

**PASTOR DOMINGO (HEIR OF THE DECEASED EMILIA ENRIQUEZ),
PETITIONER, VS. HON. NICASIO YATCO, JUDGE OF THE COURT OF
FIRST INSTANCE OF QUEZON CITY, J. M. TUASON & CO. INC.,
AND THE ...**

G. R. No. 11874. June 27, 1958

Ponente: MONTEMAYOR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-11874/>

MONTEMAYOR, J.:

This is a petition for certiorari filed by Pastor Domingo, who claims to be an heir of Emilia Enriquez, said to be deceased, to declare null and void the decision of respondent Judge Nicasio Yatco of the Court of First Instance of Quezon City, dated March 2, 1955, and to set aside his orders of May 21, 1956 and August 18, 1956.

From what we can gather from the petition and its annexes, as well as the answer to said petition and its annexes, the facts would appear to be as follows: J. M. Tuason & Co., a domestic corporation claiming to be the registered owner of a parcel of land, known as the Sta. Mesa Heights Subdivision, on June 26, 1954, filed a complaint in the Court of First Instance of Quezon City for ejectment against Emilia Enriquez (Civil Case No. Q—1087), alleging that defendant had illegally occupied a portion of Lot No. 43, Block 383, and the rotonda area near Block 383, where she constructed two houses and made other constructions without plaintiff's consent; that plaintiff urgently needed to sell said Lot No. 43, but was unable to do so due to the illegal constructions made by defendant who refused to remove her two houses from the land and to vacate the same despite demands made on her; that the damages suffered by the plaintiff was in the sum of P20 a month for a period of over one year she illegally occupied the portion from the date of the filing of the complaint. Summons was issued against defendant Emilia Enriquez which, according to the writ of the Sheriff, was served thus:

"I have this day served a copy of the within complaint and process upon the defendant Emilia Enriquez at her residence at Barrio San Jose, Quezon City by leaving a copy to her thru her daughter Eleuteria Domingo, a person of sufficient age and discretion to receive same and living in the same house but who refused to acknowledge receipt thereof."

Upon her failure to file an answer to the complaint, on motion of plaintiff, respondent Judge, by order of February 21, 1955, declared defendant in default and plaintiff was allowed to present evidence before the Deputy Clerk of Court who was authorized to receive said evidence. On the basis of said evidence, respondent Judge rendered decision on March 2, 1955, finding that Emilia Enriquez had unlawfully occupied about 200 square meters of Lot No. 43 of the Sta. Mesa Heights Subdivision for over two years before the filing of the suit, and had constructed thereon her houses without plaintiff's consent; that plaintiff was in urgent need of the said lot for the purpose of selling the same, but was unable to do so due to the illegal occupation of a portion thereof by the defendant who despite repeated demands, verbally and in writing, made by plaintiff, refused to remove her houses and vacate the portion in question; and that as a result thereof, plaintiff suffered and continued to suffer damages in the sum of P20 a month. Consequently, judgment was rendered in favor of the plaintiff and against the defendant, ordering

the latter to remove the houses and other constructions and to vacate the aforesaid Lot No. 43 and to pay plaintiff as damages, the sum of P20 a month from the filing of the action until possession was restored to plaintiff.

Upon petition of plaintiff, the corresponding writ of execution was issued on May 21, 1956. Then, by order of August 18, 1956, on motion of the same plaintiff, respondent Judge gave the defendant 30 days within which to comply with the writ of execution, upon failure of which the Sheriff of Quezon City was directed "to demolish the house of said defendant from the land of plaintiff for the full satisfaction of the decision rendered in these cases". On September 19, 1956, an "Urgent Motion to Set Aside Order of Execution and Order Granting Motion for Demolition in Civil Case No. Q-1087" was filed by "the movant in the above entitled civil case by and through his undersigned counsel". Nowhere in the said urgent motion was the said movant identified, and the counsel signed the urgent motion thus:

"Respectfully submitted,
PALARCA & PALARCA

By:

(Sgd) JOSE PALARCA JR.

(t) JOSE PALARCA JR.

Counsel for the Defendant
CIT Bldg., Quezon Boulevard
Manila"

The urgent motion alleged that the trial court had no jurisdiction to issue the order of execution and the order granting plaintiff's motion for demolition, on the ground that defendant Emilia Enriquez died on May 20, 1954, as evidenced by a certificate of death appearing as Register No. 645 of Quezon City, attached as Annex A, and the "Burial Contract" with La Funeraria Oro, dated May 20, 1954, attached as Annex B, so that the complaint in said Civil Case No. Q-1087 was filed over a month after the death of Emilia Enriquez. Consequently, the trial court, it was argued, never acquired jurisdiction to hear the case and render decision, issue a writ of execution and grant the motion for demolition.

Acting upon this urgent motion, respondent Judge Yatco by order of November 24, 1956, denied the same, thus:

"For lack of personality on the part of counsel appearing for the movant in the herein Motion dated September 19, 1956, which the Court finds to be without merit, the said Motion is, therefore, DENIED."

The present petition was given due course, and upon filing of a bond in the amount of P500, a writ of preliminary injunction was issued to stop the execution of the order of demolition. Aside from the answer filed by respondent J. M. Tuason & Co. and its annexes, no other pleadings in the form of briefs or memoranda were filed by the parties. In its answer, Tuason & Co. claims that according to the return of the Sheriff, defendant Emilia Enriquez was duly served summons; that said corporation disclaims any knowledge of the allegation in the petition that petitioner Domingo is the heir of the deceased Emilia Enriquez; that the allegation in paragraph 7 of the petition that petitioner filed an urgent motion to set aside the order of execution and the order granting the motion for demolition is absolutely false, because Pastor Domingo never filed any pleading in Civil Case No. 1087, for the reason that said urgent motion was signed by Jose Palarca, Jr., as counsel for the defendant Emilia Enriquez in the said case, and that if Emilia were then already dead as alleged in said urgent motion, how could Atty. Jose Palarca, Jr., represent in court a deceased person; that the allegation in paragraph 9 of the petition to the effect that respondent Sheriff was threatening to execute the order of demolition and threatening to demolish the "premises of the petitioner", is not true, because the demolition referred to the house of defendant Emilia Enriquez, not of

the petitioner, the latter being but a third party with respect to said civil case No. Q-1087, and that being a third party, he had nothing to do with said civil case and cannot collaterally question the final decision of respondent Judge.

If at the time the complaint was filed by Tuason & Co. against Emilia Enriquez, the latter was already dead, it is clear that the court acquired no jurisdiction over the case. But said death is a question of fact which must be duly established. If what the Sheriff stated in his writ is true, namely, that he left a copy of the summons with Eleuteria Domingo, a daughter of Emilia Enriquez, and that apparently, he was not told that Emilia was already dead, then said Sheriff must have duly complied with his duty of serving the summons. Again, if Emilia Enriquez was really dead, it is hard to understand why her heirs, like her daughter Eleuteria Domingo or the petitioner, Pastor Domingo, who also claims to be an heir, did not come forward and inform the court or the Sheriff that the defendant, their mother, was already dead, so that proper steps could have been taken to the effect that a substitution by administration proceedings be made so that the administrator could duly represent the estate of Emilia Enriquez. Also, the urgent motion filed by the attorneys, Palarca & Palarca, through Atty. Jose Palarca, Jr., is rather a puzzle. As already stated, the motion was supposed to have been filed by the movant but without mentioning who that movant was, and then the motion ends with the statement that Jose Palarca, Jr. was counsel for the defendant who was none other than Emilia Enriquez.

In the interest of justice, and to give the parties, particularly the defense in Civil Case No. Q—1087, and the petitioner herein, an opportunity to present evidence, the petition for certiorari is granted; and let the said civil case be reopened so that the fact of the alleged death of Emilia Enriquez could be duly established and in which case, her estate could be adequately represented in said case and given its day in court. It is suggested that the trial court give preference to this case with a view to its early and final determination. No costs.

Paras, C. J., Bengzon, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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.