



Republic of the Philippines  
**Supreme Court**  
 Manila

SUPREME COURT OF THE PHILIPPINES  
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 AUG 10 2018  
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**FIRST DIVISION**

**DEPARTMENT OF EDUCATION,**      **G.R. No. 216748**  
 Petitioner,

- versus -

Present:

LEONARDO-DE CASTRO,  
*Chairperson,*

\*BERSAMIN,  
 DEL CASTILLO,  
 TIJAM, and  
 \*\*GESMUNDO, *JJ.*

**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.

Promulgated:

**JUL 25 2018**

*[Signature]*

X-----X  
**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

\* Designated additional Member, per Raffle dated July 19, 2018 vice Associate Justice Francis H. Jardeleza.

\*\* Designated Acting Member per Special Order No. 2560 dated May 11, 2018.

<sup>1</sup> *Rollo*, pp. 12-58.

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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

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<sup>2</sup> Penned by Associate Justice Jhosep Y. Lopez, with Associate Justices Edgardo A. Camello and Henri Jean Paul B. Inting, *concurring*. Id. at 59-71.

<sup>3</sup> Id. at 72-75.

<sup>4</sup> Promulgated by Judge Benjamin P. Estrada. Id. at 130-139.

<sup>5</sup> Id. at 96.

<sup>6</sup> Id. at 15.

<sup>7</sup> Id. at 113-118.

<sup>8</sup> Id. at 145-146.

<sup>9</sup> Id. at 15.

<sup>10</sup> Id., at p. 15.

<sup>11</sup> Id. at 120.

<sup>12</sup> Id. at 121.

<sup>13</sup> Id. at 17.

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>

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<sup>14</sup> Id. at 18-19.

<sup>15</sup> Id. at 19.

<sup>16</sup> Id.

<sup>17</sup> Id. at 129.

<sup>18</sup> Id. at 20.

<sup>19</sup> Id. at 130-139.

<sup>20</sup> Id. at 138-139.



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**

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<sup>21</sup> Id. at 59-79.

<sup>22</sup> 779 Phil. 405 (2016).

**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, service of orders or notices must be made on the counsel on record. Service of orders or notices to the party or to any other lawyer does not bind the party and is not considered as notice under the law.<sup>24</sup>

In this case, while the City Prosecutor of Malaybalay City was deputized by the OSG, the latter still remains to be the principal counsel of Cabanglasan Elementary School and hence entitled to be furnished copies of all court orders, notices, and decision. Any court order and decision sent to the deputy, acting as an agent of the Solicitor General, is not binding until it is actually received by the Solicitor General.<sup>25</sup>

Here, the OSG, claimed that the Cabanglasan Elementary School was not properly represented before the RTC since the OSG was not served all the notices by the RTC. As such, the petitioner cannot be deemed to have waived its right to present evidence without violating due process. Therefore, the proceedings before the RTC should be declared null and void for lack of proper representation by the OSG.

*We do not agree.*

It is undisputed that as early as November 28, 2002, the OSG was notified as to the failure of the city prosecutor to present evidence on behalf of the elementary school. It was aware that the presentation of evidence was rescheduled numerous times for the failure of the city prosecutor to present the same. In fact, the OSG has been forewarned that the RTC will be constrained to waive the right of Cabanglasan Elementary School to present evidence if it still failed to present the same, thus:

Send a copy of this Order to the City Prosecutor of Malaybalay City, to the Office of the Solicitor General, to the defendants Buenaventura Lumbad, Cresencio Labrador, and Cabanglasan Public School, for them to appear during the said trial and be ready to present their evidence and to appear with [their] own counsel, the City Prosecutor of Malaybalay City, **failure on his part to do so will constrain this Court to submit the case for decision. The defendants to have been waived the right to present any evidence in [their] behalf.**<sup>26</sup> (Emphasis ours)

Contrary to petitioner's allegation, the OSG was furnished the necessary orders in order for the same to exercise its supervision and control

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<sup>23</sup> Id. at 413-414.

<sup>24</sup> *Cervantes v. City Service Corp., et al.*, 784 Phil. 694, 699 (2016).

<sup>25</sup> *Rep. of the Phils. v. Court of Appeals, et. al.*, 781 Phil. 15, 21 (2016).

<sup>26</sup> *Rollo*, p. 127.

over the actuations of the public prosecutor. Notice of the RTC's warning should have put the OSG on guard as to the result of public prosecutor's failure to present evidence. The OSG could have warned the public prosecutor to be more vigilant and zealous in handling the instant case. Also, it could have actively pursued the retrieval of the documents from the RTC or even from Atty. Barroso. Despite the OSG's notice of the RTC's Order<sup>27</sup> dated January 15, 2008, declaring Cabanglasan Elementary School to have waived its right to present evidence, the OSG could have filed a motion for reconsideration of the said order or even filed a petition for *certiorari* questioning the same. Instead, the OSG chose to sit idly by and let the said order attain finality. Be it noted that the trial court promulgated its decision on December 9, 2009<sup>28</sup> declaring that respondent Nixon has a better right to possess the subject land and ordering Cabanglasan Elementary School to vacate the subject land. Interestingly, what the petitioner is indirectly seeking here is a new trial of the case, for this Court to remand the case to the trial court to litigate anew issues and facts which it have already settled. This, petitioner could not be allowed to do.

We quote with conformity the findings of the CA, in this wise:

Appellant School already waived their right to present evidence per lower court's Order dated January 15, 2008 which it failed to challenge. Hence, the Order dated January 15, 2008 already became final. Since appellant School waived its right to present evidence, it follows that it failed to offer any, and no evidence can be considered in their favor in accordance with Section 34, Rule 132 of the Rules of Court.

The records show that the lower court granted appellant School so much opportunities to present evidence but it simply failed to avail of them. It bears stressing that appellees already rested their case as early as August 24, 2001 and the lower court directed the defendants including appellant School to start presenting their evidence on October 4 and 5, 2001. In short, the lower court gave appellant School more than 7 years to present evidence before it was declared to have waived such right. For this reason therefore, We find unacceptable appellant School's explanation before Us, now through the [OSG], that its failure to present evidence was due to the failure of its former counsel to turn over the records of the case to them. xxx.<sup>29</sup>

**WHEREFORE**, the petition is **DENIED**. The Decision dated January 22, 2014 and Resolution dated January 26, 2015 of the Court of Appeals in CA-G.R. CV No. 02130-MIN are hereby **AFFIRMED**.

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<sup>27</sup> Id. at 129.

<sup>28</sup> Id. at 130-139.

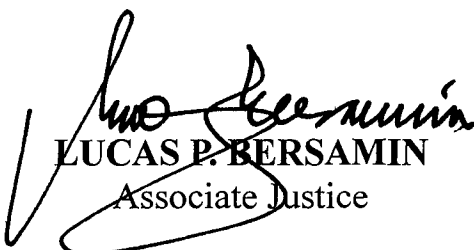
<sup>29</sup> Id. at 65-66.


**SO ORDERED.**

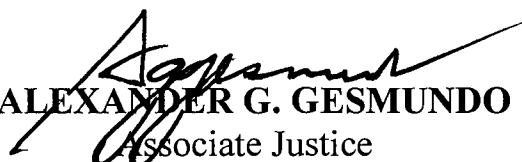
  
**NOEL GIMENEZ TIJAM**  
Associate Justice

**WE CONCUR:**

*Teresita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice  
Chairperson

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**ALEXANDER G. GESMUNDO**  
Associate Justice


**ATTESTATION**

I attest 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.

*Teresita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice  
Chairperson

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.



**ANTONIO T. CARPIO**  
Senior Associate Justice  
(Per Section 12, R.A. 296,  
The Judiciary Act of 1948, as amended)