

**DR. DEOGRACIAS CAMON, PETITIONER, VS. HON. CARLOS ABIERA,
PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF NEGROS
OCCIDENTAL, THE PROVINCE OF NEGROS OCCIDENTAL, RUFINO
SUPLIDO,...**

G.R. No. L-33123. November 22, 1977

Ponente: AQUINO, J.

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AQUINO, J.:

This is an appeal from the order of the Court of First Instance of Negros Occidental dated July 3, 1967, dismissing petitioner's complaint for damages amounting to P121,500 (Civil Case No. 245).

Doctor Deogracias Camon, in his amended complaint dated July 9, 1965, alleged that the provincial board of Negros Occidental, in its resolution dated February 21, 1964 (Exh. A), allowed him to rent the government bulldozer for six days so that he could use it on the four parcels of sugarland situated in Himamaylan, Negros Occidental which he occupied as lessee; that he paid the rentals in advance to Cipriano Pet, the district engineer (Exh. B); that notwithstanding that payment, Pet and Honesto Galeno, the officer in charge of equipment in the third engineering district, refused to deliver the bulldozer to Doctor Camon in spite of repeated demands; that they instructed Daniel Medes, the driver of the bulldozer, to operate it on the adjoining sugarland of Raymundo Sancho, and that the bulldozer was used on Sancho's land for nine months. (Rufino Suplido financed the cultivation of sugarcane on the land of his nephew, Sancho).

Doctor Camon also alleged that on April 13, 1964 Suplido and Sancho caused to be piled stones and boulders on his land, thus frustrating Camon's plan to plant sugarcane. He had to transfer his farming operations to the eastern portion of his farm. However, on November 13 and 14, 1964, when the fields in the eastern portion were already prepared for the planting of sugarcane, Medes forcibly entered that area and, by means of the bulldozer, he scraped the top soil and devastated the land. The top soil was transferred to Sancho's hacienda and was used in the construction of roads therein.

Defendant Province of Negros Occidental in its answer denied that there was a lease of the bulldozer. It pleaded that Doctor Camon had no cause of action against the province.

Defendant Honesto Galeno admitted the lease. He alleged that Doctor Camon used the bulldozer for four days in April and two days in July, 1964, or for six days, as stipulated in the lease contract.

The answer of Daniel Medes consisted of denials. He alleged that in the operation of the bulldozer he merely complied with the orders of his immediate superior.

Defendants Suplido and Sancho denied that they caused damages to Camon. They averred that Suplido was a lessee of the bulldozer.

At the pre-trial on February 17, 1966 the counsel for defendant Pet asked that he be allowed to file a motion to

dis-miss. Acting on that request, Judge Carlos Abiera said that "the court orders the parties to present whatever pleadings they may present in connection with this case and the court will resolve within due time whatever questions that may be brought out by the said parties" (28 tsn, p. 229 of Rollo).

Judge Abiera concluded the pre-trial by prejudging the case. Adopting the theory of defendants Sancho and Suplido, he said that "the court believes that Dr. Camon was influenced only by hatred (and) jealousy because he was not given the same privileges and preference like what they have done to Dr. Suplido" (30 tsn, p. 32, Brief of Suplido and Sancho, p. 231, Rollo).

Judge Abiera then issued an order directing the defendants "to file any pleading (that) they may desire within fifteen days from" February 17, 1966 "for the consideration of the court".

Defendant Pet, who, during the pre-trial was very vocal as to the filing of a motion to dismiss, did not file any such motion. On the other hand, the court's order gave defendants Suplido, Sancho and Medes the cue for filing motions to dismiss dated March 2 and 4, 1966 on the ground of lack of cause of action. Doctor Camon opposed the motions.

Although Judge Abiera said that he would resolve the motions in due time, it took him more than fifteen months to pass upon the motions to dismiss. On July 3, 1967 he issued the following ungrammatical and incongruous minute order of dismissal:

"Acting upon (should be finding) the motions to dismiss filed by the defendants Rufino Suplido, Raymundo Sancho and Daniel Medes well founded, the motion to dismiss insofar as these defendants are concerned, are hereby granted, and the case is dismissed without pronouncement as to costs." (sic).

Doctor Camon received a copy of that order on August 11, 1967. He perfected an appeal from that order. Judge Abiera did not act on the appeal for a long time. It was only after more than three years, or on October 24, 1970, when he gave due course to the appeal to this Court. (Note that in another case, Civil Case No. 347, a motion for reconsideration was submitted for Judge Abiera's resolution on October 21, 1968. He resolved it nearly three years later, or on September 10, 1971, during the pendency of a certiorari and mandamus case in the Court of Appeals, assailing his order which was under reconsideration. For that delay and for violation of section 5 of the Judiciary Law, Judge Abiera was found guilty of serious misconduct and a fine equivalent to his three months' salary was imposed upon him and deducted from his retirement benefits. *Perez vs. Abiera*, Adm. Case No. 223-J, June 11, 1975, 64 SCRA 302).

The record was received in this Court on December 15, 1970. Doctor Camon was required to file a petition for review pursuant to Republic Act No. 5440.

The only issue is whether Judge Abiera erred in dismissing the complaint insofar as defendants Sancho, Suplido and Medes are concerned. Although it is stated in the order that the case was dismissed "insofar as these defendants are concerned", yet the last clause of the order gives the discordant impression that the case was dismissed as to all the six defendants.

Respondent Judge not only inexcusably delayed for fifteen months the resolution of the motions to dismiss and he not only acted carelessly in issuing an ungrammatical and disharmonious order of dismissal, but he also failed to articulate the factual and legal bases of the order.

Hence, appellant Camon argues in this appeal that he was denied due process and deprived of his day in court and that respondent Judge acted capriciously and abused his discretion.

Plaintiff Camon raised several factual issues in his complaint which were traversed by the defendants. His

complaint shows on its face a cause of action for damages. Instead of dismissing the case, the lower court should have tried those issues.

Squarely applicable to this case is the ruling that "the dismissal of an action upon a motion to dismiss constitutes a denial of due process of law if from a consideration of the pleadings it appears that there are issues of fact which cannot be decided without a trial of the case on the merits" (De Leon vs. Henson and Castañeda, 111 Phil. 810; Socorro vs. Vargas, L-29648, October 26, 1968, 25 SCRA 592, 596; Republic Bank vs. Cuaderno, L-22399, March 30, 1967, 19 SCRA 671).

WHEREFORE, the order of dismissal is reversed and set aside. The lower court is directed to try the case. Costs against defendants Sancho, Suplido and Medes.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, Concepcion, Jr., and Santos, JJ., concur.

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