

# FIRST DIVISION

[ G.R. No. 216748, July 25, 2018 ]

**DEPARTMENT OF EDUCATION, PETITIONER, VS. NIXON Q. DELA TORRE, BENHUR Q. DELA TORRE, QUINTIN DELA TORRE (DECEASED), REPRESENTED BY HIS WIFE CATALINA DELA TORRE AND HIS CHILDREN STELLA T. NAGDALE, DWIGHT DELA TORRE, VIVIAN T. SUPANGCO, NIXON DELA TORRE AND BENHUR DELA TORRE, RESPONDENTS.**

## DECISION

**TIJAM, J.:**

Before Us is a Petition for Review on *Certiorari*<sup>[1]</sup> filed by the Department of Education (petitioner), through the Office of the Solicitor General (OSG) assailing the Decision<sup>[2]</sup> dated January 22, 2014 and Resolution<sup>[3]</sup> dated January 26, 2015 of the Court of Appeals (CA) in CA-G.R. CV No. 02130-MIN which affirmed the Decision<sup>[4]</sup> dated December 9, 2009 of the Regional Trial Court (RTC) in Civil Case No. 3056-01 declaring that respondent Nixon dela Torre (Nixon) has the better right to possess the land covered by Original Certificate of Title (OCT) No. 0-841 (subject land).

The pertinent facts of the case are as follows:

On December 8, 1979, Maria Pencerga (Maria) executed a Deed of Donation<sup>[5]</sup> in favor of the Poblacion Cabanglasan Elementary School, donating a four (4) hectare portion of the subject land.<sup>[6]</sup> On February 23, 2001, two decades after the donation, respondent Nixon together with Benhur Q. Dela Torre, Quintin Dela Torre represented by his wife and children (respondents) filed a civil case<sup>[7]</sup> for recovery of possession alleging that they were co-owners of a 100,024 square meter lot sold<sup>[8]</sup> by Maria to respondent Nixon on January 5, 1988.<sup>[9]</sup>

Cabanglasan Elementary School was initially represented by Atty. Conrado Barroso (Atty. Barroso) in the said case, then a legal consultant of the former Department of Education, Culture and Sports (DECS). However, during the hearing on October 4, 2001, Atty. Barroso manifested that his Consultancy agreement with the DECS had expired and that there was an uncertainty as to its renewal.<sup>[10]</sup> Thus, the OSG entered its appearance<sup>[11]</sup> on behalf of the Cabanglasan Elementary School and deputized<sup>[12]</sup> the City Prosecutor of Malaybalay City to appear on its behalf.

On November 28, 2002, the RTC noted the City Prosecutor's appearance. However, the hearing was reset since the prosecutor cannot proceed with the presentation of evidence inasmuch as the presentation of evidence was previously handled by Atty. Barroso.<sup>[13]</sup> On May 21, 2004, the RTC issued another Order resetting the hearing

on account of the absence of the City Prosecutor. Further, on July 16, 2004, the public prosecutor again failed to appear, thus, the RTC issued an Order resetting the hearing with a warning to the public prosecutor that failure to present evidence will constrain the RTC to waive its presentation of evidence and submit the case for decision.<sup>[14]</sup>

On September 9, 2004, the hearing was again reset because the public prosecutor manifested that the documents she has to present are still in the possession of Atty. Barroso, who has not yet turned over the same.<sup>[15]</sup> On March 8, 2005, the OSG received the RTC's order cancelling the hearing as it was busy trying another case.<sup>[16]</sup>

The OSG has not yet heard of the case since then, until it received the Order<sup>[17]</sup> dated January 24, 2008 declaring the elementary school's waiver for presenting its evidence and that the case was submitted for decision.<sup>[18]</sup> On December 9, 2009, the RTC issued a Decision<sup>[19]</sup> finding respondent Nixon to have a better right to the possession of the subject property and ordering Cabanglasan Elementary School to vacate the premises, thus:

IN VIEW OF ALL THE FOREGOING, Plaintiff Nixon dela Torre is adjudged to have a better right to the possession and is the owner of the litigated area thereof, and for which Defendants Cabanglasan Public Elementary School, Buenventura (sic) Lumbad and Cresencio Labrador, their heirs, privies and successor-in-interest are ordered to remove any structures they have built therein, vacate the area and reconvey possession thereof to Plaintiff Nixon dela Torre, his heirs and/or successors and assigns in interest.

In the alternative, if plaintiff Nixon dela Torre wants to appropriate the buildings and other improvements placed by defendant Cabanglasan Public Elementary School, he will pay the latter of the expenses incurred in placing such buildings and other improvements therein, or plaintiff Nixon dela Torre will sell the area to defendant Cabanglasan Public Elementary School in accordance with the prevailing market value of the portion of the subject parcel of land. The alternative afore-mentioned is, however without prejudice to any arrangement the parties may enter with.

Likewise, Plaintiff Nixon dela Torre is directed to deliver portion of the subject parcel of land to his co-plaintiffs Ben Hur dela Torre and Quintin dela Torre or to their respective heirs, privies or successors-in-interest in accordance with the deeds of sale they have executed.

IT IS SO ORDERED.<sup>[20]</sup>

Cabanglasan Elementary School appealed the case to the CA. The CA in its Decision<sup>[21]</sup> dated January 22, 2014, affirmed the ruling of the RTC. The motion for reconsideration filed by the elementary school was denied by the CA. Hence, this

Petition.

The petitioner raised the following issues for resolution:

I.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN DECLARING THAT PETITIONER HAS WAIVED ITS RIGHT TO PRESENT EVIDENCE DESPITE THE FACT THAT IT (PETITIONER) WAS NOT PROPERLY REPRESENTED BEFORE THE TRIAL COURT.

II.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING THAT RESPONDENTS HAVE A BETTER RIGHT TO POSSESS THE SUBJECT PROPERTY.

III.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT DECLARING THAT RESPONDENTS ARE GUILTY OF LACHES.

Ultimately, the issue to be resolved is whether the CA erred in affirming the RTC decision.

***The petition is denied.***

In the case of *Republic of the Philippines, represented by the Land Registration Authority v. Raymundo Viaje, et. al.* <sup>[22]</sup>, We held that the OSG remains the principal counsel, despite the presence of a deputized counsel, and as such, entitled to be furnished copies of all court orders, resolutions and judgments, thus:

The power of the OSG to deputize legal officers of government departments, bureaus, agencies and offices to assist it in representing the government is well settled. The Administrative Code of 1987 explicitly states that the OSG shall have the power to "deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases." But it is likewise settled that **the OSG's deputized counsel is "no more than the 'surrogate' of the Solicitor General in any particular proceeding" and the latter remains the principal counsel entitled to be furnished copies of all court orders, notices, and decisions.**<sup>[23]</sup> (Emphasis supplied)

Well-settled is the rule that when a party is represented by a counsel on record,