


MARCH 31/2023

The Regional Executive Director
DENR MIMAROPA Region
1515 DENR by the Bay Building
Roxas Boulevard, Ermita Manila

DENR MIMAROPA RECORDS SECTION RECEIVED	
MAR 31 2023	
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BY: _____	DATE NO. _____
TIME: _____	

IN the Matter of The
OOJ
ADMINISTRATIVE ADJUDICATION
OF PROCEEDINGS OF TWO
Hundred fourteen Pieces
of Lumber of Gmelina species
with a TOTAL Volume of 1,364 BOARD
Feet AND one (1) Volume of unit 1822U
Forward Truck BEARING Plate No. WSU 342
APPREHENDED IN Barangay HAGAN
BONGABONG, oriental Mindoro.


Melson J. Eustaquio
Hagan Bongabong oriental Mindoro

CEL. NO. - 0953 216 5631

Republic of the Philippines
Department of Environment and Natural Resources
MIMARIPA Region

IN THE MATTER OF THE
005

MIMAROPA AAP Case No.

ADMINISTRATIVE ADJUDICATION
OF PROCEEDINGS OF TWO
HUNDRED FOURTEEN PIECES
OF LUMBER OF GMELINA SPECIES
WITH A TOTAL VOLUME OF 1,364 BOARD
FEET AND ONE (1) UNIT ISUZU FORWARD
TRUCK BEARING PLATE NO. WSU 342
APPREHENDED IN BARANGAY HAGAN
BONGABONG, ORIENTAL MINDORO

X-----X

MOTION FOR RECONSIDERATION

COMES NOW NELSON EUSTAQUIO, by himself, unto this Honorable Office, most respectfully alleges that:

1. On March 21, 2023, he received a copy of DECISION in the above-entitled case, ordering the seizure of 214 pieces of lumber of Gmelina species and the confiscation of the forward truck bearing plate number WSU 342;

2. With all due respect, the undersigned respondent moves for the reconsideration of the above-mentioned Decision on the ground that this Honorable Office committed reversible errors;

3. In the Report dated May 19, 2021 issued by OIC-CENRO ALMA GIBE, addressed to the REGIONAL EXECUTIVE DIRECTOR DENR MIMAROPA REGION, copy of which is hereto attached as Annex "1" and made an integral part hereof, the OIC-CENRO Alma Gibe, pursuant to the Memorandum dated April 12, 2021 issued by the Regional Executive Director, DENR MIMAROPA, found and held that the undersigned did not commit any violation of the law because the forest products apprehended albeit illegally were covered by cutting permit clearance (CPC) and that at the time the apprehending policemen arrested the respondent, he was just transferring the dried lumbers to his storage facility which does not yet require a certificate of transport agreement (CTA) but only a CPC. The OIC-CENRO concluded that the undersigned respondent did not violate Section 77 of PD 705 as amended. This Memorandum was submitted to this Honorable Office but was apparently not favorably considered in the evaluation of the facts and in the rendition of the Decision;

4. The finding of facts by the CENRO Roxas, Oriental Mindoro is binding and conclusive because it is the one that has first hand knowledge of the facts of the case. Its recommendation in the said Memorandum that the respondent did not violate Section 77 of PD 705 as amended deserves favorable consideration;

5. The reliance on the presumption of regularity in the performance of official duty by the apprehending officers is misplaced considering that the arrest and apprehension were clearly illegal. In fact, the undersigned respondent was acquitted of the criminal case filed against him by the said apprehending policemen against him. In acquitting the herein respondent, the Court gave credence and probative value in the Report issued by OIC CENRO Alma Gibe. In its Decision dated April 18, 2022, copy of which is hereto attached as Annex "2" and made an integral part hereof, RTC Branch 41, Pinamalayan, Oriental Mindoro, said that:

"The findings and recommendation of the CENRO negates the existence of probable cause in this case. The Accused was charged under special law and may be prosecuted only if there was indeed violation of (sic) the said law, however, the very agency entasked to monitor and determine such violation has already made findings that the accused did not commit any violation so there is no use of prosecuting the accused in this case as it will result to grave injustice.

To the mind of the Court the instant report of the CENRO has extinguished the offense of the accused as it has been declared that the accused committed no offense. Dismissal of the case is proper at this stage as further prosecution of the accused will just be a mere exercise of futility as it will certainly result to accused's acquittal.

Accordingly, the instant case filed against the accused is hereby ordered DISMISSED For lack of probable cause and want of evidence and the Cash Bond posted by the accused in the amount of P40,000.00 under O.R. No. 8704868 to secure his temporary liberty is hereby cancelled and ordered to be reimbursed to the accused upon presentation of proper documents.

Since the accused has not committed any violation, the items confiscated from the accused including the Isuzu Forward Stake with Plate No. T-WSU-342 are hereby ordered to be released to the accused or to the owner thereof, immediately.

SO ORDERED."

6. Indeed, the undersigned respondent did not commit any administrative violation to warrant the confiscation of the lumber and the forfeiture of the vehicle because the lumbers were covered by CPC and he was not transporting them when the apprehension was effected by the

policemen. He was just transferring the dried lumbers to his storage facility which as opined by OIC-CENRO Gibe merely requires CPC and not CTA.

PRAYER

WHEREFORE, premises considered, it is respectfully prayed that the impugned Decision be reversed and set aside and a new one be rendered ordering the release of the confiscated items including the subject vehicle .

Other reliefs just and equitable under the premises are likewise prayed for.

March 24, 2023, Bongabong, Oriental Mindoro for Manila.


NELSON S. EUSTAQUIO
Hagan, Bongabong
Oriental Mindoro

Copy furnished by registered mail:

Community Environment and Natural Resources Office
San Mariano, Roxas, Oriental Mindoro

This Motion was filed with this Honorable Office and served on the CENRO by registered mail due to distance and lack of messenger .


NELSON S. EUSTQUIO



Republic of the Philippines
Department of Environment and Natural Resources
MIMAROPA Region

Community Environment and Natural Resources Office

Camia St., San Mariano, Roxas, Oriental Mindoro
Contact No. : 0917 876 9985/ 0917 113 5572
VOP: (043) 289-7118
Email: cenroroxas_orientalmin@yahoo.com

FOR : The Regional Executive Director
DENR MIMAROPA Region
1515 DENR by the Bay Building
Roxas Boulevard, Ermita Manila

ATTN: The Chief Law Enforcement Division
The Chief Legal Division

THRU : The PENR Officer
DENR, PENRO, Suqui, Calapan City

FROM : OIC, CENR Officer
Roxas, Oriental Mindoro

SUBJECT : REPORT ON THE APPREHENDED ONE (1) UNIT ISUZU FORWARD
TRUCK BEARING PLATE NUMBER WSU-342 LOADED WITH TWO
HUNDRED FOURTEEN (214) PIECES OF LUMBER OF GMELINA
SPECIES WITH A TOTAL VOLUME OF 1,364 BOARD FEET IN BRGY.
HAGAN, BONGABONG, ORIENTAL MINDORO

DATE : May 19, 2021

This pertains to your Memorandum dated April 12, 2021.

Section 77 of P.D. 705 as amended punishes two (2) distinct and separate offenses (*People vs. Que, G.R. No. 120365, 1996*), to wit:

- (1) Cutting, gathering, collecting and removing timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land without any authority; and
- (2) Possession of timber or other forest products without the legal documents required under the existing forest laws and regulations.

In the first offense, the required document is a Cutting Permit Clearance (CPC) from the Regional Executive Director. For the second offense, a Certificate of Transport Agreement (CTA) issued by CENRO for transporting lumber.

In this case, there were contradictions between the statements of the PNP-Bongabong and Nelson Eustaquio (Nelson) as to the manner and date of the apprehension.

The PNP-Bongabong stated that they apprehended Nelson on January 1, 2021 at 2:30 am at National Road Sitio Centro Barangay Hagan, Bongabong Oriental Mindoro while transporting the said lumbers. This act will require CTA to be valid since it falls under the 2nd paragraph.

However, Nelson claimed that he was apprehended on December 31, 2020 at 6:00 pm, at Sitio Gumatos Barangay Hagan, Bongabong, Oriental Mindoro when he was about to transfer the dried lumbers to his storage facility to prevent the lumbers from drifting to the river due to flooding. This act falls under the 1st paragraph (gathering) which requires CPC. Attached is the statement of Lalaine Garcia (*Annex A*) as witness of the apprehension.



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During the Administrative Hearing, Nelson claimed that CPCs were issued to him but no CTA for the 1,364 board feet yet. He refrained from transporting the said lumber as he was still waiting for the approval of its CTA.

Upon checking and verification, there were two (2) CPCs issued in favor of Nelson Eustaquio as representative, one from Mr. Mauricio Salcedo, which was issued on September 21, 2020 and the other one was from Mr. John Robert F. Vargas, issued on February 11, 2020. Attached as (*Annex B-1*) and (*Annex B-2*) respectively. The total net volume granted to Nelson for cutting Gmelina was 24.56 cu.m.

When the CTAs issued in favor of Nelson were counter-checked, the total volume he transported covered by the CPCs above were only 19.88 cu.m. The 1,364 board feet (3.21 cu.m) is still within the allotted volume. Attached herewith are the issued CTAs covered by two CPCs as *Annex C-1, C-2, C-3, C-4, and C-5*.

Considering that the 1, 364 board feet are covered by the Cutting Permit Clearance, and the apprehension was done when he was about to transfer the lumber to storage facility which requires only CPC, then we recommend that Nelson Eustaquio did not violate Section 77 of P.D. 705 as amended.

The forest product and conveyance shall be released subject to the criminal proceeding involving this case.


ALMA E. GIBE
OIC- CENRO

REGIONAL TRIAL COURT
FOURTH JUDICIAL REGION
PINAMALAYAN ORIENTAL MINDORO
BRANCH 41

PEOPLE OF THE PHILIPPINES,

Criminal Case No. CR21-11536
For: Violation of P.D. 705

-versus-

NELSON SUBITO EUSTAQUIO,
Accused.

X-----X

RESOLUTION

Before this Court is a Motion To Dismiss the above-entitled case filed by the accused through counsel anchored on the ground that the proper government Agency has already made a recommendation that the accused was in possession of necessary permit and the pieces of lumber recovered from the accused is within the limit of the Cutting Permit Clearance (CPC) and Certificate of Transport Agreement (CTA) issued to him.

The Information indicting the accused in the above-captioned case states that:

"That on or about the 1st day of January, 2021 at around 2:30 oclock in the morning, in Sitio Centro, Barangay Hagan, Municipality of Bongabong, Province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, did then and there, willfully, unlawfully and feloniously gather and transport TWO HUNDRED FOURTEEN (214) PIECES of GEMELINA sawn lumber of assorted sizes with the total volume of one Thousand Three Hundred Sixty Four (1,364) Board Feet and with an estimated market total value of SIXTY ONE THOUSAND THREE HUNDRED EIGHTY (PHP 61,380.00) PESOS, Philippine currency loaded in an ISUZU FORWARD TRUCK bearing Plate No. WSU-3452, Engine No. GBGI-699244 and Chassis No. FRR12HA-3557136 owned by the said accused, without any permit from lawful authority, to the damage and

prejudice of the Republic in the aforementioned amount."(underscoring supplied).

In his motion, the accused attached the Certified true copy of the report of the OIC, CENR Officer based in Roxas, Oriental Mindoro relative to the instant apprehension of the accused, it was stated that the accused was in possession of Cutting Permit Clearance from the Regional Executive Director and a Certificate of Transport Agreement issued by CENRO..

The report of the OIC-CENRO also stated that Considering that the 1,364 board feet are covered by the Cutting Permit Clearance and the apprehension was done when he was about to transfer the lumber to storage facility which requires only CPC and since the accused is in possession of the CPC, then it was recommended that the accused Nelson Eustaquio did not violate Section 77 of PD 705 as amended.

The prosecution was afforded time to comment on the accused's Motion to Dismiss.

The Court grants the Motion.

The findings and recommendation of the CENRO negates the existence of probable cause in this case. The Accused was charged under this special law and may be prosecuted only if there was indeed violation of such law, however, the very agency entasked to monitor and determine such violation has already made findings that the accused did not commit any violation so there is no use prosecuting the accused in this case as it will result to grave injustice.

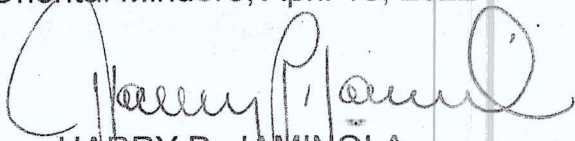
To the mind of the Court the instant report of the CENRO has extinguished the offense of the accused as it has been declared that the accused committed no offense. Dismissal of the case is proper at this stage as further prosecution of the accused will just be a mere exercise of futility as it will certainly result to the accused's acquittal.

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Since the accused has not committed any violation, the items confiscated from the accused including the Isuzu Forward Stake with Plate No. T-WSU-342 are hereby ordered to be released to the accused or to the owner thereof, immediately.

SO ORDERED.

Pinamalayan, Oriental Mindoro, April 18, 2022



HARRY D. JAMINOLA
Presiding Judge