



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**ARMED FORCES OF THE
PHILIPPINES RETIREMENT AND
SEPARATION BENEFITS SYSTEM,**

Petitioner,

- versus -

REPUBLIC OF THE PHILIPPINES,

Respondent.

X ----- X

G.R. No. 188956

Present:

SERENO, C.J.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, JJ.

Promulgated:

MAR 20 2019

DECISION

VILLARAMA, JR., J.:

Before us is a petition for review on certiorari under Rule 45 assailing the Orders dated February 17, 2009¹ and July 9, 2009² of the Regional Trial Court (RTC) of Pasig City, Branch 68, in Land Registration Case No. N-11517.

The first Order reconsidered and recalled the Decision³ of the RTC dated April 21, 2008, which granted the application for land registration of petitioner Armed Forces of the Philippines Retirement and Separation Benefits System. The second Order denied the Motion for Reconsideration filed by the petitioner.

Petitioner was “created under Presidential Decree (P.D.) No. 361,⁴ as amended, and was designed to establish a separate fund to guarantee continuous financial support to the [Armed Forces of the Philippines] military retirement system as provided for in Republic Act No. 340.”⁵

¹ *Rollo*, pp. 47-48. Penned by Judge Santiago G. Estrella.

² *Id.* at 49-50.

³ *Id.* at 40-46.

⁴ PROVIDING FOR AN ARMED FORCES RETIREMENT AND SEPARATION BENEFIT SYSTEM.

⁵ *Rollo*, p. 13, citing *Ramiscal, Jr. v. Hon. Sandiganbayan*, 487 Phil. 384, 390 (2004).

Petitioner filed an Application for Registration of Title⁶ over three parcels of land located in West Bicutan, Taguig City, before the RTC of Pasig City. The said application was later docketed as LRC Case No. N-11517 and raffled to Branch 68 of the court *a quo*.

These three parcels of land constitute a land grant by virtue of Presidential Proclamation No. 1218, issued by former President Fidel V. Ramos on May 8, 1998.⁷

The application was filed by Mr. Honorio S. Azcueta (Mr. Azcueta), the then Executive Vice President and Chief Operating Officer of the petitioner, who was duly authorized to do so by the Board of Trustees of the petitioner, as evidenced by a notarized Secretary's Certificate⁸ dated August 18, 2003.

After due posting and publication of the requisite notices, and since no oppositor registered any oppositions after the petitioner met the jurisdictional requirements, the court *a quo* issued an order of general default against the whole world, and the petitioner was allowed to present evidence *ex-parte*.⁹

The petitioner then presented as its witness, Ms. Alma P. Aban (Ms. Aban), its Vice President and Head of its Asset Enhancement Office. She testified, *inter alia*, that: among her main duties is to ensure that the properties and assets of petitioner, especially real property, are legally titled and freed of liens and encumbrances; the subject properties were acquired by the petitioner through a land grant under Presidential Proclamation No. 1218; prior to Presidential Proclamation No. 1218, the Republic of the Philippines was in open, continuous, exclusive, notorious, and peaceful possession and occupation of the subject properties in the concept of an owner to the exclusion of the world since time immemorial; petitioner, after the Republic of the Philippines transferred ownership of the subject properties to it, assumed open, continuous, exclusive, notorious, and peaceful possession and occupation, and exercised control over them in the concept of owner, and likewise assumed the obligations of an owner; petitioner has been paying the real estate taxes on the subject properties; and the subject properties are not mortgaged, encumbered, or tenanted.¹⁰

Subsequently, petitioner submitted its Formal Offer of Evidence,¹¹ following which, the court *a quo* granted the application in a Decision dated April 21, 2008. The dispositive portion of the said decision reads:

⁶ Records, pp. 1-4. The application was dated September 29, 2003.

⁷ *Rollo*, pp. 17 and 56-58.

⁸ Records, p. 25.

⁹ *Rollo*, p. 44.

¹⁰ TSN, March 30, 2006 pp. 1-10; records, pp. 204-213.

¹¹ Records, pp. 188-191.

WHEREFORE, finding the Petition meritorious, the Court **DECLARES, CONFIRMS AND ORDERS** the registration of AFPRSBS' title thereto.

As soon as this Decision shall have become final and after payment of the required fees, let the corresponding Decree be issued in the name of **Armed Forces of the Philippines Retirement and Separation Benefits System**.

Let copies of this Decision be furnished the Office of the Solicitor General, Land Registration Authority, Land Management Bureau and the Registry of Deeds, Taguig City, Metro Manila.

SO ORDERED.¹²

In response, the Office of the Solicitor General (OSG) filed a Motion for Reconsideration¹³ dated May 12, 2008, wherein it argued that the petitioner failed to prove that it has personality to own property in its name and the petitioner failed to show that the witness it presented was duly authorized to appear for and in its behalf.

On June 2, 2008, petitioner filed its Comment/Opposition.¹⁴

On February 17, 2009, the court *a quo* issued the assailed Order granting the Motion for Reconsideration of the OSG on the ground that the petitioner failed to prosecute its case. The dispositive portion of the assailed Order reads:

WHEREFORE, premises considered, the OSG's motion for reconsideration is **GRANTED**. The Court's Decision of April 21, 2008 is hereby **RECONSIDERED** and **RECALLED**, and a new one issued **DISMISSING** this Application for Registration of Title for failure to prosecute.

SO ORDERED.¹⁵

The Motion for Reconsideration¹⁶ of petitioner was denied by the court *a quo* in the other assailed Order¹⁷ dated July 9, 2009. Hence, this petition.

The issue to be resolved in the present case is whether the court *a quo* acted contrary to law and jurisprudence when it dismissed petitioner's application for land registration on the ground that petitioner failed to prosecute the subject case.

We answer in the affirmative.

¹² *Rollo*, pp. 45-46.

¹³ *Id.* at 65-68.

¹⁴ *Id.* at 70-75.

¹⁵ *Id.* at 48.

¹⁶ *Id.* at 76-85.

¹⁷ *Supra* note 2.

The reason of the court *a quo* in dismissing petitioner's application for land registration on the ground of failure to prosecute was the lack of authority on the part of Ms. Aban to testify on behalf of the petitioner.

However, Section 3, Rule 17 of the 1997 Rules of Civil Procedure, as amended, provides only three instances wherein the Court may dismiss a case for failure to prosecute:

Sec. 3. *Dismissal due to fault of plaintiff*.—If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

Jurisprudence has elucidated on this matter in *De Knecht v. CA*:¹⁸

An action may be dismissed for failure to prosecute in any of the following instances: **(1) if the plaintiff fails to appear at the time of trial; or (2) if he fails to prosecute the action for an unreasonable length of time; or (3) if he fails to comply with the Rules of Court or any order of the court.** Once a case is dismissed for failure to prosecute, this has the effect of an adjudication on the merits and is understood to be with prejudice to the filing of another action unless otherwise provided in the order of dismissal. In other words, unless there be a qualification in the order of dismissal that it is without prejudice, the dismissal should be regarded as an adjudication on the merits and is with prejudice. (Emphasis supplied.)

Clearly, the court *a quo*'s basis for pronouncing that the petitioner failed to prosecute its case is not among those grounds provided by the Rules. It had no reason to conclude that the petitioner failed to prosecute its case. First, the petitioner did not fail to appear at the time of the trial. In fact, the Decision of the RTC dated April 21, 2008 ordering the registration of petitioner's title to the subject lots shows that the petitioner appeared before the Court and was represented by counsel. Records would also reveal that the petitioner was able to present its evidence, and as a result, the RTC rendered judgment in its favor.

Second, the petitioner did not fail to prosecute the subject case considering that it appeared during trial, presented Ms. Aban, who gave competent testimony as regards the titling of the subject lots, and the court *a quo* never held petitioner liable for any delay in prosecuting the subject case.

Third, a perusal of the records would demonstrate that the petitioner did not fail to comply with the Rules or any order of the court *a quo*, as there is no ruling on the part of the latter to this effect.

¹⁸ 352 Phil. 833, 849 (1998).

Indeed, there was no basis for the court *a quo*'s ruling that the petitioner failed to prosecute the subject case, because none of the grounds provided in the Rules for dismissing a case due to failure to prosecute is present. That the RTC dismissed the application for land registration of the petitioner for failure to prosecute after the petitioner presented all its evidence and after said court has rendered a decision in its favor, is highly irregular.

At this juncture, it would be appropriate to discuss the basis of the court *a quo* in dismissing the petitioner's application for land registration for failure to prosecute – the alleged lack of authority of the witness, Ms. Aban, to testify on behalf of the petitioner.

The assailed Order held as follows:

With things now stand, the Court believes that OSG was correct in observing that indeed the AFPRSBS did not present its duly authorized representative to prosecute this case. And the records support the observation since AFPRSBS presented only one witness – Mrs. Aban. In view of the foregoing the Court is left without choice than to grant OSG's motion for reconsideration.¹⁹

However, there is no substantive or procedural rule which requires a witness for a party to present some form of authorization to testify as a witness for the party presenting him or her. No law or jurisprudence would support the conclusion that such omission can be considered as a failure to prosecute on the part of the party presenting such witness. All that the Rules require of a witness is that the witness possesses all the qualifications and none of the disqualifications provided therein. Rule 130 of the Rules on Evidence provides:

SEC. 20. *Witnesses; their qualifications.*—Except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses.

X X X X

*Cavili v. Judge Florendo*²⁰ speaks of the disqualifications:

Sections 19 and 20 of Rule 130 provide for specific disqualifications. Section 19 disqualifies those who are mentally incapacitated and children whose tender age or immaturity renders them incapable of being witnesses. Section 20 provides for disqualification based on conflicts of interest or on relationship. Section 21 provides for disqualifications based on privileged communications. Section 15 of Rule 132 may not be a rule on disqualification of witnesses but it states the grounds when a witness may be impeached by the party against whom he was called.

¹⁹ *Rollo*, p. 48.

²⁰ 238 Phil. 597, 602-603 (1987).

x x x The specific enumeration of disqualified witnesses excludes the operation of causes of disability other than those mentioned in the Rules. It is a maxim of recognized utility and merit in the construction of statutes that an express exception, exemption, or saving clause excludes other exceptions. (*In Re Estate of Enriquez*, 29 Phil. 167) As a general rule, where there are express exceptions these comprise the only limitations on the operation of a statute and no other exception will be implied. (Sutherland on Statutory Construction, Fourth Edition, Vol. 2A, p. 90) The Rules should not be interpreted to include an exception not embodied therein. (Emphasis supplied.)

A reading of the pertinent law and jurisprudence would show that Ms. Aban is qualified to testify as a witness for the petitioner since she possesses the qualifications of being able to perceive and being able to make her perceptions known to others. Furthermore, she possesses none of the disqualifications described above.

The RTC clearly erred in ordering the dismissal of the subject application for land registration for failure to prosecute because petitioner's witness did not possess an authorization to testify on behalf of petitioner. The court *a quo* also erred when it concluded that the subject case was not prosecuted by a duly authorized representative of the petitioner. The OSG and the court *a quo* did not question the Verification/Certification²¹ of the application, and neither did they question the authority of Mr. Azcueta to file the subject application on behalf of the petitioner. Case records would reveal that the application was signed and filed by Mr. Azcueta in his capacity as the Executive Vice President and Chief Operating Officer of the petitioner, as authorized by petitioner's Board of Trustees.²² The authority of Mr. Azcueta to file the subject application was established by a Secretary's Certificate²³ attached to the said application. The asseveration that the subject case was not prosecuted by a duly authorized representative of the petitioner is thus unfounded.

Interestingly enough, the respondent itself agrees with the petitioner that the dismissal of the subject application by the court *a quo* on the ground of failure to prosecute due to lack of authority of the sole witness of the petitioner is unfounded and without legal basis.²⁴

WHEREFORE, the petition for review on certiorari is **GRANTED**. The Orders of the Regional Trial Court dated February 17, 2009 and July 9, 2009 are **REVERSED AND SET ASIDE**. The Decision of the Regional Trial Court dated April 21, 2008, granting the Application for Registration of Title of the petitioner is hereby **REINSTATED and UPHELD**.

No pronouncement as to costs.

²¹ Records, p. 4.

²² Id. at 3, 25.


²³ Supra note 8.

²⁴ *Rollo*, p. 111.

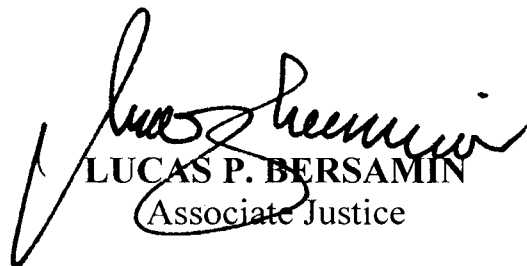
SO ORDERED.


MARTIN S. VILLARAMA, JR.
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson



TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the 1987 Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice