

**NATIONAL COCONUT CORPORATION, PLAINTIFF AND APPELLEE,
VS. MAXIMO M. KALAW ET AL., DEFENDANTS; MAXIMO M. KALAW,
DEFENDANT AND APPELLANT.**

G.R. No. L-5412. January 28, 1954

Ponente: PARAS, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/51752c2df2cf/>

PARAS, C.J.:

On February 3, 1949, the plaintiff, National Coconut Corporation, hereinafter to be referred to as NACOCO, filed an action in the Court of First Instance of Manila against the defendants, Maximo M. Kaiaw, Juan Bocar, Casimiro Garcia and Leonor Moll, civil case No. 7312. The complaint alleges that defendant Kalaw, as General Manager and Chairman of the Board of Directors of NACOCO, entered on behalf of said corporation into the following contracts:

- (a) July 30, 1947—contract for the sale of 2,000 long tons of copra to Alexander Adamson & Co., at the price at \$167 per ton, f.o.b., to be delivered during the months of August and September, 1947;
- (b) September 5, 1947—contract for the sale of 1,000 long tons of copra to Spencer, Kellog & Sons at the price of \$160 per ton, c.i.f., Los Angeles, U. S. A. to be delivered during November, 1947 from the Philippines;
- (c) September 9, 1947—contract for the sale of 1,500 long tons of copra to Franklin Baker Division of General Foods Corporation, at the price of \$164 per long ton, c.i.f., New York, to be shipped during November, 1947;
- (d) September 12, 1947—contract for the sale of 3,000 tons of copra to Louis Dreyfus & Co. (Overseas) Ltd. at the price of \$154 per ton, f.o.b. three Philippine ports, to be delivered during the month of November, 1947;
- (e) On October 27, 1947, he executed a contract for the sale of 1,000 tons of copra to Fairwood Company at the price of P210 per short ton, c.i.f. Pacific ports, to be delivered in the months of December, 1947 and January, 1948;
- (f) On October 28, 1947, he executed a contract for the sale of 1,000 tons of copra to Fairwood Company at the price of \$210 per short ton, c.i.f. Pacific ports, to be delivered in January, 1948;
- (g) On September 13, 1947, he executed a contract for the sale of 2,000 tons of copra to Juan Cojuangco at the price of \$175 per ton to be delivered in the months of November and December, 1947; this contract was also assigned by Juan Cojuangco to the Pacific Vegetable Oil Co.;
- (h) He also executed a contract with the Pacific Vegetable Oil Co. for the sale of 3,000 tons at the price of \$137.50 per ton to be delivered in September, 1947.

The complaint also avers that the foregoing contracts were executed by defendant Kalaw without the authority of NACOCO's Board of Directors contrary to the charter and by-laws of the corporation and to the directives of President Roxas that it should not speculate; that at the time of the execution of said contracts defendant Kalaw knew that NACOCO had neither the necessary copra nor the money with which to purchase the same in the open market; that the other defendants, as members of NACOCO's Board of Directors, ratified the aforesaid contracts,

with full knowledge that damage would thereby result to the corporation; that as a consequence NACOCO suffered damages recovered from the defendants herein.

On February 28, 1949, summons was served on defendant Kalaw, but before he could file a responsive pleading, NACOCO filed a motion praying that it be allowed to amend the complaint by excluding therefrom the following claims:

"(a) Claim for the amount of P270,028 which represents the damage sustained by the plaintiff as a result of the unauthorized contract which had been entered into by the defendant Maximo M. Kalaw on behalf of the NACOCO on July 30, 1947 for the sale of 2,000 long tons of copra to Alexander Adamson & Co., which contract was later on assigned to Louis Dreyfus & Co. (Overseas) Ltd.

"(b) Claim for the amount of P447,908.40 which represents the damage sustained by the plaintiff as a result of the unauthorized contract which had been entered into by the defendant Maximo M. M. Kalaw on behalf of the NACOCO for the sale of 3,000 long tons of copra to Louis Dreyfus & Co. (Overseas) Ltd."

This motion to amend was grounded on the allegation that the amount of plaintiff's claim under the two contracts was still undetermined and that an amicable settlement between NACOCO and Louis Dreyfus & Co. (Overseas) Ltd. was possible. The plaintiff expressly alleged that it reserved the right to institute a separate action against the defendants as to said claims. The court granted the motion to amend, at the bottom of which counsel for defendant Kalaw indeed wrote the following:

"Defendant Maximo M. Kalaw offers no objection to the admission of the amended complaint.

"(Sgd.) AMELITO M. MUTUC

"Counsel for defendant Maximo M. Kalaw"

On February 1, 1951, NACOCO filed a complaint in the Court of First Instance of Manila against the same defendant (civil case No. 13184), seeking to recover the very-claims excluded from the original complaint in civil case No. 7312. On March 3, 1951, defendant Kalaw filed in civil case No. 13184 a motion to dismiss the complaint, alleging that there was another action pending between the same parties and for the same cause, and that the plaintiff had split its cause of action in civil case No. 7312, to which NACOCO filed an opposition. Pending the resolution on this motion to dismiss, NACOCO filed a third amended complaint in civil case No. 7312, the amendment being the inclusion of plaintiff's claim dealing with the contracts with Louis Dreyfus & Co. (Overseas) Ltd. which, it is noteworthy, is involved in civil case No. 13184 and which was excluded from the original complaint in civil case No. 7312. The court allowed this amendment "to the end that the real matter in dispute and all matters in the action in dispute between the parties may, as far as possible, be completely determined in a single proceeding."

On October 2, 1951, NACOCO filed a motion to dismiss civil case No. 13184, without prejudice to the prosecution of plaintiff's claim in civil case No. 7312, on the ground that plaintiff's claim against the defendants involved in the former, was already reinstated in civil case No. 7312. Notwithstanding the opposition interposed by defendant Kalaw, the Court of First Instance of Manila, on October 15, 1951, dismissed civil case No. 13184 "without prejudice to the action of the same plaintiff against the same defendants as instituted in civil case No. 7312 also of this court." Defendant Kalaw has appealed, insofar as the dismissal was made without prejudice. No appeal was taken by the other defendants.

Appellant's main contention is that the court a quo erred in qualifying the order of dismissal in civil case No. 13184, because, under section 1, Rule 30, of the Rules of Court, a dismissal operates as an adjudication upon the merits when obtained by a plaintiff who has once dismissed in a competent court an action based on or including

the same claim. Specifically, appellant argues that the claim with respect to the contracts of Louis Dreyfus & Co. (Overseas) Ltd. was in effect already dismissed when it was excluded by the filing of the plaintiff's first motion to amend in civil case No. 7312, which was allowed by the lower court; and the dismissal sought by the plaintiff and granted by the lower court in civil case No. 13184 cannot be made without prejudice, because, by operation of section 1 of Rule 30, said dismissal should be an adjudication upon the merits, the purpose being to avoid vexatious litigation. Counsel for appellant had presented the latter's case lengthily and comprehensively, and such display of industry is commendable.

Section 1, Rule 30, of the Rules of Court, invoked by appellant, reads as follows: "Dismissal by the plaintiff.— An action may be dismissed by the plaintiff without order of court by filing a notice of dismissal at any time before service of the answer. Unless otherwise stated in the notice, the dismissal is without prejudice, except that a notice operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim."

It is unnecessary to refute in detail the various arguments adduced by appellant's counsel or to comment on the authorities cited in support thereof. Suffice it to say that, in our opinion, the situation under advisement does not come within the purview of the reglementary provision. Section 1 contemplates a case wherein a first action was dismissed finally, followed by the dismissal of a second action based on or including the claim covered by the first action. The rule does not apply to a situation where, as in the case before us, the first action (civil case No. 7312) is still pending, and the claim involved in second action (civil case No. 13184) was merely reinstated in the pending first action (civil case No. 7312). It is to be recalled that the re-inclusion of the claim dismissed in civil case No. 13184 was effected merely by amending the complaint in civil case No. 7312; and we are not now called upon to decide whether the allowance by the trial court of the third amended complaint in civil case No. 7312 was appropriate.

Wherefore, the appealed order is affirmed and it is so ordered with costs against appellant Maximo M. Kalaw.

Pablo, Bengzon, Padilla, Montemayor, Reyes, and Labrador, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.