

**DIRECTOR OF LANDS, PETITIONER, VS. HON. PATRICIO C. CENIZA,
JUDGE OF THE COURT OF FIRST INSTANCE OF MISAMIS
OCCIDENTAL AND TEODORO DUMALAGAN, RESPONDENTS.***G.R. No. L-18527. June 29, 1963*

Ponente: PAREDES, J.

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Sometime in 1951, respondent Teodoro Dumalagan, filed Registration Case No. N-17, L.R.C. Record No. 4458, with the CFI of Misamis Occidental, covering a parcel of land of 78.3080 hectares, and situated in barrio Dampalan-Luzaran, Municipality of Lopez Jaena, same province. The Director of Lands, on October 24, 1951, presented an opposition, claiming that the land applied for is a portion of the public domain. Trial was subsequently held. After the applicant had presented his evidence, the Director of Lands, thru counsel, orally moved for the dismissal of the application on the ground of insufficiency of evidence. Reservation to present evidence was not asked. Respondent Judge denied the verbal motion to dismiss in an order dated March 23, 1961 (Annex B), and considered the case submitted for decision on the merits.

Petitioner, as therein oppositor, moved for a reconsideration of the above order and asked that it be allowed to present its evidence; arguing that the absence of reservation on the part of petitioner's counsel, did not amount to a waiver of its right to do so. On May 17, 1961, respondent Judge denied the motion for reconsideration, as not well taken.

This Order and the one denying the motion for reconsideration, are now before Us, on a Petition for Certiorari and Mandamus, with Preliminary Injunction. Petitioner alleges that respondent Judge committed grave abuse of discretion or a capricious and whimsical exercise of judgment, amounting to lack of jurisdiction; an unlawful neglect to perform an act which the law specifically enjoined as a duty resulting from his (respondent judge's) office, and excluded him (Director of Lands), from the enjoyment of a right to which he was entitled—the duty to give party to a litigation, a reasonable opportunity to be heard and his right to present his side; and that there was no appeal or any other plain, speedy and adequate remedy in the ordinary course of law. The petition also prayed for a preliminary writ of injunction, to enjoin the respondent judge from rendering judgment in the application of respondent Teodoro Dumalagan. This Court gave due course to the petition and issued a preliminary writ of injunction, as prayed for, on June 28, 1961.

At the time the present controversy was being ventilated, the rule governing the subject-matter, which was a clarification of the doctrines on earlier cases (*Arroyo vs. Azur*, 76 Phil. 495, April 13, 1946; *Guido vs. Castelo*, L-1613, May 24, 1948, 81 Phil. 81; *Ocum et al. vs. Nunez, et al.*, 97 Phil., 762; *Montelibano, et al. vs. Bacolod Murcia, etc.*, L-15092, Sept. 29, 1962), was—

"After the plaintiff has completed the presentation of his evidence, the defendant without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff had shown no right to relief. However, if the motion is granted and the order of

dismissal is reversed on appeal, the movant loses his right to present evidence in his behalf."

This rule is now embodied in the Revised Rules of Court, section 1, Rule 35, captioned Judgment and Demurrer to Evidence, which will take effect on January 1, 1964. It is, therefore, evident that the respondent court, in the case at bar, after denying the motion to dismiss, for insufficiency of evidence, (demurrer to the evidence), should have permitted the petitioner-defendant to present its own evidence, notwithstanding its failure or omission to make a reservation, to that effect; more so, as in this particular case, when the petitioner-defendant had asked to be given a day in court, in order to defend the government's title to a 78 hectare parcel of land.

IN VIEW HEREOF, the writ is granted; the orders complained of are SET ASIDE, and the respondent Court is directed to proceed with the trial of the case, until its final termination. The preliminary injunction earlier issued is made permanent. Without pronouncement as to costs.

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

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