

Republic of the Philippines
REGIONAL TRIAL COURT OF PALAWAN
Fourth Judicial Region
BRANCH 95

Roxas, Palawan
Rtc95roxaspalawan@gmail.com
0950-345-9348/0936-683-9473

REPUBLIC OF THE PHILIPPINES,
Plaintiff,

CIVIL CASE NO. 4542

- versus -

for

HEIRS OF INDALECIO NAMUCO
Namely: EMMY NAMUCO-TEJEDOR
Defendants.

**CANCELLATION OF FREE
PATENT AND ORIGINAL
CERTIFICATE OF TITLE
AND REVERSION**

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MOTION FOR RECONSIDERATION

Defendants, by the undersigned counsel, unto this Honorable Court most respectfully submit their Motion for Reconsideration wherein they state the following:

1. On February 20, 2023, this Honorable Court rendered the Decision on this case. The dispositive portion states as follows:

"WHEREFORE, premises considered, judgment is hereby rendered GRANTING the prayer of the Plaintiff and rendering the following decretal:

1. The free patent No. (IV-A-11) 1269 and Original Certificate of Title (OCT) No. E-4948 of the Registry of Deed of Palawan in the name of Indalecio Namuco, and all its derivative titles are hereby declared VOID AB INITIO;

2. The heirs of Indalecio Namuco, namely: Rebecca Namuco-Carceller and Emmy Namuco-Tejedor, or any other person in possession of Transfer Certificate of Title No. 065-2022000188 in the name of Rebecca Namuco-Carceller and Emmy Namuco-Tejedor, are hereby ordered to SURRENDER the said land title to Registry of Deeds of Palawan and the latter is hereby directed to cancel the aforementioned titles/s, as well as the

original thereof, and all of its subsequent titles, if any;

3. *The heirs of Indalecio Namuco, namely: Rebecca Namuco-Carceller and Emmy Namuco-Tejedor are hereby ordered to cease and desist from exercising or representing acts of ownership or possession over Lot No. 894, PLS-232 situated in Barrio of Del Pilar, Municipality of Roxas, Province of Palawan; and finally,*

4. *The Lot no. 894 PLS-232 covered by the aforementioned patent and title is hereby ordered reverted back to the land of public domain.*

No pronouncement as to cost.

IT IS SO ORDERED."

2. Pursuant to Section 1, Rule 52, of the Rules of Court, a party may file a motion for reconsideration of a judgment or final resolution within fifteen (15) days from notice thereof. The Defendant's counsel received the said Decision on February 23, 2023. Thus, the latter has until March 10, 2023 to file this Motion for Reconsideration and this motion is timely filed.

3. On the grounds of misapprehension of facts and error in the application of laws by this Honorable Court, the Defendants seek for the reconsideration of the said Decision in their favor.

4. With the indulgence of this Honorable Court, this motion for reconsideration is not intended to delay the administration of justice but to avail the remedy in order to redress the findings or conclusions by this Honorable Court which are not supported by the evidence or contrary to law.

**With due respect, Indalecio Namuco
did not commit fraud or misrepresentation
of facts which would warrant the cancellation
of the free patent and certificate of title
duly issued by competent government authority
in his favor**

5. It is undisputed fact that on July 23, 1956, Indalecio Namuco (Indalecio for brevity) filed with the

Bureau of Lands an application for free patent, Bureau of Lands No. 2-367 over the subject lot, identified as Lot No. 894, PLS-232 situated in Del Pilar, Roxas, Palawan, consisting of 9,060 square meters.

6. Pursuant to said application, a Free Patent No. (IV-A-11) 1269 was issued to Indalecio. Subsequently, Original Certificate of Title No. E-4948 (OCT No. E-4948) was issued to him by the Registry of Deeds of Palawan on February 24, 1983.

7. Upon the demise of Indalecio sometime in the year 2000, one of his heirs, the herein defendant, Emmy Namuco-Tejedor (Tejedor for brevity) took over the parcel of lot subject of this case. Tejedor and her co-heirs executed an Extra-Judicial Settlement of the Estate of Indalecio, among them is the said property OCT No. E-4948 and a new Transfer Certificate of Title No. (TCT No.) 065-2011000188 was issued to one of his heirs, Norma Namuco-Mala.

8. It bears emphasizing that this Honorable Court decided this case by relying heavily on the Plaintiff's allegation that Indalecio committed fraudulent act and misrepresentation in his application for free patent that misled the Department of Environment and Natural Resources (DENR) in issuing the patent to the prejudice of the State over its patrimony. This reliance holds no water.

9. The issue of fraudulent act and misrepresentation by Indalecio arose when allegedly, he already transferred his rights and interests over the subject lot to a certain Antonio Lavega (Antonio for brevity) on December 11, 1965. There is no evidence as to this matter.

10. Assuming without conceding that such transfer of rights and interests on December 11, 1965 is true, it is clear that Indalecio did not mislead the DENR through fraud or misrepresentation at the time of his free patent application which was made on July 23, 1956 or eight years earlier from the alleged transfer of rights and interests. In other words, at that time, the land described and applied for free patent was not claimed or occupied by any person other than Indalecio.

11. It bears stressing that Section 38 of Act No. 496¹ recognizes the right of a person deprived of land

¹ AN ACT TO PROVIDE FOR THE ADJUDICATION AND. REGISTRATION OF TITLES TO LANDS IN THE

to institute an action to reopen or revise a decree of registration obtained by **actual fraud**. "[T]he fraud must consist in an intentional omission of facts required by law to be stated in the application or a willful statement of a claim against the truth. It must show some specific acts intended to deceive and deprive another of his right. The fraud must be **actual and extrinsic**, not merely constructive or intrinsic; the evidence thereof must be clear, convincing and more than merely preponderant, because the proceedings which are assailed as having been fraudulent are judicial proceedings which by law, are presumed to have been fair and regular."²

12. The Court's ruling in *Republic v. Guerrero*³ is instructive, viz:

"Fraud is of two kinds: actual or constructive. Actual or positive fraud proceeds from an intentional deception practiced by means of the misrepresentation or concealment of a material fact. Constructive fraud is construed as a fraud because of its detrimental effect upon public interests and public or private confidence, even though the act is not done with an actual design to commit positive fraud or injury upon other persons.

Fraud may also be either extrinsic or intrinsic. Fraud is regarded as intrinsic where the fraudulent acts pertain to an issue involved in the original action, or where the acts constituting the fraud were or could have been litigated therein. The fraud is extrinsic if it is employed to deprive parties of their day in court and thus prevent them from asserting their right to the property registered in the name of the applicant.

The distinctions assume significance because only actual and extrinsic fraud had been accepted and is contemplated by the law as a ground to review or reopen a decree of registration.

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In all these examples, the overriding consideration is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court or from presenting his case. The fraud, therefore, is one that affects and goes into the jurisdiction of the court."

PHILIPPINE ISLANDS. (Emphasis Supplied)

² *Libudan v. Gil*, L-21163 and L-25495, May 17, 1972, 45 SCRA 17, 27. (Emphasis Supplied)

³ G.R. NO. 133168, March 28, 2006.

13. Here, evidence on records vis-à-vis the facts of the case suggest that Plaintiff failed to adduce clear and convincing evidence that Indalecio committed actual and extrinsic fraud in procuring the patent No. (IV-A-11) 1269 and the corresponding OCT E-4948.

14. Also, there is no evidence on record showing that Antonio, who claim that Indalecio transferred his rights and interests over the subject lot, was prevented from asserting his right over the lot in question and from properly presenting his case by reason of such fraud. Antonio did not participate in the proceedings of this case. As correctly pointed out by this Honorable Court, fraud cannot be presumed, and failure to prove it defeats one's own cause.

15. *"Well-settled is the rule that the party alleging fraud or mistake in a transaction bears the burden of proof. The circumstances evidencing fraud are as varied as the people who perpetrate it in each case. It may assume different shapes and forms; it may be committed in as many different ways. Thus, the law requires that fraud be established, not just by preponderance of evidence, but by clear and convincing evidence."*⁴

16. Be that as it may, the applicable ruling in this case is Ramirez v. Court of Appeals⁵ wherein the Court held that, *"A certificate of title fraudulently secured is not null and void ab initio, unless the fraud consisted in misrepresenting that the land is part of the public domain, although it is not. In such case the nullity arises, not from the fraud or deceit, but from the fact that the land is not under the jurisdiction of the Bureau of Lands."*

17. Noteworthy is that this Honorable Court gives accord and credence to the investigation of Plaintiff's witness DENR Special Investigator Ronnie Lilang (Lilang for brevity). Close scrutiny of his report⁶ however reveals that it is tainted with bias against one of the defendants. First, the report indicates that there was no proof of long-time possession in the lot which is the subject matter of this case and the subject property could not qualify for free patent application because Indalecio allegedly failed to introduce development therein. This is contrary to what the latter stated in his free patent application, particularly paragraph 4 of Bureau of Lands No. 2-367 which provides, to wit:

⁴ Id.

⁵ 30 SCRA 301.

⁶ Exhibit "F", Formal Offer of Evidence by the Plaintiff.

'4. The land described and applied for is not claimed or occupied by any other person, but is public land. I entered upon and begun cultivation of the same on the ____ day of April, 1945 and since that date I have continuously cultivated the land, and have made thereon the following improvements, viz.: 85 coconuts bearing in Lots Nos. 54, 55 and 56 and 60 coconuts bearing in Lot No. 894 and house in Lot No. 55.'

18. The second bias was manifested when Lilang reported that the Defendant Tejedor is unwilling to cooperate by refusing for scrutiny the sources of her evidence thus, the former ruled that the latter lost reason to insist her claim. This has no factual and legal basis. Tejedor was not invited or given a chance to take part on the said investigation. Neither a subpoena was issued for such purpose. Third, Lilang reported that their office has no record of Indalecio's free patent application or carpeta. This contention should be given scant consideration. Their office is the one that should be responsible in securing and preserving government documents. It has control over the same hence, with this contention, it gives rise to a presumption that Lilang deliberately removed the carpeta from the filing cabinet to the prejudice of the Defendants. And lastly, the bias is bolstered when Lilang recommended that a certain Romeo Martin be given 120-day period within which to file an appropriate PLA of his own over the subject lot. It appears that the latter is interested over the same because of the fact that he owns a property adjacent to it and he was the one who appears to have initiated to file this action of reversion before the office of the Solicitor General.

19. Justice and equity demand therefore that these biases against the Defendants be reconsidered by this Honorable Court.

The waiver of rights and interests over the subject property purportedly executed by Indalecio which has been the basis of this Honorable Court's finding of fraud and misrepresentation pending application for free patent should not be given force and effect on the ground of laches

20. Perusal of the evidence on records reveal that such transfer of rights and interests purportedly executed by Indalecio should not be given force and effect of law considering that Antonio and his

successor-in-interest Romeo Lavega (Romeo for brevity) failed to assert it within a reasonable period of time.

21. Allegedly, the said waiver of rights and interests over the subject lot was executed on December 11, 1965 while the approval of Indalecio's free patent application and subsequently the issuance of OCT E-4948 was on February 24, 1983. It is undisputed fact that the lot in question has been registered in the name of Indalecio since 1983 and a new title, TCT No. 065-2011-000188 was issued to one of his heirs under the Torrens system and that notwithstanding, Antonio Lavega has never taken any step to nullify said title and just filed a protest before the DENR Region Office IV only on December 12, 2003. In other words, they allowed a period of 38 years before they woke up to invoke what they now claim to be an erroneous issuance of said certificate of title.

22. The Court's ruling in the case of Heirs of Lorenzo et.al. vs. Heirs of Eustaquio⁷ is instructive, viz:

"Laches is the failure or neglect for an unreasonable or unexplained length of time to do that which could or should have been done earlier by exercising due diligence. Such failure or neglect warrants a presumption that he has abandoned his right or declined to assert it.

The doctrine of laches, also known as a stale demand, is based on public policy, which requires, for the peace of society, the discouragement of stale claims. It is not a mere question of time, but is principally a question of the inequity and unfairness of permitting a stale right or claim to be enforced or asserted. Truly, the law serves those who are vigilant and diligent, not those who sleep when the law requires them to act."

23. The inaction of Lavega for a period of 38 years already converted into stale demand his right over the subject lot. "Silence, delay or neglect in asserting and enforcing one's right for an unexplained long period of time gives rise to a presumption that there is no merit at all in one's claim. Laws must come to the assistance of the vigilant, not of the sleepy."⁸

24. In effect, the alleged waiver of rights and interests, which has been the supposed basis of fraud and misrepresentation of Indalecio in his application

⁷ G.R. 209435, Aug. 10, 2022.

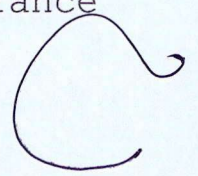
⁸ Id.

for free patent as this Honorable Court sustains, should not be given the force and effect of law. Lavega's right, if any, to bring an action should be considered barred by laches for not having taken the action seasonably after the certificate of titles to the subject lot had been issued under the Torrens system in the name of Indalecio since 1983.

Indalecio and his heirs has been in open, continuous, peaceful, public and in actual physical possession of the lot which is the subject matter of this case from the time of his ancestor's acquisition up to the present time in the concept of absolute owner thereof and the various Certificate of Titles subsequently obtained under the name of his predecessor-in-interest accords the protection of the Torrens System thus, renders the same indefeasible and conclusive

25. Undoubtedly, the lot which is the subject matter of this case was first entered upon, cultivated and occupied by Leonardo Namuco⁹, father of Indalecio on or about year 1920. At the time of the former's death sometime in 1946, the latter administered and managed the same and applied for free patent in year 1956. Subsequently, it was approved and OCT E-4948 was obtained under his name on February 24, 1983. Upon Indalecio's death sometime in year 2000, his heirs, particularly the herein Defendant Tejedor assumed the administration and management of the subject lot. Eventually, Indalecio's heirs successfully executed an Extra-Judicial Settlement of the Estate thereby a new TCT No. 065-2011000188 was issued by the Registry of Deeds for the Province of Palawan in the name of one of his heirs, Norma Namuco-Mala over the same lot. Likewise, corresponding taxes were duly paid as per records of this case.

26. Section 39 of the Land Registration Act provides, 'Sec. 39. Every person receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value in good faith shall hold the same free of all encumbrance except those noted on said certificate.'



⁹ As per paragraph 5 of Application for Free Patent, Bureau of Lands No. 2-367 filed by Indalecio on July 23, 1956.

27. In the case of *Republic v. Umali*,¹⁰ the Court ruled that, "As private registered land, it is governed by the provisions of the Land Registration Act, now denominated the Property Registration Decree, which applies even to the government. The pertinent provision of the Land Registration Act was Section 122, which read as follows: Sec. 122. "Whenever public lands in the Philippine Islands belonging to the Government of the United States or to the Government of the Philippine Islands are alienated, granted, or conveyed to persons or to public or private corporations, the same shall be brought forthwith under the operation of this Act and shall become registered lands." This should be related to Section 12 of the *Friar Lands Act*, providing thus: "Sec. 12... upon the payment of the final installment together with all accrued interest, the Government will convey to such settler and occupant the said land so held by him by proper instrument of conveyance, which shall be issued and become effective in the manner provided in section one hundred and twenty-two (Sec. 122) of the Land Registration Act."

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28. "The Torrens system was adopted in this country because it was believed to be the most effective measure to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized."¹¹

29. Consequently, the ruling in *Hagonoy v. Secretary of Agriculture and Natural Resources*¹² must be squarely applied in this case, viz.:

"Once a patent is registered and the corresponding certificate of title is issued, the land ceases to be part of public domain and becomes private property over which the director of Lands has neither control nor jurisdiction. A public land patent, when registered in the corresponding Register of Deeds, is a veritable Torrens Title, and becomes as indefeasible as Torrens Title upon the expiration of one (1) year from the date of issuance thereof. Said title is, like one issued pursuant to a judicial decree, subject to review within one (1) year from the date of the issuance of the patent. Beyond said period, the action for the annulment of the certificate of title issued upon the land grant can no longer be entertained."

¹⁰ G.R. No. 80687. April 10, 1989.

¹¹ *Sps. Peralta v. Heirs of Abalon*, G.R. No. 183448, June 30, 2014.

¹² 73 SCRA 507.

"If the title to the land grant in favor of the homesteader would be subjected to inquiry, contest and decision after it has been given by the Government thru the process of proceedings in accordance with the Public Land Law, there would arise uncertainty, confusion and suspicion on the government's system of distributing public agricultural lands pursuant to the "Land for the Landless" policy of the State."¹³

30. On side comment, this case stemmed from a person, who obviously manifested interest over the subject land. As such should not be allowed for it is tantamount to using the all-encompassing arms of the government for his personal interest. And by doing so, it would run contrary to the intent and spirit of the homestead laws, i.e. conservation of a family home, and to encourage the settlement, residence and cultivation and improvement of the lands of the public domain.

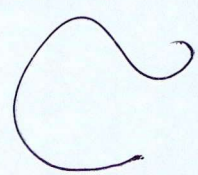
The Plaintiff's evidence is not sufficiently preponderant to support the cancellation of the Defendants' title

31. Of the 25 documentary exhibits formally offered by the Plaintiff, only seven (7) of them are original documents. The Defendants vehemently objected to the presentation of the other documentary exhibits, being merely photocopies, during the testimony of Plaintiff's witness.

32. The Plaintiff failed to explain how and why they failed to present the original copies of these other eighteen (18) documents which are supposedly in their possession. Thus, the Defendants filed their comments and objections thereto when the Plaintiff formally offered their documentary exhibits. For the purpose of this motion, the Defendants adopt their Comments & Objections to: the Plaintiff's Formal Offer of Exhibits filed on February 3, 2021.

33. The original copies of the Plaintiff's documentary exhibits do not explain how and why the Defendants' title should be cancelled. There is thus no evidence to support the claim for the cancellation of the title. Without documentary evidence, such claim is merely hearsay, conjectural, speculative and surmised, hence, not admissible evidence.

¹³ Ybañez v. IAC, G.R. No. L-68291, March 6, 1991.



34. Supposedly, Indalecio Namuco waived the property to some other person after his application for free patent was approved. However, there is no such evidence of such waiver on record. Even without such evidence, the Plaintiff then assumed that by reason of that, the application for free patent was fraudulent. This is absurd for if ever the property has been waived after the approval of the free patent application, then there was no fraud at the time of the application and approval of the free patent application. In this case, no such action for the cancellation of the free patent was initiated by the Plaintiff prior to the issuance of the title. What is even more absurd is the fact that the Plaintiff, responsible for the issuance of titles, could not even explain how and why it (by the DENR Deputy Land Officer MARIANO M. VILLANUEVA on February 24, 1983)) issued the title instead of initiating an action for the cancellation of the free patent prior to the issuance of the title.

35. Other than the above-stated supposed and speculated matters, there is no other evidence which would support the cancellation of the title for: (a) the property is undisputably available for the issuance of title; and, (b) the Defendants and their predecessors had taken possession of and had occupied the property continuously for over 100 years. On these points alone, the Defendants are clearly entitled to have title over the property as provided for by the law.

P R A Y E R

WHEREFORE, premises considered, it is most respectfully prayed unto this Honorable Court that the Decision dated February 20, 2023 rendered by this Honorable Court be reconsidered and hence, this instant case be dismissed.

Other measures of relief which are just and equitable under the premises are also prayed for.

Respectfully submitted.

Puerto Princesa City, March 08, 2023.


JEAN LOU N. AGUILAR

Roll No. 44785

IBP BDO remit 1-10-2023

PTR 1745621/1-8-2023/PPC

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NOTICE OF HEARING

The Clerk of Court

RTC Branch 95
Puerto Princesa City

Dear Madam:

Please submit this motion for the consideration and approval of the Honorable Court on March 24, 2023 at 8:30 o'clock in the morning.



JEAN LOU N. AGUILAR

Copy furnished:

The Hon. Solicitor General

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Explanation as to Manner of Service

The Plaintiff's counsels were served with a copy of this motion by way of private courier LBC considering the distance of their respective offices from the office of the Defendant's counsel and lack of personnel to effect personal service.



JEAN LOU N. AGUILAR