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FIRST DIVISION

[G.R. No. 161739. May 04, 2006]

ALFREDO BOKINGO, *petitioner, vs.* **THE HONORABLE COURT OF APPEALS, the HEIRS OF CELESTINO BUSA, represented by FELICIDAD BUSA-PANAL and ERNESTO M. CAMPOS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WILL NOT LIE UNLESS A MOTION FOR RECONSIDERATION IS FIRST FILED BEFORE THE RESPONDENT COURT TO ALLOW IT TO CORRECT ITS ERRORS, IF ANY.— Preliminarily, the Court finds no reversible error in the dismissal by the CA of petitioner Bokingo's petition for *certiorari* filed therewith. As correctly held by the CA, the mere fact that he failed to move for the reconsideration of the court *a quo's* order denying his motion to dismiss was sufficient cause for the outright dismissal of the said petition. *Certiorari* as a special civil action will not lie unless a motion for reconsideration is first filed before the respondent court to allow it an opportunity to correct its errors, if any. Petitioner Bokingo did not proffer any compelling reason to warrant deviation by the CA from this salutary rule. As further observed by the CA, petitioner Bokingo failed to even allege grave abuse of discretion on the part of the court *a quo* in rendering the order denying his motion to dismiss.

2. ID.; CIVIL PROCEDURE; ACTIONS; NATURE OF ACTION AND WHICH COURT HAS ORIGINAL AND EXCLUSIVE JURISDICTION OVER THE SAME IS DETERMINED BY THE MATERIAL ALLEGATIONS OF THE COMPLAINT, TYPE OF RELIEF PRAYED FOR BY THE PLAINTIFF, AND THE LAW IN EFFECT WHEN THE ACTION IS FILED, IRRESPECTIVE OF WHETHER THE PLAINTIFFS ARE ENTITLED TO SOME OR ALL THE CLAIMS ASSERTED THEREIN.— In any case, the present petition lacks substantive merit. It is axiomatic that the nature of the action and which court has original and exclusive jurisdiction over the same is determined by the material allegations of the complaint, the type of relief prayed for by the plaintiff, and the law in effect when the action is filed, irrespective of whether the plaintiffs are entitled

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to some or all of the claims asserted therein. The caption of the complaint is not determinative of the nature of the action. Nor does the jurisdiction of the court depend upon the answer of the defendant or agreement of the parties, or to the waiver or acquiescence of the parties.

3. **ID.; ID.; ID.; WHERE THE BASIC ISSUE IS SOMETHING OTHER THAN THE RIGHT TO RECOVER A SUM OF MONEY, WHERE MONEY CLAIM IS PURELY INCIDENTAL TO, OR A CONSEQUENCE OF, THE PRINCIPAL RELIEF SOUGHT OR WHERE THE ACTION IS ONE WHERE THE SUBJECT OF LITIGATION MAY NOT BE ESTIMATED IN TERMS OF MONEY, JURISDICTION PROPERLY LIES EXCLUSIVELY WITH THE REGIONAL TRIAL COURTS.**— It is well to note that the Court had the occasion to explain that "in determining whether an action is one the subject matter of which is not capable of pecuniary estimation, the nature of the principal action, or remedy sought must first be ascertained. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and jurisdiction over the action will depend on the amount of the claim. However, where the basic issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of, the principal relief sought, the action is one where the subject of litigation may not be estimated in terms of money, which is cognizable exclusively by Regional Trial Courts."

4. **ID.; ID.; ID.; RESPONDENT'S COMPLAINT PRINCIPALLY SOUGHT TO ENJOIN PETITIONER AND HIS REPRESENTATIVES FROM COMMITTING ACTS THAT WOULD TEND TO PREVENT THE SURVEY OF THE SUBJECT LAND; AS SUCH, THE SUBJECT MATTER OF LITIGATION IS INCAPABLE OF PECUNIARY ESTIMATION AND PROPERLY COGNIZABLE EXCLUSIVELY BY THE REGIONAL TRIAL COURT UNDER SECTION 19 (1) OF *B.P. BLG. 129* AS AMENDED BY R.A. NO. 7691.**— As gleaned from the complaint, the principal relief sought by the respondents in their complaint is for the court *a quo* to issue an injunction against petitioner Bokingo and his representatives to permanently enjoin them from preventing the survey of the subject land. Contrary to the view posited by petitioner Bokingo, the cause of action of the respondents' complaint is not, as yet, to recover the possession of the subject land. There are three kinds of actions to judicially recover possession of real property and these are distinguished in this wise: What really distinguishes an action for unlawful detainer from a possessory action (*accion publiciana*) and from a reinvindicatory action (*accion*

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reinvindicatoria) is that the first is limited to the question of *possession de facto*. An unlawful detainer suit (*accion interdictal*) together with forcible entry are the two forms of an ejectment suit that may be filed to recover possession of real property. Aside from the summary action of ejectment, *accion publiciana* or the plenary action to recover the right of possession and *accion reinvindicatoria* or the action to recover ownership which includes recovery of possession, make up the three kinds of actions to judicially recover possession. Significantly, the respondents' complaint has not sought to recover the possession or ownership of the subject land. Rather, it is principally an action to enjoin petitioner Bokingo and his representatives from committing acts that would tend to prevent the survey of the subject land. It cannot be said therefore that it is one of a possessory action. The respondents, as plaintiffs in the court *a quo*, to be entitled to the injunctive relief sought, need to establish the following requirements: (1) the existence of a right to be protected; and (2) that the acts against which the injunction is to be directed are violative of the said right. As such, the subject matter of litigation is incapable of pecuniary estimation and properly cognizable exclusively by the court *a quo*, a Regional Trial Court under Section 19 (1) of *B.P. Blg.* 129, as amended by R.A. 7691: SEC. 19. *Jurisdiction in Civil Cases.* – Regional Trial Courts shall exercise exclusive original jurisdiction: (1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation; x x x Hence, the court *a quo* did not err in denying petitioner Bokingo's motion to dismiss.

APPEARANCES OF COUNSEL

Wilfred D. Asis for petitioner.
Sorrera-Ty Salise-Gonzaga Law Offices for respondents.

DECISION

CALLEJO, SR., *J.*:

Before the Court is the petition for review on *certiorari* filed by Alfredo Bokingo seeking to reverse and set aside the Decision[1]

[1] Penned by Associate Justice Jose L. Sabio, Jr. with Associate Justices Delilah Vidallon-Magtolis (retired) and Hakim S. Abdulwahid concurring; *rollo*, pp. 32-35.

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dated December 17, 2003 of the Court of Appeals (CA) in CA-G.R. SP No. 71510 which dismissed his petition for *certiorari* filed therewith.

The factual and procedural antecedents are as follows:

Petitioner Alfredo Bokingo is one of the defendants in the complaint for injunction and damages filed by Ernesto Campos, the Heirs of Celestino Busa,[2] the Heirs of Felicidad Busa-Panal[3] and the Heirs of Concordia Busa.[4] The complaint was filed with the Regional Trial Court (RTC) of Butuan City, Branch 3 thereof, and docketed as Civil Case No. 1003. The complaint alleged as follows:

CAUSE OF ACTION

3. Plaintiffs [herein respondents] are co-owners of the land subject matter. By virtue of the right of representation, the heirs of FELICIDAD BUSA-PANAL and CONCORDIA S. BUSA and REYNALDO S. BUSA, respectively;

4. Defendants in this case are heirs of MIGUEL BOKINGO;

5. Defendants ALFREDO BOKINGO [herein petitioner], WENCESLAO B. AMBRAY, JR., ROSA B. AMBRAY, CELIA A. ALMORA and JOSELITO B. AMBRAY, filed an application for titling of a parcel of land before the Department of Environment and Natural Resources, Office of the CENRO, Ochoa Avenue, Butuan City;

6. The land subject matter of the application of defendants is a parcel of land located at Baan (Buhangin), Butuan City, containing an area of 2.1600 hectares, more or less;

7. The land subject matter of the application for titling of defendants is a parcel of land inherited by plaintiffs from their father, the late

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[2] Namely Milagros Busa-Simogan, Teresita Busa Linao, Jovita Busa-Besillas and Nestor A. Busa.

[3] Represented by Cresilda P. Elvira.

[4] Represented by Reynaldo S. Busa.

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CELESTINO BUSA. This parcel of land is described particularly as:

TAX DECLARATION NO. GR.-10-002-0189-A

"A parcel of land covered by Tax Declaration No. GR-10-002-0189-A, situated in Buhangin, Butuan City, containing an area of 2.1600 HAS., more or less. Bounded on the North – Elisa Busa, South — Pastor Ago, East – Ho. Miguel Bokingo and on the West – Baan River."

8. When plaintiffs knew of defendants' application, plaintiffs filed a protest against defendants' application on February 5, 1996. Attached as Annex A is the Protest;

9. On November 24, 1998, the Provincial Environment and Natural Resources Officer, HUGO I. BAÑOSIA, resolved the Protest in favor of Plaintiffs — the protestant in the DENR case. Attached as Annex B is the order;

10. On January 6, 1999, the Provincial Environment and Natural Resources Officer, HUGO T. BAÑOSIA, issued a certification stating that the order dated November 24, 1998 has become final and executory. Attached as Annex C is the machine copy of the Certification;

11. On September 9, 1999, the same DENR Officer HUGO T. BAÑOSIA issued an Order of Execution which states that:

In complying herewith, the Land Management Officer III concerned should be instructed to set forth the whole proceeding in writing signed by the parties and witnesses, if possible, submit and return to this Office within sixty (60) days from receipt hereof, to be used as evidence should it be necessary to institute any action, criminal or otherwise, against any party who may refuse to obey the same.

SO ORDERED, *Butuan City, September 9, 1999.*

12. Plaintiffs requested on June 23, 1999, for a Survey Authority to survey the land subject matter of this case before the CENRO Office of Butuan City. Attached as Annex D is the Survey Application;

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13. On July 30, 1999, A Survey Authority was issued by the CENRO of Butuan City, authorizing plaintiff ENGR. ERNESTO M. CAMPOS, JR., to survey the land subject matter of the DENR case and the case at bar. Attached as Annex E is the Survey Authority;

14. On November 18, 1999 at 11:00 A.M., FELICIDAD BUSA-PANAL, MILAGROS BUSA SIMOGAN, TERESITA BUSA LINAO, JIMMY BUSA-PANAL, son of Felicidad Busa-Panal, ALFREDO BUSA-PANAL, son-in-law of Concordia S. Busa, personnel of the Butuan PNP and the personnel of ENGR. ERNESTO M. CAMPOS went to the area subject matter of this case to survey the land. Unfortunately, Defendant SPO3 FERDINAND B. DACILLO and Defendant ALFREDO BOKINGO, representatives of defendants, told the survey group to stop and not to enter the area subject matter of this case. Attached as Annex F is the report of CENRO Officer who [was] present during the November 18, 1999 survey which was stopped by SPO3 FERDINAND B. DACILLO and ALFREDO BOKINGO;

15. Plaintiff[s] availed of the *Barangay* Justice System to resolve the controversy regarding the survey but to no avail, defendants still refused to allow plaintiffs to survey the area. Thus, a Certificate to File Action was issued by the *Lupong Tagapamayapa*. Copy of the same is hereto attached as Annex G;

16. The defendants did not exercise honesty and good faith in their acts which is a violation of Article 19 of the New Civil Code, and which entitles the plaintiffs for damages;

17. The acts of defendants constrained the plaintiff[s] to litigate and to incur attorney's fees in the amount of Php10,000.00 plus litigation expenses estimated at Php10,000.00.

PRAYER

Wherefore, premises considered, it is respectfully prayed that after hearing, this Honorable Court:

1) Enjoin permanently the illegal acts of defendants of preventing the survey of the land subject matter of this case by ENGR. ERNESTO M. CAMPOS;

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2) Order defendants to pay plaintiffs the sum of ₱10,000.00 as attorney's fees, ₱10,000.00 as litigation expenses;

3) Order defendants to pay damages to plaintiff;

4) Such other reliefs just and reasonable under the circumstances.[5]

Petitioner Bokingo, as one of the defendants in the above complaint, filed with the court *a quo* a motion to dismiss alleging that the latter has no jurisdiction over the subject matter of the claim. Specifically, petitioner Bokingo contended that it could be gleaned from the complaint that the issue between the parties involved the possession of the land. As such, the assessed value of the land was crucial to determine the court's jurisdiction over the subject matter in accordance with either Section 19(2)[6] or Section 33(3)[7] of *Batasang Pambansa*

[5] *Rollo*, pp. 37-38.

[6] The provision reads:

SEC. 19. *Jurisdiction in Civil Cases.* – Regional Trial Courts shall exercise exclusive original jurisdiction:

x x x x x x x x x

(2) In all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds Twenty thousand pesos (₱20,000.00) or for civil actions in Metro Manila, where such value exceeds Fifty thousand pesos (₱50,000.00) except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts;

[7] The provision reads:

SEC. 33. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Civil Cases*:

x x x x x x x x x

(3) Exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed Twenty thousand pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos (₱50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs: *Provided*, That in cases of land not declared for taxation purposes, the value of such property shall be determined by the assessed value of the adjacent lots.

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Blg. 129[8] as amended by Republic Act No. 7691. If the assessed value thereof is ₱20,000.00 or less, then the Municipal Trial Court (MTC) has jurisdiction over the subject matter. Otherwise, jurisdiction is with the RTC.

Petitioner Bokingo pointed out in his Motion to Dismiss that the assessed value of the land subject matter of the complaint was not indicated. Nonetheless, he proffered that based on his father's tax declaration covering the subject land, its assessed value was only ₱14,410.00. Consequently, it was allegedly clear that the court *a quo*, a Regional Trial Court, had no jurisdiction over the subject matter of the complaint filed by the respondents. Rather, in view of the assessed value of the subject land which was allegedly less than the ₱15,000.00, jurisdiction properly belonged to the MTC.

Petitioner Bokingo thus urged the court *a quo* to dismiss the complaint filed by the respondents for lack of jurisdiction over the subject matter thereof.

Acting thereon, the court *a quo* issued the Order dated March 13, 2002 denying the motion to dismiss. It pointed out that the complaint's allegation is that the respondents, as plaintiffs, are entitled to have the subject land surveyed after petitioner Bokingo's and his co-claimants' application for the titling of the subject land was dismissed by the Provincial Environment and Natural Resources Officer (PENRO) and the respondents were declared to have a better right to file a public land application covering the same. Further, the relief being sought in the complaint is injunction in order that the respondents' right to survey the subject land would not be defeated.

Based on these allegations, the court *a quo* held that it had jurisdiction over the subject matter of the claim under Section 2 of Rule 58 of the Rules of Court which provides in part that "[a] preliminary injunction may be granted by the court where the action or proceeding is pending." It accordingly denied

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[8] The Judiciary Reorganization Act of 1980.

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petitioner Bokingo's motion to dismiss the complaint for lack of jurisdiction.

Petitioner Bokingo forthwith filed with the Court of Appeals a petition for *certiorari* alleging grave abuse of discretion on the part of the court *a quo* in denying his motion to dismiss.

On December 17, 2003, the CA rendered the assailed Decision dismissing the said petition for lack of merit, in fact and in law. It ruled that the remedy of *certiorari* is unavailing to petitioner Bokingo because "an order denying a motion to dismiss is interlocutory and cannot be the subject of the extraordinary petition for *certiorari* or *mandamus*."[9]

It was noted that the records fail to disclose that petitioner Bokingo filed a motion for reconsideration of the order of the court *a quo*. According to the CA, such omission warranted the outright dismissal of the petition for *certiorari*. Finally, it was not shown or even alleged in the petition that the court *a quo*, in issuing the assailed order, acted with grave abuse of discretion amounting to lack of jurisdiction. The issue raised by petitioner Bokingo, the CA held, was proper for an appeal but not a petition for *certiorari*.

Aggrieved, petitioner Bokingo now comes to the Court seeking the reversal of the said decision of the CA which dismissed his petition for *certiorari* filed therewith. He insists that the complaint filed by the respondents with the court *a quo* is a possessory action. To determine which court, the RTC or MTC, has primary jurisdiction, petitioner Bokingo theorizes that it is necessary that the assessed value of the land be alleged in the initiatory complaint. Absent such allegation, the court where the case was filed should allegedly preliminarily determine the assessed value of the subject property to determine whether or not it has jurisdiction over the subject matter of the claim. In the present case, according to petitioner Bokingo, the assessed

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[9] *Rollo*, p. 33, citing *Far East Bank and Trust Company v. Court of Appeals*, 395 Phil. 701 (2000).

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value of the subject land is only ₱14,410.00; hence, jurisdiction thereof properly belongs to the MTC in accordance with Section 19(2) or 33(3) of *BP Blg.* 129 as amended by R.A. 7691.

The petition is bereft of merit.

Preliminarily, the Court finds no reversible error in the dismissal by the CA of petitioner Bokingo's petition for *certiorari* filed therewith. As correctly held by the CA, the mere fact that he failed to move for the reconsideration of the court *a quo's* order denying his motion to dismiss was sufficient cause for the outright dismissal of the said petition. *Certiorari* as a special civil action will not lie unless a motion for reconsideration is first filed before the respondent court to allow it an opportunity to correct its errors, if any.[10] Petitioner Bokingo did not proffer any compelling reason to warrant deviation by the CA from this salutary rule. As further observed by the CA, petitioner Bokingo failed to even allege grave abuse of discretion on the part of the court *a quo* in rendering the order denying his motion to dismiss.

In any case, the present petition lacks substantive merit. It is axiomatic that the nature of the action and which court has original and exclusive jurisdiction over the same is determined by the material allegations of the complaint, the type of relief prayed for by the plaintiff, and the law in effect when the action is filed, irrespective of whether the plaintiffs are entitled to some or all of the claims asserted therein.[11] The caption of the complaint is not determinative of the nature of the action. Nor does the jurisdiction of the court depend upon the answer of the defendant or agreement of the parties, or to the waiver or acquiescence of the parties.[12]

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[10] *Yao v. Perello*, G.R. No. 153828, October 24, 2003, 414 SCRA 474, 480.

[11] *Hilario v. Salvador*, G.R. No. 160384, April 29, 2005, 457 SCRA 815, 824.

[12] *Id.*

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A careful perusal of the respondents' complaint, quoted earlier, shows that it alleges that per the Order dated November 24, 1998 of PENRO of Butuan City, petitioner Bokingo's and his co-claimants' application for titling of the subject land was rejected. On the other hand, in the same order it was declared that the respondents, if qualified, may file an appropriate public land application covering the same land. It was further alleged that the said order became final and executory, and in connection therewith, the respondents were authorized by the City Environment and Natural Resources Officer (CENRO) of Butuan City to conduct a survey on the subject land. However, petitioner Bokingo, through his representatives, unjustly prevented the conduct of the said survey. Even when the matter regarding the survey was submitted to the *Lupong Tagapamayapa*, petitioner Bokingo still allegedly refused to allow the respondents to survey the subject land. Hence, the Complaint for Injunction filed by the respondents where the principal relief sought is to enjoin permanently the illegal acts of the defendants therein, including petitioner Bokingo, of preventing the survey of the land subject matter of the case.

In this connection, it is well to note that the Court had the occasion to explain that "in determining whether an action is one the subject matter of which is not capable of pecuniary estimation, the nature of the principal action, or remedy sought must first be ascertained. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and jurisdiction over the action will depend on the amount of the claim. However, where the basic issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of, the principal relief sought, the action is one where the subject of litigation may not be estimated in terms of money, which is cognizable exclusively by Regional Trial Courts."[13]

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[13] *Radio Communications of the Philippines, Inc. v. Court of Appeals*, G.R. No. 136109, August 1, 2002, 386 SCRA 67, 70.

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As gleaned from the complaint, the principal relief sought by the respondents in their complaint is for the court *a quo* to issue an injunction against petitioner Bokingo and his representatives to permanently enjoin them from preventing the survey of the subject land. For clarity, the prayer of the complaint reads:

> Wherefore, premises considered, it is respectfully prayed that after hearing, this Honorable Court:
>
> 1) Enjoin permanently the illegal acts of defendants of preventing the survey of the land subject matter of this case by ENGR. ERNESTO M. CAMPOS;
>
> 2) Order defendants to pay plaintiffs the sum of ₱10,000.00 as attorney's fees, ₱10,000.00 as litigation expenses;
>
> 3) Order defendants to pay damages to plaintiff;
>
> 4) Such other reliefs just and reasonable under the circumstances.[14]

Contrary to the view posited by petitioner Bokingo, the cause of action of the respondents' complaint is not, as yet, to recover the possession of the subject land. There are three kinds of actions to judicially recover possession of real property and these are distinguished in this wise:

> What really distinguishes an action for unlawful detainer from a possessory action (*accion publiciana*) and from a reinvindicatory action (*accion reinvindicatoria*) is that the first is limited to the question of *possession de facto*. An unlawful detainer suit (*accion interdictal*) together with forcible entry are the two forms of an ejectment suit that may be filed to recover possession of real property. Aside from the summary action of ejectment, *accion publiciana* or the plenary action to recover the right of possession and *accion reinvindicatoria* or the action to recover ownership which includes recovery of possession, make up the three kinds of actions to judicially recover possession.[15]

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[14] *Rollo*, p. 38.

[15] *Ganila v. Court of Appeals*, G.R. No. 150755, June 28, 2005, 461 SCRA 435, 445.

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Significantly, the respondents' complaint has not sought to recover the possession or ownership of the subject land. Rather, it is principally an action to enjoin petitioner Bokingo and his representatives from committing acts that would tend to prevent the survey of the subject land. It cannot be said therefore that it is one of a possessory action. The respondents, as plaintiffs in the court *a quo*, to be entitled to the injunctive relief sought, need to establish the following requirements: (1) the existence of a right to be protected; and (2) that the acts against which the injunction is to be directed are violative of the said right. As such, the subject matter of litigation is incapable of pecuniary estimation and properly cognizable exclusively by the court *a quo*, a Regional Trial Court under Section 19 (1) of *BP Blg.* 129, as amended by R.A. 7691:

SEC. 19. *Jurisdiction in Civil Cases.* – Regional Trial Courts shall exercise exclusive original jurisdiction:

(1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;

x x x x x x x x x

Hence, the court *a quo* did not err in denying petitioner Bokingo's motion to dismiss.

WHEREFORE, premises considered, the petition is *DENIED* and the assailed Decision dated December 17, 2003 of the Court of Appeals in CA-G.R. SP No. 71510 is *AFFIRMED in toto.*

SO ORDERED.

Panganiban, C.J. (Chairperson), Ynares-Santiago, Austria-Martinez, and *Chico-Nazario, JJ.,* concur.