

Republic of the Philippines
Department of Justice
CITY PROSECUTION OFFICE OF PUERTO PRINCESA
Hall of Justice, Sta. Monica, Puerto Princesa City

ERIBERTO B. SAÑOS,
Complainant,

NPS Docket No. IV-17-INV-21J-0563

- versus -

for

ROMMEL A. IBUNA and
RODOLFO O. BERNARDO,
Respondents.

VIOLATION OF SEC 78 OF PD 705

X-----X

RESOLUTION

Provincial Environment and Natural Resources Officer (PENRO) Eriberto B. Saños (PENRO Saños for brevity) filed the instant complaint against respondents Rommel A. Ibuna (Ibuna for brevity), General Manager of Prudential Customs Brokerage Services Inc., with address at Malvar Street, cor. Sandoval Street, Puerto Princesa City; and Rodolfo O. Bernardo (Bernardo for brevity) of Barangay Liwanag, Puerto Princesa City for violation of Section 78 of P.D. 705, as amended.

Complainant PENRO Saños claims that, as shown in the documents submitted to the Provincial Environment and Natural Resources Office (PENRO), respondents Ibuna and Bernardo have been in possession of the sand bar at the lagoon area of Snake Island since 1996 up to the present and were constructing a new structure thereon for private use by them and/or for other persons without any authority under a license agreement, lease, license or permit from the appropriate government agency.

PENRO Saños further claims that the Snake Island is a forest land and has been declared as the National Coastal and Marine Center for Research (NCMR) by virtue of DAO 2011-12 dated November 3, 2011. Its topographic area covers a land area of 65.45 hectares, coral reefs of 445.17 hectares and lagoon area of 92.13 hectares. Snake Island is located in Barangay Manalo, Puerto Princesa City and its categorization as an unclassified public forest land is evidenced by: (1) the Certification dated September 30, 2021 issued by Jason D. Montimor, Unit Head, GIS and Land Classification Verification of the Community Environment and

Natural Resources Office (CENRO); (2) Land Classification Map; and (3) its Land Cover Map and Area Profile.

It is alleged that the said sand bar/lagoon area being claimed by the respondents is within the Snake Island and is part of the unclassified forest land; that respondents' entrance and occupation or possession thereof is without any authority from the Department of Environment and Natural Resources (DENR) Office and neither have they been issued any tenurial instrument, license or authority to possess the said sand bar thus they have been sent a Notice to Self-demolish and Vacate the Area in the Snake Island.

The antecedent facts as presented by PENRO Saños are as follows:

Snake Island was established as the DENR National Coastal and Marine Center for Research by then Secretary Ramon J. P. Paje of the Department of Environment and Natural Resources through DENR Administrative Order 2011-12 (DAO 2011-12) dated November 3, 2011. Prior to its issuance, Rodolfo Ibuna (now deceased) and respondents Rommel Ibuna and Rodolfo Bernardo, have been possessing the portion of the lagoon area of Snake Island since June, 1996 as established in the electronic mail of Rodolfo Bernardo dated March 8, 2019 addressed to Franklin G. Hernandez, OIC Chief-Management Services Division of Department of Environment and Natural Resources (Annex "M", Complaint) and the purported Mangrove Stewardship Agreement (Annex "E", Complaint) presented by Mr. Rodolfo Bernardo to the PENR Office.

On February 2, 2012, Regional Executive Director Edgardo Galeon and PENRO Juan Dela Cruz initiated the closure of Snake Island to ecotourism activities by installing a signage at the Information Center in the wharf of Barangay Sta. Lourdes and on Snake Island in Barangay Manalo, Puerto Princesa City. Thereafter a demolition activity of all existing structures on the island was undertaken. However, the structure located at its northern part which was owned by a certain Felix Beltran remained undemolished. Whilst a Demolition Order was issued by then Mayor Edward S. Hagedorn on May 17, 2012, the same was not implemented for undisclosed reasons. Nevertheless, Mr. Rodolfo Ibuna gave notice to the CENRO of Puerto Princesa City that the structure of Mr. Beltran is within his claimed area.

On February 22, 2019, DENR-Staff Mr. Jamael Masacal, confirmed an ongoing-construction of a structure on the sandbar in the lagoon area of Snake Island. It was later found out that the construction was ordered by respondent Bernardo and that Felix Beltran was the project foreman. This fact was affirmed by Bernardo himself when he was invited to the PENR Office for a dialogue.

During his monitoring of the island, Masacal spotted Allan Galicha, Rodel Ceaqiña and Eugene Ponce who were constructing the structure on the sand bar (lagoon area) of the Snake Island last March 3 and 4, 2019. When these laborers were instructed to cease their activity, they presented a map with Certificate of Stewardship Contract (CSC) No. 02601537 for Social Forestry Area in the name of respondent Bernardo as basis of their construction works on the said area. It was then revealed that the structure is owned by respondents Rommel Ibuna and Rodolfo Bernardo and that Felix Beltran was only hired as their foreman.

On March 5, 2019 Mr. Franklin Hernandez, Chief of Management Division and then Officer-In-Charge of the PENR Office, invited Rodolfo Ibuna for a dialogue regarding their construction of a new structure in the lagoon area of Snake Island. In his electronic mail dated March 8, 2019, respondent Bernardo informed about the death of Rodolfo Ibuna on September 24, 2018. Bernardo also gave notice of their purchase of the sand bar (lagoon area) in June, 1996 and expressed willingness to dialogue with the DENR official.

On March 25, 2019, respondent Bernardo appeared at the PENR Office and submitted documents pertaining to their occupation of Snake Island, particularly, his Letter dated August 13, 2008 addressed to the Community Environment and Natural Resources Officer; Copy of an Application for Special Land Use Permit signed by Rodolfo S. Ibuna; and Copy of Barangay Manalo Resolution No. 08 Series of 2009 (Annex "Q", "R" and "S", Complaint). A second meeting was then scheduled on April 10, 2019 as set by Bernardo in his electronic mail dated April 4, 2019 (Annex "T") and attaching thereto a copy of the Special Power of Attorney (SPA) executed by respondent Ibuna in his favor to represent the latter's interest, claims and concerns relating to their property and improvements on the sandbar covered by the jurisdictional scope of Snake Island which was declared as NCMR on June 3, 2011.

On April 5, 2019 Marshalita Ocampo, ECOMS II of Community Environment and Natural Resources Office (CENRO) Puerto Princesa City, issued a Memorandum declaring that no record on the stewardship contract awarded to Rodolfo Bernardo exists, while respondent Ibuna has a Certificate of Stewardship Contract (CSC) application covering an area of 7.0 hectares in Barangay Salvacion which is identical to the area of Rodolfo Ibuna but which was not approved.

During the dialogue on April 10, 2019 Bernardo appeared for himself and for respondent Ibuna pursuant to the latter's SPA and thereby reacted to the policies and directives presented by the PENRO. Bernardo however sought permission to stay in the lagoon area considering the money they had spent in maintaining it. He was then requested by Johnny Lilang, Chief of Technical Services Division, and Forester Norma Cayatoc to submit their Position Paper on the matter.

Having failed to submit the Position Paper and there being no valid documents presented to justify and support their claim on the area, PENRO Saños issued respondent Ibuna a Notice To Self-Demolish and Vacate on May 6, 2019. In reply, Bernardo subsequently filed a Position Letter dated May 21, 2019 therein challenging the Notice To Self-Demolish and Vacate that was issued. He cited an existing Mangrove Stewardship Agreement dated June 7, 1996 executed by the Secretary of Environment and Natural Resources which would expire on June 7, 2021 and subject to renewal for another twenty-five (25) years. Citing the ruling in *Buyco vs. Philippine National Bank* (No. L-14406, June 30, 1961, 2 SCRA 682) Bernardo posits that his vested right over the area cannot be defeated and set aside by Executive Order Nos. 192 and 553 which were issued long after his Stewardship agreement took effect on June 7, 1996. Further, he contends that DENR AO No. 2011-12 dated November 3, 2012 covers only the entire Snake Island or Kalumpang Island whilst his property and the structure thereon are located on a mere sandbar which is approximately 1.3 kilometers away from the island.

The instant Complaint is supported with the following documents, to wit:

1. Certification dated September 30, 2021 prepared by Franklin P. Gadiano, Forest Technician CENRO Puerto Princesa (Annex A);
2. A Map depicting an island (Annex B);

3. Snake Island Profile (Annex C);
4. DENR Administrative Order No.2011-12(Annex D);
5. Mangrove Stewardship Agreement (Annex E);
6. CENRO Memorandum dated May 21, 2012 and its annex (Annex F);
7. Letter of Rodolfo Ibuna dated April 3, 2012 (Annex G);
8. Memorandum dated February 22 2019 signed by Genesis Z. Ustares (Annex H);
9. Photographs depicting motorboat and building structure (Annex H-1&2);
10. Affidavit of Jamael B. Masacal (Annex I);
11. Letter of PENRO Saños address to City Mayor (Annex J);
12. Letter Invitation of Frankin Hernandez to Rodolfo Ibuna dated March 05, 2019 (Annex L); >
13. Letter of Rodolfo Bernardo address to Franklin Hernandez (Annex M);
14. Memorandum dated March 19,2021 signed by Johnny Lilang and its annexes (Annex N);
15. Letter PENRO Saños address to Rommel Ibuna (Annex O);
16. Caller's Slip (Annex P);
17. Letter of Rodolfo Ibuna address to CENRO dated August 13, 2008 (Annex Q);
18. Resolution No. 08, Series of 2009 of Barangay Manalo (Annex S);
19. Letter of Rodolfo O. Bernardo to Johnny Lilang dated April 4, 2019 (Annex T);
20. Special Power of Attorney (Annex U);
21. Memorandum of Marshalita P. Ocampo dated April 05, 2019 (Annex V);
22. Memorandum of Rhodora B. Ubani dated April 22, 2019 (Annex W);
23. Photo Documentation (Annex X);
24. Minutes on dialogue (Annex Y);
25. Affidavit of Johnny Lilang (Annex Z);
26. Notice To Self Demolish And Vacate (Annex AA);
27. Certification dated September 29, 2021 issued by Felizardo Cayatoc (Annex BB);
28. Position Letter of Rodolfo Bernardo dated May 21, 2019 (Annex CC);
29. Letter of PENRO Saños dated May 30, 2019 (Annex DD);
30. Memorandum of Genesis Z. Ustares dated August 5, 2019 (Annex EE);

31. Passenger's Manifest dated August 23, 2019 (Annex FF);
32. Affidavit of Alfredo Marapao (Annex GG);
33. Letter of PENRO Saños to City Mayor dated February 26, 2019 (Annex HH); and
34. Letter of City Administrator to PENRO Saños dated August 22, 2019.

Both respondents were subpoenaed giving them a period of ten (10) days from receipt to submit their Counter-affidavits for their defense.

In compliance, respondent Bernardo submitted his Counter-Affidavit averring that the nipa hut on the sand bar belonged to one Nicolas Quilisado who constructed it upon authority of the DENR; that Quilisado thereafter sold to him said structure and his possessory right thereto without the cooperation and participation of respondent Ibuna; that before their sale was consummated, a survey was conducted in the presence of Mr. Larry Martinez of the DENR who certified that the sand bar is not within the Snake Island Research Center;

Bernardo cited that Section 78 of P.D. 705 penalizes the unlawful occupation or destruction of forest land and grazing land, thus, if the land occupied or destroyed is not any of such type, there can be no violation of said law as there is no crime where there is no law punishing it;

Respondent also made mention of the complainant's allegation and supporting evidence that Snake Island is a "purely unclassified public forestland." Given that Section 78 of P.D. 705 only specifically covers: "Unlawful occupation or destruction of forest land and grazing lands", and not those designated as "purely unclassified public forestland" as is the subject of the instant complaint, the said provision of law cannot be extended to include the latter type of land within its provisions. Citing the basic principle on statutory construction, Bernardo claims that to extend Section 78 of P.D. 705 to cover "purely unclassified public forest lands" even if not specifically mentioned in the said law, would clearly transgress the principle(s) he cited.

On the other hand, Ibuna denies that he is in possession of the sand bar at the lagoon area of Snake Island and neither is he constructing a new structure thereon for private use. He averred that there is no allegation of material occupation on his part or entry therein,

and complainant merely assumed that he is the owner of the structure. Further he cites that such assumption that he and his father are one and the same claimant/owner is incredulous.

It is now resolved.

The instant charge centers on the respondents' continued unauthorized occupation or possession of a forest land. In its usual sense "occupation" is where a person exercises physical control, while "possession" is the act of having or taking into control without regard to ownership.

Section 78 of P.D. 705 (Revised Forestry Code) as amended by E.O. 277 and R.A. 7161 provides:

"Unlawful occupation or Destruction of Forest Lands – Any person who enters and occupies or possesses, or makes kaingin for his own private use or for others, any forest land or grazing land without authority under a license agreement, lease, license or permit, or in any manner destroys such forest land or grazing land or part thereof, or causes any damage to the timber stand and other products and forest growth found therein, or who assists, aids or abets any other person to do so, or sets a fire, or negligently permits a fire to be set in any forest land or grazing land, or refuses to vacate the area when ordered to do so, pursuant to the provisions of Section 53 hereof shall, upon conviction, be fined in an amount of not less than five hundred pesos (P500.00), nor more than twenty thousand pesos (P20,000.00) and imprisoned for not less than six (6) months nor more than two (2) years for each such offense, and be liable to the payment of ten (10) times to the rental fees and other charges which would have accrued had the occupation and use of the land been authorized under a license agreement, lease, license or permit: Provided, That in the case of an offender found guilty of making kaingin, the penalty shall be imprisonment for not less than two (2) nor more than four (4) years and a fine equal to eight (8) times the regular forest charges due on the forest products destroyed, without prejudice to the payment of the full cost of production of the occupied area as determined by the Bureau: Provided, further, That the maximum of the penalty

prescribed herein shall be imposed upon the offender who repeats the same offense and double the maximum of the penalty upon the offender who commits the same offense for the third time.

In all cases, the Court shall further order the eviction of the offender from the land the forfeiture to the government of all improvements made and all vehicles, domestic animals and equipment of any kind used in the commission of the offense. If not suitable for use by the Bureau, said vehicles, domestic animals, equipment and improvements shall be sold at public auction, the proceeds of which shall accrue to the Development Fund of the Bureau.

In case the offender is a government official or employee, he shall, in addition to the above penalties be deemed automatically dismissed from office and permanently disqualified from holding any elective or appointive position."

Section 3 of the said law defines the scope and concept of forest land, to wit:

- a. **"Public forest** is the mass of lands of the public domain which has not been the subject of the present system of classification for the determination of which lands are needed for forest purposes and which are not.
- b. Permanent forest or forest reserves refer to those lands of the public domain which have been the subject of the present system of classification and determined to be needed for forest purposes.
- c. x x x
- d. **Forest lands** include the **public forest**, the permanent forest or forest reserves, and forest reservations." (Bold letters and underscore supplied)

It is thus clear that forest lands include public forest which have not been the subject of the present system of classification.

In this case, the government officers were able to establish that the Snake Island or Kalungpang Island is within an Unclassified Public Forest" as certified by the CENRO of Puerto Princesa City, and as defined under the aforecited law. Records at hand is replete with evidence that Bernardo occupied and took possession of the portion of Snake Island. In his letter addressed to Franklin G. Hernandez, Chief Management Service Division and Officer-In-Charge Department of Environment and Natural Resources-Region IV dated March 8, 2019 (Annex "M"), Bernardo admitted thus:

" x x x

Ang aking salaysay tungkol sa isla o sand bar na malapit sa Snake Island National Research Center for Research. Ito ay nagsimula noong June 1996 ng ito ay aking nabili kay Nikolas Quilisadio Lapu-Lapu and Pearl farm technician ni Mayor Oliveros at Señorita Island. Ito ay aming pinagyaman, pinatamnan at pinasuri kasama si Larry Martinez na taga DENR. xxx hindi namin ipinagmaramot ang paggamit ng struktura sa lahat ng mga nangangailangan. Marami na kaming pinahinto sa paghuhuli ng mga seahorse sa area at pagpapaputok ng dinamita. Dahil dito kasama naming noon ang kasalukuyang DENR official sa pagpapayaman ng nasabing lugar. xxx

Sa tagal ng panahon ng aming pagtigil sa nasabing lugar ay hindi naming ginawang resort o pagkakitaan ang lugar tulad ng ibang isla. xxx

Binabayaran din naming si Felix Beltran ng Php500 kada buwan para bantayan ang nasabing lugar upang maiwasan ang mga poachers at nais magtayo ng struktura. Sa hindi inaasahang panahon ay isang malaking bagyo ang dumaan na sumira ng aming struktura. Sa hindi inaasahang panahon ay isang malaking bagyo ang dumaan na sumira ng aming struktura. Ito ay nagtagal na hindi naipagawa. Noon pang August 2018 ng dalawin ko sa ospital si Mr. Ibuna (elected co-owner ng lugar since 1996) hiniling niya sa akin na ipagawa muli ang kubo para madala niya ang kanyang apo na malapit sa kanyang puso. Sa kanyang pagpanaw, ang ipinalit na katulong ko sa pangangasiwa at pangangalaga ay si Mr. Rommel Ibuna, Presidente ng Prudential Customs Brokerage Services, Inc.. Ang buong pamilya ng mga Ibuna ay

nangangakong pananatilihin nila ang kanilang interest at pangangalagaan ang nasabing lugar. xxx"

Clearly from the foregoing, the activities mentioned by Bernardo are indications of possession, occupation and ownership. The sandbar where they erected their structure is directly connected to the sand, mud and reef system of Snake Island, hence part thereof.

Furthermore, in Bernardo's Position Letter dated May 21, 2019 (Annex "CC", Complaint) he asserted that *"This period has not yet expired and I have been in peaceful continuous possession of the area, religiously complying with all my obligation thereunder."* Such is a claim of admission on his part that he is indeed occupying and possessing the subject area. Bolstering this fact is the affidavit of Alfredo Marapao (Annex "GG", Complaint) who declared that last March 5, 2019 and July 23 and 24, 2019, he transported Bernardo to and from the sandbar adjacent to the Snake Island using his boat MBca Mart Grace; and that he saw the house constructed thereon already finished.

DENR-PENRO Research Assistant Jamael Masacal stated that during his inspection on the Snake Island last March 4, 2019 he saw the structure being built there and when he ordered the workers to stop their construction, they presented an alleged Certificate of Stewardship in the name of Bernardo from which the latter apparently exercised possessory rights and control over the area. It should be noted however that in the Memorandum of CENRO ECOMS II, Marsha Lita P. Ocampo, no record of such stewardship contract exists thereby rendering doubt on the validity of Bernardo's claim. This is buttressed by the Memorandum dated April 22, 2019 submitted by Rhodora B. Ubani (Annex "W") disclosing Bernardo's request for permission to stay (in the area) considering the substantial amount of money they had spent in maintaining it for whatever purpose. The Minutes of the dialogue (Annex "Y") further indicates that Bernardo had requested that the length of their stay in the island since 1996 be appreciated in their favor and explained that their submission of an application was not allowed by the CENRO-Puerto Princesa City during the time of President Ramos but were allowed to stay in the island provided that the area will be monitored.

On the other hand, Johnny P. Lilang, Chief of Technical Services Division of DENR-PENRO-Palawan, corroborated the fact that Bernardo requested for an extension of their stay on the island.

None of the respondents presented any document that they were allowed to occupy or possess the Snake Island or any portion thereof and neither have they persuasively rebutted the evidence presented against them.

On April 25, 2022, the undersigned conducted a clarificatory hearing to determine the seeming proprietary right of respondent Rommel Ibuna over the sand bar at the lagoon area of Snake Island. At the hearing, complainant's witness, Masacal confirmed that Ibuna has no material or physical possession of the subject property as there is no proof to support such fact. For his part, Bernardo affirmed that he possessed and occupied the sand bar near the Snake Island since 1996 where he built a nipa hut and when it was destroyed by a typhoon, he built a structure thereon sometime in the year 2019. Bernardo cited the advice of his lawyer and reiterated his claim that he could not be penalized for unlawful occupation or destruction of forest land since Snake Island does not fall within such classification as it is a "purely unclassified public forest land".

Complainant DENR submitted the following document as additional evidence, to wit: (1) Photographs taken of the structure built by Bernardo; (2) Original copy of the Final Notice To Vacate dated September 27, 2021 addressed to Rommel A. Ibuna and Rodolfo O. Bernardo and signed by PENRO Eriberto B. Sanos; and (3) Original copy of a Letter dated October 7, 2021 addressed to Eriberto B. Sanos and signed by Atty. Arturo S. Santos.

We thus find the complaint and its supporting evidence sufficient to establish and engender a well-founded belief that the crime charged has been committed and that Bernardo may be guilty thereof, hence, must be held for trial. All of the evidence are pointing to him for the alleged violation, while there is no competent evidence showing that Ibuna committed it personally or in conspiracy with the former. The evidence fails to establish that Ibuna, by himself or through another person, had materially or physically occupied the sand bar of Snake island nor exercised any proprietary act thereon. He cannot thus be indicted based on hearsay or mere assumption that he owned and built the alleged structure found in the area.


Furthermore, a reading of Ibuna's Special Power of Attorney as presented by complainant PENRO Saños therein stating, thus, "*xxx that our property and the improvements thereon commonly referred to as a*

Sand Bar located in Palawan is covered by the jurisdictional scope of Snake Island xxx", suggests an exercise of his hereditary right as heir of his deceased father Rodolfo Ibuna, who had a claim and an application for Special Land Use Permit dated January 14, 2009 involving an area within Snake island (attached as Annex "R" of the complaint) which was prior to the issuance of DAO 2011-12 dated November 3, 2011 declaring the said island as a National Coastal and Marine Center for Research (NCMR). The violation committed by Rodolfo Ibuna, if there was any, could not be attributed to respondent Rommel Ibuna who merely succeeded his father's right but did nothing against the law.


WHEREFORE, premises considered, it is respectfully recommended that an Information for **UNLAWFUL OCCUPATION OR DESTRUCTION OF FOREST LANDS AND GRAZING LANDS** under **SECTION 78 of PRESIDENTIAL DECREE 705** be filed in court against **RODOLFO O. BERNARDO**.

Further, it is recommended that the complaint against **ROMMEL A. IBUNA** be **DISMISSED** for lack of probable cause.

Puerto Princesa City, Palawan, May 10, 2022.


CARLOS F. SANTOS, JR.
Deputy City Prosecutor
MCLE Compliance No. VII-0015338

APPROVED:


CARMELINA CENIZA GUEVARRA
City Prosecutor
MCLE Compliance No. VI-0015258

Copy furnished:

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2. Rommel A. Ibuna - De La Rosa Centre, 7603 De La Rosa St.,
Bgy. Pio del Pilar, 1230 Makati City
3. Rodolfo O. Bernardo - 11J 106 Aguirre St., Bgy. San Lorenzo Village, Makati City
4. Atty. Arturo S. Santos - 6/F TRIDA Bldg. Parkview Plaza Bldg.
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