

PALMARIN Q. HURTADO, PETITIONER, VS. ISABEL G. JUDALENA AND HON. ARSENIO M. GONONG, IN HIS CAPACITY AS JUDGE IN THE CFI OF ILOCOS NORTE, BATAC BRANCH, RESPONDENTS.

G.R. No. L-40603. July 13, 1978

Ponente: CONCEPCION, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/ab54ff7d1778/>

CONCEPCION, JR., J.:

This is a petition for certiorari with a prayer for a writ of preliminary injunction, to annul the order of April 2, 1975, issued by the respondent Judge Arsenio M. Gonong in Civil Case No. 485-IV of the Court of First Instance of Ilocos Norte, upon the ground that the said order was issued in violation of Section 1, Rule 137 of the Revised Rules of Court, the respondent judge being the brother of the private respondent Isabel G. Judalena.

The record shows that on March 14, 1975, the private respondent Isabel G. Judalena filed a complaint against the petitioner Palmarin Q. Hurtado before the Court of First Instance of Ilocos Norte which was docketed therein as Civil Case No. 485-IV. The substance of the complaint is that Isabel G. Judalena had sold a portion, containing an area of 75 square meters of her parcel of land to Palmarin Q. Hurtado, with the condition that the latter shall cause a subdivision survey of the portion sold in order to segregate said portion from the bigger portion, after which the said Palmarin Hurtado shall construct a concrete fence between the two lots, but that the said Palmarin Hurtado, contrary to their agreement, built a concrete fence much beyond the 75 square meters portion and started construction of a house on the encroached portion. Isabel G. Judalena prayed for a writ of preliminary injunction to restrain Hurtado from constructing the house mentioned on the controverted parcel of land.[1]

On March 31, 1975, the petitioner Palmarin Q. Hurtado filed his answer thereto, denying the claim of Judalena that he had encroached on their property, claiming that they are the owners of the property on which they are constructing their house.[2]

On April 2, 1975, the respondent Judge Arsenio Gonong, his close relationship with Isabel G. Judalena notwithstanding, and despite the prohibition imposed by Section 1, Rule 137 of the Revised Rules of Court,[3] issued an order, ex-parte, directing the issuance of a writ of preliminary injunction upon the filing of a bond in the amount of P1,000.00. On April 4, 1975, Isabel G. Judalena filed the required bond and a writ of preliminary injunction was issued, ordering Palmarin Q. Hurtado, his father, and other persons acting on his behalf to refrain and desist from constructing a house on the land in controversy and stop disturbing in any other manner the possession of Isabel G. Judalena.[4]

The next day, April 5, 1975, the respondent judge issued an order voluntarily disqualifying himself from hearing the case in view of his close relationship with the plaintiff therein and directed the transmittal of the records of the case to the incumbent Executive Judge for proper assignment to the other judges of the court.[5]

On April 10, 1975, Palmarin Q. Hurtado filed a motion for the dissolution of the writ of preliminary injunction in order to preserve the status quo until the designation of another judge to try the case, with a prayer that the respond judge hear the motion to give him an opportunity to rectify the mistake or error he had committed in

taking cognizance of the case and in granting, ex-parte, the issuance of the writ of preliminary injunction.[6]

The respondent judge, however, denied the motion on April 21, 1975.[7]

Hence, the instant petition. On May 12, 1975, this Court issued a temporary restraining order, to stop the respondent judge from enforcing his orders on April 2, 1975 and April 21, 1975.[8]

Section 1, Rule 137 of the Revised Rules of Court enumerates without ambiguity the cases in which any judge or judicial officer is disqualified from acting as such.[9] The said section, in no uncertain terms, expressly prohibits a judge or judicial officer from sitting in a case where he is related to either party within the sixth degree of consanguinity or affinity. This is mandatory.[10] In the case at bar, it is not denied that the respondent judge is the brother of the respondent Isabel G. Judalena and their close relationship notwithstanding, and despite the prohibition mentioned above, the respondent judge took cognizance of the case and issued the controversial order directing the issuance of a writ of preliminary injunction, after which he inhibited himself from sitting on the case for the same reasons. Such action, to our mind, is reprehensible as it erodes the all important confidence in the impartiality of the judiciary.

WHEREFORE, the writ prayed for is hereby granted and the order of April 2, 1975, issued in Civil Case No. 485-IV of the Court of First Instance of Ilocos Norte, is hereby annulled and set aside. The temporary restraining order heretofore issued is hereby made permanent. With costs against the respondents.

SO ORDERED.

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

[1] p. 7, rollo.

[2] p. 9, rollo.

[3] p. 25, rollo.

[4] p. 11, rollo.

[5] p. 12, rollo.

[6] p. 14, rollo.

[7] p. 24, rollo.

[8] p. 30, rollo.

[9] Section 1, Rule 137 provides:

"Section 1. Disqualification of judges. - No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

"A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above."

[10] Mateo vs. Villaluz, G.R. Nos. L-34756-59, March 31, 1973, 50 SCRA 18; People vs. Ancheta, G.R. No. L-39993, May 19, 1975, 64 SCRA 90.

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.