

ERNESTO CAMPOS AND FLORENCIO OROC, PETITIONERS AND APPELLANTS, VS. ESTEBAN DEGAMO AND FELINO PALARCA, RESPONDENTS.

G.R. No. L-18315. September 29, 1962

Ponente: PAREDES, J.

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PAREDES, J.:

The complaint, styled "Quo Warranto", filed on September 27, 1960, alleges that in the election of November, 1959, petitioners Ernesto Campos and Florencio Oroc were elected and proclaimed councilor No. 1 and councilor No. 2, respectively, of the municipality of Carmen, Agusan; that on December 7, 1959, respondents Esteban Degamo and Felino Palarca were proclaimed Mayor and Vice Mayor, respectively, of the said municipality, notwithstanding the protest and request that the proclamation be suspended on the ground that the Board of Canvassers used in their canvass for election in Precinct No. 6, the election return coming from the Provincial Treasurer's Office, in spite of the fact that the copy of the election return in the hands of the municipal treasurer of Carmen, was available; that there was no valid canvass for the offices of Mayor and Vice Mayor effected and the respondents could not legally occupy the said positions; that on August 8, 1960, the respondents installed their own offices in a temporary building near the municipal hall, and appointed policemen, with the approval of the Provincial Treasurer; and that petitioners made verbal demands upon respondents to stop performing the duties and functions of said offices, but respondents denied and refused, thereby making the public believe they were the lawful officials of said municipality. Petitioners, therefore, prayed (a) that a writ of quo warranto be issued ousting and excluding respondents Degamo and Palarca from the office of mayor and vice-mayor of Carmen, respectively; and that they be declared entitled to said offices and placed forthwith in possession thereof.

Respondents answering, after the usual admissions and denials, averred that the Board of Canvassers was created and appointed by and acted upon instructions of, the Commission on Elections; that they were duly elected by the people and validly proclaimed by the said Board; that they occupied another building as their office, because the then incumbent and defeated Municipal Mayor Jose Malimit only vacated the municipal building on September 22, 1960; and that on January 1960, respondent Degamo, as new mayor, terminated the services of the policemen appointed by ex-mayor Malimit, and on September 22, 1960, the Philippine Constabulary disarmed all the policemen appointed by said Ex-mayor. As affirmative defenses, respondents claimed that (1) the petition was filed outside the reglementary period; (2) there was no sufficient cause of action; (3) the petitioners had no legal personality or authority to file the present case; (4) the court had no jurisdiction over the petition and the petitioners; (5) there was a pending case of the same nature and of substantially the same allegations against the respondents, before the same court; and (6) the respondents took their oaths of office and performed their respective duties starting January 1, 1960. In their counterclaim, respondents prayed for moral damages and attorneys fees.

On January 28, 1961, the lower court issued the following order:

The present quo warranto seeks the ouster of the respondents Esteban Degamo and Felino Palarca from the

positions of mayor and vice-mayor, respectively, of Carmen, Agusan. The allegations of the petition show that it is not based upon section 173 of the Revised Election Code because the petitioners Ernesto Campos and Florencio Oroc were not candidates for the same positions but for the positions of councilors of the municipality of Carmen in the 1959 elections. Besides, the period of one week from the proclamation for the filing of quo warranto under the election law has long expired.

This quo warranto may therefore be considered as an ordinary quo warranto under the Rules of Court, but it cannot prosper because it fails to state a cause of action, the petitioners not being entitled to the positions of mayor and vice mayor of the municipality of Carmen, Agusan, inasmuch as there is at present pending before the Supreme Court a case of quo warranto over these two positions filed by Jose Malimit and Vicente Acain against the herein respondents Esteban Degamo and Felino Palarca. Although the appealed case was dismissed by this Court on jurisdictional grounds, the appellate court may reverse the decision and order this Court to proceed with the hearing of said quo warranto. Hence, this action is premature.

WHEREFORE, for lack of jurisdiction and cause of action, this petition is hereby dismissed with costs against the petitioners.

Petitioners appealed directly to this Court on purely questions of law, claiming in their brief that the lower court erred (1) in declaring that they are not entitled to the said positions of Mayor and Vice-Mayor; and (2) in declaring that the petition states no cause of action.

The dominant facts brought out at the hearing, pleadings and decisions of our court, of which we take judicial cognizance, are the following: That neither petitioners Campos or Oroc, was a candidate for the office of mayor or vice-mayor of the municipality of Carmen during the 1959 elections; that Degamo and Palarca were candidates and duly elected mayor and vice-mayor of said municipality in said election and their close rivals were Jose Malimit for Mayor and Vicente Acain for Vice-Mayor; that when this present action for quo warranto, (Sp. Civil Case No. 117) was filed with the CFI of Agusan, there was pending Quo Warranto proceeding filed by Malimit and Acain, against Degamo and Palarca for the same offices[1] and an election protest was also filed by Malimit against Degamo;[2] and that the complaint in special civil case No. 117 did not set forth the names of Malimit and Acain who also claimed to be entitled to the offices in question.

Under the theory that Special Civil Action No. 117 comes under the provisions of the Revised Election Code, its filing violates section 173 thereof which states:

"When a person who is not eligible is elected to a provincial or Municipal Office, his right to the Office may be contested by any registered candidate for the same office before the Court of First Instance of the province, within one week after the proclamation of his election, by filing a petition for quo warranto. The case shall be conducted in accordance with the usual procedure and shall be decided within thirty days from the filing of the complaint. A copy of the decision shall be furnished the Commission on Elections."

Petitioners Campos and Oroc were not registered candidates for the offices of Mayor and vice-mayor, and the quo-warranto was not filed within one week after the proclamation of the persons sought to be ousted—the respondents herein. The proclamation of the respondents was made on December 7, 1959, and the present quo warranto complaint was filed on September 27, 1960, about a year later.

On the assumption that the present action is presented as an ordinary quo warranto case (Rule 68, Rules of Court), same can not also prosper. Section 7, Rule 68, provides:

"What complaint for usurpation to set forth, and who may be made parties.—When the action is against a person for usurping an office or franchise, the complaint shall set forth the name of the person who claims to be entitled thereto, if any, with an averment of his right to the same and that the defendant is unlawfully in possession thereof. All persons who claim to be entitled to the office or franchise may be made parties, and

their respective rights to such office or franchise determined, in the action."

Malimit and Acain who claimed to be entitled to the offices of mayor and vice-mayor, respectively, are not parties herein. The complaint must likewise allege that plaintiffs were duly elected to such positions. Where the office in question is an elective one, the complaint must show that the plaintiff was duly elected thereto (Luna vs. Rodriguez, 38 Phil. 401; Acosta vs. Flor, 5 Phil. 18). Petitioners-appellants Campos and Oroc, having been candidates and elected for the office of councilors and not for the office of mayor and vice-mayor, they are not the proper parties to institute the present action.

Moreover, there being a pending case for quo warranto before this court (G.R. No. L-17850 foot note No. 1, supra), filed by Malimit and Acain against the same Degamo and Palarca, for the office of mayor and vice-mayor of Carmen, respectively, the filing of the case at bar was premature and the cause of action had not as yet accrued.

The appeal is dismissed and the order appealed from is affirmed, with costs against the petitioners-appellants.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Dizon, and Labrador, JJ, concur.

[1] G.R. No. L-17850, Jose Malimit & Vicente Acain, vs. Esteban Degamo & Felino Palarca—Appeal from the Order of Dismissal (Quo Warranto)—Pending decision.

[2] G.R. No. L-017951, Jose Malimit, Protestant-Appellant vs. Esteban Degamo, Protestee-Appellee—Appeal from Order of Dismissal (Election Protest) Pending decision.

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