

SPOUSES CRISTINO AND BRIGIDA CUSTODIO AND SPOUSES LITO AND MARIA CRISTINA SANTOS, PETITIONERS, VS. COURT OF APPEALS, HEIRS OF PACIFICO C. MABASA AND REGIONAL TRIAL COURT OF PASI...

G.R. No. 116100. February 09, 1996

Ponente: REGALADO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-116100/>

REGALADO, J.:

This petition for review on certiorari assails the decision of respondent Court of Appeals in CA-G.R. CV No. 29115, promulgated on November 10, 1993, which affirmed with modification the decision of the trial court, as well as its resolution dated July 8, 1994 denying petitioner's motion for reconsideration.[1]

On August 26, 1982, Civil Case No. 47466 for the grant of an easement of right of way was filed by Pacifico Mabasa against Cristino Custodio, Brigida R. Custodio, Rosalina R. Morato, Lito Santos and Maria Cristina C. Santos before the Regional Trial Court of Pasig and assigned to Branch 22 thereof.[2]

The generative facts of the case, as synthesized by the trial court and adopted by the Court of Appeals, are as follows:

Perusing the record, this Court finds that the original plaintiff Pacifico Mabasa died during the pendency of this case and was substituted by Ofelia Mabasa, his surviving spouse [and children].

The plaintiff owns a parcel of land with a two-door apartment erected thereon situated at Interior P. Burgos St., Palingon, Tipas, Taguig, Metro Manila. The plaintiff was able to acquire said property through a contract of sale with spouses Mamerto Rayos and Teodora Quintero as vendors last September 1981. Said property may be described to be surrounded by other immovables pertaining to defendants herein. Taking P. Burgos Street as the point of reference, on the left side, going to plaintiff's property, the row of houses will be as follows: That of defendants Cristino and Brigido Custodio, then that of Lito and Maria Cristina Santos and then that of Ofelia Mabasa. On the right side (is) that of defendant Rosalina Morato and then a Septic Tank (Exhibit "D"). As an access to P. Burgos Street from plaintiffs property, there are two possible passageways. The first passageway is approximately one meter wide and is about 20 meters distant from Mabasa's residence to P. Burgos Street. Such path is passing in between the previously mentioned row of houses. The second passageway is about 3 meters in width and length from plaintiff Mabasa's residence to P. Burgos Street; it is about 26 meters. In passing thru said passageway, a less than a meter wide path through the septic tank and with 5-6 meters in length has to be traversed.

When said property was purchased by Mabasa, there were tenants occupying the premises and who were acknowledged by plaintiff Mabasa as tenants. However, sometime in February, 1982, one of said tenants vacated the apartment and when plaintiff Mabasa went to see the premises, he saw that there had been built an adobe fence in the first passageway making it narrower in width. Said adobe fence was first constructed by defendants Santos along their property which is also along the first passageway. Defendant Morato constructed her adobe fence and even extended said fence in such a way that the entire passageway was

enclosed (Exhibit "1-Santos and Custodios," Exh. "D" for plaintiff, Exhs. "1-C", "1-D" and "I -E") And it was then that the remaining tenants of said apartment vacated the area. Defendant Ma. Cristina Santos testified that she constructed said fence because there was an incident when her daughter was dragged by a bicycle pedalled by a son of one of the tenants in said apartment along the first passageway. She also mentioned some other inconveniences of having (at) the front of her house a pathway such as when some of the tenants were drunk and would bang their doors and windows. Some of their footwear were even lost. x x x[3] (Italics in original text; corrections in parentheses supplied)

On February 27, 1990, a decision was rendered by the trial court, with this dispositive part:

Accordingly, judgment is hereby rendered as follows:

- 1) Ordering defendants Custodios and Santos to give plaintiff permanent access - ingress and egress, to the public street;
- 2) Ordering the plaintiff to pay defendants Custodios and Santos the sum of Eight Thousand Pesos (P8,000) as indemnity for the permanent use of the passageway.

The parties to shoulder their respective litigation expenses.[4]

Not satisfied therewith, therein plaintiff represented by his heirs, herein private respondents, went to the Court of Appeals raising the sole issue of whether or not the lower court erred in not awarding damages in their favor. On November 10, 1993, as earlier stated, the Court of Appeals rendered its decision affirming the judgment of the trial court with modification, the decretal portion of which disposes as follows:

WHEREFORE, the appealed decision of the lower court is hereby **AFFIRMED WITH MODIFICATION** only insofar as the herein grant of damages to plaintiffs-appellants. The Court hereby orders defendants-appellees to pay plaintiffs-appellants the sum of Sixty Five Thousand (P65,000) Pesos as Actual Damages, Thirty Thousand (P30,000) Pesos as Moral Damages, and Ten Thousand (P10,000) Pesos as Exemplary Damages. The rest of the appealed decision is affirmed to all respects.[5]

On July 8, 1994, the Court of Appeals denied petitioner's motion for reconsideration.[6] Petitioners then took the present recourse to us, raising two issues, namely, whether or not the grant of right of way to herein private respondents is proper, and whether or not the award of damages is in order.

With respect to the first issue, herein petitioners are already barred from raising the same. Petitioners did not appeal from the decision of the court a quo granting private respondents the right of way, hence they are presumed to be satisfied with the adjudication therein. With the finality of the judgment of the trial court as to petitioners, the issue of propriety of the grant of right of way has already been laid to rest.

For failure to appeal the decision of the trial court to the Court of Appeals, petitioners cannot obtain any affirmative relief other than those granted in the decision of the trial court. That decision of the court below has become final as against them and can no longer be reviewed, much less reversed, by this Court. The rule in this jurisdiction is that whenever an appeal is taken in a civil case, an appellee who has not himself appealed may not obtain from the appellate court any affirmative relief other than what was granted in the decision of the lower court. The appellee can only advance any argument that he may deem necessary to defeat the appellant's claim or to uphold the decision that is being disputed, and he can assign errors in his brief if such is required to strengthen the views expressed by the court a quo. These assigned errors, in turn, may be considered by the appellate court solely to maintain the appealed decision on other grounds, but not for the purpose of reversing or modifying the judgment in the appellee's favor and giving him other affirmative reliefs.[7]

However, with respect to the second issue, we agree with petitioners that the Court of Appeals erred in awarding

damages in favor of private respondents. The award of damages has no substantial legal basis. A reading of the decision of the Court of Appeals will show that the award of damages was based solely on the fact that the original plaintiff, Pacifico Mabasa, incurred losses in the form of unrealized rentals when the tenants vacated the leased premises by reason of the closure of the passageway.

However, the mere fact that the plaintiff suffered losses does not give rise to a right to recover damages. To warrant the recovery of damages, there must be both a right of action for a legal wrong inflicted by the defendant, and damage resulting to the plaintiff therefrom. Wrong without damage, or damage without wrong, does not constitute a cause of action, since damages are merely part of the remedy allowed for the injury caused by a breach or wrong.[8]

There is a material distinction between damages and injury. Injury is the illegal invasion of a legal right; damage is the loss, hurt, or harm which results from the injury; and damages are the recompense or compensation awarded for the damage suffered. Thus, there can be damage without injury in those instances in which the loss or harm was not the result of a violation of a legal duty. These situations are often called *damnum absque injuria*. [9]

In order that a plaintiff may maintain an action for the injuries of which he complains, he must establish that such injuries resulted from a breach of duty which the defendant owed to the plaintiff -- a concurrence of injury to the plaintiff and legal responsibility by the person causing it.[10] The underlying basis for the award of tort damages is the premise that an individual was injured in contemplation of law. Thus, there must first be the breach of some duty and the imposition of liability for that breach before damages may be awarded; it is not sufficient to state that there should be tort liability merely because the plaintiff suffered some pain and suffering)[11]

Many accidents occur and many injuries are inflicted by acts or omissions which cause damage or loss to another but which violate no legal duty to such other person, and consequently create no cause of action in his favor. In such cases, the consequences must be borne by the injured person alone. The law affords no remedy for damages resulting from an act which does not amount to a legal injury or wrong. [12]

In other words, in order that the law will give redress for an act causing damage, that act must be not only hurtful, but wrongful. There must be *damnum et injuria*. [13] If, as may happen in many cases, a person sustains actual damage, that is, harm or loss to his person or property, without sustaining any legal injury, that is, an act or omission which the law does not deem an injury, the damage is regarded as *damnum absque injuria*. [14]

In the case at bar, although there was damage, there was no legal injury. Contrary to the claim of private respondents, petitioners could not be said to have violated the principle of abuse of right. In order that the principle of abuse of right provided in Article 21 of the Civil Code can be applied, it is essential that the following requisites concur: (1) The defendant should have acted in a manner that is contrary to morals, good customs or public policy; (2) The acts should be willful; and (3) There was damage or injury to the plaintiff. [15]

The act of petitioners in constructing a fence within their lot is a valid exercise of their right as owners, hence not contrary to morals, good customs or public policy. The law recognizes in the owner the right to enjoy and dispose of a thing, without other limitations than those established by law. [16] It is within the right of petitioners, as owners, to enclose and fence their property. Article 430 of the Civil Code provides that "(e)very owner may enclose or fence his land or tenements by means of walls, ditches, live or dead hedges, or by any other means without detriment to servitudes constituted thereon."

At the time of the construction of the fence, the lot was not subject to any servitudes. There was no easement of way existing in favor of private respondents, either by law or by contract. The fact that private respondents had no existing right over the said passageway is confirmed by the very decision of the trial court granting a compulsory

right of way in their favor after payment of just compensation. It was only that decision which gave private respondents the right to use the said passageway after payment of the compensation and imposed a corresponding duty on petitioners not to interfere in the exercise of said right.

Hence, prior to said decision, petitioners had an absolute right over their property and their act of fencing and enclosing the same was an act which they may lawfully perform in the employment and exercise of said right. To repeat, whatever injury or damage may have been sustained by private respondents by reason of the rightful use of the said land by petitioners is *damnum absque injuria*.^[17]

A person has a right to the natural use and enjoyment of his own property, according to his pleasure, for all the purposes to which such property is usually applied. As a general rule, therefore, there is no cause of action for acts done by one person upon his own property in a lawful and proper manner, although such acts incidentally cause damage or an unavoidable loss to another, as such damage or loss is *damnum absque injuria*.^[18] When the owner of property makes use thereof in the general and ordinary manner in which the property is used, such as fencing or enclosing the same as in this case, nobody can complain of having been injured, because the inconvenience arising from said use can be considered as a mere consequence of community life.^[19]

The proper exercise of a lawful right cannot constitute a legal wrong for which an action will lie,^[20] although the act may result in damage to another, for no legal right has been invaded^[21] One may use any lawful means to accomplish a lawful purpose and though the means adopted may cause damage to another, no cause of action arises in the latter's favor. Any injury or damage occasioned thereby is *damnum absque injuria*. The courts can give no redress for hardship to an individual resulting from action reasonably calculated to achieve a lawful end by lawful means.^[22]

WHEREFORE, under the compulsion of the foregoing premises, the appealed decision of respondent Court of Appeals is hereby REVERSED and SET ASIDE and the judgment of the trial court is correspondingly REINSTATED.

SO ORDERED.

Romero and Puno, JJ., concur.

Mendoza, J., took no part.

[1] Penned by Justice Lourdes K. Tayao-Jaguros, with Justices Vicente V. Mendoza and Jesus M. Elbinias, concurring.

[2] Original Record, 1.

[3] Rollo, 28-29.

[4] *Ibid.*, 38.

[5] *Ibid.*, 31.

[6] *Ibid.*, 34.

[7] See *Lumibao vs. Intermediate Appellate Court, et al.*, G.R. No. 64677, September 13, 1990, 189 SCRA 469; *SMI Fish Industries, Inc., et al. vs. National Labor Relations Commission, et al.*, G.R. Nos. 96952- 56, September 2, 1992, 213 SCRA 444; *Heirs of Juan Oclarit, et al. vs. Court of Appeals, et al.*, G.R. No. 96644, June 17, 1994, 233 SCRA 239.

[8] 22 Am Jur 2d, Damages, Sec. 4,35-36.

[9] Ibid., 113

[10] 1 Am Jur 2d, Actions, Sec. 65, 595; see *The Board of Liquidators vs. Kalaw, et al.*, L-18805, August 14, 1967, 20 SCRA 987.

[11] *Plummer vs. Abbott Laboratories* (DC RI), 568, F Supp. 920, CCH Prod Liab Rep 9878.

[12] Ibid., 598.

[13] *Comstock vs. Wilson*, 257 NY 231 177 NE 421, 76 ALR 676; *Haldeman vs. Bruckhart*, 45, 45 Pa 514.

[14] *U.S. - Premier Malt Roducts Co. vs. Kasser*, 23 F. (2d)98.

[15] *Jurado, D.P., Personal and Family Law*, 1984 ed., 41.

[16] *Jovellanos, et al. vs. Court of Appeals, et al.*, G.R. No. 100728, June 1992, 210 SCRA 126.

[17] See *Escano, et al. vs. Court of Appeals, et al.*, L-47207, September 25 1980, 100 SCRA 197; *Ilocos Norte Electric Co. vs. Court of Appeals, et al.*, G.R. No. 53401, November 6, 1989, 179 SCRA 5; *Albenson Enterprises Corporation, et al. vs. Court of Appeals, et al.*, G.R No. 88694, January 11, 1993, 217 SCRA 16.

[18] 1 C.J.S., Actions, Sec. 15, 1007-1008.

[19] *Tolentino, A.M., Commentaries and juris-prudence on the Civil Code of the Philippines*, Vol. 11(1987), 59, citing 8 Salvat 614.

[20] *Coyne vs. Mississippi & R.R. Boom Co.*, 72 533, 75 NW 748.

[21] *White vs. Kincaid*, 149 NC 415, 63 SE 109; *Fahn vs. Reichart*, 8 Wis 255.

[22] *O'Keefe vs. Local 463, United Asso. P. & G.* 277 NY 300, 14 NE 2d 77, 117 ALR 817.

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.