

95 Phil. 450

[ G.R. No. L-4301. July 28, 1954 ]

**MAXIMO OMANDAM, APPLICANT AND APPELLEE, VS. THE DIRECTOR OF LANDS,  
OPPOSITOR AND APPELLANT.**

**D E C I S I O N**

**PADILLA, J.:**

Maximo Omandam applied for registration, under the Land Registration Act, of a parcel of agricultural land, together with the improvements thereon, containing an area of 177, 813 square meters or 17.7813 hectares, located in the barrio of Casul, municipality of Baliañgao, Province of Occidental Misamis, delimited and described in the plan and technical description attached to the application, subject to a mortgage in favor of the Philippine National Bank for the sum of P600. Notice of hearing was issued on 1 September 1949, duly published and served upon all interested parties setting the hearing of the application for 28 December 1949 at 8:00 a.m. On that day the representatives of the Bureau of Lands and of the Philippine National Bank and other opponents appeared. The representatives of the Bureau of Lands and of the Philippine National Bank were granted fifteen days within which to file a written opposition to the application. Except as to those who had made their appearance a general default was entered. On 2 May 1950 after hearing the Court rendered judgment for the applicant decreeing the registration of the parcel of land in his name, subject to a mortgage to secure the payment to the Philippine National Bank of P600. The opponents Pedro Omandam and Evencia Omandam who appeared and cross-examined the witnesses withdrew their opposition to the application. On 6 June 1950 an opposition was filed by the Director of Lands and ten days later (16 June), a motion for reconsideration was filed by him predicated upon newly discovered evidence and lack of

notice of the hearing held on 2 May 1950. This was denied by the Court in its order of 8 July 1950. On 15 August, the provincial fiscal in behalf of the Director of Lands filed a motion for relief from judgment on the ground of excusable neglect. He alleged that the faulty means of communication from Occidental Misamis to Manila was the cause of the Government's failure to file its opposition to the application. This was denied by the Court on 9 September 1950, from which order denying the relief prayed for the Director of Lands is appealing.

Appellant points to the lack of hearing on the petition for relief, as provided for in sections 4 and 6, Rule 38. According to the rule the Court is to require "those against whom the petition is filed to answer the same within fifteen days from the receipt thereof" "if the petition is sufficient in form and substance to justify such process." Granting that the means of communication between Occidental Misamis and Manila was faulty as alleged by the appellant, still there is no justification for the delay in filing his opposition to the application. It was filed on 6 June 1950. And although he was not in default because his representative appeared on the date and time set for the hearing and was granted fifteen days within which to file his opposition to the application, yet the fact that he did not file it within the period granted or within a reasonable time thereafter led the Court to believe that he abandoned his opposition to the application. More, as early as 5 June 1949 the Solicitor General returned the record of the case to the Court with the statement that the Director of Lands did not deem it necessary to file an opposition to the registration applied for by Maximo Omandam. This statement must have been made upon report on investigation done by the field officers of the Bureau of Lands. The reservation made by the Director of Lands in the indorsement to the Solicitor General that the non-presentation of an opposition was "without prejudice to the right of this Bureau to take proper steps should it find upon proper investigation that the applicant is not entitled to the land sought to be registered" does not justify the delay of the appellant in filing his opposition. The motion for relief, apart from failing to show excusable neglect, does not have an affidavit of merits, for although it is verified by the provincial

fiscal and the affidavit attached thereto sworn to also by the provincial fiscal, the latter does not know the facts upon which the opposition is based, to wit: that the applicant has not been in possession of the parcel of land applied for since 26 July 1894. Hence, being an insufficient petition not only in form but also in substance to justify the Court to require those against whom it is filed to answer within fifteen days from the receipt thereof, as provided for in section 4, Rule 38, the hearing provided for in section 6 of the rule was not available to the party seeking the relief.

The order appealed from is affirmed, without costs.

*Paras, C. J., Pablo, Bengzon, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion and Reyes, J. B. L., JJ., concur.*