

GABRIEL LOQUIAS, PETITIONER, VS. CESARIO RODRIGUEZ, JOSE FORRO AND PEDRO SAMSON ANIMAS, JUDGE OF THE COURT OF FIRST INSTANCE OF SOUTH COTABATO, 16TH JUDICIAL DISTRICT BRANCH II,...*G.R. No. L-38388. July 31, 1975*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/931234e056ac/>

The invocation by petitioner in this certiorari proceeding of procedural due process appears to be more than justified. He made the explicit allegation that the order of dismissal of his complaint for recovery of possession of land with damages was issued by respondent Judge[1] on January 9, 1974 without any notice being served on him that the case would be heard that day.[2] There was no denial of such an assertion in the one-page, three-paragraph answer of private respondents. All that was therein stated was that the case was set for pre-trial on that date but with none of the parties appearing, there was a failure to prosecute. Hence the dismissal. Thus it is clear that no notice was served on petitioner. That omission is fatal under the due process concept. So the controlling doctrines hold. Nor, as will presently be shown, was the action taken by respondent Judge warranted under the view that there was a failure to prosecute. The decisive circumstance then was that petitioner's right to a day in court was flagrantly disregarded. The petition must be granted.

In the order which dismissed two cases pending in the sala of respondent Judge,[3] it was stated: "Considering the non-appearance of the parties and all their counsel today, the above-entitled cases, including claims and counterclaims, are hereby [dismissed], without pronouncement as to costs." [4] It is true that this particular case had been pending for some time in such sala previously presided by other judges. That, coupled with the absence of petitioner as plaintiff, was also cited as a ground for the dismissal. So it was, but in the petition for certiorari, there was an explanation. It turned out that the delay was attributable partly to the court itself, the previous judges having in mind that the case could be compromised. Petitioner then should not shoulder the blame. The case was filed on March 21, 1962,[5] but it was not until November 14, 1966 that the case was set for pre-trial. At that time, however, both parties filed a joint motion for postponement because of previous commitments by their counsel who had to attend to urgent matters in Manila.[6] Thereafter, it was not until December 4, 1969 that the court issued an order to a surveyor to make a relocation of the boundaries of the lot in question.[7] There was such a report but the matter could not be heard as on that scheduled date for pre-trial, July 17, 1970, the surveyor who was also needed to interpret the technical aspect of his report was out of the country.[8] Moreover, the original counsel for petitioner, Attorney Fidel Purisima, was busy with his candidacy as delegate to the 1970 Constitutional Convention.[9] Then on February 22, 1971, there was an order by the lower court for the Bureau of Lands to survey the boundaries of the lot in question.[10] The chief of the survey party of such Bureau, a certain Francisco R. Alcones, submitted his comments on May 6, 1971.[11] Still there was some delay due to the aforesaid counsel Purisima having been elected as delegate to the Constitutional Convention. He had to be replaced.[12] While the court set the pre-trial for November 11, 1971, it had to be postponed anew because the presiding judge was then in Manila.[13] On January 12, 1972, such a hearing was again scheduled but there was a suggestion made by the court itself that the parties should try to settle the case amicably.[14] One more effort was made at a hearing on pre-trial on October 17, 1972, but again, the then presiding judge expressed anew his desire

that the case be settled at a conference at which he would be present, but it did not go through is it was cancelled at his own instance.[15] Petitioner had to wait as the then judge was on leave, but as soon as he learned that respondent Judge would take over Branch I of the Court of First Instance of South Cotabato, he did file on December 12, 1973 a motion to set the case for hearing.[16] Evidently, the respondent Judge granted such a plea, but as set forth at the cut set, he issued the order of dismissal on January 9, 1974 because of non-appearance of the parties, a matter that could easily be explained as there was no notice served on them.

In fairness to respondent Judge, the motion to set aside the order of dismissal concentrated primarily on the absence of the required notice for the pre-trial. Petitioner admitted his failure to appear but made clear it was not through any fault on his part as he was not informed at all. All that he mentioned as to the antecedents was that "this case has been dragging on for quite some time due to a series of postponements at the instance of the Court of First Instance Branch II of Koronadal, South Cotabato; ***." [17] He could have been more explicit. That he was in his petition. At any rate, there was a denial of his motion, with respondent Judge explaining why: "A review of the record will show that this case was commenced as early as 1962. Since then, nothing was done by plaintiff to prosecute this case within a reasonable time. Until today, no pretrial was had. Granting *arguendo* that no notice of hearing was issued at the time of the order of dismissal, the doctrine in *Montejo versus Urotia* . . . will apply in the instant case." [18]

Respondent Judge was thus not fully appreciative of the due process requirement as to notice and appeared not to be fully cognizant of the antecedents of the case as narrated in the petition. Under the circumstances, the challenged order of dismissal, as made clear at the outset, cannot stand.

1. It is to repeat the obvious if reference is made to the rudimentary requirement of procedural due process as to the indispensability of a notice for a hearing. Implicit in the leading case of *Banco Español-Filipino v. Palanca*, [19] with its specific reference to the essential condition that a party should be given an opportunity to be heard, is the requirement that he should be so notified as to when such an event will take place. [20] Such a principle was earlier stated thus: "Parties have a right to be present at the trial of their causes either by themselves or by their attorneys. They are also entitled to reasonable notice of the time fixed for the trial of their case." [21] Nothing is better settled than that in the absence thereof, resulting in the failure of a litigant to be accorded his day in court, there can be a resort to this Tribunal. Its response has invariably been to assure that such a right be respected. [22] It is thus a guarantee fundamental in character. It would be revolting to the natural sense of justice if it were otherwise. So it must be in this case. There was clearly no notice given petitioner as plaintiff. His case was dismissed summarily. He was thus not heard at all. A clearer instance of a denial of procedural due process, it would be difficult to imagine.

2. Nor is the action of the lower court to be justified on the principle that with the time that had elapsed since the filing of the case in 1962, there was a failure to prosecute. If the time lag alone were the sole consideration, it could be, if not a decisive factor, at the very least of some persuasive weight in ascertaining whether the order of dismissal could be assailed as a grave abuse of discretion. That is the implication of *Montejo v. Urotia*, [23] referred to by respondent Judge. It certainly could not be, however, for as set forth earlier, petitioner took pains to explain that such delay could not be ascribed to the lack of zeal on his part. Rather fortuitous circumstances over which he had no control conspired against an early determination. One of them arose from the fact that the previous counsel of petitioner ran for the 1971 Constitutional Convention. It was also unfortunate that the first surveyor called upon to ascertain the fact as to what appeared to be a boundary controversy was abroad at the time when his presence was needed. Also, the judges who previously were assigned to the sala of respondent Judge did hope for an amicable settlement and did urge its advisability on the parties. It would be an affront to reason then if what did transpire would be ignored or disregarded and sole reliance be placed on the fact that notwithstanding

years that had gone by, the case had been at a standstill. It would be most unfair to entertain the view that petitioner was less than zealous in the defense of his rights. There is an element in it of the arbitrary, which is repugnant to the due process clause. There is no escaping the conclusion then that the order of dismissal must be set aside.

3. There is much to be said for respondent Judge doing his best to clear his docket. His zeal is to be commended. That is, however, only one side of the coin. Of far greater significance is that the process of adjudication be not tainted with unfairness. It would be the very height of unreason if a party were to be made to suffer for failure to attend a hearing of which he was not notified. It would likewise be indefensible if under the admitted facts of this case, petitioner could be held accountable for the case not having reached the trial stage, with the passing of the years. The appropriate solution is for him to be heard without further delay. To repeat, it is indispensable that he be notified as to when it would take place.

WHEREFORE, the writ of certiorari prayed for is granted, and the order of respondent Judge of January 9, 1974 dismissing the case, and his order of February 1, 1974, denying a motion for reconsideration are reversed and nullified. The case is remanded to the lower court for further proceedings in accordance with law.

Makalintal, C.J, Barredo, Aquino, and Concepcion, Jr., JJ., concur.

Antonio, J., is on official leave.

[1] The private respondents are Cesario Rodriguez and Jose Forro.

[2] Petition, par. 21 and Annex H.

[3] Civil Case No. 5 for recovery of possession of land with damages, the dismissal of which gave rise to this petition, and Civil Case No. 150 for partition and damages entitled Forro v. Navales.

[4] Order, Annex H to Petition.

[5] Petition, par. 3.

[6] Ibid, par. 5.

[7] Ibid, par. 6.

[9] Ibid, par. 10.

[10] Ibid, par. 11.

[11] Ibid, par. 12.

[12] Ibid. par. 13.

[13] Ibid, par. 14.

[14] Ibid. par. 15.

[15] Ibid. par. 18.

[16] Ibid, pars. 19-20.

[17] Petition to Set Aside Order of Dismissal, Annex I to Petition.

[18] Order. Annex J to Petition.

[19] 37 Phil. 921 (1918).

[20] Cf. L."As applied to a judicial proceeding, however, it may be laid down with certainty that the requirement of due process is satisfied if the following conditions are present, namely; (1) There must be a court or tribunal clothed with judicial power to hear and determine the matter before it; (2) jurisdiction must be lawfully acquired over the person of the defendant or over the property which is the subject of the proceeding; (3) the defendant must be given an opportunity to be heard; and (4) judgment must be rendered upon lawful hearing." At 394.

[21] Muerteguy & Aboitiz v. Delgado, 22 Phil. 109, 110 (1912).

[22] Cf. Lopez v. Director of Lands, 47 Phil. 23 (1924); Buendia v. Sotto, 68 Phil. 31 (1939); Government v. La Asociacion Cooperativa de Credito Agricola de Paroma de Minalbac, Camarines Sur, 69 Phil. 130 (1939); Villegas v. Roldan, 76 Phil. 349 (1946); Monfori v. Aguinaldo, 11 Phil. 67 (1946); Halili v. Public Service Commission, 92 Phil. 1036 (1953); Siochi v. Tirana, 99 Phil. 460 (1956); Correa v. Pascual, 99 Phil. 696 (1956); Valencia Jr. v. Mabilangan. 105 Phil. 162 (1959); Rojas v. Papa, 107 Phil. 983 (1960); Elli v. Ditan, L-17444, June 30, 1962, 5 SCRA 503; Garcia v. The Executive Secretary, L-19748, Sept. 13, 1962, 6 SCRA 1; Mata v. Rita Legarda, Inc., L-18941, Jan. 31, 1963, 7 SCRA 227; Tolentino v. Ongsiako, L-17938, April 30, 1963, 7 SCRA 1001; Ledesma v. Villasenor, L-18725, March 31, 1965. 13 SCRA 494; Manila Railroad Co. v. Moya, L-17913. June 22, 1965. 14 SCRA 358; Ongoco v. Judge, Court of First Instance, L-20941, Sept. 17, 1965. 15 SCRA 30; Macabingkil v. Yatco, L-23174, Sept. 18, 1967, 21 SCRA 150; Pabiling v. Parinacio, L-22682. July 23, 1968, 24 SCRA 100; J.M. Javier Logging Corp. v. Mardo, L-28188. Aug. 27, 1968, 24 SCRA 776; Tiglaio v. Comelec, L-31566. Aug. 31, 1970, 34 SCRA 456; Shell Company of the Phil, Ltd. v. Enage, L-30111, Feb. 27, 1973, 49 SCRA 416; Aducayen v. Flores, L-30370, May 25, 1973, 51 SCRA 78; Carandang v. Cabatuando, L-25384, Oct. 26, 1973, 53 SCRA 383; Auyong Hian v. Court of Tax Appeals, L-28782. Sept. 12, 1974, 59 SCRA 110.

[23] L-31074, July 22, 1971, 40 SCRA 43.

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