

**EMMA VELEZ Y BATO AND ANTONIO BATO,  
PLAINTIFFS-APPELLANTS, VS. ROBERTO VELEZ AND EDUARDO  
BUN-AN, DEFENDANTS-APPELLEES.**

*G.R. No. L-28873. July 31, 1973*

Ponente: FERNANDO, J.

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**FERNANDO, J.:**

Appellants, the spouses Emma Velez Bato and Antonio Bato, would have us set aside an order of the lower court dismissing their complaint for recovery of possession of certain parcels of lands. Defendants, now appellees, did prevail in obtaining such a result on a showing that Emma Velez, during her minority with the assistance of her mother, attempted, as far back as 1952 to have herself judicially declared as an illegitimate child of Nicolas Velez, the source of the disputed property, but was unsuccessful as she herself desisted from pursuing her suit, with an express acknowledgment that no such relationship existed. It was apparent to the lower court then that there was no cause of action. Hence the order of dismissal, now on appeal. A study of the records reveals that in all subsequent pleadings after the motion to dismiss, including their brief filed with us, there was no denial of Emma Velez having failed during the lifetime of the alleged putative father to prove her status of being his illegitimate child. We affirm.

The order of dismissal dated January 2, 1968 speaks for itself. Thus: "It is clear, in the opinion of the Court, that in 1951 or 1952, or more than 15 years before the institution of the case at bar, Emma Sabido and her mother Eulogia Sabido filed an action for support against Nicolas Velez but moved for the dismissal of the same, admitting that they had no evidence, oral or documentary, to prove Emma Sabido's filiation to Nicolas Velez. And what Emma failed to get in said case she now tries to make up by filing the instant case and alleging therein that she is the heiress of Nicolas Velez and therefore the owner of all his properties by operation of law, he having died in 1965. There being no allegation in her complaint that she had been recognized by Nicolas Velez the present action becomes one to compel recognition which cannot be brought after his death." [1] Further: "As stated by the Supreme Court in the aforementioned Paulino case: 'It is true that by their motion to dismiss the appellees are deemed to have admitted that the appellant is the illegitimate, spurious, not natural, child of the deceased Marcos Paulino. Such an admission, however, does not entitle her to inherit from her alleged putative father. It is necessary to allege that her putative father had acknowledged and recognized her as such. Such acknowledgment is essential and is the basis of her right to inherit. There being no allegation of such acknowledgment the action becomes one to compel recognition which cannot be brought after the death of the putative father.'" [2]

As set forth at the outset, there is no justification for a reversal.

- The basic premise for the order of dismissal is the absence of a cause of action. In thus ruling, the lower court acted the way it should. What it did has the sanction of the authoritative pronouncement in the leading case of *Paulino v. Paulino* [3] referred to in such order. The excerpt from the opinion therein rendered by Justice Padilla, quoted by the lower court, erases any doubt as to the absence of any right on the part of plaintiffs to pursue the matter further. The outcome is predictable, the result a foregone conclusion. It would be a sheer

waste of time and effort, under the undisputed facts, had the lower court not dismissed the complaint. The Paulino doctrine remains authoritative. Subsequent decisions, *Noble v. Noble*[4] and *Paterno v. Paterno*,[5] make that clear. In *Noble v. Noble*, the concluding paragraph in the opinion of Justice Barrera reads thus: "Incidentally, the last sentence of the above-quoted portion of the decision in the Paulino case constitutes a reversal of the ruling contained in the majority opinion in the case of *Zuzuarregui v. Zuzuarregui* \* \* \* relied upon by the appellant." [6] To pursue the matter further, it would appear that what was set forth in the concurring opinion of Justice J. B. L. Reyes in *Zuzuarregui v. Zuzuarregui*[7] was embodied in *Paulino v. Paulino*. Thus: "I submit that, at the very least, the spurious child must be required to file the action to establish his paternity or maternity during the lifetime of the presumed parent, as in the case of the natural child. It is to me inconceivable that the illegitimate child not natural should enjoy a longer right of action than the natural child, when the law clearly tends to favor the natural issue as against the non-natural one. If the latter may sue to establish his filiation even after the death of the presumed parents, then he is practically placed on a par with the legitimate child, who is given right to do so during his, (the child's) lifetime. That appears contrary to the plan and intent of the Code." [8] There was no attempt on the part of plaintiffs to show that such a recognition did in fact exist. There was none because it would have been fruitless. The motion to dismiss in the 1952 case for support filed by the plaintiff Emma Velez, then calling herself Emma Sabido, with her mother, Eulogia Sabido, did expressly admit it. In the face of such incontrovertible fact coming from the very plaintiff herself, it cannot be gainsaid that the lower court acted the only way it should when it ordered the dismissal of another complaint filed more than fifteen years later, to all intents and purposes with the same end in view.

- That is all there is then to this litigation, except perhaps for a reminder to counsel for plaintiffs of the need for greater care before filing actions which are doomed to fail. Even if the complaint be so skillfully worded that its inherent weakness is not apparent on its face, there is nothing under settled procedural principles that will postpone, much less avert, the fatal outcome. Hence the need for being fully informed of all the relevant circumstances, and thereafter, the most careful study of every matter bearing on the possible success, or lack of it, of a litigation he would initiate. There is some basis for the conclusion that counsel in this case was not kept in the dark as to what had transpired because of the artful way in which the complaint was prepared. While perhaps such a mode of preparing a pleading is not unusual, considering the requirement that a lawyer should exert his effort to the utmost to press his client's claim, still, his duty to the court as an officer thereof does require of him the utmost candor. What is more, a lawyer has not lived up to the high standards of the profession if he lays himself open to the legitimate suspicion that he does not measure up to that degree of sincerity and honesty that is expected of every member of the bar in his dealings with the judiciary.

WHEREFORE, the order of dismissal of January 2, 1968 is affirmed. Costs against plaintiffs-appellants.

Makalintal, Actg. Chief Justice., Teehankee, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.

Ruiz Castro, J., did not take.

Zaldivar, J., is on official leave.

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[1] Order of Dismissal, Record on Appeal, 43.

[2] *Ibid*, 43-44.

[3] G.R. No. L-15091, December 28, 1961, 3 SCRA 730.

[4] G.R. No. L-17742, December 17, 1966, 18 SCRA 1104.

[5] G.R. No. L-23060, June 30, 1967, 20 SCRA 585.

[6] G.R. No. L-17742, 18 SCRA 1104, 1108.

[7] 102 Phil. 346 (1957).

[8] Ibid, 357.

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