

102 Phil. 390

[ G. R. No. L-11005. October 31, 1957 ]

**SIARI VALLEY ESTATES, INC., PETITIONER, VS. FILEMON LUCASAN AND HON. W. M. ORTEGA, JUDGE OF THE COURT OF FIRST INSTANCE OF ZAMBOANGA DEL NORTE, RESPONDENTS.**

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

**BENGZON, J.:**

This is an offshoot of our decision in G. R. No. L-7046, Siari Valley Estate Inc. vs. Filemon Lucasan,<sup>1</sup> wherein we affirmed, on appeal, the judgment of Hon. Patricio Ceniza, of the Zamhoanga court of first instance in its Civil Case No. 134. The dispositive part of such affirmed judgment read as follows:

Valley Estate all the cattle that may be found in the cattle ranch

“\* \* \* judgment is hereby rendered, adjudicating to the Siari of Filemon Lucasan specially the 321 heads that had been entrusted to his care as receiver or trustee of this Court and ordering the defendant to deliver to the plaintiff all said cattle or their value amounting to P40,000 to pay damages to the Siari Valley Estate for the 400 heads of cattle that he Bold since 1946 up to the date of the trial at the rate of P100.00 per head or P40,000 plus interest at the rate of 6 per cent from the date of the trial of this ease in January, 1951 and to pay the cost of the proceeding. In addition, the defendant is hereby ordered to allow the Siari Valley Estate to rm.nd up all the buffaloes that may be found in his cattle ranch after the Siari Valley Estate shall have posted a bond in the amount of P5,000 to answer for whatever damages the operation may cause to him.

With regard to the contempt proceedings, Filemon Lucasan is hereby found guilty of tha charges and he is hereby sentenced to pay a fine of P500 pursuant to section 6 Rule 64 of the Rules of Court or suffer subsidiary imprisonment in case

of insolvency at the rate of one day for every P2.50 that he fails to pay.

With regard to the three causes of action the counter-claim of the defendant, all of them are hereby dismissed for lack of merit.

Upon petition by the intervenors, tho intervention had been dismissed in a previous order of this Court, without prejudice to the filing of an independent action. (*Italics ours.*)

After our decision had become final, the *expediente* “was returned to the court below for execution. Thereupon a dispute arose whether we had *affirmed* also that part of Judge Ceniza’s judgment underlined in the above quotation (concerning buffaloes). Lucasan pointed out that, in quoting the dispositive paragraphs of the appealed judgment, our decision had omitted the underlined portion. Therefore, he argued, the affirmance of the judgment did not include the directive about buffaloes. As the respondent judge sustained Lucasan’s contention, this petition for mandamus and other auxiliary remedies was promptly filed.

Knowing the extent and scope of our decision in said appealed case, we issued a preliminary injunction designed to protect petitioner’s interests. And now, after the parties have been heard, we turn to the principal question, which is: did we uphold the right given to plaintiff by the court below “to round up the buffaloes”? The answer must be: we did. In the concluding part of our decision we found the appealed judgment to be substantially in accordance with the facts and the law; and then we adjudged : “Therefore it is hereby affirmed with cost against appellant.”

Ordinarily the affirmed judgment is that contained in its dispositive part; in the said Siari Valley appealed case, the above-quoted four paragraphs.

It is true that in the opening statements our decision quoted the dispositive part of the appealed judgment as follows:

“Premises considered, judgment is hereby rendered, adjudicating to the Siari Valley Estate all the cattle that may be found in the cattle ranch of Filemon Lucasan, specially the 321 heads that had been entrusted to his care as receiver or trustee of this Court and ordering the defendant to deliver to the plaintiff all said cattle or thsir value amounting to P40,000, to pay damages to the Siari

Valley Estate for the 400 heads of cattle that he sold since 1946 up to the date of the trial at the rate of P100 per head or P40,000 plus interest at the rate of 6 per cent from the date of the trial of this case in January, 1951 and to pay the costs of the proceeding.

With regard to the contempt proceedings, Filemon Lucasan is hereby found guilty of the charges and he is hereby sentenced to pay a fine of P500 pursuant to section 6, Rule 64, of the Rules of Court or suffer subsidiary imprisonment in case of insolvency at the rate of one day for every P2.50 that he fails to pay.”

thereby omitting the portion regarding buffaloes. But observe that we used elliptical signs, i. e. several \*'s which indicated the omission of some portion or portions.<sup>2</sup> This did not evince any intention to “modify” the judgment by eliminating the omitted portion.<sup>3</sup> The judgment, we decreed in concluding, “is hereby affirmed”. We did not say, it is hereby *modified*. Neither did we say, “the quoted portion of the judgment is hereby affirmed”.

For that matter, would respondents maintain likewise that the last two paragraphs of the dispositive part of the appealed judgment (regarding the counterclaim and the intervenors) were not equally affirmed, because they were not quoted?

We explained in *Contreras vs. Felix*, 78 Phil., 570, 44 Off. Gaz., 4306 that “the final judgment as rendered is the judgment of the court, irrespective of all seemingly contrary statements in the decision”, and that the judgment must be distinguished from the opinion. Our decree was one affirming the appealed judgment. If any statement in the opinion preceding the decree seemingly excluded a portion (which we deny), it must be overlooked, because the judgment or the decree prevails over the opinion.

In construing confirmatory decisions of appellate courts the practice is to regard the whole of the appealed judgment to have been upheld even if several points thereof have not been discussed “or touched upon in such confirmatory decision.”<sup>4</sup>

The truth is, as may be verified from our decision itself, our statement omitted the portion concerning buffaloes because it was immaterial for the purpose of the appeal. It was not a point necessary to understand or decide the questions then before us.<sup>5</sup> Indeed the whole decision made no reference to the subject of buffaloes, even as appellant’s brief (Lucasan) failed to debate such aspect of the appealed judgment.

The argument is advanced that inasmuch as the plaintiff “never claimed the buffaloes in its amended complaint (and) the (lower) court could not have granted that which was not prayed”, therefore the Supreme Court most probably had excluded the matter (of buffaloes) from its confirmatory order. Such reasoning has no valid foundation, because Lueasan was not in default, there was a trial, and under the circumstances the plaintiff could be granted any relief that was supported by the evidence “although not specified in his pleadings.”<sup>6</sup>

The other argument addressed to the proposition that this Court shouldn’t have, and couldn,t have affirmed that phase of the judgment is too late, if not impertinent. The affirmance without modification of the judgment is final. And the parties should realize that the matter of buffaloes was not such plain error (supposing it was error) as to call for special consideration by this Court even if ignored <sup>7</sup> by appellant’s counsel in his brief.

All the foregoing shows the respondent judge’s mistake in declining to permit Siari Valley Inc. to round up its buffaloes roaming on Lucasan’s ranch. But the latter’s resistance to such rounding-up, founded on a rather technical plea, despite his knowledge that he had complained of such buffaloes grazing on his land (R. A. in L-7046 p. 140), was not a mere mistake but a rather sharp practice transcending the limits of good faith. However—overruling petitioner’s contention—Lucasan will not be declared to have committed contempt of court considering on the one hand that his ground of objection appeared to ,be not so flimsy <sup>8</sup> as to make his conduct a “willful disregard or disobedience” <sup>9</sup> or a “clear and contumacious refusal to obey”<sup>10</sup> and on the oth’er hand remembering that the power to punish for contempt should be conservatively exercised.<sup>11</sup>

Wherefore, the petition for mandamus is granted, the respondent judge, and whoever may be acting in his place, is hereby ordered to enforce, and the other respondent Filemon Lucasan is ordered to obey, the aforementioned judgment in full of Judge Ceniza which was totally affirmed by this Court on appeal. Costs of this proceeding shall be paid by respondent Lueasan. So ordered.

*Paras, C. J., Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.*

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<sup>1</sup> Phil., 987.

<sup>2</sup> It would be unorthodox, not to say illegal, thus to modify, since the litigants are entitled to know why it was modified.

<sup>3</sup> In the absence of words to the contrary.

<sup>4</sup> The affirmance of a judgment makes it conclusive as to all matters actually adjudicated by it, even though not mentioned in the affirming opinion. (Freeman on Judgments, Vol. 2, section 640 citing cases.

<sup>6</sup> The effect of the confirmatory judgment as an adjudication is not controlled by general expressions of the court in its opinion, outside the matter before it and not necessary to its decision. Freeman on judgments, Vol. 2 p. 1348.

<sup>7</sup> See section 9 Rule 35, Rules of Court; Iturraldc vs. Magcauas, 9 Phil. 599; Santos vs. Macapinlac, 51 Phil. 224 and other cases cited in Moran, Comments on the Rules of Court 1957 Ed. Vol. 1 p. 486.

<sup>7</sup> Cf. Rule 53 section 5 in relation with section 1, Rule 58.

<sup>8</sup> He even managed to convince the judge of a superior court.

<sup>9</sup> People vs. Rivera, (91 Phil., 354)' and other cases cited in Moran, Rules of Court (1967 Ed.) Vol. 2 p. 127.

<sup>10</sup> Gamboa vs. Teodoro, (91 Phil., 270) and other authorities cited in Moran, Rules of Court (1957 Ed.) Vol. 2 p. 129.

<sup>11</sup> Gamboa vs. Teodoro, *Supra*.

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