

## NG SAM BOK, APPLICANT AND APPELLEE, VS. DIRECTOR OF LANDS, OPPOSITOR AND APPELLANT.

*G. R. No. 11988. December 22, 1958*

Ponente: PARAS, C.J.

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### PARAS, C.J.:

The applicant-appellee, Ng Sam Bok, filed with the Court of First Instance of Antique an application for registration of certain lots. The Director of Lands filed an opposition, claiming that the lots form part of the public domain. After the parties had presented their respective evidence and while the case was pending decision, the applicant-appellee filed a motion for dismissal without prejudice, alleging that some twenty hectares of sugar, land belonging to him were inadvertently or otherwise omitted in the survey. The lower court, over the opposition of the provincial fiscal, issued an order dismissing the case without prejudice. The Director of Lands has appealed.

The pertinent legal provision is section 37 of Act No. 496 which is to the following effect:

"If in any case without adverse claim the court finds that the applicant has no proper title for registration, a decree shall be entered dismissing the application, and such decree may be ordered to be without prejudice. The applicant may withdraw his application at any time before final decree, upon terms to be fixed by the court: Provided, however, That in a case where there is an adverse claim, the court shall determine the conflicting interest of the applicant and the adverse claimant, and after taking evidence shall dismiss the application if neither of them succeeds in showing that he has proper title for registration, or shall enter a decree awarding the land applied for, or any part thereof, to the person entitled thereto, and such decree when final, shall entitle to the issuance of an original certificate of title to such person; \* \* \*."

As the Director of Lands has registered herein an adverse claim, the lower court was bound to determine the conflicting interest of said claimant and the applicant-appellee ; and in case neither succeeds, under the evidence, in showing proper title for registration, it may dismiss the case. The alleged omission in the survey of a certain area would of course not bar the applicant-appellee from filing another application for registration covering said area. Wherefore, the order appealed from is reversed and the case remanded to the lower court for further proceedings. So ordered without costs.

Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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