

REV./ATTY. JOSE T. TAYOTO SUBSTITUTED BY HIS HEIR, JULIETA ESPANTO VDA.DE TAYOTO, PETITIONER, VS. THE HEIRS OF CABALO KUSOP, NAMELY HADJI LUCAYA CABALO VDA. DE RASIM, SALUDIN CA...

G.R. NO. 74203. April 17, 1990

Ponente: FERNAN, CJ.

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FERNAN, CJ.:

In the instant petition for review on certiorari of the decision of the then Intermediate Appellate Court affirming the dismissal of the complaint for quieting of title/specific performance with preliminary injunction, the Court is confronted with the question of the validity of a donation in favor of an educational institution which was represented in the deed of donation by a lawyer who, thereafter, helped obtain a presidential proclamation declaring a portion of the donated parcel of land as disposable under the provisions of the Public Land Act.

On October 2, 1963, then President Diosdado Macapagal issued Proclamation No. 168 withdrawing from sale or settlement and reserving for recreational and health resort site purposes a 52,678-square meter parcel of land of the public domain in the then Municipality of General Santos in the Province of Cotabato. Known as the Magsaysay Park, said parcel of land is bounded on the south and southwest by the Sarangani Bay; on the west by Lot 1 of Psu-133253; on the north by Albert Morrow Boulevard, and on the east and northeast by Gallego Boulevard. According to said presidential proclamation, the park would be under the administration of the Municipality of General Santos "subject to private rights, if any there be.[1]

General Santos became a city by virtue of Republic Act No. 5412 which took effect on June 15, 1968. Under Section 98 of said law, the national government ceded to General Santos City "the ownership and possession to all lands of the public domain within the city."

Magsaysay Park became known as the Lion's Beach after it was developed by the Matutum Lion's Club into a public park with swings and a skating rink. The beach also became an ideal place to go swimming.[2]

On February 5, 1973, the herein private respondents who are Moslem Filipinos and residents of Polomolok, South Catabato, claiming ownership over the entire 52,678-square meter Magsaysay Park, donated one-half of the western side thereof to the John F. Kennedy Memorial Lyceum (Far East), Inc. (hereinafter referred to as the Lyceum), a non-stock private corporation, represented by Atty. Jose T. Tayoto. Herein quoted in full is the deed of donation:

DEED OF DONATION

KNOW ALL MEN BY THESE PRESENTS:

"THIS DEED OF DONATION, made and executed in the City of General Santos, Philippines, on this 5th day of February, 1973

- by -
- HADJI LUKAYA KABALO married to Hadji Mohammad Rasim
- UDIN KABALO married to Kabiba Malang
- MAMAGAS KABALO married to Omon Saligan
- MAMASALANGA KABALO married to Camalia Andagay
- BIDALIA KABALO married to Mad Guaybar
- NANG KABALO married to Guimbang Lava
- HANSIYA KAHAL married to Zabal Mula
- JALIPA KAHAL married to Kosin Alibasa
- IMA KAHAL married to Mamaluba Sedik
- ILON KAHAL married to Amina Sedik

of legal ages, Moslem Filipinos and residents of Palomolok, South Cotabato, Mindanao, Republic of the Philippines, hereinafter called the DONORS,

- In favor of -

The JOHN F. KENNEDY MEMORIAL LYCEUM (FAR EAST) INC., a duly organized non-stock private corporation, existing under and by virtue of the laws of the Republic of the Philippines, with principal office at General Santos City, Republic of the Philippines, represented in this act by its President/ Director and Founder, Atty. Jose T. Tayoto, who is likewise of legal age, Filipino, married to Juliet P. Espanto and resident of General Santos City, Republic of the Philippines, hereinafter called the DONEE,

“WITNESSETH

"That the DONOR is the absolute owner of that certain real property situated in General Santos City and more particularly described as follows:

"A parcel of land (plan MR-1160-D) situated in the Barrio of Dadiangas, City of General Santos, bounded on the N. by the Albert Morrow Boulevard; on the NE and E, by the Gallego Blvd.; on the SW by the Sarangani Bay; and on the W. by the Sufragia Salazar Point x x x is S. 20 deg. 35'E., 6682.40 M. from Triangulation Station Sarangani West Base Area FIFTY TWO THOUSAND SIX HUNDRED SEVENTY EIGHT (52,673) SQUARE METERS, more or less.

"Declared for taxation purposes under tax declaration No, 8715, in the name of the late Kabalo Kusap, issued by the Treasurer's Office of General Santos, Cotabato, now General Santos City; and the corresponding previous tax declarations thereof;

"That for and in consideration of the love and affection which the DONOR has for the purposes for which the DONEE is existing, which is education, and of the faithful service as legal counsel which the President/Director and Founder of the Donee, has rendered and is rendering to the DONOR, the said DONOR by these presents, cedes, transfers, and conveys, by way of DONATION, unto said DONEE the ONE-HALF PORTION AT THE WESTERN SIDE of the above described property, subject to the outcome of the case involving said parcel of land, with the herein DONORS as plaintiffs/complainants/petitioners and the City of General Santos as defendant/respondents to be handled, and ventilated with the above said Atty. Jose T. Tayoto, as legal counsel;

"That the DONORS does (sic) hereby state if for the purpose of giving full effect to this donation, that they

have reserved for: themselves in full ownership other properties sufficient to support them in a manner appropriate to their station;

"That the DONEE does hereby accept the donation of the above-mentioned property, and does by these presents express (sic) its sincerest appreciation and thanks for the kindness and liberality shown by the DONORS.

"IN WITNESS WHEREOF, the above named parties have signed and executed this instrument, at the place and on the date first above written.

(Sgd.)

HADJI LUKAYA KABALO

JOHN F. KENNEDY

MEMORIAL LYCEUM

(FAR EAST) INC.

(Sgd.)

UDIN KABALO

DONEE

(Sgd..)

MAMAGAS KABALO

(Thumbmarker)

BIDALIA KABALO

By:

(Sgd.)

MAMASALNGA KABALO

(Sgd.)

(Thumbmarked)

ATTY. JOSE T. TAYOTO

NANG KABALO

President/Director
& Founder

(Thumbmarked)

KAMSIYA KAHAL

(Sgd.)

JALIPA KAHAL

(Sgd.)

IMA KAHAL

(Sgd.)

ILON KAHAL

D O N O R S

SIGNED IN THE PRESENCE OF:

(Sgd.)

(Sgd.)

1. Witness

2. Witness

(Acknowledgment Omitted)[3]

A decade later, or on February 25, 1983, the then President of the Philippines issued Proclamation No. 2273 excluding from the operation of Proclamation No. 168 "certain portions of the lands embraced therein and declaring the same open to disposition under the provisions of the Public land Act." [4] After a survey had been conducted, said portions were identified as Lot Y-1 and Lot Y-2, MR 1160-D, respectively containing areas of 18,695 and 18,903 square meters.

On March 28, 1983, the board of trustees of the Lyceum adopted Resolution No. 1 authorizing Jose T. Tayoto as its president and chairman of the board and Mrs. Juliet E. Tayoto as its treasurer/trustee, "to cede, transfer, convey and assign Lot Y-1, MR-1160-D in partial settlement of years of accumulated salaries." The resolution states that the one-half western side of the Magsaysay Park had been "definitely identified" as Lot Y-1, MR-1160-D with an area of 18,695 square meters. Present during the meeting were three of the five members of the board of trustee, namely, Jose T. Tayoto, his wife Juliet and Rev. Juan T. Tayoto. [5] Accordingly, on April 9, 1983, the Lyceum, represented by Jose T. Tayoto and his wife, executed a deed assigning its ownership rights over Lot Y-1 in favor of Jose T. Tayoto. [6]

As the heirs of Cabalo Kusop had on June 25, 1975 sold for P5,000 Lot Y-1 with an area of 30,000 square meters and Lot Y-3 with an area of 1,500 square meters in favor of Fortunato Falalimpa, on April 13, 1983, Falalimpa executed a deed of assignment of real rights over Lot Y-1 in favor of Tayoto on the grounds that he had been a beneficiary of the Lyceum, his grandchildren having studied there and that he realized that the transfer to him, although approved by the Southern Philippines Development Administration, was already a second transfer of the property. [7]

Thereafter, Tayoto introduced improvements on Lot Y-1 including a "guardhouse-shade-temporary office combine" and later on, he filed a free patent application therefore. [8] For a while, Tayoto nurtured the belief that Lot Y-1 would eventually be his. However, subsequent, acts of herein private respondents led him to file a case in court against them.

According to Tayoto, as soon as private respondents took hold of a copy of Proclamation No. 2273, they disowned the deed of donation in his favor, caused the survey of the lot without consulting him and, when he confronted them, they promised to give him 2,000 square meters of lot Y-1. Furthermore, private respondents, through one Mad Guaybar, threatened his employees and through hired malefactors, destroyed the walls of the guardhouse and the furniture therein. [9]

Claiming that private respondents were poised to induce mass squatting on Lot Y-1; that private respondents had disregarded ten years of his "incessant legal battles and follow-ups" to obtain Proclamation No. 2273; that his travail led to his hospitalization for heart ailment; that Udin Saludin Kabalo called him up by long distance telephone threatening to kill him unless he accepted 2,500 square meters of Lot Y-1, and that he had granted special privileges to the Kusop heirs of school age,[10] Tayoto filed on May 15, 1983 a complaint for quieting of title/specific performance with preliminary injunction and prayer for immediate issuance of status quo order with damages before the Regional Trial Court of General Santos City.[11]

In their answer, the heirs of Cabala Kusop averred that there was in fact no donation as their signatures were obtained thru the fraudulent manipulation and misrepresentation of Tayoto who, being their lawyer, exerted undue influence and moral ascendancy over them who are illiterates and unlearned. Tayoto allegedly made them believe that by affixing their signatures to the deed of donation, the approval of their petition to segregate the area involved from the operation of Proclamation No. 168 would be facilitated.[12]

Atty. Rogelio Garcia, as a taxpayer, and the City Fiscal, in behalf of the city government, intervened in the case. Thereafter, the heirs of Cabalo Kusop filed an urgent motion to dismiss the complaint on the following grounds: [a] invalidity of the donation as the subject thereof had not yet been excluded from the Magsaysay Park; [b] nullity of the donation as it contravened Article 1491, paragraph 5 of the Civil Code; [c] the donor did not in fact execute the deed of donation; and [d] the complaint did not state a cause of action.

In dismissing the complaint, the lower court[13] held that at the time of the donation, Proclamation No. 168 'was still in force and hence, the donated property was still part of Magsaysay Park. Necessarily, the donors could not dispose of the property which was not theirs. The lower court found that although the ostensible donee was the Lyceum, "the donation was actually for attorney's fees"[14] as proven by the fact that later, the Lyceum assigned the donated property to Tayoto. Moreover, should the donated property be considered as a contingent fee, collection of the same could not be enforced "while the case is pending or during the pendency of the case,"[15]

The lower court did not deem it necessary to discuss the third ground for dismissal but it upheld the defendants' contention that the complaint did not state a cause of action. The court noted that there was a "lull" in the disposition of the case after the assassination of the judge* handling it and before it was transferred to another branch.

Tayoto appealed to the then Intermediate Appellate Court. In its decision of September 30, 1985, said court dismissed the appeal. It ruled that the lower court correctly nullified the donation as the donated lot was still part of the public domain. It added that although Proclamation No. 168 states that the reservation of the Magsaysay Park is "subject to private rights, if any there be," Proclamation No. 2273 does not recognize the private claim or right of the heirs of Cabalo Kusop as the latter proclamation still required the claimants to the excluded lots to comply with the provisions of the Public Land Act on free patents, sales patents or homesteads.

The appellate court, noting that in his brief Tayoto did not clearly state whether he was the lawyer of the herein private respondents in the litigations pending before the lower courts,[16] also ruled that the provisions of Article 1491, paragraph 5 were violated when the parties executed the deed of donation at the time of the existence of the lawyer-client relationship.

His motion for reconsideration of the appellate court's decision having been denied, Tayoto came to this Court through this petition for review on certiorari. He contends herein that the proviso in Proclamation No. 2273 that portions of Magsaysay Park "shall be open for disposition in accordance with the public land law" does "not per se or automatically mean that the private rights or ownership of the heirs of Cabala Kusop are not recognized"[17] in view of the various documents recognizing said private rights over Lots Y-1 and Y-2 as well as "official

documents of several imports (which) were the basis for the issuance of Proclamation No. 2273." [18] Hence, petitioner cites the fact that on December 29, 1983, the Bureau of Lands disposed of portions of Lot Y-2 under Free Patent No. (XXI-21)475 and the same was registered in the name of the heirs of Cabalo Kusop under Original Certificate of Title No. P-4900. [19]

Petitioner also contends that the deed of donation does not violate Article 1491 paragraph 5 of the Civil Code because the deed "could not take effect but only upon the success of the case being advocated by" him. [20] The deed of donation "must be construed as a contingent onerous donation" x x x "effective only after the happening of the suspensive condition" consisting of the Issuance of a presidential proclamation segregating portions of Magsaysay Park in favor of the donors. [21]

The resolution of this case hinges on the validity of the donation the deed of which has been quoted above.

Both the courts below appear to have proceeded from the presumption that the donation is actually in favor of the petitioner. The deed of donation itself and subsequent acts of Tayoto, however, reveal that the donee is the John F. Kennedy Memorial Lyceum (Far East), Inc. and not the herein petitioner.

Admittedly, there appears to be a confusion as to the personalities of the Lyceum and Tayoto as shown by the facts that one of the reasons stated for the donation is Tayoto's "faithful service as a legal counsel" and that the deed states that the donation is "subject to the outcome of the cases" involving the donated property which cases would be handled by Tayoto. However, the undisputable fact is that Tayoto affixed his signature on the deed of donation and accepted the donation in his capacity as "President/Director & Founder" of the Lyceum and not in his personal capacity. The deed itself acknowledges the fact that the Lyceum is "a duly organized non-stock private corporation." Hence, legally, it is a separate corporate entity with a personality distinct from that of its representative in the donation, petitioner herein.

Moreover, petitioner is bound by his actuations subsequent to the execution of the deed of donation which negate his claim that the donation is really a "contingent onerous donation" in his favor. After the issuance of Proclamation No. 2273, when it became apparent that the donors would eventually have a right to claim the property excluded from the Magsaysay Park, petitioner still moved to solidify his claim over the donated property. Thus, he saw to the adoption by the Lyceum board of trustees of Resolution No. 1 which resulted in the execution of the document by which petitioner, in his capacity as president of the lyceum and his wife as treasurer thereof, assigned the ownership rights over the donated land to petitioner himself.

Be that as it may, the donation is void. There are three essential elements of donations: [1] the reduction of the patrimony of the donor, [2] the increase in the patrimony of the donee, and [3] the intent to do an act of liberality (animus donandi). [22] Granting that there is an animus donandi, we find that the alleged donation lacks the first two elements which presuppose the donor's ownership rights over the subject of the donation which he transmits to the donee thereby enlarging the donee's estate. This is in consonance with the rule that a donor cannot lawfully convey what is not his property. [23] In other words, a donation of a parcel of land the dominical rights of which do not belong to the donor at the time of the donation is void. This holds true even if the subject of the donation is not the land itself but the possessory and proprietary rights over said land. [24]

In this case, although they allegedly declared Magsaysay Park as their own for taxation purposes, the heirs of Cabalo Kusop did not have any transmissible proprietary rights over the donated property at the time of the donation. In fact, with respect to Lot Y-2, they still had to file a free patents application to obtain an original certificate of title thereon. This is because Proclamation No. 2273 declaring as "open to disposition under the provisions of the Public Land Act" some portions of the Magsaysay Park, is not an operative law which automatically vests rights of ownership on the heirs of Cabalo Kusop over their claimed parcels of land.

The import of said quoted proviso in a presidential proclamation is discussed in the aforecited Republic v. Court of Appeals case which dealt with the validity of a donation by a sales awardee of a parcel of land which was later reserved by presidential proclamation for medical center site purposes. We held therein that where the land is withdrawn from the public domain and declared as disposable by the Director of Lands under the Public Land Act, the Sales Award covering the same confers on a sales awardee only a possessory and not proprietary right over the land applied, for. The disposition of the land by the Director is merely provisional as the applicant still has to comply with the requirements of the law before any patent is issued. It is only after the compliance with such requirements that the patent is issued and the land applied for considered "permanently disposed of by the Government." [25]

The interpretation of said proviso should even be more stringent in this case considering that with respect to Lot Y-1, the heirs of Cabalo Kusop do not appear to have taken even the initial steps mandated by the Public Land Act for claimants of the land excluded from the public domain. The alleged donation was therefore no more than an exercise in futility.

The donation being void, petitioner is not entitled to any rights otherwise emanating therefrom. Hence, we do not find it necessary to determine the applicability of Article 1491, paragraph 5 of the Civil Code.

However, it appearing that petitioner's legal services to private respondents have not been paid as the donation which was supposedly in payment thereof has been declared null and void in the present case, we deem it just fair and equitable to fix a reasonable amount of attorney's fees in favor of petitioner. We would have ordinarily remanded the case for reception of evidence on the nature and character of the services rendered by petitioner to private respondents, but so as not to unduly prolong the resolution of this controversy, more so now that petitioner is dead,** we fix the amount of attorney's fees to be paid by private respondent to the estate of petitioner at Ten Thousand Pesos.

WHEREFORE, the petition for review on certiorari is hereby DENIED for lack of merit. The motion for substitute petitioner filed by his widow, Mrs. Juliet Espanto vda. de Tayoto, is GRANTED. Private respondents are ordered to pay the amount of Ten thousand Pesos as attorney's fees to the estate of the late Rev./Atty. Jose T. Tayoto for the legal services rendered by the latter to them. No pronouncement as to costs.

SO ORDERED.

Feliciano, Bidin and Cortes, JJ., concur.
Gutierrez, Jr., J., on leave.

[1] 59 O.G. 7216-7217.

[2] Rollo, p. 177.

[3] Rollo, pp. 79-80.

[4] 79 O.G. 1323-1325.

[5] Rollo, p. 85-A.

[6] Rollo, p. 86.

[7] Rollo, pp. 87-88.

[8] Rollo, p. 69.

[9] Rollo, p. 71.

[10] Rollo, pp. 73-75.

[11] Civil Case No. 2714.

[12] Rollo, p. 108.

[13] Judge Manuel S. Gumban, presiding.

[14] Rollo, p. 99.

[15] Rollo, supra.

* Judge Pedro Animas.

[16] In his memorandum dated July 10, 1980 to the then Minister of Natural Resources, Senior Presidential Assistant Juan C. Tuvera (copy of which is attached as Annex F to intervenor Rogelio V. Garcia's comment on the petition) noted that the heirs of Cabalo Kusop unsuccessfully tried to establish their claims to the property involved through the following cases: [a] Civil Case No. 442, Hadji Lucaya, et al. v. Municipality of General Santos City filed in the CFI of General Santos City on August 8, 1963 and dismissed on January 18, 1969; [b] Land Registration Case No. N-9 filed on May 6, 1970 and dismissed on December 28, 1971; and [c] Civil Case No. 38, a special civil action for prohibition with preliminary injunction filed by the heirs of Cabalo Kusop but dismissed by the court on October 9, 1975 (Rollo, p. 199).

[17] Rollo, p. 23.

[18] Rollo, p. 32.

[19] Rollo, p. 32.

[20] Rollo, p. 33.

[21] Rollo, p. 36.

[22] Tolentino, Civil Code of the Philippines, Vol. II, 1987 ed., p. 496.

[23] De Guzman, Jr. v. Court of Appeals, L-46935, December 21, 1987, 156 SCRA 701 citing Esquejo v. Fortaleza, L-15897, February 26, 1975, 13 SCRA 187.

[24] Republic v. Court of Appeals, L-40912, September 30, 1976, 73 SCRA 146, 160.

[25] supra, p. 161.

** Petitioner died on November 27, 1987

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