

Republic of the Philippines
Region IV-MIMAROPA
Province of the Palawan
Municipality of Roxas
Barangay Abaroan

Date: September 29, 2021



TO: **MR. RONNIE GANDEZA**
OIC-CENRO ROXAS
Roxas, Palawan

FROM: **MRS. AMELIA V. DELOS ANGELES**
Abaroan, Roxas, Palawan

SIR:

It had been Two years and Three months that passed since June 14, 2019 that my two trucks were seized and impounded at the DENR CENRO Roxas, Palawan which resulted into big losses to my business, deteriorations of my equipment and a couple of year of stress.


Thoroughly the due process of law **had took over and justly comes to an end, to a Court Order dated September 8, 2021 granting our motion to release my two trucks from the custody of CENRO Roxas. (as per attached photocopy)**

In view hereof, I would like to ask and plead earnestly your cordial acknowledgement of this particular writ issued by the court, as a Third Party and owner of these trucks, Please! Let me start the recovery and gradually lessen the losses, the consequences of the case that I suffered so long.

Hoping for your kind consideration and immediate approval.

Thank you so much!

Respectfully yours,


AMELIA V. DELOS ANGELES
Third Party

Republic of the Philippines
MUNICIPAL CIRCUIT TRIAL COURT FOR ROXAS AND CAGAYANCILLO
Roxas, Palawan

People of the Philippines
Plaintiff,

-versus-

Rolly Olete, Joart Sarmiento
and Leo De Los Angeles

X-----X

Criminal Case No. 3697

for

violation of Section 77,
of PD 705, as amended.

ORDER

For resolution are a Motion for Reconsideration on the court's order dated May 4, 2021 dismissing the case via demurrer, served and filed by the prosecution on July 27, 2021 and, a Motion to Release Impounded Vehicles served by the defense on August 21, 2021 and filed in court on August 17, 2021. In a hearing on the two motions on August 24, 2021, the defense opposed the prosecution's motion for reconsideration for being filed late. The prosecution opposed the defense motion for the release of the impounded vehicles because the court has no jurisdiction over them. After hearing the parties the motions were submitted for the court's resolution.

First, the court denies the prosecution's motion for reconsideration on the court's order dismissing the case via a demurrer for being served and filed late and for presenting no new arguments against it. The order was sent by the court to the prosecution via registered mail on May 10, 2021. Under Section 10, Rule 13 of the 2019 amendments to the 1997 Rules of Civil Procedure, the prosecution is presumed to have received it 20 days thereafter, or on or before May 30, 2021. The prosecution's Fifteen (15) days to serve and file their motion for reconsideration falls on June 15, 2021. Thus, the prosecution's serving and filing of their motion for reconsideration on July 27, 2021 is way beyond the deadline allowed by the Rules.

The prosecution's motion for reconsideration is also pro-forma. It argued that there is no difference between illegal logging and illegal possession of lumber by simply defining the words 'gather' and 'gathering' in the face of clear jurisprudence cited in the order differentiating clearly the difference between the offenses of illegal cutting from illegal possession of lumber. The motion also failed to show that the court committed errors of law, of fact, fraud, accident, mistake or excusable negligence in coming out with the order.

Second, in their motion for the release of impounded vehicles, the defense argues that the vehicles are not owned by any of the accused and not registered to any of them. Thus, under Article 45 of the Revised Penal code, as amended, the said vehicles belong to a third party, and cannot be forfeited in favor of the government.

In opposition thereto, the prosecution argues that under *DENR vs. Daraman* (G.R. No. 125797, February 15, 2002) the court has no jurisdiction over the vehicles under Section 2 of Executive Order 277 which provides: 'Section 2. Presidential Decree No. 705, as amended, is hereby further amended by adding Sections 68-A and 68-B which shall read as follows: "SEC. 68-A. Administrative Authority of the Department Head or His Duly Authorized Representative to Order Confiscation. — In all cases of violations of this Code or other forest laws, rules and regulations, the Department Head or his duly authorized representative, may order the confiscation of any forest products illegally cut, gathered, removed, or possessed or abandoned, and all conveyances used either by land, water or air in the commission of the offense and to dispose of the same in accordance with pertinent laws, regulations or policies on the matter.' (Underlining supplied.)

The court agrees with the argument of the defense that since the trucks apprehended and impounded by the DENR is registered to a certain Amelia De Los Angeles, a third person, they should be released to her in accordance with Article 45 of the Revised Penal Code. The reason is, although EO 277 allows the confiscation of the conveyances involved in the illegal possession of lumber, the confiscation is not mandatory but directory as the law uses the word may and not shall. This court believes this is so because the offense of illegal possession defined in EO 277 is penalized as a crime of theft under Article 308, 309 and 310 of the Revised Penal Code. Under existing jurisprudence, if the penalty for the offense in a special law is defined under the Code, then the provisions therein are also applicable to the offense defined by the special law.

The court does not agree with the prosecution that it has not acquired jurisdiction over the trucks. First, the court believes it has acquired jurisdiction over them when the prosecution presented and the court admitted the trucks as evidence. In presenting the trucks as evidence the DENR waived its administrative jurisdiction over them and placed them under the jurisdiction of the court. Second, the DENR has not acquired jurisdiction over the trucks and the lumber as they were illegally obtained by apprehending DENR officers CENRO Emer Garraez, Forester Rensy Magdayao and Forest Technician Nolly Billones when they invalidly arrested the accused without a warrant and illegally search them without a warrant and seized the lumber and the trucks from them. Under existing jurisprudence, the evidence obtained from the accused in an invalid warrantless arrest, search and seizure is inadmissible against the accused in any proceeding and for any purpose. Any proceeding means proceedings in criminal, civil, or administrative. Thus the DENR cannot also use the trucks and the lumber loaded on them as evidence in their administrative proceedings. They also cannot use them for any purpose such as forfeiting them, then disposing them or using the trucks for official purposes. The illegal confiscation and impounding by the DENR of the trucks stripped them of any jurisdiction thereover.

The defense also argued and the court found that the *mangium* possessed by accused Olete and Sarmiento were planted trees or cultivated species. Under DENR

Administrative Order No. 2004-04, the transport of logs of planted trees are allowed provided they are accompanied by a certificate by the local tree farmers associations, cooperatives, federation, or in the absence of any, by the individual tree farmer concerned duly authenticated and affirmed under oath by a private Registered Professional Forester. However, a certification is not necessary if the landowner does not intend to transport the logs from the private land.

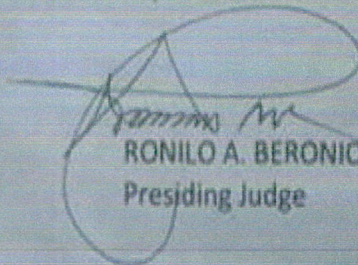
Under the said administrative order private land refers to all lands covered by OCTs, TCTs including CLOAs, and tax-declared A&D lands. Thus, based on the DENR rule itself, the mere possession of logs of planted trees cannot be immediately considered illegal possession of lumber punishable under PD 705 as amended by EO 277. The DENR must first ascertain if the transport of logs violated their order. In addition the DENR must also present proof that the pieces of lumber were harvested from timberland. The prosecution failed to present any evidence to show that the *mangium* lumber being loaded on the trucks were done by the accused in violation of the DENR administrative order and were harvested from timberland. On the contrary the defense presented during pre-trial a tax declaration as evidence that the *mangium* logs were harvested from private land.

In sum, the failure of the DENR officials to observe their own rules and regulations by first determining if the accused complied with their administrative order before apprehending them and confiscating their lumber and impounding their trucks stripped them of any administrative jurisdiction over the same. Their conduct of an invalid warrantless arrest and an illegal search and seizure of the lumber and the trucks in possession of the accused, removed from them any kind of evidence they can use against the accused. Consequently, their administrative and criminal cases against the accused cannot be sustained. It is as if there is no case whatsoever against the accused. Thus, there is no other just recourse for the DENR to retribute their illegal acts but to return to the true owner, the lumber and the trucks they illegally confiscated from the accused.

Wherefore, the prosecution's motion for reconsideration on the court's order dismissing the case via demurrer is denied. The defense's motion to release the trucks illegally seized and impounded at the DENR CENRO Roxas, Palawan is granted. The DENR CENRO OF ROXAS and/or its officer in custody thereof are hereby ordered to immediately release the trucks and the lumber loaded on them to their owner Mrs. Amelia De Los Angeles.

SO ORDERED.

Issued this 8th day of Sept 2021 at Roxas, Palawan.


RONILO A. BERONIO
Presiding Judge