

EMILIO Z. CABABASADA, PETITIONER, VS. THE COURT OF APPEALS AND CIRIACO VALMORIA, RESPONDENTS.

G.R. No. L-2591. March 15, 1949

Ponente: PERFECTO, J.

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PERFECTO, J.:

Ciriaco Valmoria was proclaimed elected as Mayor of Kinoguitan, Oriental Misamis, in the election of November 11, 1947, with 687 votes against 686 received by his rival candidate Emilio Z. Cababasada.

The election was contested. The trial court found that 678 votes must be credited to Cababasada and 636 to Valmoria, and declared the former elected with a plurality of forty two (42) votes. Valmoria appealed. The Court of Appeals found that both candidates received 678 votes each and declared the election to have resulted in a tie.

One of the several questions raised by Cababasada in his appeal before us is the Court of Appeals' failure to add, in the final computation, to the votes received by him, ballots 7-A and 7-B which, in the body of the decision of said court, were found to have been legally cast in favor of Cababasada.

Said ballots were objected by Valmoria on the ground that they contain names of persons who are not candidates. There is no question that said ballots are valid votes for Cababasada under the provisions of Section 149, No. 13, of the Revised Election Code which we quote:

"13. Any vote in favor of a person who has not filed a certificate of candidacy or in favor of a candidate for an office for which he did not present himself, shall be void and counted as a stray vote but shall not invalidate the whole ballot."

Evidently, the Court of Appeals erred in not crediting said two ballots to Cababasada in the final computation, and the error should be corrected.

Valmoria contends that the two ballots in question were rejected by the trial court and that Cababasada could and cannot claim said ballots for his failure to make an express assignment of errors in his brief regarding said two ballots. The contention has no merit. When it appears that the trial court has illegally rejected ballots that have been legally cast in favor of a candidate, the appellate court must correct the error, even without an express assignment of error made in the brief. An appellate court may affirm an appealed decision on grounds different from those stated in the decision of the trial court. According to Section 178 of the Revised Election Code, appeals in election contests shall proceed as in criminal cases, and in a criminal case the appellate court may consider errors of the trial court not expressly pointed out in an assignment of error, so as to render substantial justice. Lastly, not to count in favor of Cababasada the two ballots in question is to defeat the popular will, and such result must be avoided in view of the fundamental principle of the Constitution that sovereignty resides in the people.

With the two ballots credited to Cababasada, the latter appears to have been elected mayor of Kinoguitan. It is not necessary, in view of this result, to consider the other questions raised by Cababasada.

For all the foregoing, the decision of the Court of Appeals is reversed, and Emilio Z. Cababasada is declared as the duly elected mayor of Kinoguitan in the election of November 11, 19475 and Ciriaco Valmoria is ordered to turn over to him the office, with costs in the three instances in favor of Cababasada. In view of the nature of this case and the circumstances surrounding it, it is ordered that this decision shall become final and executory five days after its promulgation.

Moran, C.J., Paras, Feria, Pablo, Bengzon, Briones, Tuason, Montemayor, and Reyes, JJ., concur.

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