truck and *Volvo* wheel loader procured at excessively high prices, accused Datumulok actually procured a second-hand TCM Michigan wheel loader worth only ₱1,700,000.00.

Undue injury in the context of Section 3(e) of R.A. No. 3019 should be equated with that civil law concept of "actual damage." Unlike in actions for torts, undue injury in Sec. 3(e) cannot be presumed even after a wrong or a violation of a right has been established. Its existence must be proven as one of the elements of the crime. In fact, the causing of undue injury, or the giving of any unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence constitutes the very act punished under this section. **Thus, it is required that the undue injury be specified, quantified and proven to the point of moral certainty.**<sup>119</sup>

While the possibility of obtaining the subject heavy equipment at lower prices has never been foreclosed in view of the failure to conduct public bidding, there is no proof on the extent of actual damage to the government caused by the direct purchase of the equipment from E.B. Ople Trading.

The prosecution evidence itself shows the actual delivery of the *Volvo* heavy equipment. As testified by prosecution witness Proserfina Cruz, the letter of credit was settled upon E.B. Ople Trading's submission of the sales invoice<sup>120</sup> and delivery receipt.<sup>121</sup> These documents show that the *Volvo* heavy equipment subject of the Loan Agreement have been delivered, thus prompting the release of the loan proceeds to the municipality.

As discussed, public bidding was not conducted; neither was it proven that there were no suitable substitutes for the equipment procured, to warrant resort to direct contracting with E.B. Ople Trading. Undue injury in this case would be the amount that the government paid, above the amount that it should have paid, under a valid procurement, for a dump truck and a wheel loader.

To quantify the undue injury suffered by the government, the price of the equipment that could have been procured through public bidding or the price of the subject equipment's suitable substitutes should have been proven,

<sup>119</sup> *Rivera v. People*, G.R. Nos. 156577, 156587 & 156749, December 3, 2014

<sup>120</sup> Exhibit "F"

<sup>121</sup> Exhibit "G"; TSN dated July 27, 2016 (p.m.), pp. 12-19. The defense admitted the existence and due execution of Exhibits "E", "F", and "G" – Order dated July 27, 2016, *Records*, Vol. 1, pp. 355-356

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so that the difference between the amount actually paid for the *Volvo* heavy equipment, *i.e.*, ₱20,000,000.00 and such proven amount could be derived. However, no documents admitted in evidence for the prosecution tends to establish these prices. Clearly, the prosecution failed to establish the actual damage caused to the government by the procurement of the *Volvo* heavy equipment.

Proof of unwarranted benefits given to E.B. Ople Trading is sufficient even in the absence of proof of undue injury against the government since, as discussed, either act proscribed under Section 3(e) of R.A. 3019 qualifies as a violation thereof.

***Accused Datumulok acted with gross inexcusable negligence in proceeding with the blatantly irregular procurement of the subject heavy equipment.***

It is not enough that undue injury was caused or unwarranted benefits were given as these acts must be performed through manifest partiality, evident bad faith or gross inexcusable negligence. Proof of any of these three in connection with the prohibited acts mentioned in Section 3(e) of R.A. No. 3019 is enough to convict.<sup>122</sup>

In *Uriarte v. People*,<sup>123</sup> the Supreme Court explained that Section 3(e) of RA 3019 may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa*, as when the accused committed gross inexcusable negligence. There is "manifest partiality" when there is clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purposes. "Gross inexcusable negligence" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.<sup>124</sup>

In this case, while the Court found that unwarranted benefits have been granted in favor of E.B. Ople Trading, evidence is wanting as to accused Datumulok's clear inclination to favor E.B. Ople Trading over other suppliers. It does not appear that accused Datumulok orchestrated the selection of E.B. Ople Trading in the exercise of his authority as municipal mayor. Neither

<sup>122</sup> *Rivera v. People*, G.R. Nos. 156577, 156587 & 156749, December 3, 2014

<sup>123</sup> 540 Phil. 477

<sup>124</sup> *Plameras v. People*, G.R. No. 187268, September 4, 2013

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does it appear that he was actuated by self-interest or ill will in procuring the subject heavy equipment from E.B. Ople Trading. While the prosecution suggests that a big chunk of the ₱20,000,000.00 paid for the equipment remains unaccounted for because what was procured was a mere second-hand TCM Michigan and not a brand new *Volvo*, this was never proven by the mere unsubstantiated and uncorroborated testimony of complainant Abdullah Datumulok.

This Court finds, however, that accused Datumulok acted with gross inexcusable negligence in proceeding with the procurement of the *Volvo* dump truck and *Volvo* wheel loader directly from E.B. Ople Trading in disregard of the strict rules on government procurement.

Accused Datumulok deflects accountability by maintaining that in procuring the *Volvo* heavy equipment, he was merely acting as an agent of the municipality, pursuant to the authority given to him by the Sangguniang Bayan. According to him, he could not have acted without such authority by the Sangguniang Bayan. He also emphasizes that none of the members of the Sangguniang Bayan have been implicated with him.

It may be true that accused Datumulok could not have acted without the authority given by the Sangguniang Bayan, but what is crucial is that the subject procurement could not have proceeded without him.

Indeed, Sangguniang Bayan Resolution No. 07-032 **authorized** accused Datumulok to enter into the Loan Agreement with PNB for the purchase of heavy equipment from the Volvo/Civic company. Logically, the act authorized can only be accomplished by accused Datumulok. To authorize does not mean to compel. Ultimately, it was accused Datumulok who held the prerogative to act as authorized.

As municipal mayor, accused Datumulok had no excuse to be unaware of the lawful procurement process. In *Ong v. People*,<sup>125</sup> the Supreme Court declared:

The Sandiganbayan correctly ruled that by procuring the subject truck through a negotiated purchase without public bidding, petitioner failed to comply with the above stated procedure. **Indeed, as the local chief executive, petitioner is not only expected to know the proper procedure in the procurement of supplies, she is also duty bound to follow the same and her failure to discharge this duty constitutes gross and inexcusable negligence.** (emphasis supplied)

The Supreme Court also held in *Sison v. People*:<sup>126</sup>

In the instant case, petitioner was grossly negligent in all the purchases that were made under his watch. Petitioner's admission that the

<sup>125</sup> G.R. No. 176546, September 25, 2009

<sup>126</sup> G.R. Nos. 170339, 170398-403, March 9, 2010

canvass sheets sent out by de Jesus to the suppliers already contained his signatures because he pre-signed these forms only proved his utter disregard of the consequences of his actions. Petitioner also admitted that he knew the provisions of RA 7160 on personal canvass but he did not follow the law because he was merely following the practice of his predecessors. This was an admission of a mindless disregard for the law in a tradition of illegality. **This is totally unacceptable, considering that as municipal mayor, petitioner ought to implement the law to the letter. As local chief executive, he should have been the first to follow the law and see to it that it was followed by his constituency. Sadly, however, he was the first to break it.**

Petitioner should have complied with the requirements laid down by RA 7160 on personal canvass, no matter how strict they may have been. *Dura lex sed lex*. The law is difficult but it is the law. **These requirements are not empty words but were specifically crafted to ensure transparency in the acquisition of government supplies, especially since no public bidding is involved in personal canvass. Truly, the requirement that the canvass and awarding of supplies be made by a collegial body assures the general public that despotic, irregular or unlawful transactions do not occur. It also guarantees that no personal preference is given to any supplier and that the government is given the best possible price for its procurements. (emphases supplied)**

As discussed above, the Sangguniang Bayan could not have granted accused Datumulok authority to act contrary to law. As municipal mayor, accused Datumulok should have known that the law does not allow the procurement of branded supplies, and from the initial perusal of Resolution No. 07-032, should have desisted from proceeding with the loan with PNB. At that juncture, accused Datumulok should have referred the matter to the Bids and Awards Committee for the proper procurement. Instead, accused Datumulok proceeded to take the loan, shifting the blame instead to the Sangguniang Bayan.

In signing the Loan Agreement, **accused Datumulok procured the Volvo heavy equipment.** To reiterate, the Loan Agreement provided:

#### **SECTION 1. TERMS OF THE LOAN**

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(c) The proceeds of the Loan shall be used by the Borrower exclusively to finance the acquisition of the equipment, more particularly described as follows (the "Heavy Equipment"):

i.

<b>One (1) unit brand new Volvo Dump Truck</b>	
Model:	FM9 6x4
Engine:	Volvo D9B340
Engine Power Output:	340HP @ 1900 RPM
Capacity:	13.5 m3
Transmission:	In-line, 6 cylinder, direct injected, turbo charged and intercooler

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Supplier/Distributor	E.B. Ople Trading No. 105 Congressional Road, Maderam, GMA Cavite	
Unit Price:	CIF Balabagan	P11,000,000.00

ii.

One (1) unit brand new Volvo Wheel Loader		
Model:	L60D	
Engine:	Volvo D6DLCE2	
Type:	6-cylinder, turbo charged	
Engine Power Output:	90KW/122HP @ 1700RPM	
Transmission:	Low emission diesel engine step 2 Aircooled intercooler and electronically fuel injected	
Bucket Capacity:	1.8 cu. Meters	
Dumping clearance:	3.050 meters	
Supplier/Distributor	E.B. Ople Trading No. 105 Congressional Road, Maderam, GMA Cavite	
Unit Price:	CIF Balabagan	P9,000,000.00

**TOTAL P20,000,000.00**

It is explicit that the proceeds of the loan would be used to purchase one *Volvo* dump truck and one *Volvo* wheel loader from E.B. Ople Trading. Knowing that E.B. Ople Trading was chosen as supplier without the requisite public bidding or a valid ground to resort to alternative modes of procurement, accused Datumulok signed the Loan Agreement, clearly intending the eventual release of the loan proceeds to E.B. Ople Trading, which, ultimately, the municipality had to disburse to repay. Needless to say, the subsequent ratification of the Sangguniang Bayan<sup>127</sup> did not validate what was patently illegal. It was accused Datumulok's duty to act in a circumspect manner to protect government funds. To do otherwise is also gross inexcusable negligence.<sup>128</sup>


It has not escaped the attention of this Court that this is a case filed by brother against his brother, which inevitably begs the question of the intention behind it. Nevertheless, such blatant disregard of the laws on procurement, no matter the reason behind its reaching this Court, carries consequences, which accused Datumulok must now face.

WHEREFORE, accused AMAN MISBAC A. DATUMULOK is found **GUILTY** beyond reasonable doubt of violation of Sec. 3(e) of R.A. 3019. He is hereby sentenced to suffer the indeterminate penalty of **IMPRISONMENT of SIX (6) years and ONE (1) month as minimum, to TEN (10) years as maximum**, with perpetual disqualification to hold public office.

SO ORDERED.

<sup>127</sup> Resolution No. 08-011, Exhibit "3"

<sup>128</sup> Cf. *Plameras v. People*, G.R. No. 187268, September 4, 2013

  
**MA. THERESA DOLORES C. GOMEZ-ESTOESTA**  
*Associate Justice, Chairperson*

WE CONCUR:

  
**ZALDY V. TRESPES**  
*Associate Justice*

  
**BAYANI H. JACINTO**  
*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.

  
**MA. THERESA DOLORES C. GOMEZ-ESTOESTA**  
*Chairperson, Seventh 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. ZABSTAJE-TANG**  
*Presiding Justice*