

FRANCISCO C. CALO, PETITIONER AND APPELLANT, VS. DELFIN G. FUERTES, ET AL., RESPONDENTS AND APPELLEES.*G. R. No. L-16537. June 29, 1962*

Ponente: PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/be5d4612f8fd/>**PADILLA, J.:**

In Bureau of Lands Claim No. 224 (N), Lot No. 143-A, Cadastral Case No. 84, Butuan City, entitled Francisco C. Calo, claimant-contestant, vs. H. A. No. 86871 (E-40476) Delfin C. Fuertes, applicant-respondent, the Director of Lands rendered on 12 April 1956 an opinion denying and dismissing former's claim and contest against the Homestead Application No. 86871 (E-40476) of Delfin C. Fuertes, ordering him to vacate the premises within sixty days from receipt of a copy of the opinion, and stating that upon finality thereof homestead patent would be issued to Delfin C. Fuertes. His request for reconsideration having been denied by the Director of Lands on 25 January 1957, Francisco C. Calo brought to the Secretary of Agriculture and Natural Resources the case, docketed as DANR case No. 1549. On 28 February 1958 the Secretary of Agriculture and Natural Resources modified the opinion of the Director of Lands—

* * * in the sense that Delfin C. Fuertes should reimburse Francisco C. Calo of the difference between the value of the improvements the latter introduced on the land in controversy and the value of the consequential benefits derived by him therefrom within thirty (30) days from advice by the Director of Lands who is hereby directed to determine the aforementioned difference within sixty (60) days from receipt of a copy of this decision.

Still dissatisfied with the above opinion, Francisco C. Calo asked the Secretary of Agriculture and Natural Resources to reconsider it but the latter denied a reconsideration thereof. Hence, on 1 August 1958 Francisco C. Calo appealed to the President of the Philippines (Annex A to answer, p. 54, rec. of case No. 55), but on 8 August 1958 he withdrew it before the President of the Philippines could act thereon (Annex A to memorandum of the petitioner, p. 64, rec. of case No. 55).

On 22 August 1958 Francisco C. Calo filed in the Court of First Instance of Agusan a petition for writ of certiorari and prohibition with preliminary injunction praying that the enforcement of the opinions of the Director of Lands and the Secretary of Agriculture and Natural Resources be enjoined; that if a bond be needed for the purpose he was willing to file it; that after hearing the injunction be made final and permanent; that the respondent Delfin C. Fuertes pay him P18,000 as damages and attorney's fees and costs of the suit; that he be declared the owner entitled to possess the parcel of land subject of the litigation; and for any other just and equitable relief (special civil case No. 55).

On 24 December 1958 the respondent Delfin C. Fuertes filed an answer and, on 27 December 1958, an amended answer to the petition; on 29 December 1958 and 3 January 1959 the respondent Secretary of Agriculture and Natural Resources and the Director of Lands, respectively, filed their answers. After a preliminary hearing as provided for in section 5, Rule 8, of the Rules of Court, on 31 July 1959 the court rendered judgment, the dispositive part of which is—

Wherefore, for failure to state a cause of action, for lack of jurisdiction and for not exhausting all the administrative remedies available to the petitioner in the ordinary course of law, the Court resolves to dismiss as it hereby dismisses the herein petition with costs against the petitioner.

The petitioner appealed, but as only a question of law is raised, the Court of Appeals certified the appeal to this Court.

This appeal has not been perfected within the reglementary period, as provided for in section 17, Rule 41, for although the notice of appeal was filed on 31 August 1959 (p. 77, record of case No. 55) or on the 13th day from the receipt of notice of judgment, to wit: 18 August 1959,

(p. 76, rec. of case No. 55) the appeal bond was filed on 18 September 1959 (p. 78, record of case No. 55), or on the 31st day after notice of judgment. This is enough to dispose of the case.

At any rate, the appellant's contention that, as the Secretary of Agriculture and Natural Resources is the alter ego of the President and his acts or decisions are also those of the latter, he need not appeal from the decision or opinion of the former to the latter, and that, such being the case, after he had appealed to the Secretary of Agriculture and Natural Resources from the decision or opinion of the Director of Lands he had exhausted all the administrative remedies, is untenable.

The withdrawal of the appeal taken to the President of the Philippines is tantamount to not appealing at all thereto. Such withdrawal is fatal, because the appeal to the President is the last step he should take in an administrative case.

Furthermore, a special civil action for certiorari and prohibition under Rule 67 of the Rules of Court lies only when "there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law." In the case at bar, appeal from an opinion or order by the Secretary of Agriculture and Natural Resources to the President of the Philippines is the plain, speedy and adequate remedy available to the petitioner.[1]

The judgment appealed from already had become final and cannot be reviewed. The appeal is dismissed, with costs against the petitioner-appellant.

Bengzon, C. J., Bautista Angela, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

[1] *Diego vs. Court of Appeals et al.*, 102 Phil., 494; 54 Off. Gaz., 956.

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.