



Republic of the Philippines
Department of Environment and Natural Resources
MIMAROPA Region
PROVINCIAL ENVIRONMENT AND NATURAL RESOURCES OFFICE
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November 7, 2023

MEMORANDUM

FOR : The Regional Executive Director
DENR-MIMAROPA Region
1515 DENR By the Bay Building, Roxas Boulevard,
Barangay 668, Ermita, Manila

THRU : The OIC, Assistant Regional Director for Technical Services


FROM : The Provincial Environment and Natural Resources Officer

SUBJECT : RESOLUTION DATED JANUARY 28, 2023, FROM RED
LORMELYN E. CLAUDIO, CESO IV, THAT HAD BEEN
INCLUDED IN THE TRANSMITTAL DOCUMENTS FROM
REGIONAL OFFICE


Forwarded herewith is the resolution dated January 28, 2023, from Regional Executive Director Lormelyn E. Claudio, *CESO IV*, that had been included in the transmittal documents from the Regional Office. The said resolution is entitled "IN RE: CONFISCATION OF ONE (1) UNIT BACKHOE, HITACHI UH045, WHICH WAS USED IN THE REMOVAL OF FOUR HUNDRED FORTY-EIGHT (448) PIECES OF TREES OF AROMA AND API-API (MANGROVE SPECIES) HAVING A TOTAL VOLUME OF 13.1079 CUBIC METERS APPREHENDED AT SITIO BAYABAS, BARANGAY CAGURAY, MAGSAYSAY, OCCIDENTAL MINDORO."

For information and further instruction.

"For the PENRO"


RONIE B. GANDEZA
DMO V/Chief, TSD
In-Charge, Office of the PENRO

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File/2023-022/ACG MES Doc. Ref. No. 2023-9890

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IN RE: CONFISCATION OF ONE (1) UNIT BACKHOE, HITACHI UH045, WHICH WAS USED IN THE REMOVAL OF FOUR HUNDRED FORTY- EIGHT (448) PIECES OF TREES OF AROMA AND API-API (MANGROVE SPECIES) HAVING A TOTAL VOLUME OF 13.1079 CUBIC METERS APPREHENDED AT SITIO BAYABAS, BARANGAY CAGURAY, MAGSAYSAY, OCCIDENTAL MINDORO

RESOLUTION

This resolves the Motion for Reconsideration dated August 20, 2021 filed by Loreto Solista and Jet Justin Asilo on the Order dated March 8, 2021 issued by then Regional Executive Director Maria Lourdes G. Ferrer, the dispositive portion of which states:

WHEREFORE, FOREGOING PREMISES CONSIDERED, the apprehended one (1) unit backhoe with body number UH 045 and Isuzu Engine number 6BD1518261 with an estimated value of PHP2,000,000.00, and Four hundred forty eight (448) pieces of trees of Aroma and Api-api (mangrove species) having a total volume of 13,1079 cubic meter with an estimated ecological value based on Section 99, RA No. 10654, of PHP21,200,000.00 are hereby **CONFISCATED** in favor of the government to be disposed of in accordance with existing DENR laws, rules, and regulations governing the matter.

The CENR Officer, San Jose, Occidental Mindoro is directed to:

1. **SUBMIT** an update whether there has already been a preparation of documents for filing of criminal charges, or if a case was filed for this incident of apprehension against Mr. Loreto Malunes Solesta, and Mr. Jet Justin A. Asilo, for violation of Section 77, PD No. 75 as amended.

In the event that there is already a case filed, **FURNISH** a copy of this Order to the handling Prosecutor and the court to officially inform them of the instant administrative case or proceeding regarding this apprehension; and,

2. **COORDINATE** with BFAR MIMAROPA Region and/ or BFAR Provincial Office, San Jose, Occidental Mindoro for the respondents' violation of RA No. 8550, as amended by RA No. 10654.

In their Motion, they stated, in gist, the following issues:

1. There was a violation of their constitutional rights such as the right against unlawful search and seizure, and right to have a counsel; and,
2. The DENR conducted an illegal operation since the area is covered by a Foreshore Lease Agreement/Fishpond License Agreement (FLA) and is under the authority of the BFAR, thus, the excavation, removal (cutting and uprooting) of the mangroves and any trees in the swamp is deemed legal and valid.

This Office resolves to deny the instant Motion for Reconsideration.

First Issue

The DENR did not violate the constitutional rights of the Movants, as the apprehension happened while an actual excavation of the area and uprooting of mangroves was being done by Movant Solista, who was hired by Movant Asilo.

In the case of *Crescencio vs. People*¹, the Supreme Court ruled that:

The Constitution recognizes the right of the people to be secured in their persons, houses, papers, and effects against unreasonable searches and seizures. Nonetheless, the constitutional prohibition against warrantless searches and seizures admits of certain exceptions, one of which is seizure of evidence in plain view. Under the plain view doctrine, objects falling in the "plain view" of an officer, who has a right to be in the position to have that view, are subject to seizure and may be presented as evidence.

Further, on their allegation that they were not represented by counsel during the administrative hearing, the minutes of the hearing disclose the following:

Hearing Officer: Itong administratibong pagdinig tungkol sa pagkahuli ng isang (1) Backhoe na may body number UHO45 na may makina na ISUZU numero 6BD1518261 na minamaneho ni Loreto Solesta na gumagawa ng pilapil ng palaisdaan na may punong Bakawan at Aroma sa So. Bayabas, Brgy. Caguray, Magsaysay, Occidental Mindoro noong ika-21 ng Septyembre taong 2020.

Sa mga katugon, ipinapalam po naming sa inyo na kayo po ay nasailalim ng administratibong pagdinig ayon sa DAO No. 97-32. Pumunta at humarap kayo sa pagdinig na ito na walang kasamang abogado at tagapagsalita para sa inyo. May karapatan kayo na kumuha ng abogado at meron kayong makukuhang abogado na nagbibigay ng libreng serbisyo. May Karapatan kayo na magsawalang kibo at ang bawat salita na inyong sasabihin ay pwedeng gagamitin laban sa inyo.

Hearing Officer: G. Loreto Solesta, handa ka bang sumagot sa aking mga tanong o magbigay ng iyong malayang salaysay **kahit wala kang kasamang abogado na magsasalita para sa iyo.**

Loreto Solesta: **Opo**
xxxxx

Hearing Officer: Ginoong Asilo, ikaw po ba ay handang sumagot o magbigay ng iyong Malaya at kusang salaysay **kahit wala kang kasamang Abogado?**

Jet Justin Asilo: **Opo**

The foregoing testimonies affirm that Mr. Solista and Mr. Asilo were duly informed of their right to avail of counsel but they voluntarily chose not to.

Second Issue

The fact that the area is covered by a Fishpond Lease Agreement does not divest the DENR with the authority to apprehend violators pursuant to the provisions of PD 705, as amended, and DAO 97-32.

Republic Act No. 7161² (1991), an amendment to PD 705, explicitly banned the cutting of all mangrove species. Most importantly, such law did not make any distinction as to whether a mangrove area is covered by a lease agreement or not.

It is worthy to note that the transfer of the FLA to Mr. Asilo by the San Diego Fisheries Enterprises, Inc. has not yet been duly approved by BFAR. This fact was already taken up in the Order being assailed.

¹ G.R. No. 205015, November 19, 2014
² An Act Incorporating Certain Sections of the National Revenue Code of 1977, As Amended, to Presidential Decree No. 705, As Amended, Otherwise Known as the "Revised Forestry Code of the Philippines", and Providing Amendments Thereto by Increasing the Forest Charges on Timber and Other Forest Products
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This Office, thus, finds no ground or cogent reason to disturb and/or modify the Order dated March 8, 2021. It is a settled rule that a motion for reconsideration which does not make out a new matter sufficiently persuasive to induce modification of judgment will be denied.³

WHEREFORE, premises considered, the instant Motion for Reconsideration is **DENIED**.

SO ORDERED.

City of Manila, Philippines. JAN 23 2023


LORMELYN E. CLAUDIO, CESO IV
Regional Executive Director *LN*

Copy furnished:

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Department of Environment
and Natural Resources
MIMAROPA Region



Doc ID: 71441

³ PCIB vs. Escolin, 67 SCRA 202



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