

**THE BUTUAN LUMBER MANUFACTURING CO. INC., ET AL,
PETITIONERS VS. HON. MONTANO ORTIZ, ET AL, RESPONDENTS.***G. R. No. L-15760. October 31, 1963*

Ponente: LABRADOR, J.

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This is a petition for certiorari against Hon. Montano Ortiz, Judge of the Court of First Instance of Agusan, to annul the proceedings and orders of said judge in Special Civil Case No. 62 of the Court of First Instance of Agusan, entitled "Rafael C. Aquino and Zacarias Aquino, petitioners, vs. The Butuan Lumber Manufacturing Co., Inc., Santiago Cabatic, Flavio Boligor, Vicente Alguno, Felix Bertodazo and Merced, respondents," on the ground that his actuations therein are without or in excess of court's jurisdiction or with grave abuse of discretion. The petition alleges that in said Special Civil Case No. 62, because of a boundary conflict between petitioners therein and the respondents, said petitioners applied to the judge below for a writ of preliminary injunction against petitioners in this case; that the court below ordered respondents to answer the petition for preliminary injunction; and the court refused to grant two motions to dismiss the proceedings filed by herein petitioners based on the ground that the petitioners in said case had not exhausted the administrative remedies available, because the respondents in that case (petitioners herein) had appealed a decision of the Bureau of Forestry on the conflict, so that the petition for preliminary injunction was without a cause of action.

Upon the filing of the present petition We ordered the respondents to answer and We issued a preliminary restraining order, prohibiting respondents from logging in the disputed area subject of the proceedings.

The facts disclosed by the record may be briefly stated as follows: Rafael Aquino has a forest concession situated along the Davao-Agusan Road in the middle of the province of Agusan. This concession borders along the east with a forest concession in the name of Jose Leido but now operated by the petitioner Butuan Lumbert Manufacturing Co., Inc. The boundary of the Leido concession on the west is the Maygatasan-San Salvador Trail. Sometime before June 1958 a forest guard by the name of Cipriano M. Medina made a survey of the said trail. According to his survey the trail passes in the middle of the concession of Rafael Aquino. So trouble arose because petitioner Butuan Manufacturing Co. wanted to log in the area east of the Medina trail and prohibit the respondents from logging over the area immediately east thereof. On June 25, 1958 Director Amos of the Bureau of Forestry ordered the suspension of operations until verification by Forester Juan. (Annex C, Motion To Dismiss) Juan made a survey, finding that the trail is not that indicated by Medina, so the Bureau of Forestry amended the boundary of the Aquino concession accordingly. (Annex A, Petition For Injunction, CFI of Agusan, Sp. Civ. Case No. 62) .

Thereupon and on October 28, 1958 Aquino filed Special Civil Case No. 62 in the Court of First Instance of Agusan, alleging the following:

(a) That petitioners have been logging in the disputed, area since 1956, but that on May 28, 1958 respondents and their agents entered the area, threatened and scared petitioners' cutters, laborers, haulers and drivers, and stopped

the operations.

(b) That the Bureau of Forestry thereupon stopped logging operations of petitioners, until after investigation.

(c) And on October 28, 1958 said Bureau rectified the common boundary line, thus proving that petitioners were within the area covered by their license.

(d) That upon resumption by petitioners of their operations respondents entered the disputed area and stopped the operations of petitioners, so petitioners were compelled to log in another area.

(e) Petitioners have already cut P500,000.00 worth of logs and unless they are allowed to haul they would pay demurrage or dead freight. Petitioners prayed that respondents and their agents be prohibited from entering the disputed area and from molesting petitioners in their logging operations, and that respondents pay P1,110,000.00 damages, fees, and expenses of the suit.

The record shows that upon the filing of the petition in the court below, the court ordered the respondents to answer the petition. Instead of filing their answer the respondents presented a motion to dismiss alleging that the petition states no cause of action and that the court has no jurisdiction over the subject matter of the petition. Respondents alleged that the petition states no cause of action because the respondents had appealed the decision of the Director of Forestry of October 10, 1958 (recognizing Aquino's claim as to the disputed boundary), to the Secretary of Agriculture and Natural Resources, and the latter had not yet decided the appeal, and that petitioners had not exhausted the administrative remedies. It was also argued in the motion that the petition is premature because the decision of the Bureau had not become final, and lastly, that since the administrative remedies have not been exhausted, the court has no jurisdiction over the subject matter of the petition.

The motion to dismiss was set for hearing. After hearing the judge held that the license of the Aquinos expressly states that the statement of the boundaries of the Aquino concession was final. So the judge denied the motion.

Motions to reconsider were denied. A second motion to dismiss was also presented, and this was again denied, the court deferring the resolution on the motion to dismiss until after trial because the grounds therefore are not indubitable.

Such are the facts and proceedings in the court below that gave rise to the petition for certiorari filed in this court.

A consideration of the facts and the allegations of the complaint filed in the court below readily shows that the present petition cannot be granted. The complaint in the court below alleges that after a verification of the disputed boundary between the concessions of the petitioners herein and the respondent Aquino, the disputed area was found to fall within the license issued in favor of Rafael Aquino. In accordance with the findings in the investigation the forest license of Aquino was amended in its description to include the disputed area.

When the complaint in the court below was filed, therefore Aquino was well within his rights in bringing the action to prevent the respondent Butuan Lumber Manufacturing Co. from operating in the disputed area. It was claimed in the motion to dismiss filed in the court below that the dispute as to boundary had not been finally settled because the Butuan Lumber Manufacturing Co. had appealed the decision of the Director of Forestry. The prosecution of said appeal by the Butuan Manufacturing Co. did not, per se, operate to render the decision of the forestry bureau in favor of Aquino inoperative; it was tine Butuan Lumber Manufacturing Company's right to the disputed area which had been denied by the Director of Forestry, not that of Rafael Aquino. Indeed it was the Butuan Lumber Manufacturing Co. which had the obligation to appeal and secure a reversal of the decision of the bureau of forestry before it could allege any right to log in the disputed area. Petitioner Aquino in the case below for injunction was, under the circumstances, entitled to the issuance of the writ to preserve his right to the

disputed area; the appeal of the Butuan Lumber Manufacturing Co. from the resolution of the Director of Forestry did not have the effect of suspending such right. The petition for injunction in the court below was, therefore sufficient and it was the duty of the court below to admit the same and require the respondent therein to answer the petition, both of which the court did.

As petitioner Aquino (in the court below) had a valid petition, it necessarily follows that the contention of the petitioners herein that the court below had no jurisdiction to entertain Aquino's petition, is without merit or legal foundation.

The next question to decide is: Did the court below commit any abuse of discretion in its proceedings in relation to the complaint for preliminary injunction. The record discloses that upon finding the complaint sufficient the judge below required the respondent to answer and set the hearing of the petition for preliminary injunction. After the hearing on the motion to dismiss the court held that as the grounds of the motion to dismiss were not indubitable, it could not be granted until after trial on the merits. In this the court below was absolutely correct. As the complaint was sufficient in form and substance the motion to dismiss could not be granted until after trial on the merits, in which it should be shown that the allegations of the complaint are unfounded or a special defense to the action existed. The court below did not grant any preliminary injunction in favor of Aquino, notwithstanding the fact that Aquino asked for the writ in his original petition. Evidently the judge followed the provisions of the Rules that require that no preliminary injunction shall issue without a hearing. (Rule 60, Section 5)

Upon the whole, therefore, We find that the allegation of the present petition that the court below in Special Civil Case No. 62 acted without jurisdiction or with grave abuse of discretion, has not been shown as alleged. The petition in this Court, therefore, is declared without merit, and is hereby dismissed, with costs against the petitioners.

Consequent with the dismissal ordered the writ of preliminary injunction issued by this Court in this case is hereby dissolved. (Rochelle vs. State, 75 So. 2d 268; Canavan, et al. vs. Canavan, 139 Pac. Rep. 154.)

The dismissal, however, is without prejudice to the continuation of the proceeding for contempt filed with this Court on August 16, 1961. And considering that the respondent in the motion for contempt has submitted his answer thereto, said petition for contempt and the answer thereto are hereby referred to the judge of the Court of First Instance of Agusan for investigation and report. So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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