

**THE GOVERNMENT OF THE PHILIPPINE ISLANDS, APPLICANT,
VS. LEOPOLDO HORMILLOSA AND "VIUDA DE TAN
TOCO"; CLAIMANTS AND APPELLANTS; THE DIRECTOR OF
FORESTRY, CLAIMANT AND APPELLEE.**

G. R. No. 24909. September 06, 1926

Ponente: JOHNS, J.

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JOHNS, J.:

STATEMENT

This is an appeal by Leopoldo Hormillosa and "Viuda de Tan Toco" from an order of the Court of First Instance of Occidental Negros, granting a motion of the Director of Forestry for the reopening of the above-entitled case with respect to lot No. 1156.

The proceedings were initiated by the Director of Lands under Act No. 2259, known as the Cadastral Act.

On November 28, 1920, the Court of First Instance of Occidental Negros set the case to be heard on February 21, 1921, in the municipality of Cadiz, of that province. December 8, 1920, the provincial fiscal on behalf of the Bureau of Forestry filed an opposition to the registration alleging that lot No. 1156 and others therein named were within the proposed "Northern Negros Forest Reservation," and, for that reason, that such lands were the property of the Government of the United States and under the administration of the Government of the Philippine Islands. About March 7, 1921, Leopoldo Hormillosa filed an answer in which he claimed to be the owner of lot No. 1156 with its improvements. In February, 1921, Uvilfredo Duyungan, on behalf of the heirs of Custodio Duyungan, filed an answer also claiming the ownership of that lot and the improvements. The respective answers were duly noted by the cadastral attorney, with the words "contested by the Bureau of Forestry" and "contested by the heirs of Custodio Duyungan and the Insular Government." April 22, 1921, Hormillosa, the Duyungan heirs and Lao Sangco filed a motion for the subdivision of lot No. 1156, which was granted on June 15, 1921, and the surveyor was ordered to designate the subdivisions as lots Nos. 1156-A, 1156-B, and 1156-C. October 10, 1921, the provincial fiscal filed another opposition alleging that lot No. 1156 and others were "public forest lands." December 8, 1921, the court adjudicated lot No. 1156-A with its improvements to Leopoldo Hormillosa. Lot No. 1156-B with its improvements to Uvilfredo Duyungan and his coheirs, subject to a right of way in favor of "The Negros Philippine Lumber Co." and lot No. 1156-C with its improvements to Lao Sangco. May 27, 1924, the provincial fiscal, on behalf of the Bureau of Forestry, filed a motion to reopen the case as to those particular lots, alleging in substance that the decision of the court had been obtained through fraud and in bad faith. Objections were filed to the granting of the motion, and after a hearing thereon, it was ordered that the case be reopened, to which Leopoldo Hormillosa and "Viuda de Tan Toco" duly excepted and moved for a rehearing, which was denied, from which they appeal and assign the following errors:

"I. The trial court erred in not holding that on December 8, 1921, the decree of registration of the land in question was entered within the meaning of section 38 of Act No. 496; and that, no fraud having been proven,

and no petition for a review having been filed within one year from the entry of said decree, the same became irrevocable.

"II. The trial court erred in entering its order of August 15, 1925 (B. E., pp. 36-38), and in not holding that the Director of Forestry, not having formulated his claim pursuant to the mandatory requirements of the law and within the period last granted by the court, had lost all right to lay such claim and. all right to be notified of the hearing."

JOHNS, J.:

The first assignment of error is squarely decided adverse to the appellants by this court in *De los Reyes vs. De Villa* (48 Phil., 227), in which the decision was promulgated on November 12, 1925.

The second assignment is largely based upon the contention that the protest of the Bureau of Forestry was not verified, and that for such reason it has no legal force or effect.

It must be noted that the original proceedings were initiated upon the petition of the Director of Lands in and by which all parties having any interest in the lands in question were cited and required to appear, claim, and assert their interests. In response to that notice, the Bureau of Forestry, through the provincial fiscal, appeared and filed an opposition claiming that lot No. 1156 and others therein named were within the proposed "Northern Negros Forest Reservation," and as such were the property of the Government of the United States and under the administration of the Government of the Philippine Islands. Based upon that opposition, the cadastral attorney made a notation on the records that the lands were "contested by the Bureau of Forestry" and "contested by the heirs of Custodio Duyuñgan and the Insular Government."

That became a matter of official record in the proceedings, and within itself was notice of the fact that the Government was claiming the lands and contesting the rights of any other claimant, upon the ground that it was within the proposed "Northern Negros Forest Reservation."

It is true, as the appellants claim, that the protest was not verified. Whatever may be the rule as to a protest filed by a private party, it does not apply to a case where the proceedings were initiated by one branch of the Government and an opposition was filed by another branch against private parties, who had appeared and asserted their respective rights against the alleged right of the Government itself. It is also maintained that no fraud was alleged or proven. Be that as it may, the original order of the court was made without giving the Bureau of Forestry an opportunity to be heard, and the court set aside that order, the doing of which was a matter largely in its discretion.

If appellants have a valid claim to the lands in question, that fact can be ascertained and determined by a hearing on the merits. If they do not have a valid claim, it would be a fraud upon the Government to have the titles to the lands in question adjudged to them.

Again, although the point is not made in the brief of the Attorney-General, under numerous decisions of this court, an order of the lower court, setting aside and vacating a judgment and granting a new trial, is not a final order from which an appeal will lie.

It follows that there is no merit in the appeal; that it was prematurely taken; and that it is dismissed, with costs. So ordered.

Avanceña, C. J., Street, Villamor, Ostrand, and Romualdez, JJ., concur.

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