

Republic of the Philippines
DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES

Region IV-B, MIMAROPA
1515 L & S Bldg., Roxas Blvd., Ermita,
Manila



BLESILDA E. VILLEGAS
Protestant

-versus

Over a Parcel of Land
Located at Ilaya,
Calapan City, Mindoro

RUBEN MAGLUYAN
MSA No. 045205-162
Respondent.

x-----/

APPEAL MEMORANDUM¹

Respondent, through the undersigned counsel, unto this Honorable Office, respectfully states that:

PREFATORY STATEMENT

"He who comes into equity must come with clean hands." This is simply a case of grudge of the protestant against the respondent.

Protestant demanded from the respondent for a right of way for her to gain a convenient access to her apartment units right on the river bank

¹ Appeal Fee paid under OR No. 4691532, June 22, 2012, **Annex "1"**.

of Calapan River and well within the public easement. Any construction on the public easement is prohibited by law. Attached hereto as **Annexes "2", "3", "4", "5" and "6"** are pictures of her apartment units which are illegally constructed on the public easement.

Respondent politely declined her request because he only holds a small piece of land while the respondent possessed a much bigger land area. Moreover, the protestant has other ways to access to her apartment units other than on the respondent's property.

Hurt by the denial, protestant belatedly interposed her opposition to the respondent's miscellaneous sales application just to get even. Hence, this case.

BRIEF STATEMENT OF FACTS

Respondent and his family have been living on the subject property since his birth (February 19, 1955) or for more than 50 years. They do not have any property. His parents lived and died on that place. Respondent possess that property continuously, notoriously and interruptedly and in the concept of an owner. The Barangay Captain attests to this. Hereto attached is the Certification as **Annex "7"**.

To formalize his possession of the land, respondent applied for a Miscellaneous Sales with the DENR on April 24, 2007 (MSA-05211-162). His Public Land Application is hereto attached **Annex "8"**.

His application was given due course. The OIC of Regional Surveys Division directed the respondent to submit clearance from DPWH. "This survey is portion of patrimonial property. Submit clearance from DPWH", portion of his directive reads. A copy of which is hereto attached as **Annex "9"**.

Subsequently, the OIC District Engineer gave clearance. "**You may consider this letter as a Clearance**", stated the District Engineer in his letter. Hereto attached as **Annex "10"** is a copy of the said letter.

Likewise, the Provincial Engineer did not oppose to the application. And his letter, he said, "Upon inspection/verification of the subject area, it was found out that the area is not within the jurisdiction of this Office and **found no reason to oppose on the above cited application**". Copy of the said letter is hereto attached **Annex "11"**.

Considering that the respondent's application was in order, a survey was conducted by Engr. Mauro M. Feraren on April 25, 2007 (Msi-045205-165-D) and was consequently approved by the OIC Regional Technical Director. Copies of the Technical Description and the Approved Plan are hereto attached as **Annexes "12"** and **"13"**.

Notably, the Approved Plan stated that, "This survey is inside Alienable and Disposable Area as per proj. no. 4, L. C. map no. 5 and established on Nov. 5, 1920 as per investigation report executed by EDNA N. Maralit D. P. L. I of CENRO Baco, Oriental Mindoro".

(Please see sub-marking "13-A" of Annex "13")

Respondent's MSA application went into the processes required by law and there were no objections from any person. The protestant only filed her opposition when her demand for right of way going to her apartment units was denied by the respondent.

Truth be told, as can be gleaned from the photos hereto attached (Annexes **2-6**), protestant's apartment units are constructed right on the legal easement. This is illegal, yet she is earning from these because she's renting this out. And to have a better access to these apartments, she demanded a right of way from the respondent who only has 186 square meters of property where his family is living and with no means of earning.

She filed this opposition solely on the reason that her whims and caprices were not heeded to by the respondent. This is a classic example of social inequality - one who has more in life abusing another who has less in life.

ISSUE:

This is a Miscellaneous Sales Application for residential purposes wherein the respondent is a qualified applicant, his application went through the legal process and his Survey Plan was correspondingly approved by the Regional Technical Director on October 25, 2007.

Is the opposition of the protestant filed only on November 29, 2011 after her demand for right of way to her apartments constructed on the legal easement was politely denied by the respondent tenable?

ARGUMENTS AND DISCUSSIONS

Republic Act No. 730 was enacted to correct the social inequality and to afford the landless and homeless a decent place to live. The law allows the direct sale of public lands for residential purposes to qualified applicants. And to qualify, the applicant must be: (a) a Filipino citizen of legal age; (b) not the owner of a home in the municipality or city where he resides; (c) have established in good faith his residence on a parcel of land which is not needed for public service; and (d) have constructed his house and actually resided therein in.

The MSA of respondent Magluyan falls squarely within this law. He is of legal age and a Filipino Citizen. He is not an owner of any home in Calapan City, nor in any other place. The land where he is residing is not

used for public service. He is actually residing therein for more than 50 years and in fact has been paying the real property tax.

The DPWH through the Office of the District Engineer and the Office of the Provincial Engineer did not object to the respondent's application. Meaning, the subject land is not used for public service. Above all, the land is inside and Alienable and Disposable Area.

Correspondingly, since respondent's application was in order, the survey plan was approved by RTD.

Now, here comes a neighbor who owns a larger land area compared only to that of the respondent which is only 186 square meters, demanded a right of way for her to have convenient access to her apartment units constructed right the river bank! On a legal easement!

Who is now violating the law? It's the protestant!

He who comes into equity must come with clean hands.

Protestant is already earning from her apartment constructed on a public easement, which in the first place, should have not been there. Yet, she is not contented; she still wants a portion of that small property of the defendant. It is not right to enrich herself more at the expense of the respondent.

While the respondent only wanted nothing more but to have a decent and peaceful home for his family. He has no place elsewhere to live. He doesn't have a gainful labor. He has been living on this place since birth. His parents lived and died there.

Isn't it right that those who have less in life must have more in law?

PRAYER

WHEREFORE, respondent Ruben Magluyan respectfully prays that:

1. His Miscellaneous Sales Application be given due course;
2. The Decision of the PENRO rejecting his application be reversed and reinstated in the records of the said office.
3. And finally, the opposition of protestant Blesilda Villegas be dismissed for utter lack of merit.

All other remedies which are just and equitable are likewise prayed for.

October 3, 2012, Quezon City for Manila.



FEROLINI T. MATAHUM

Roll No. 53185

PTR No. 6031659/01.02.2012/Quezon City

IBP No. 823341/01.02/2012/Quezon City

MCLE Compliance No. IV-0004439

February 7, 2012

GASCON AND ASSOCIATES LAW OFFICE

3rd Floor, Victoria 1 Bldg., 1670 Quezon Ave.,

Quezon City

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Copy furnished:
Blesilda E. Villegas
Del Rosario St., Ilaya,
Calapan, Oriental Mindoro

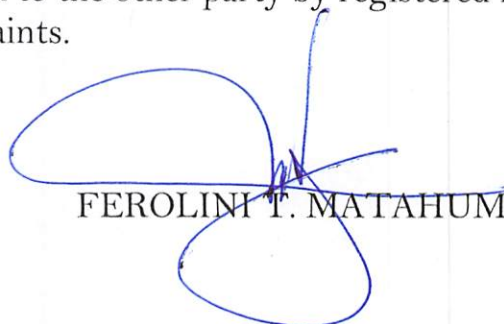
Registry Receipt No. 113509

Date 10/4/12

MANILA CPD

EXPLANATION →

Pursuant to *Section 11 Rule 13 of the 1997 Rules of Civil Procedure*, the foregoing pleading was furnished to the other party by registered mail in view of distance and time constraints.



FEROLINI T. MATAHUM

VERIFICATION AND CERTIFICATION
FOR NON-FORUM SHOPPING

I, **RUBEN MAGLUYAN**, after having duly sworn, hereby depose and say that:

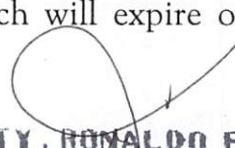
1. I am the respondent of this case.
2. I caused the preparation of this Memorandum.
3. I have read the same and the contents thereof are true and correct to my personal knowledge and on the basis of the documents and records in my possession.
4. I have not commenced any other action or proceeding involving the same issues in the Supreme Court, Court of Appeals or any other tribunal or agency in the Philippines;
5. To the best of my knowledge, no such action or proceeding has been filed or pending before the Supreme Court, Court of Appeals or any other tribunal or agency in the Philippines;
6. If should learn hereafter that a case of similar nature has been filed in the Supreme Court, Court of Appeals or any other tribunal or agency, I undertake to report the same to this Honorable Court within five (5) days from knowledge thereof;

IN WITNESS WHEREOF, I have hereunto set my hand this OCT 04 2012 in the City of Manila, Philippines.


RUBEN MAGLUYAN

SUBSCRIBED AND SWORN to before me, this OCT 04 2012 at City of Manila, the affiant exhibited to me a sufficient proof of identity, e. i.: Driver's License No. DO5-81-011783 which will expire on February 19, 2015.

Doc. No. 493;
Page No. 110;
Book No. XXXI;
Series of 2012


ATTY. RONALDO E. RENTA
NOTARY PUBLIC
UNTIL DECEMBER 31, 2013
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