

HOSPICIO A. PACAL, PETITIONER, VS. THE HONORABLE F. RAMOS, JUDGE OF THE FIRST INSTANCE OF MINDORO, AND AGATON N. COSUCO, RESPONDENTS.

G.R. No. L-2167. May 17, 1948

Ponente: PERFECTO, J.

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PERFECTO, J.:

Respondent Agaton N. Cosuco was proclaimed mayor-elect of Mamburao, Mindoro in the elections of November 11, 1947, with 539 votes 'against 524 votes received by Hospicio A. Pacal.

In a motion of protest, dated November 20, 1947, Pacal contested Cosuco's election upon two sets of grounds: 1. That protestee is ineligible because (a) he is not a Filipino citizen, (b) he has not filed his certificate of Candidacy within the time prescribed by law, and (c) he spent for his campaign more than the total amount of the emoluments for one year attached to the office of mayor of Mamburao, and 2. That errors, irregularities, illegalities and frauds had been committed in precinct Nos. 3, 4 and 5 without which protestant would have won with a plurality not less than 100 votes. Among other remedies, protestant prayed that protestee be declared disqualified to hold the office of mayor or that his election be annulled and, in any case, that protestant be declared elected to the office.

In his answer, dated December 2, 1947, protestee, among others, made the allegation that the set of grounds for the protest about alleged ineligibility of the contestee should be stricken out from the protest upon the authority of section 173 of the Election Code, and averred facts belying the three grounds of ineligibility. At the same time, contestee denied all protestant's allegations about election irregularities and frauds in precinct Nos. 3, 4 and 5, and countered with the allegation that if any irregularity, fraud or anomaly was made in said precincts, the same was committed by and for the contestant and, as a matter of fact, pointed to specific frauds, irregularities and errors which, if, proved, would give him a greater majority.

On January 21, 1948, contestee filed agnition to dismiss the case upon the theory that the action taken by protestant, by impugning protestee's eligibility, is in the nature of a quo warranto proceedings which, having been started on November 24, 1947, ten days after contestee's proclamation which took place on November 14, violates the provision of section 173 of the Election Code, according to which the petition for quo warranto should be filed within one week after the proclamation. The protestee added that if the proceedings can be considered as a joint quo warranto and election contest, the court's jurisdiction cannot be exercised jointly on both proceedings.

Protestant answered the motion to dismiss, alleging that the proceedings he initiated is in the nature of an election contest with separate and alternate grounds. At the same time, considering that May 24, 1948, is the deadline for the decision of the case, protestant, acceding to protestee's suggestion made in his answer, moved that his allegations about protestee's ineligibility be ordered stricken out, excepting the one regarding expenses in the election.

On April 19, 1948, respondent judge ordered the dismissal of the case finding that the protest "contains sufficient

allegations constituting an action for an election contest" and, at the same time, "substantially all the allegations necessary to sustain an action for quo warranto," and that, under the rule laid down in *Rama vs. Yonzon*, 52 Phil., 446, 447, the lower court cannot exercise its jurisdiction over the two remedies jointly and in the same proceedings, adding that "since the petition cannot now be amended in order either to separate the two remedies erroneously merged or eliminate one of them, because such an amendment would be out of time, there remains no alternative but to dismiss the case."

Respondent judge erred in dismissing the protest. The grounds for quo warranto are separable from the grounds for election irregularities alleged in the protest. In fact, they are alleged in separate paragraphs. There is no provision of law, authority, or principle of justice against their separation. Contestee himself suggested in his answer that the grounds for quo warranto should be "stricken out from the protest," and protestant followed the suggestion by moving for the elimination of the disputed allegations. There is no valid reason why respondent judge could not accede to the course of action proposed by both parties. When two independent actions are improperly joined in one proceeding, it is the duty of the court to order their separation, so that each one may proceed independently of the other. If one of them should be dismissed on jurisdictional or other legal ground, its dismissal should not affect the other action if there is no legal ground to dismiss it. Each action should be dealt with according to its own merits.

As prayed for, the order of April. 19, 1948, is set aside and respondent judge is ordered to proceed without delay to try and decide on the Merits of the election protest filed by petitioner Hospicio A. Pacal versus. Agaton N. Cosuco without costs. By its urgent nature, this decision shall be executory immediately upon its promulgation.

Parás, Actg. C.J., Feria, and Tuason, JJ., concur.

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