

PEDRO CALANO, PETITIONER AND APPELLANT, VS. PEDRO CRUZ, RESPONDENT AND APPELLEE.*G.R. No. L-5514. May 07, 1952*

Ponente: LABRADOR, J.

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This is an appeal from an order of the Court of First Instance of Bataan dismissing a complaint of quo warranto filed by petitioner herein Pedro Calano against respondent Pedro Cruz on two grounds, namely: (a) that the petition was filed beyond the seven-day period prescribed by Section 173 of the Revised Election Code, and (b) that petitioner has no legal capacity to sue, because his complaint does not allege that he was duly elected councilor of the municipality of Orion, and, therefore, has been deprived of his right to said position by virtue of the proclamation of the respondent as duly elected councilor of said municipality. It is claimed on this appeal that the above rulings of the court a quo are erroneous and that, therefore, the order of dismissal should be reversed.

The complaint filed by the petitioner herein was presented in the court a quo on November 23, 1951, exactly on the eighth day after the proclamation of the respondent as duly elected councilor for the municipality of Orion, Bataan. It happens, however, that November 22, 1951, the last day of the seven-day period prescribed by Section 173 of the Revised Election Code, was declared a "Special Public Holiday for National Thanksgiving" by Proclamation No. 290, series of 1951, of the President of the Philippines. The trial court held that the provisions of Section 1 of Rule 23 of the Rules of Court should not be applied to the case at bar because it is an election case (Rule 132, Rules of Court), and declared that the complaint was filed outside of the period provided for by law. Assuming that Section 1 of Rule 28 of the Rules of Court is not applicable, the law applicable is Section 31 of the Revised Administrative Code, which provides that "where the day, or the last day, for doing any act required or permitted by law falls on a holiday, the act may be done on the next succeeding business day." The court a quo, therefore, committed an error in declaring that the complaint was filed out of time.

With respect to the second ground upon which the complaint was dismissed, we note that the complaint fails to allege the fact that the petitioner obtained the next highest number of votes, or the seventh highest number of votes, for the position of councilor, so that upon the annulment of the election of respondent on the ground that he does not possess the qualifications required for the position of councilor, he (petitioner) would be entitled to be declared elected councilor for the municipality. The only allegations in the complaint having to do with the right of the petitioner to be declared elected councilor are those in paragraph 8, which reads as follows:

"8. Que el recurrente tenia y tiene derecho a ocupar el cargo de concejal de Orion, Bataan, si no habia sido proclamado electo concejal de Orion, Bataan, al aqui recurrido."

and those of paragraph 3, thus:

"3. Que el recurrente era candidato a concejal del municipio de Orion, Bataan con el Certificado de candidatura debidamente presentado, y registrado asi como tambien fue votado y elegido para dicho cargo, en la eleccion del 13 de Noviembre de 1951." (Italics ours)

The above allegations are conclusions of law; they are not statements of fact. The complaint would, therefore, seem to be deficient for failure to state a sufficient cause of action. But this defect was not raised in the motion to dismiss filed by the respondent, because the ground relied upon is that the "petitioner has no legal capacity to sue." It is well settled that this defense refers to the minority, insanity, coverture, lack of juridical personality, or any other disqualification of a party, but not that the complaint fails to state a sufficient cause of action. (*Arguelles vs. Sy-yap*, 22 Phil; 442; *Lunsod vs. Ortega*, 46 Phil. 664; *I Moran* 3rd ed., 139.) The court a quo also erred, therefore, in dismissing the complaint on the above ground.

Wherefore, the order of dismissal appealed from is hereby reversed, and the case remanded to the court of origin for further proceedings. So ordered without costs.

Paras, C.J., Feria, Pablo, Bengzon, Tuason, Montemayor, and Bautista Angelo, JJ., concur.

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