

JOSE MALIMIT, PROTESTANT AND APPELLANT, VS. ESTEBAN DEGAMO, PROTESTEE AND APPELLEE. JOSE MALIMIT, ET AL., PETITIONERS AND APPELLANTS, VS. ESTEBAN DEGAMO, ET AL., RESPONDENTS AND...

G. R. Nos. L-17850-51. November 28, 1964

Ponente: DIZON, J.

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DIZON, J.:

Jose Malimit and Esteban Degamo were opposing candidates for mayor, whereas Vicente Acain ran for vice-mayor, of Carmen, Agusan, in the general elections held on November 10, 1959. On the 16th of said month the municipal board of canvassers, by a vote of five to three, proclaimed Malimit as mayor-elect but suspended the canvass and corresponding proclamation in relation to the position of vice-mayor, at the request of Acain who claimed that the election returns for two precincts had been tampered with. As the three members of the board of canvassers who voted against the proclamation of Malimit refused to sign the certificate of canvass on the ground that the municipal treasurer's copy of the election returns for precinct No. 6 had been tampered with by making it appear therein that Malimit had obtained 139 instead of 39 votes, the matter was submitted to the Commission on Elections who, on November 24, 1959, nullified the canvass and proclamation made on November 16, and authorized its representative in Agusan to appoint substitutes for the five members of the board of canvassers who voted in favor thereof.

On December 3, 1959, Malimit filed with Us a petition for certiorari and prohibition, with a prayer for a writ of preliminary injunction, to annul the above-mentioned resolution of the Commission on Elections and prevent its enforcement, but the same was dismissed for lack of merit.

After a recanvass of the votes for mayor and vice-mayor the reconstituted board of canvassers, on December 7, 1959, proclaimed Degamo and Palarca as mayor and vice-mayor elect by 1,012 and 944 votes, respectively, as against their closest opponents, Malimit and Acain, who obtained 957 and 483 votes, respectively.

On December 14, 1959 Malimit instituted quo warranto proceedings against Degamo in the Court of First Instance of Agusan. The complaint was later amended to include the office of vice-mayor (Special Case No. 97), and on December 21, 1959 Malimit also filed an election protest against Degamo in the same court (Election Case No. 16).

On January 4, 1960 Malimit and Acain filed a petition for certiorari, mandamus and prohibition, with preliminary injunction, with Us (G. R. No. L-16445) to annul the proclamation of Degamo and Palarca and prohibit them from assuming office. On May 23, 1960, We dismissed the petition holding that "upon the filing of the aforementioned petition for a writ of quo warranto and election protest on December 17 and 28, 1959, respectively, the Court of First Instance of Agusan acquired exclusive authority to inquire into and pass upon the title of Degamo and the validity of the proclamation made by the municipal board of canvassers on December 7, 1959", and that "We cannot, upon the authority of the petition herein filed on January 4, 1960, determine said questions without

encroaching upon the jurisdiction of said court of first instance, which is the duty of this body, as the highest Court of the land, not only to respect, but, also to uphold".

On October 8, 1960, the Court of First Instance of Agusan, after a preliminary hearing, issued a resolution dismissing the petition for quo warranto mentioned heretofore for having been filed out of time and for lack of jurisdiction, the pertinent portions thereof reading as follows:

"After a careful examination of the record of the case, the Court finds that on December M, 1959, Jose Malimit, thru Counsel, bailed to the Clerk of Court of First Instance or Agusan one, Copy of a petition fur quo warranto against Esteban Degamo on the ground that the latter was not eligible for the Office of Mayor of Carmen, Agusan, for lack of residence. This letter was received by the Clerk of Court on December 17, 1950. Jose Malimit's counsel in the preliminary hearing manifested that a money order for the amount of P16.00 to cover the docketing fee was enclosed in the envelope containing the petition but this is contradicted by Official Receipt 177450 which shows that the amount of P16.00 was actually received on January 5, 1960, the date when said official receipt was issued."

"On January 7, 1960, according to the note of the docket clerk written at the bottom of the petition, said petition was brought to the attention of the Court for the first time and forthwith an order was issued requiring respondent Esteban Degumo to answer the petition within five days from receipt of said order which shall be served upon the latter by the Sheriff."

"For failure to pay the sheriff's fees, the order of the Court of January 7, 1960 was not served upon the respondent immediately. Not until March 14, 1960 when the fee was paid that the sheriff transmitted said order to the Chief of Police of Carmen, Agusan, for service upon the respondent. This is more than two months from the date of its issuance by the Court."

"On June 3, 1960, without leave of Court, the original petition amended. The amended petition included two quo warrantos, one for the office of Mayor and the other for Vice-Mayor. The consolidation of these two quo warrantos in one single case is, in the opinion of the Court, improper, following the spirit of Section 171 of the Revised Election Code which provides that each contest shall refer exclusively to one office. Granting, however, that this consolidation is legal, still the amended petition could no longer confer jurisdiction upon the Court because it was filed out of time, to be exact nearly six months after the proclamation of the respondents as mayor and vice-mayor of Carmen."

"In fact, even the original quo warranto for the office of mayor was filed out of time. The proclamation of Esteban Degamo as mayor took place on December 7, 1959 and although the petition for quo warranto was mailed on December 14, 1959 to the Clerk of Court and under the Rules, the date of mailing is considered the date of filing, yet for lack of docketing fee and extra of the petition, said petition was only docketed on January 7, 1960, one month after the proclamation of respondent Esteban Degamo. The petition was considered only filed on the date the docketing fee was paid."

"Under section 173 of the Revised Election Code, a petition a quo warranto must be filed within one week after proclamation and shall be decided within thirty days from the filing of the complaint From the records, it is evident that both the original petition and the amended petition for quo warranto were filed out of time and the period of thirty days for hearing and decision has long expired thru Urn inaction of the petitioner."

The court likewise dismissed the election case of Malimit against Degamo for failure on the part of the former to prosecute his case, and for lack of jurisdiction. We agree with the trial court that the quo warranto proceeding was commenced after the expiration of the period of one week after proclamation provided therefor by law (Section 173, Revised Election Code). True, the original petition was mailed and addressed to the Clerk of the Court of First Instance of Agusan on December 14, 1959, but it is likewise true that the required docket fee³ were paid only on January 5, 1960. This latter date must be deemed to be the real date of filing of the aforesaid petition and

not the date when it was mailed. Before the payment of docket fees the case is not deemed duly registered and docketed (Lazaro vs. Endencia, 57 Phil., 552; In the matter of the petition for citizenship of Jimmy Lee, G. R. No. L-15027, January 81, 1964).

It not being disputed that the proclamation of Degamo as mayor-elect was made on December 7, 1959, it is clear that the petition for quo warranto was filed out of time.

With respect to the election protest mentioned heretofore, the record discloses that the same was dismissed not for lack of jurisdiction — as appellant claims in his third assignment of error — but due to his failure to prosecute the case (Order of the lower court of July 18, 1960),

Consequently, appellant's contention in this regard is without merit.

Wherefore, the orders appealed from are affirmed, with costs.

Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Regala, Bengzon, J. P. and Zaldivar, JJ. concur.

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