

**DAVID R. QUITUGUA, Appellant**  
v.  
**THOMAS C. MENDIOLA, Appellee**  
Civil Appeal No. 52  
Appellate Division of the High Court  
June 26, 1970

Appeal from judgment in trial court on grounds that trial court improperly dismissed appellant's counterclaim. The Appellate Division of the High Court held that appellant's statement regarding the counterclaim was not only unfounded but false in every respect.

Judgment affirmed.

**1. Attorney and Client—Generally**

Counsel for a party does not appear before the courts of the Trust Territory as a matter of right.

**2. Attorney and Client—Generally**

How long counsel continues to exercise the privilege of appearing before the courts of the Trust Territory depends upon his recognition of ethical considerations and his obligation to truth in all dealings with the court.

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*For the Appellant:* PAUL D. PALTING  
*For the Appellee:* JOSE C. TENORIO

Before SHOECRAFT, *Chief Justice*, and TURNER and BURNETT, *Associate Justices*

Plaintiff-appellee recovered judgment in the trial court in the amount of one thousand two hundred and eighty-three dollars (\$1,283.00), representing the balance of proceeds remaining in the hands of defendant-appellant from the sale of a motorcycle and an automobile belonging to appellee. Defendant-appellant was denied recovery on his counterclaim.

No briefs were filed; nevertheless the court assigned the matter for oral argument. Of the seven purported assignments of error set out in the Amended Notice of Appeal, counsel for appellant referred to only one; all others are considered abandoned and need not concern us. The one

we may consider, not because it has merit, but rather because it is so totally lacking in it.

The assignment with which we are concerned reads as follows:—

“1. The Trial Court erred in dismissing the counterclaim, denying the defendant-appellant the right to prove the counterclaim in the middle of the trial, which action consisted a deprivation of the due process clause.”

Counsel's statement, repeated in oral argument, is not only unfounded, it is false in every respect, as the most casual reading of the record will demonstrate. Extensive testimony was taken concerning every item contained in the counterclaim, five exhibits in support were received in evidence, and the trial court considered every aspect of the counterclaim in minute detail in the course of its extended opinion. There was no dismissal of the counterclaim, there was no denial of opportunity to offer proof, nor was there denial of due process.

When asked, in the course of oral argument, to identify specifically, by reference to the record, where the alleged error occurred, counsel admitted that he was unable to do so, but offered the transparent excuse that the transcript was not in his possession, having been retained by his co-counsel.

Counsel could hardly have been ignorant of what transpired in the course of trial—he was present and participated throughout. While we might, on occasion, be disposed to overlook ignorance, we cannot overlook what can only be construed as a deliberate attempt to mislead the court.

[1, 2] Counsel for appellant is reminded that he does not appear before the courts of the Trust Territory as a matter of right. How long he continues to exercise the privilege of doing so may well depend upon his recognition of ethical considerations and his obligation to truth in all dealings with the court.

We find no error, and the judgment below is affirmed.