

## **TWENTY-SECOND DIVISION**

**[ CA-G.R. CV NO. 02737-MIN, August 14, 2014 ]**

**DARDAGAN PANGAGA, PLAINTIFF-APPELLEE, VS. NATIONAL  
POWER CORPORATION, DEFENDANT-APPELLANT.**

### **D E C I S I O N**

**INTING, J.:**

This is an appeal from the October 27, 2011 Decision<sup>[1]</sup> of the Regional Trial Court, Branch 10, Marawi City, in Civil Case No. 1334-95 for damages, the dispositive portion of which reads:

"WHEREFORE, for all the foregoing considerations, judgment is hereby rendered in favor of plaintiff Dardagan Panggaga and against defendant National Power Corporation directing said defendant to pay unto plaintiff the following:

1. Defendant is ordered to pay plaintiff the sum of P3,500,000.00 as temperate damages, with legal interest at 12% per annum on the amount herein above adjudged from the date of finality of herein Decision until satisfaction thereof;
2. Defendant is ordered to pay plaintiff the sum of P200,000.00 as moral damages;
3. Defendant is likewise ordered to pay the Plaintiff the sum of P100,000.00 as exemplary damages;
4. Defendant is moreover ordered to pay the Plaintiff the sum of P200,000.00 as attorney's fees; and
5. Defendant is finally ordered to pay plaintiff the sum of P20,000.00 as litigation expenses.

The counter-claim of herein defendant is DISMISSED for insufficiency of evidence.

Cost against defendant.

SO ORDERED."

The facts of the case are as follows:

Plaintiff Dardagan Pangaga was purportedly engaged in the business of buy and sell of sand. His quarry is about 4,000 sq.m. located at Barangay Caloocan, Marawi City. His business had been in operation since 1971<sup>2</sup> and was earning well until 1979 until the defendant National Power Corporation built a dam and regulated the Agus River to supply the volume of water needed for the operation of seven (7) hydroelectric power plants. Supposedly, the construction of the dam altered the river water bed so that during dry season, the dam had to draw 100 to 110 cubic meters of water from the lake causing a drought around the lake shore; while on rainy seasons, 100 to 105 cubic meters of water is added to the lake basin resulting to a flash flood that damaged and washed away the sand on his land. The flood continued to damage the plaintiff's quarry area in the years 1984, 1986, 1989, 1993, 1994, 1995 and 1996. During that time, the sand per cubic meter cost about P165.00 until 1993 and P195.00 thereafter.<sup>[3]</sup>

In 1979, the plaintiff allegedly had no idea what caused the flooding until in 1994. It was then that the plaintiff approached the NPC Vice President for the latter to issue an order to open the Agus dam to prevent the floods that caused damage to his property. His request was not heeded but he was nevertheless instructed to submit photos<sup>[4]</sup> of the flooded area for the NPC Board of Directors to consider for payment of damages. However, per letter dated February 9, 1994,<sup>[5]</sup> the plaintiff's demand was denied on the ground that the NPC was not remiss in its duty to maintain the appropriate water level hence, it could not be blamed for the flooding. The plaintiff gave the letter to Palawan Lomondaya, the manager of Agus 1 and 2, who promised to pay the former a compensation along with the other batch of claimants. However, the plaintiff received nothing.<sup>[6]</sup> This prompted the plaintiff to file an action for damages against NPC on April 17, 1995,<sup>[7]</sup> later amended on October 25, 2006.<sup>[8]</sup> The plaintiff prayed for moral damages of P50,000.00, lease rentals of P10.00 per square meter considering that NPC also made use of his property, just compensation at P100.00 per sq.m. for NPC's continued refusal to open the dam causing further damages to his land, and exemplary damages of P30,000.00.

On the other hand, the NPC denied responsibility for the alleged flooding. NPC maintained that it has regularly performed its duty to preserve Lanao Lake and its watershed. Per Memorandum Order No. 398 from the Office of the President, the NPC is clothed with the power to build the Agus Regulation Dam and to operate it for the purpose of generating energy. Also part of its mandate is to place every town around the lake at the normal maximum lake elevation of 702 m., benchmark warning that a cultivation of land below the elevation is prohibited.<sup>[9]</sup> The monthly tabulations of Lake Lanao since 1979 show that the water levels never went beyond the maximum prescribed by the Order.<sup>[10]</sup>

Further, the NPC has created a task force, headed by Palawan Lomondaya, designed to identify people who were residing below the 702 m. watermark and affected by the flooding. Actual inspections were made, claimants were listed but the plaintiff was not among those whose properties were damaged by the flooding. Even during the actual inspection, the plaintiff did not present himself as the claimant.

Furthermore, the NPC asserted that the plaintiff built his improvements on the lake shore area below the 702 m. watermark which violates M.O. No 398. The NPC also maintained that the damage was caused by nature as the rise in the water elevation

of the lake was due to a natural phenomenon aggravated by a denuded watershed area.<sup>[11]</sup> The NPC adduced its Environmental Compliance Certificate<sup>[12]</sup> showing that it has complied with the certain conditions including, among others, the construction of a regulation dam at the mouth of Agus River in Dansalan to prevent the occurrence of flood in the lake shore area.

On October 27, 2011, the RTC rendered the assailed decision holding that the NPC was remiss in performing its duty to release more water to the Agus River during rainy season to avoid flooding and prevent the water from going over the maximum level; that before the construction of the dam, there was no report of damages to the landowners around the lake but when the dam started to operate in 1978, complaints of flooding had been widespread; that it is within NPC's power to show that there was no negligence on its part because the dam is within its exclusive control and management hence, the doctrine of *res ipsa loquitur* applies, but it failed to do so; that the damages were brought about by the plaintiff's introduction of improvements on prohibited area was unfounded; that when a person's negligence concurs with the act of God in causing damage to another, such person is not exempt from liability by showing that the proximate cause of the injury was a fortuitous event; and that the damage is not *damnum absque injuria* because the damage suffered by the plaintiff is un rebutted and it was proven that his land was inundated when the water level escalated.

Further, the RTC applied the case of NPC v. CA (G.R. No. 12478, March 8, 2008) finding that it has the same factual milieu as the instant case, involving same laws, cause of action, facts, issues, subject matter, area and time element, thus, based on *stare decisis*, it had to extensively apply the rulings therein. Resultantly, the RTC awarded to the plaintiff temperate damages in lieu of actual damages which were not proven, moral damages, exemplary damages following the order to pay moral damages, attorney's fees and litigation expenses.

Hence, this recourse before Us by the defendant assigning the following trial court errors, to wit:

I.

THE TRIAL COURT ERRED IN HOLDING APPELLANT LIABLE FOR DAMAGES DESPITE CONCRETE AND UNREBUTTED PROOF THAT IT REGULARLY PERFORMED ITS FUNCTION IN OPERATING THE AGUS REGULATION DAM;

II.

THE TRIAL COURT ERRED IN FINDING FOR THE APPELLEE DESPITE LACK OF PREPONDERANT PROOF OF THE DIRECT CAUSAL RELATIONSHIP BETWEEN APPELLANT'S OPERATION OF THE DAM AND THE ALLEGED DAMAGE SUSTAINED BY APPELLEE;

III.

THE TRIAL COURT ERRED IN FAILING TO CONSIDER THAT APPELLEE'S

CAUSE OF ACTION IS BARRED BY LACHES AND PRESCRIPTION;

IV.

THE TRIAL COURT ERRED IN AWARDING TEMPERATE DAMAGES, AS WELL AS MORAL AND EXEMPLARY DAMAGES AND OTHER MONETARY AWARDS TO APPELLEE;

V.

THE TRIAL COURT ERRED IN HEAVILY RELYING ON THE RULING IN NPC V. HADJI ABDUL CARIM ABDULLAH, ET.AL., WHICH IS NOT ON ALL FOURS TO THE PRESENT CASE.

The defendant-appellant maintains that it is mandated by law to establish and install infrastructure projects necessary to implement its objectives to provide and generate electricity; that one of the projects is the Agus Regulation Dam to maintain the water elevation for purposes of power generation per Memorandum Order No. 398; that pursuant to its mandate, it kept the required water elevation of the dam thus, it is not negligent in implementing the prescribed regulation; that from the start of the dam operations, the water level never went above the maximum allowed by law; that it made the necessary benchmarks as called for but the plaintiff-appellee still made the improvements on the prohibited area; that the plaintiff-appellee's cause of action has prescribed as actions based on injury of rights and upon quasi-delict must be filed within four (4) years; that the plaintiff-appellee's action is also barred by laches having failed to assert his right considering that his complaint was instituted only in April 17, 1995 and amended on October 22, 2006 or 16 years from the time of the occurrence of the alleged damages in 1979; that the temperate damages awarded was more than the compensatory damages prayed for by the plaintiff-appellee; and that the NPC case relied upon by the RTC is inapplicable for it involved different parties, rights and time.

Our Ruling.

The petition is bereft of merit.

Contrary to the petitioner's claims, the case of *NPC v. CA* cited by the RTC is aptly applicable to the case at bench and its rulings and findings are accorded conclusiveness and finality. Although the cited case and the instant case involve different parties and area, the fact remains that the parties herein suffered the same fate as the parties in the aforementioned jurisprudence with respect to their properties, which are similarly located along the Lanao Lake and which were damaged due to a recurring flood.

It was never refuted by the petitioner that the respondent suffered damages in his quarry during the years 1979, 1984, 1986, 1989, 1993, 1994, 1995 and 1996. What the petitioner is asseverating is that they cannot be blamed considering that what happened was an act of God which they could not have prevented; and granting that it was in their control, they were not negligent in their duties since they were able to maintain the required water level as found in its records.

We differ.

It has been duly established that the flooding along the area of Lanao Lake started only when the dam started operations. Several factors may have contributed thereto but it is undeniable that the proximate cause was the petitioner's failure to release more water to the Agus River especially during rainy seasons when the water level rises. The case of *NPC v. CA*,<sup>[13]</sup> exhaustively explains why such inadvertence to release the necessary amount of water to the river could cause the inundation and We quote:

"...Lake Lanao has only one outlet, the Agus River which in effect is the natural regulator. When the Lake level is high, more water leaves the lakes towards the Agus River. Under such a natural course, overflowing is remote because excess in water level of the lake, there is a corresponding increase in the volume of water drain down towards the Agus River and vice versa.

In order to achieve its goal of generating hydroelectric power, defendant NPC constructed the Intake Regulation Dam, the purpose of which being to control and regulate the amount of water discharged into the Agus River. With this dam, defendant NPC is able to either increase or decrease the volume of water discharged into the Agus River depending on the amount of power to be generated. When the lake level rises, [e]specially during rainy days, it is indispensable to wide open the dam to allow more water to flow to the Agus River to prevent overflowing of the lakeshore and the land around it. But the NPC cannot allow the water to flow freely into its outlet — the Agus River, because it will adversely affect its hydroelectric power plants. It has to hold back the water by its dam in order to maintain the volume of water required to generate the power supply. As a consequence of holding back the water, the lands around the lake are inundated...." (Underscoring Ours)

Apparently, the release of water from Lanao Lake to Agus River is controlled by NPC through a dam they built for regulation. When heavy rains cause the lake water level to rise, NPC ought to allow the release of substantial amount of water to the river to prevent the lake from overflowing and avoid flooding in the area surrounding it. However, NPC is constrained from doing so because such water discharge will adversely affect its hydroelectric power plants. Thus, NPC holds back the lake water which, instead of flowing towards the river, extends to the shores flooding the areas around the lake. Flooding on the lakeside is plausible hence the duty of NPC to make benchmark warnings prohibiting improvements built on the lake shore area below the 702 m. watermark.

The respondent's pictures showing his quarry area swamped with water demonstrate NPC's inadvertence and negate its claim that the water level during those times were still within the limits provided by its order. The images contradict the supposed report showing that NPC was able to properly regulate the river's flow during those time. Further, NPC's allegation that the respondent's improvements were made within the prohibited area remained uncorroborated and unfounded thus, cannot be given credence. Granting that it is indeed in the proscribed area, it