



Republic of the Philippines
Department of Environment and Natural Resources
MIMAROPA REGION
PROVINCIAL ENVIRONMENT AND NATURAL RESOURCES OFFICE

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April 28, 2023

MEMORANDUM

FOR : The Regional Executive Director
1515 DENR By the Bay Building
Roxas Blvd., Barangay 668, Ermita Manila

Attention : *The Chief, Legal Division*

FROM : The Provincial Environment and
Natural Resources Officer

SUBJECT : **MOTION FOR RECONSIDERATION DATED MARCH 17, 2023 RE: DENR CASE NO. M-06-11-L SPOUSES SIMEON HEREDERO AND PURITA HEREDERO, PROTESTANTS VERSUS ANTERO B. HEREDERO AND ROSALINO H. SENDITO, PROTESTEE INVOLVING LOT 207, PLS 794 SITUATED AT MAASIN, QUEZON, PALAWAN**

Forwarded is the Motion for Reconsideration dated March 17, 2023 filed by the Protestants Spouses Simeon B. Heredero and Purita Heredero praying for reconsideration and or set aside the Decision of August 31, 2016.

Attached is the copy of the subject Decision bearing signature of Mr. Simeon Heredero in one of his visit to this Office on January 10, 2020.

Further attached is the copy of the Survey Order Number 2022-05 instructing Engr. Jonathan Gellez to segregate the portion of Lot 207, Pls 794 identical to Lot 2476, Cad 798-D situated at Barangay Maasin, Quezon, Palawan.

For information and consideration of evaluation and or further instruction.

Copy furnished:

The CENRO Quezon, Palawan

Spouses Simeon and Purita Heredero
Maasin, Quezon, Palawan
TSD-RPS DRN 2023-3615/lmo


FELIZARDO B. CAYATOC

DENR-PALAWAN
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By: 
Date: 24 MAY 2023 CN 23-1234

Republic of the Philippines
Department of Environment and Natural Resources
REGION IV-MIMAROPA

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DATE: 04-20-2023 ON 2:36:15

**SPOUSES SIMEON B.
HEREDERO and PURITA
HEREDERO,**

DENR CASE NO. M-06-11-L

Protestants,

-versus-

**LOT NO. 207, PLS-794
BRGY. MAASIN, QUEZON,
PALAWAN**

**ANTERO B. HEREDERO
and ROSALINA H.
SENDITO,**

Protestees.

X_____X

MOTION FOR RECONSIDERATION

(On the Decision dated August 31, 2016)

PROTESTANTS-MOVANTS, for and on their own behalf, unto this Honorable Office, hereby file this Motion for Reconsideration from 31 August 2016 Decision of the Regional Director Oscar C. Dominguez of the Department of Environment and Natural Resources Region IV- MIMAROPA and respectfully states that:

TIMELINESS OF THIS ACTION

Protestants received a copy of the Decision in the above-entitled case on March 3, 2023; Thus, they have until March 18, 2023 within which to file this Motion for Reconsideration;

**THE RESOLUTION SUBJECT OF
RECONSIDERATION**

This Honorable Office promulgated a Decision on 31 August 2016, the decretal portion of which reads:

“WHEREFORE, premises considered, this Office finds the instant Protest UNMERITORIOUS and is hereby DISMISSED. The parties are ORDERED to have their land applications to cover only the portions they are actually occupying subject of the lifting of the afore-cited suspension order.

SO ORDERED.

**OSCAR C. DOMINGUEZ
Regional Director
DENR Region IV-B**

THE ASSIGNMENT OF ERROR

WITH DUE RESPECT, THE HONORABLE OFFICE COMMITTED PALPABLE ERROR IN DISMISSING THE INSTANT CASE FOR LACK OF MERIT.

ARGUMENTS/DISCUSSIONS

1. Protestants Spouses Heredero, are in open, continuous, exclusive, adverse, notorious and public possession of the disputed land under a *bona fide* claim of ownership since 1962. They had the land surveyed, declared the land for taxation purposes under the name of Simeon and introduced thereon considerable improvements. Therefore, applicant Simeon had complied with the necessary requirements of law for a grant by the government through actual physical, possession and occupation openly, continuously, adversely and publicly. Where all the necessary requirements for a grant by the government are complied with, the possessor is deemed to have already acquired by operation of law not only a light to a grant, but a grant of the government, for it is not necessary that a certificate of title be issued in order that said grant may be sanctioned by the courts.¹

¹ Medina vs. Pineda Vda. de Souza, et al., No. L-14722, May 25, 1960

2. Although Section 6 of Republic Act No. 6657 enacted in 1988 provides for a retention limit of only five (5) hectares of public or private agricultural land, the same section also provides that in all cases, the security of tenure of farmers or farmworkers of the land prior to the approval of this Act shall be respected. The Memorandum Circular No. 22, Series of 1989 which is the basis of the decision of this Honorable Office cannot be applied in the present case for it would impair or diminish the vested rights acquired by Simeon under Commonwealth Act No. 141 which qualifies him for a homestead patent at the time he applies for patent in 1974. The right, title and interest of Simeon having become vested under C.A. 141, his rights cannot be affected by any law passed subsequent thereto.
3. Simeon started to cultivate Lot No. 207 since 1962 or 27 years prior to the enactment of R.A. 6657. It is clearly then that Simeon had already a vested right to the land. A vested right is some right or interest in property that had become fixed and established, and is no longer open to doubt or controversy. Rights are vested when the right to enjoyment present or prospective, has become the property of some person as present interest.² A party who has complied with all the terms and conditions which entitle him to a patent for a particular tract of public land acquires a vested interest therein, and is to be regarded as the equitable owner thereof.³
4. In 1961, the land (Lot 207) applied for by Spouses Heredero is not claimed or occupied by any other person including Antero but is a public land which was first occupied and cultivated by them in 1962. In 1965, Simeon let his younger brother Antero who was then 19 years old to use the portion of his land for *kaingin* and allowed his brother to temporarily build his house on their lot. After a year, his brother Antero left their land. Hence, the possession of Antero of that portion of Lot No. 207 for a very short period of time is based on Simeon's tolerance or permission to

³ Balboa vs Farrales, G.R. No. 27059, February 14, 1928.

temporarily occupy the disputed property and such did not make them co-owners of the land as claimed by this Honorable Office.

5. Since Antero's possession of the land is by mere tolerance, he has no authority whatsoever to request for its resurvey and subdivision because he is not the owner thereof. Hence, the approval of resurvey of Lot No. 207 in 1986 which caused the partition of the land in question into two (2) lots, Lot No. 2475 and 2476, must be declared null and void, and the application for free patent by Antero for Lot No. 2476 should not be given due course.
6. The Honorable Office erred in saying that the possession of Lot No. 207 by Simeon was merely in the concept of a trustee. As a rule, in order to establish an implied trust in real property by parol evidence, the proof should be as fully convincing as if the acts giving rise to the trust obligation are proven by an authentic document. An implied trust, in fine, cannot be established upon vague and inclusive proof.⁴ The burden of proving the existence of a trust is on the party asserting its existence, and such proof must be clear and satisfactorily show the existence of the trust and its elements.⁵ In this case, there were no conclusive proof that would support this fact other than the self-serving statements of Antero himself and his neighbor Nestor Cabrestante.
7. The Certifications issued by Barangay Captains in 1985 and 2002 together with the Survey Notification Card for Lot No. 2476 and tax declarations and receipts for Lot No. 2476 are not conclusive evidence of ownership by Antero.
8. Moreover, the protestee Antero Heredero committed PERJURY by way of alleging in Paragraphs 9, 10, and 11 in his application for free patent. Under paragraph 9, he declared that he or his ancestors continuously occupied

⁴ Heirs of Yap v. Court of Appeals, 371 Phil. 523, 531 (1999)

⁵ Morales v. Court of Appeals, 274 SCRA 282 (1997).

- and cultivated Lot 2476 which is a portion of Lot 207 since the date of entry thereon, when in fact, he never possessed, occupied nor introduced improvements of the said except during the time that he was allowed by his brother Simeon to occupy the land;
9. The statement in paragraph no. 10 was false as he never possessed nor cultivated Lot 2476, portion of Lot No 207 until he dies in 2018.
10. Since Spouses Heredero have been in actual, open, peaceful and continuous possession of the property since 1962 or for 61 years, the claim of ownership by them based on their actual occupation of the land and bolstered by Tax Declaration No. 0079 under the name of Simeon must be respected.

PRAYER

WHEREFORE, premises considered, it is most respectfully prayed that the Decision dated 31 August 2016 of this Honorable Office be RECONSIDERED and SET ASIDE AND A NEW ONE ENTERED IN FAVOR OF THE PROTESTANTS.

Protestants-movants likewise pray for other just and equitable reliefs under the premises.

Respectfully submitted this 17th day of March 2023, in Puerto Princesa City, Philippines.



SIMEON B. HEREDERO
Protestant-movant

Purita B. Heredero
PURITA HEREDERO
Protestant-movant

Copy Furnished:

MARITES VILLABERDE

Heir of ANTERO B. HEREDERO
Maasin, Quezon, Palawan

LUZ ABUL

Heir ROSALINA H. SENDITO
Kalatagbak, Quezon, Palawan

FELIZARDO B. CAYATOC

DENR-PENRO
Barangay Sta. Monica
Puerto Princesa City

REYNATO S. GONZAGA

DENR-CENRO
Poblacion, Quezon
Palawan

EXPLANATION:

(Pursuant to Sec. 11, Rule 13 of the 1997 Rules of Civil Procedure)

Copy of the Motion for Reconsideration is being served to the parties in the above-entitled case through registered mail, personal service not being practicable due to distance and time constraints.



SIMEON B. HEREDERO

Purita B. Heredero
PURITA HEREDERO



**SPOUSES SIMEON B. HEREDERO
and PURITA HEREDERO,**
Protestants,

DENR CASE NO. M-06-11-L

- versus -

**ANTERO B. HEREDERO and
ROSALINA H. SENDITO,**
Protestees.

**Lot No. 207, Pls-794
Brgy. Maasin, Quezon, Palawan**

**DENR PENRO
PALAWAN RECORDS
RECEIVED**

BV. *V. A. A.*
DATE: *09/20/16* CIL *16-25*

X-----X

DECISION

On April 22, 1974, Simeon Heredero filed Homestead Application No. (IV-13) 8390 over Lot 207, Pls-794, with a total area of 10.0073 hectares, located at Brgy. Maasin, Quezon, Palawan, which application remains unapproved up to now.

The same lot was resurveyed and subdivided in 1985 under Cad 798-D, of the Quezon Cadastre, approved on September 25, 1986, with the resulting lots:

1. Lot No. 2475 - 5.0426 hectares surveyed for Simeon Heredero; and,
2. Lot No. 2476 - 4.9639 hectares surveyed for Antero Heredero.

On September 30, 1986, Antero Heredero filed an application for a Homestead Patent over Lot No. 2476, which was later on substituted for a Free Patent Application (FPA-unnumbered) on November 2, 1992.

On June 3, 2002 Simeon Heredero, with his wife Purita, filed a formal Protest against the FPA of Antero Heredero, praying for the cancellation of the subdivision plan of Lot No. 207 and the disapproval of Antero's application.

ALLEGATIONS OF THE PARTIES

PROTESTANTS

Simeon Heredero alleges that he and his wife have been in open, continuous, and peaceful possession and occupation of Lot No. 207 since 1962. They have introduced improvements on the lot and continuously cultivated the same. They also had it declared for taxation purposes.

Protestant narrates that it was sometime in 1986 that he was informed by the CENRO Quezon, Palawan, that the same lot was already in the name of Protestee Antero Heredero, despite the fact that they are the ones occupying the area. Protestant Simeon insists that Antero and his wife Rosalina did not reside in the area, and it was only in 2002 when the

CERTIFIED TRUE / PHOTO COPY
9/20/16
MARTIN M. CADILLA
Agent and in Charge of Office Design
Legal Division, DENR MIMAROPA Region

Protestees were able to enter the lot and build a nipa hut thereon because the Protestants were forced to stay in Puerto Princesa City for medical care.

Protestant Simeon Heredero prays for the cancellation of the subdivision plan of Lot No. 207 and for the approval of his Homestead Application No. (IV-13) 8390.

PROTESTEES

Protestee Antero Heredero, in support of his claim, submitted pertinent documents such as Survey Notification Card for Lot No. 2476 issued in his favor by the Cadastral Surveyor in 1985; Certification dated October 13, 1985 from the Barangay Captain that he is the owner of a five-hectare lot separate from that of Simeon's; Certification dated January 23, 2002 of Barangay Captain Sofronio R. de Asis that Protestee Antero is the owner of Lot 2476; tax declarations and tax receipts, among other similar documents. Antero claims that his brother Simeon should give him back Lot No. 2476 as the latter has already used it for seventeen (17) years.

DISCUSSION

Lot No. 2476, Cad 798-D is a portion of Lot No. 207, Pls-794. Lot No. 207 with an area of 10.0073 hectares is covered by Homestead Application No. (IV-13) 8390 in the name of Simeon Heredero. Lot No. 2476, in particular, is covered by the unnumbered Free Patent Application of Antero Heredero. Both applications remain unapproved up to now.

Based on the Report of Inspection and Investigation dated September 9, 1997 submitted by Special Investigator Jimmy Villareal, it is disclosed that Lot No. 207 was first occupied in 1961 by Antero Sendito, the husband of Protestant Simeon and Protestee Antero's sister Rosalina Heredero-Sendito, who verbally waived his right to the land in favor of the parties in the instant case, on the condition that the land should be equally divided between the brothers once Antero reaches the age of maturity. Simeon became the survey claimant because Antero was then still a minor. The statement of Rosalina that Lot No. 207 was supposed to be divided between Simeon and Antero was corroborated by a neighbor Nestor Cabrestante.

In 1974, Simeon filed a homestead application without the knowledge of Antero.

On September 30, 1986, Antero Heredero filed an application for a Homestead Patent over Lot 2476, which was later on substituted for a Free Patent Application (FPA-unnumbered) on November 2, 1992.

A follow-up ocular inspection was conducted on August 6, 2004 and a conference on August 11, 2004 was presided by Land Management Officer III/LMS Chief Johnny Lilang for the parties to have an amicable settlement, but it was unsuccessful. In the conference, it was revealed by the Protestant himself that he and his brother, Protestee Antero, previously lived with their sister Rosalina Heredero-Sendito. Protestant Simeon claims that Lot No. 207 could not have been owned by his brother-in-law Antero Sendito because it is a public land.

Further, it was disclosed that Protestant Simeon made his improvements on Lot No. 2476 and entrusted Lot No. 2475 to a caretaker, which is a circumvention of the requirements in the grant of a homestead patent.

In another ocular inspection conducted by the PENRO Palawan, it was reported that the Protestants and the Protestees occupy separate portions of Lot No. 207. Protestant Simeon occupies Lot No. 2475 while Protestee Antero occupies Lot No. 2476. It was observed that the Protestees have introduced improvements and fully developed their respective lots.

It was, however, noted that it was Simeon who first settled in the subject lot and exerted more time and effort in developing the same. However, in the early years he concentrated most of his improvements on Lot 2476 with the help of a caretaker.

A relevant recommendation in the ocular inspection and investigation report of LMO Chief LMS Lilang states that a survey of both Lot No. 2475 and 2476 is necessary to exclude any existing road traversing the disputed lot.

LILANG

The instant case can be properly resolved pursuant to the provisions of DENR Memorandum Circular No. 22, Series of 1989 with the subject "Policy on the Size of Grants Covering Public Agricultural Lands," which states, in Item No. 2 thereof:

"2. Five (5) hectares in the case of homestead applications

As to subsisting homestead application prior to the promulgation of R.A. No. 6657, where no vested right has yet accrued, the same shall be limited to a maximum area of five (5) hectares. x x x"

In accordance with the foregoing, Homestead Application No. (IV-13) 8390 of Simeon Heredero over Lot 207, Pls-794 with a total area of 10.0073 hectares cannot be given due course.

On the other hand, the unnumbered Free Patent Application of Antero Heredero over Lot No. 2476 may be given due course, subject to the survey of Lot Nos. 2475 and 2476 as recommended by LMO III/LMS Chief Lilang.

The right of Protestee Antero over Lot No. 2476 is supported by the fact that he is deemed a co-owner of the whole Lot No. 207. Further, he has already filed a Free Patent application over a specific portion thereto, namely Lot No. 2476.

Protestant Simeon cannot arrogate unto himself the whole Lot No. 207 as he co-owns the same with Protestee Antero. The Supreme Court has held, in the case of Salvador vs. CA, 243 SCRA 239, that:

"The possession of a co-owner cannot ripen into ownership for the reason that the possession was merely in the concept of a trustee for the other co-owners."

In addition, pursuant to the Memorandum dated May 28, 2015, signed by Undersecretary for Field Operations Demetrio L. Ignacio, Jr., CESO I, with the subject: "Suspension of Issuance of Survey Authority, Conduct and Approval of Survey of Untitled Lands and Acceptance and

applications in the instant case. WHEREFORE, premises considered, this Office finds the instant application **UNMERITORIOUS** and is hereby **DISMISSED**. The parties are **ORDERED** to have their respective lots resurveyed to exclude the existing road and to amend their respective applications to cover only the portions they are actually occupying, subject to the afore-cited suspension order.

SO ORDERED.

Manila, Philippines. 31 AUG 2016

[Signature]
OSCAR C. DOMINGUEZ
Regional Director
DENR Region IV-B



The PENR Officer
DENR Compound, Sta. Monica, Puerto Princesa City
Palawan

The CENR Officer / CENRO, Quezon, Palawan -
CFI Compound, Sta. Monica, Puerto Princesa City
Palawan

Simeon Heredero
Sicilian, Puerto Princesa City

Antero Heredero
Maasin, Quezon, Palawan

[Signature]
Monica H Villacorte

Party received copy
Simeon Heredero
01-10-2020

**DENR PENR
PALAWAN RECORDS
RELEASE**
BY: CH
DATE: 9-22-16 CN



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

DENR PENRO
PALAWAN RECORDS
RECEIVED

BY: [Signature]
DATE: DEC 05 2022 CN 22-1185

SURVEY ORDER NO. 2022-025

SUBJECT: SUBDIVISION SURVEY OF LOT 2476, CAD-798-D LOCATED AT
BARANGAY MAASIN, QUEZON, PALAWAN

In the interest of service and in order to ensure the effective implementation of Land Subdivision Survey of Lot 2476 located at Barangay Maasin, Quezon, Palawan, **Engr. Jonathan Gellez** is hereby directed to execute/conduct the said survey and submit to this office the complete survey returns for verification and approval.

Conformably, the conduct of the survey is hereby authorized subject to provisions of DENR Administrative Order (DAO) No. 2007-29, otherwise known as "*Revised Regulations on Land Surveys*" and its implementing procedure, DMC No. 2010-13 (*Manual on Land Survey Procedures*).

DEC 05 2022

SO ORDERED.

[Signature]

LORMELYN E. CLAUDIO, CESO IV
Regional Executive Director

[Signature]



Department of Environment
and Natural Resources
MIMAROPA Region



Doc ID: 95908