

## SECOND DIVISION

[ G.R. No. 121587, March 09, 1999 ]

**SOLEDAD DY, DOING BUSINESS UNDER THE NAME AND STYLE  
RONWOOD LUMBER, PETITIONER, VS. COURT OF APPEALS AND  
ODEL BERNARDO LAUSA, RESPONDENT.**

### D E C I S I O N

**MENDOZA, J.:**

This is a petition for review of the decision<sup>[1]</sup> of the Court of Appeals in CA G.R. SP 33099 setting aside two orders of the Regional Trial Court of Butuan City (Branch 5) and the appellate court's resolution denying petitioner's motion for reconsideration.

The facts are as follows.

On May 31, 1993, the Mayor of Butuan City issued Executive Order No. 93-01 creating Task Force Kalikasan to combat "illegal logging, log smuggling or possession of and/or transport of illegally cut or produced logs, lumber, flitches and other forest products" in that city.<sup>[2]</sup> The team was composed of personnel of the Philippine Army, Philippine National Police (PNP), the Department of Natural Resources (DENR), and the Office of the City Mayor of Butuan. Respondent Odel Bernardo Lausa, who was the acting chief of civilian security in the mayor's office, was a member of the team.

On July 1, 1993, the members of the task force received confidential information that two truckloads of illegally cut lumber would be brought to Butuan City from the Ampayon-Taguibe-Tiniwisan area. Accordingly, the team set up a check-point along kilometer 4 in Baan, Butuan City.<sup>[3]</sup> What happened thereafter is summarized in the following portion of the decision of the Court of Appeals:<sup>[4]</sup>

At around 10:00 p.m., two trucks with Plate Nos. KAK-542 and KBL-214 and loaded with lumber approached the checkpoint. They were flagged down by the operatives but instead of stopping, they accelerated their speed hence, the task force gave chase. They finally caught up with the two vehicles at the compound of Young Metalcraft and Peterwood Agro-Forest Industries at Baan, Butuan City, about two kilometers from the checkpoint. When requested by the operatives, Pulcita Lucero, caretaker/in charge of the compound could not produce any document as proof of the legality of the origin/possession of the forest products.

Forester Resurreccion Maxilom of the DENR issued a temporary seizure order and a seizure receipt for the two vehicles and their cargo consisting of several pieces of lumber of different sizes and dimensions, but Lucero, the caretaker of the compound where they were seized, refused to accept them. The seized lumber and vehicles were then taken to the City motorpool and placed in the custody of respondent

Lausa.

The next day, July 2, 1993, Maxilom submitted a memorandum-report to the Community Environment and Natural Resources Officer (CENRO) of Butuan City on the seizure of the lumber and the two vehicles.<sup>[5]</sup> On July 6, the CENRO issued a notice of confiscation which was duly posted for three days.

For lack of claimants, DENR Regional Technical Director Raoul Geollegue recommended to the Secretary on July 29, 1993 the forfeiture of the lumber and the two vehicles. <sup>[6]</sup> Accordingly, on July 30, 1993, DENR Regional Director De la Rosa ordered the CENRO of Butuan City to issue the requisite forfeiture orders,<sup>[7]</sup> which CENRO Angelita Orcasitas issued on August 15, 1993.<sup>[8]</sup>

On October 20, 1993, more than two months after the lumber had been forfeited, petitioner, claiming to be the owner of the lumber, filed a suit for replevin in the Regional Trial Court of Butuan City (Branch 5) for its recovery. The next day, October 21, 1993, the trial court issued a preliminary writ of replevin.

On October 29, 1993, respondent Lausa filed a motion for the approval of a counterbond. Before the court could act on his motion, he moved to dismiss and/or quash the writ of replevin on the ground that the lumber in question, having been seized and forfeited by the DENR pursuant to P.D. No. 705, as amended (Revised Forestry Code), was under its custody and, therefore, resort should first be made to the DENR.

On November 29, 1993, the trial court denied respondent Lausa's application for the approval of the counterbond as well as his motion to dismiss and/or quash the suit for replevin. For this reason, respondent filed a petition for *certiorari* in the Court of Appeals in which he sought the approval of his counterbond and the nullification of the two orders, dated October 21, 1993 and November 29, 1993, granting petitioner's prayer for a preliminary writ of replevin and denying his Motion to Dismiss Case and/or Quash Writ of Replevin.

On January 19, 1995, the Court of Appeals rendered a decision, the dispositive portion of which reads:

WHEREFORE, the petition is hereby GRANTED, and

- a. The Orders dated 21 October 1993 and 29 November 1993 are SET ASIDE.
- b. Respondent judge is directed to approve a duly qualified counterbond to be filed by petitioner, even with a period of at least one year.

No pronouncements as to costs.

SO ORDERED.<sup>[9]</sup>

Petitioner's subsequent motion for reconsideration was denied in a resolution, dated July 26, 1995. Hence, this petition. Petitioner alleges that: