

SECOND DIVISION

[G.R. No. 108619, July 31, 1997]

EPIFANIO LALICAN, PETITIONER, VS. HON. FILOMENO A. VERGARA, PRESIDING JUDGE, RTC BRANCH 52, PUERTO PRINCESA CITY AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

DECISION

ROMERO, J.:

The issue posed for resolution in this petition for *certiorari* and prohibition with prayer for the issuance of a temporary restraining order is whether or not a charge of illegal possession of "lumber" is excluded from the crime of illegal possession of "timber" as defined in Sec. 68 of Presidential Decree No. 705 (The Forestry Reform Code of the Philippines), as amended, to warrant the quashal of an information charging the former offense or a "nonexistent crime."

On July 23, 1991, an information for violation of Section 68 of P.D. No. 705, as amended by Executive Order No. 277, was filed by the City Prosecutor of Puerto Princesa City against petitioner Epifanio Lalican,^[1] Ruben Benitez, Allan Pulgar and Jose Roblo before the Regional Trial Court of that city. Docketed as Criminal Case No. 9543, the information reads:

"That on or about the 9th day of February, 1991, at Sitio Cadiz, Barangay Bacungan, City of Puerto Princesa, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without lawful authority or permit, conspiring and confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously have in their possession, custody and control 1,800 board feet of assorted species and dimensions of lumber on board two (2) passenger jeeps, with a value of Fourteen Thousand Pesos (14,000.00), Philippine Currency, to the damage and prejudice of the Government in the amount aforestated.

CONTRARY TO LAW."

At their arraignment on August 9, 1991, all the accused pleaded not guilty to the crime charged.

On August 23, 1991, petitioner Lalican filed a motion to quash the information on the ground that the facts charged did not constitute an offense. Contending that Sec. 68 of P.D. No. 705 refers to "timber and other forest products" and not to "lumber," and asserting that "timber" becomes "lumber" only after it is sawed into beams, planks or boards, petitioner alleged that said decree "does not apply to 'lumber.'" He added that the law is "vague and standardless" as it does not specify the authority or the legal documents required by existing forest laws and

regulations. Hence, petitioner asserted that the information should be quashed as it violated his constitutional rights to due process and equal protection of the law.^[2]

The prosecution opposed the motion to quash on the ground that it is not for the courts to determine the wisdom of the law nor to set out the policy of the legislature which deemed it proper that the word "timber" should include "lumber" which is a "product or derivative after the timber is cut." The position of the prosecution was that to hold otherwise would result in the easy circumvention of the law, for one could stealthily cut timber from any forest, have it sawn into lumber and escape criminal prosecution. The prosecution asserted that the issue raised by petitioner was more semantical than a question of law.^[3]

On September 24, 1991, the lower court,^[4] guided by the principles that penal laws should be construed strictly against the state and that all doubts should be resolved in favor of the accused, issued an Order quashing the information. It held that the distinction between "timber" and "lumber" is not artificial nor a matter of semantics as the law itself distinguishes the two terms. Sec. 3(q) of P.D. No. 705 classifies "timber" as a forest product while Sec. 3(aa) thereof considers "lumber" as a finished wood product. Adding that unlicensed cutting, gathering and/or collecting of "timber" is penalized under Sec. 68 while sale of "lumber" without compliance with grading rules established by the government is prohibited by Sec. 79, the lower court categorically stated that:

"Logically, lumber, being a manufactured wood product, poses no more danger to forest lands by being cut, gathered, collected or removed. It is in fact, only bought and sold. Thus, Sec. 68 cannot be made to apply to lumber."

The court, however, refrained from exploring the constitutional issues raised by petitioner upon a holding that the case could be resolved on some other grounds or issues.^[5]

The prosecution filed a motion for the reconsideration of this Order, pointing out that under the Primer on Illegal Logging of the Department of Energy and Natural Resources (DENR), timber is not just any piece of wood for it may consist of squared and manufactured timber or one which has been sawn to pieces to facilitate transportation or hauling. It stressed that to consider a person who had made lumber out of timber as not criminally liable is an absurd interpretation of the law.

Moreover, the prosecution underscored the facts that when apprehended, the accused presented Private Land Timber Permit No. 030140 dated February 10, 1991 which had expired; that while the certificate of origin indicated Brgy. Sta. Cruz, the product actually came from Sitio Cadiz, and that the two jeeps bearing the product were not equipped with certificates of transport agreement. Added to this was the fact that, if the product were indeed lumber, then the accused could have presented a certificate of lumber origin, lumber sale invoices in case of sale, tally sheets and delivery receipts for transportation from one point to another.^[6]

Petitioner opposed the motion for reconsideration contending that the DENR primer's definition of "timber" is erroneous because the law itself distinguishes "timber" from "sawn lumber." The non-inclusion of "lumber" in Sec. 68 could only mean a clear

legislative intent to exclude possession of "lumber" from the acts penalized under that section.^[7]

Pending resolution of the motion for reconsideration, the Presiding Judge of Branch 49 inhibited himself from taking cognizance of Criminal Case No. 9543. The case was subsequently assigned to Branch 52.

On June 10, 1992, the lower court^[8] issued the herein questioned Order setting aside the quashal Order of the previous judge. It declared that from the law itself, it is evident that what is sought to be penalized is not the possession, without the required legal documents, of timber only but also of "other forest products." It stated that even if lumber is not timber, still, lumber is a forest product and possession thereof without legal documents is equally prohibited by the law which includes "wood" in the definition of forest products.

Petitioner sought the reconsideration of this Order but the lower court denied it. Hence, the instant petition arguing that the lower court gravely abused its discretion amounting to lack of jurisdiction in setting aside the quashal order and in denying his motion for reconsideration on the ground that Sec. 68 of P.D. No. 705 neither specifies nor includes "lumber" in the phrase "timber or other forest products."

The petition is devoid of merit.

Sec. 68 of P.D. No. 705, as amended by Executive Order No. 277 which was issued on July 25, 1987 by then President Corazon C. Aquino, provides:

"SEC. 68. Cutting, Gathering and/or collecting Timber, or Other Forest Products Without License.- Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

The Court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed, as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found."
(Underscoring supplied.)

Punished then in this section are: (a) the cutting, gathering, collection, or removal of timber or other forest products from the places therein mentioned without any authority; or (b) possession of timber or other forest products without the legal documents as required under existing forest laws and regulations.

In the recent case of Mustang Lumber, Inc. v. Court of Appeals,^[9] this Court, thru Justice Hilario Davide, held:

"The Revised Forestry Code contains no definition of either timber or lumber. While the former is included in forest products as defined in paragraph (q) of Section 3, the latter is found in paragraph (aa) of the same section in the definition of 'Processing plant,' which reads:

(aa) Processing plant is any mechanical set-up, machine or combination of machine used for the processing of logs and other forest raw materials into lumber, veneer, plywood, wallboard, blockboard, paper board, pulp, paper or other finished wood product.

This simply means that lumber is a processed log or processed forest raw material. Clearly, the Code uses the term lumber in its ordinary or common usage. In the 1993 copyright edition of Webster's Third New International Dictionary, lumber is defined, inter alia, as 'timber or logs after being prepared for the market.' Simply put, lumber is a processed log or timber.

It is settled that in the absence of legislative intent to the contrary, words and phrases used in a statute should be given their plain, ordinary, and common usage meaning. And insofar as possession of timber without the required legal documents is concerned, Section 68 of P.D. No. 705, as amended, makes no distinction between raw or processed timber. Neither should we. *Ubi lex non distinguit nec nos distinguere debemus.*"

Be that as it may, the legislative intent to include possession of lumber in Sec. 68 is clearly gleaned from the expressed reasons for enacting the law which, under Executive Order No. 277, are the following:

"WHEREAS, there is an urgency to conserve the remaining forest resources of the country for the benefit and welfare of the present and future generations of Filipinos;

WHEREAS, our forest resources may be effectively conserved and protected through the vigilant enforcement and implementation of our forestry laws, rules and regulations;

WHEREAS, the implementation of our forestry laws suffers from technical difficulties, due to certain inadequacies in the penal provisions of the Revised Forestry Code of the Philippines; and

WHEREAS, to overcome these difficulties, there is a need to penalize certain acts to make our forestry laws more responsive to present situations and realities; x x x"

To exclude possession of "lumber" from the acts penalized in Sec. 68 would certainly emasculate the law itself. A law should not be so construed as to allow the doing of an act which is prohibited by law, nor so interpreted as to afford an opportunity to defeat compliance with its terms, create an inconsistency, or contravene the plain words of the law.^[10] After all, the phrase "forest products" is broad enough to