

Republic of the Philippines
Department of Environment and Natural Resources
OFFICE OF THE SECRETARY
Visayas Avenue, Diliman, Quezon City

RE: LETTER COMPLAINT OF
MR. BALBINO ROCA
AGAINST ROMULO
FETALVERO AND ENGR.
ELPIDIO ATIENZA OF PENRO
ODIONGAN, ROMBLON.

ADM. CASE NO. 2022-05-19

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ORDER

1. Nature and Facts of the Case

This resolves the Letter-Complaint¹ of Balbino Roca (Roca), of San Mariano, Isabela, against Romulo Fetalvero (Fetalvero), OIC Land Management, and Engr. Elpidio E. Atienza (Engr. Atienza) both employees of Provincial Environment and Natural Resources (PENR) Office, Odiongan, Romblon. The Complaint stemmed from the alleged mistake by the Survey Crew for having an incomplete survey work resulting in the disappointment and humiliation of Roca.

The facts of the case were summarized in the Investigation Report² dated 10 February 2006 and quoted for easy reference, to wit:

- a) That the issue (sic) started from the boundary conflict between adjoining Lots 471 and 473, Cad 341-D, all located at Barangay Poctoy, Odiongan, Romblon
- b) That Lot 473, Cad 341-D with an area of 9,448 square meters was already patented to Dionesio Fajolagutan on September 28, 1963
- c) That Lot 471-C, Csd-04-0215450D identical to Lot 11444, cad 341-D with an area of 700 square meters was covered by FPA No 045909-152 filed by Juanito F. Roca but that said application was hold on abeyance due to the claims and boundary conflict which was still unresolved

¹ DENR Folder (unnumbered).

² *Id.*

d) That both parties agreed that a settlement be made in the Barangay level and during the meeting in Barangay both parties concerned agreed that said lands be surveyed and relocated by a private surveyor. It was agreed further that both parties must deposit an amount of P 15,000 for payment of the services of the hired surveyor. So, Victor Fetalvero, the present owner of Lot 473, Cad 341-D had given P15,000 to Romel Fajarito, the Barangay Captain of Poctoy as his deposit and Mr. Balbino Roca claimant of Lot 471-C, had given to Engr. Elpidio Atienza of this Office the P 15,000 as his deposit. Due to the non-availability of a licensed surveyor in the vicinities during that time and Engr. Elpidio Atienza had just assumed as GE III in this Office was available during Saturdays and Sundays, then the relocation job was passed to Engr. Atienza it was then relocated, then a corresponding plan was given to both parties concerned with informations on the outcome of the relocation survey. For this, the deposits were now given to Engr. Elpidio Atienza for his services.

e) Mr B. Roca won't agree on the result of the relocation survey done, so the said case was forwarded for the proper court proceedings by the Barangay Captain of Poctoy upon the coordination by the undersigned to the local officials.

On 20 December 2005, this Office received a Letter-Complaint with addenda filed by Roca questioning the result of the survey work. Roca alleged that the survey work resulted to Land-Grabbing favoring Victor Fetalvero where the Survey Crew, under the direction of Engr. Atienza, made a gross mistake when they installed a concrete monument between Cor-1 and Cor-2 of Lot-471.

Apparently, the survey work was incomplete and had to be redone based on the corrected technical description of the land. However, it was further alleged that the Survey Crew did not put a single concrete monument sign or stakeout after the survey was conducted, and that the technical data issued by PENR Office, Odiongan were "unbelievably inconsistent-outrageous."

On 04 January 2006, the Regional Technical Director (RTD) for Lands, DENR IV, MIMAROPA, issued a Memorandum³ ordering the

³ *Ibid.*

Community Environmental and Natural Resources (CENR) Office to investigate and submit a report on the said Complaint.

On February 2006, Roca wrote a Letter⁴ addressed to the Secretary, alleging that two months had already lapsed and the RTD failed to conduct a fact-finding investigation, resulting in inaction. In response, the Assistant Secretary of the Administrative Legal Service issued a Memorandum⁵ on 30 August 2006, directing the submission of an Investigation Report on the matter.

On 19 June 2006, the Barangay Captain of Poctoy, Odiongan, Romblon sent a letter to the PENR Office. The letter informed the PENR Office that Roca and Victor Fetalvero met before the barangay for the acceptance of the endorsed survey plan, to which Roca did not accept the proposal. Thus, the parties failed to reach an amicable settlement before the Lupong Tagapamayapa (Lupon). Consequently, all the necessary documents, i.e. the minutes of the meeting, result of the settlement, were attached on the aforementioned letter.

Acting on the said letter, the PENR Office issued an Order of Investigation.⁶ Accordingly, Roca was invited by the PENR Office in a Letter⁷ dated 05 September 2006, to ventilate all the complaints and grievances relating to the dispute over the land with Victor Fetalvero.

The RED then issued a Memorandum⁸ for the Assistant Secretary of this Office, updating the status of the case and stating that the PENR Office are finding ways to resolve the conflict between Roca and Victor Fetalvero.

2. Issue:

Whether there is a ground to administratively charge Romulo Fetalvero and Engr. Atienza.

3. Ruling:

After evaluation of the available records, this Office finds the Letter-Complaint without merit.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

There is no ground to administratively charge Romulo Fetalvero and Engr. Atienza for the alleged gross mistake.

Civil Service Commission (CSC) Resolution No. 1701077, otherwise known as the 2017 Rules on Administrative Cases in the Civil Service⁹ (2017 RACCS), provides for the requisites of a valid complaint. Section 11 of which states:

Section 11. Requisites of a Valid Complaint – No complaint against an official or employee shall be given due course unless the same is in writing, subscribed and sworn to by the complainant. In cases initiated by the proper disciplining authority or an authorized representative, a show cause order is sufficient.

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The complaint shall contain the following:

- a. Full name and address of the complainant;
- b. Full name and address of the person complained of as well as his/her position and office;
- c. A narration of the relevant and material facts which shows the acts or omissions allegedly committed;
- d. Certified true copies of documentary evidence and affidavits of his/her witnesses, if any; and
- e. Certification or statement of non-forum shopping.

The absence of any of the aforementioned requirements may cause the dismissal of the complaint without prejudice to its refiling upon compliance with the same. (*Underscoring and emphasis supplied*)

Accordingly, the Letter-Complaint against the person complained of shall only be given due course if there is a *prima facie* case established during the preliminary investigation or an *ex-parte* examination of the records and documents submitted by the parties. In the absence of a *prima facie* case, the complaint shall be dismissed. Section 22 of the 2017 RACCS provides:

⁹ CSC Resolution No. 1701077, [July 3, 2017].

Section 22. Decision or Resolution after Preliminary Investigation. – if a *prima facie* case is established after preliminary investigation, the disciplining authority may issue either a formal charge or a notice of charge pursuant to Rule 5 of these Rules.

In the absence of a *prima facie* case, the complaint shall be dismissed. (*Emphasis supplied*)

The above cited law explains that absent a valid complaint, as in this case, there can be no basis for determining whether there is a *prima facie* case against the persons complained of, as to cause the issuance of a formal charge or notice of charge. Therefore, in this case the Letter-Complaint filed by Roca should be dismissed, for insufficient grounds to administratively charge the person complained of.

In this case, the Letter-Complaint failed to attach the following: certified true copies of documentary evidence and affidavits of his/her witnesses, if any, and Certification or Statement of Non-Forum Shopping.

From the records, this Office finds that Romulo Fetalvero and Engr. Atienza were acting in accordance with the Order of the PENR Office. There was no gross mistake on their part, they exerted effort to settle the dispute before the Barangay.

As to the allegation of incomplete Survey Work, this Office disagrees and finds the statement of Roca as self-serving and unsubstantiated. From the minutes of the hearing conducted before the Lupon, Roca says that the Survey Crew did not even put any signs or monuments. Engr. Atienza answered and confirmed that signs were indeed installed but Roca removed them. Roca did not refute such statement before the Lupon. No evidence was presented nor given to refute the answer of Engr. Atienza further confirming that the allegations made were baseless.

Finally, the officers enjoy the presumption of regularity for their official acts as stated in the case of *Anuncio C. Bustillo, Emilio Sumilhig, Jr., and Agustin Billedo, Jr. vs People of the Philippines*¹⁰ viz:

The presumption of regularity of official acts may be rebutted by affirmative evidence of

¹⁰ G.R. No. 160718, [May 12, 2010], 634 PHIL 547-556.

irregularity or failure to perform a duty. The presumption, however, prevails until it is overcome by no less than clear and convincing evidence to the contrary. Thus, unless the presumption is rebutted, it becomes conclusive. Every reasonable intendment will be made in support of the presumption and in case of doubt as to an officer's act being lawful or unlawful, construction should be in favor of its lawfulness. (Emphasis supplied)

In this case, Roca failed to present any evidence that shows the officers were remiss of their duty, no other proof was submitted to support his claim.

From the foregoing, considering that the Letter-Complaint was baseless and was not supported by any documentary or direct evidence, and even lacks the required Certificate of Non-Forum Shopping, Roca fails to comply with the requirements of a valid complaint. It must be stressed that "bare allegations unsubstantiated by evidence, are not equivalent to proof"¹¹.

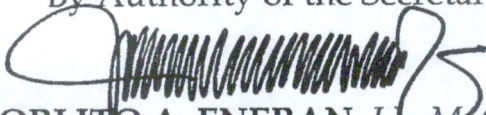
Furthermore, upon examination of the records, this Office finds that there was no *prima facie* case established to proceed further.

WHEREFORE, the Complaint dated 20 December 2005, of Balbino Roca against Romulo Fetalvero and Engr. Elpidio E. Atienza is **DISMISSED.**

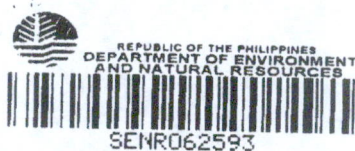
SO ORDERED.

Quezon City, Philippines, MAY 06 2022.

By Authority of the Secretary:¹²


NORLITO A. ENERAN, LL.M., CESO III
Director, Legal Affairs Service

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¹¹ *Domingo vs. Robles*, 453 SCRA 812, 818 [2005].

¹² DENR DAO 2020-05.

Copy Furnished:

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