

**MAGDALENA SIBULO VDA. DE MESA, WIDOW OF THE LATE
FRANCISCO DE MESA, JUAN GILBUENA, DR. PEDRO MOLERA,
EMETRIO. PRESNEDI AND LUCIO VICTA, AS OFFICERS AND IN
REPRESENTATION OF THE ...**

G. R. No. L-24583. October 29, 1966

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

In this petition for certiorari with preliminary injunction, the petitioners ask this Court to review a three-to-two decision rendered by a special division of the Court of Appeals on March 26, 1965 in C.A. 35019-R, sustaining the validity of the proceedings had and taken by the Court of First Instance of Rizal in election case 7924 before it (Maximino A. Argana, protestant vs. Francisco De Mesa, protestee). The issue of nullity of the judgment promulgated in the said election case was elevated to the Court of Appeals on a petition for certiorari and mandamus, upon the contention that the said court of first instance illegally and incorrectly did not allow the substitution of the present petitioners as parties for De Mesa, after the latter's death, and thereafter denied due course to their appeal from the said judgment.

The antecedent facts are not complicated.

Opponents for the mayoralty of Muntinlupa, Rizal in the 1963 elections were Francisco De Mesa and Maximino A. Argana. The electorate's choice, as tallied by the local board of canvassers, was De Mesa. Elected vice-mayor with him was Demetrio R. Loresca. Duly proclaimed elected, these two qualified and assumed their respective positions upon the commencement of their term of office.

Meanwhile and in due season, defeated candidate Argana, charging the perpetration of frauds, terrorism and other irregularities in certain precincts, protested the election of De Mesa, which protest was docketed as election case 7924, supra, in the Court of First Instance of Rizal, the Honorable Eulogio Mencias presiding. In his return to the protest, De Mesa traversed the charges, and, in a counter-protest incorporated therein, sought to shift responsibility for irregularities to the protestant and his followers, impugning in view thereof the results in some thirteen precincts.

On March 18, 1964, however, an assassin's bullet felled De Mesa, and, forthwith, vice-mayor Loresca was, by operation of law, duly installed as his successor. Notice of De Mesa's demise was given on April 22, 1964 to the court a quo thru a "Constancia" filed by the decedent's counsel of record, in which they also indicated their belief that, by reason of said death, their authority as such counsel was terminated.

In the election case, meanwhile, the protestant Argana moved for the constitution of committees on revision of ballots. Expressly to hear protestee's view thereon and to afford him a chance to propose his commissioners, this motion was set for hearing but, quite understandably, no appearance was entered for the deceased protestee. Accordingly, on May 6, 1964, the court a quo required the protestee's widow and children to appear within

fifteen days from notice in order to be substituted for said protestee, if they so desired. They did not, however, comply. Taking no further action in the premises, the trial court left the matter at that.

Then proceeding ex-parte, on June 11, 1964, the protestant Argana reiterated his move for the appointment of commissioners on revision of ballots, but this time without proposing any provision for representation for the protestee whose widow and children he sought to be declared "non-suited". On June 23, 1964, without notice to the protestee and/or his legal representative - as indeed none had thus far been named - the trial court granted the motion aforesaid.

With the constitution of the committee on revision of ballots in which, incidentally, Ramon Antilon, Jr. was motu proprio named and then served as commissioner for the deceased protestee, the completion of the proceedings on revision, and the submission of the report thereon, the trial court, in its decision of August 10, 1964, adjudged the protestant Maximino A. Argana as the duly elected mayor of Muntinlupa, Rizal in the 1963 elections, and taxed the costs and expenses of the protest against the estate of the deceased protestee Francisco De Mesa.

On August 17, 1964, within the reglementary period for the finality of the decision aforesaid, a three-pronged move was taken by De Mesa's widow, Magdalena Sibulo Vda. de De Mesa, and the local chapter of the Liberal Party of which the deceased protestee was a member, thru its president and secretary. First, they sought leave to represent the deceased protestee, invoking specifically said protestee's interest to keep his political opponent out of the contested office in order to maintain his successor therein, which interest was not abated by his death; second, they moved for the reconsideration of the August 10, 1964 decision and/or for new trial based, inter alia, upon the ground that, for failure to order the protestant to procure the appointment of a legal representative of the deceased protestee after his widow and children had failed to appear, pursuant to the applicable provisions of the Rules of Court, it was legally improper for the trial court to have proceeded ex parte with the election case; and third, they filed a "Cautionary Notice of Appeal" in anticipation of the possible denial of their said motion for reconsideration and new trial.

Pleading lack of personality both of De Mesa's widow and the local Liberal Party Chapter to intervene in the case, as well as the absence of any ground for a new trial, the protestant opposed the foregoing moves. To the opposition, the movants below filed their reply. On September 25, 1964 the court a quo, subscribing to the position taken by the protestant, denied the movants' petition for leave to represent the deceased protestee and ordered stricken from the record their motion for reconsideration and new trial and their cautionary notice of appeal.

On October 6, 1964 Argana qualified as mayor and assumed office.

Forthwith, on October 7, 1964 the movants aforesaid gave notice of their intention to take the matter on appeal to the Court of Appeals. This was met with the protestant's motion to strike out their notice of appeal, grounded on the trial court's finding of movants' want of personality to appear in the case, and consequently to appeal the decision a quo.

In the meantime, Demetrio R. Loresca made common cause with Be Mesa's widow and the local Liberal Party Chapter, and moved for leave to be added to and/or substituted as party-protestee, claiming a legal and continuing interest in the outcome of the election protest as successor to De Mesa.

On November 10, 1964 the trial court dictated twin orders: (1) granting the protestant's motion to strike out the notice of appeal heretofore adverted to; and (2) denying Loresca's motion to be substituted as party-protestee.

This development sent the herein petitioners to the Court of Appeals on a petition for certiorari and mandamus, with preliminary injunction (CA 35019-R), to nullify for lack of jurisdiction the proceedings taken by the trial

court in the election case aforesaid without allowing the intervention and/or the inclusion of a legal representative of the deceased protestee; or, in the alternative, to compel the trial court to give due course to the petitioners' appeal from the decision in said case. Upon bond duly filed and approved, the Court of Appeals issued the writ of preliminary injunction prayed for. However, upon respondents' motion and over the opposition of the petitioners, the effect of said writ was temporarily suspended until the case was finally decided by the Court of Appeals.

Appropriate proceedings having been had in the case, the latter court, besides finding the inapplicability to election cases of the provisions of Section 17, Rule 3 of the Rules of Court on substitution of parties in case of death, opined that the petitioners likewise lacked the legal standing and/or capacity to appear in election case 7924 aforesaid and/or to appeal from the decision rendered therein, and that furthermore while the petitioner Loresca may have had such personality he nevertheless failed to timely invoke the same to protect his interests. Accordingly, it denied the petition for certiorari and mandamus and consequently permanently dissolved the writ of preliminary injunction theretofore issued.

Hence, the present recourse.

The vital issue, to which all other issues appear to be subsidiary, is the determination of the legal effect of the proceedings taken by the trial court in the election contest before it subsequent to the demise of the protestee De Mesa.

As we approach this question, certain postulates project themselves to the fore. It is axiomatic that an election contest, involving as it does not only the adjudication and settlement of the private interests of the rival candidates but also the paramount need of dispelling once and for all the uncertainty that beclouds the real choice of the electorate with respect to who shall discharge the prerogatives of the offices within their gift, is a proceeding imbued with public interest which raises it onto a plane over and above ordinary civil actions. For this reason, broad perspectives of public policy impose upon courts the imperative duty to ascertain by all means within their command who is the real candidate elected in as expeditious a manner as possible, out being fettered by technicalities and procedural barriers to the end that the will of the people may not be frustrated (*Ibasco vs. Ilaos, et al.*, G.R.L-17512, December 29, 1960; *Reforma vs. De Luna*, G.R. L-13242, July 31, 1958). So inextricably intertwined are the interests of the contestants and those of the public that there can be no gainsaying the logic of the proposition that even the voluntary cessation in office of the protestee not only does not ipso facto divest him of the character of an adversary in the contest inasmuch as he retains a party interest to keep his political opponent out of the office and maintain therein his successor, but also does not in any manner impair or detract from the jurisdiction of the court to pursue the proceeding to its final conclusion (*De Los Angeles vs. Rodriguez*, 46 Phil., 595, 597; *Salcedo vs. Hernandez*, 62 Phil. 584, 587; *Galves vs. Maramba*, G.R. L-13206).

Upon the same principle, the death of the protestee De Mesa did not abate the proceedings in the election protest filed against him, and it may be stated as a rule that an election contest survives and must be prosecuted to final judgment despite the death of the protestee.

With the death of De Mesa, however, a contingency not expressly provided for by the Revised Election Code was ushered in. Nevertheless, the hiatus in the special law posed no impediment to the course of the proceedings because, precisely by express mandate of Rule 134 of the Rules of Court, said rules, though not generally applicable to election cases, may however be applied "by analogy or in a suppletory character and whenever practicable and convenient". For the eventuality here involved, the Rules specifically plot the course of action to be taken, in the following language:

"Sec. 17. Death of party.- After a party dies and the claim is not thereby extinguished, the court shall order, upon proper notice, the legal representative of the deceased to appear and to be substituted for the deceased,

within a period of thirty (30) days, or within such time as may be granted. If the legal representative fails to appear within said time, the court may order the opposing party to procure the appointment of a legal representative of the deceased within a time to be specified by the court, and the representative shall immediately appear for and on behalf of the interest of the deceased, x x x". (Rule 3).

That the applicability of the foregoing precept to the election contest below was initially conceded is borne out by the proceedings on record. The trial court, it will be recalled, in its order of May 6, 1964, required the widow and children of the deceased protestee to appear and be substituted for and on his behalf and to protect his interest in the case. But when they failed to comply - mainly because of the shock and agony that followed in the wake of the violent death of the protestee the trial court took no further steps in the premises and, instead, at the instance of the protestant, declared said widow and children non-suited, proceeded with the case *ex parte* and effectively blocked all attempts at intervention and/or substitution in behalf of the deceased protestee. In these moves, the trial court did not only merit the unqualified sanction of the Court of Appeals but the latter, taking an even more radical view of the matter, actually held that the rule relied upon has no application to election cases.

We cannot give our imprimatur to the foregoing view. All reasonable intendments deducible from the law and the essential nature of the case involved, to our mind, unerringly tend to the contrary. At the very least, nothing extant in the Revised Election Code either expressly or by implication renders inappropriate the application of said principle of substitution in case of death to proceedings thereunder. On the contrary, because of its clear failure to meet the contingency in question, the need to supplement the deficiency becomes imperative. Then, the exertion of judicial power to hear and determine a cause implicitly presupposes in the trial court, amongst other essentials, jurisdiction over the persons of the parties. That jurisdiction was inevitably impaired upon the death of the protestee pending the proceedings below such that unless and until a legal representative is for him duly named and within the jurisdiction of the trial court, no adjudication in the cause could have been accorded any validity or binding effect upon any party, in representation of the deceased, without trenching upon the fundamental right to a day in court which is the very essence of the constitutionally enshrined guarantee of due process. As cogently synthesized in *Cupples vs. Castro*, 137 P. 2d., 755 –

"Where contestant was declared elected and contestee appealed after which contestant died, rights of parties could not be determined in absence of contestant and his legal representative and submission would be set aside and cause taken from calendar to be heard only after representative of contestant should have been substituted." (Francisco, *The Revised Election Code*, 1957 ed., p. 583).

If this be the case with the contestant, a fortiori no less can be said of the contestee whose rights as well as those of his successor by operation of law would be at hazard in an *ex parte* proceeding. Further still, the fundamental purpose of the Revised Election Code, it has been recognized, is to protect the integrity of elections and suppress all evils that may vitiate their purity and defeat the popular will. Judicial experience teaches that more often than not frauds and irregularities committed during the voting come to light only when the ballot boxes are opened and their contents examined. At no time then in the course of an election contest is the need for vigilance more to be insisted upon than during that critical stage when the ballot boxes are opened and the ballots themselves are revised. To deny a party to the contest the representation that the law allows him at this juncture is virtually to take away one of the most effective measures designed for the approximation of the primordial objective election laws are intended to achieve.

In the light of the foregoing, it is our considered view that Section 17, Rule 3 of the Rules of Court applies to election contests to the same extent and with the same force and effect as it does in ordinary civil actions. And we declare that unless and until the procedure therein detailed is strictly adhered to, proceedings taken by a court in the absence of a duly appointed legal representative of the deceased protestee must be stricken down as null and

void. Considering that, in the case at bar, the trial court failed to order the protestant to procure the appointment of a legal representative of the deceased protestee after the latter's widow and children had failed to comply with the court order requiring their appearance to be substituted in lieu of their predecessor, but instead - in derogation of the precepts of the Rule in question and in the total absence of a legal representative of the deceased protestee - proceeded ex parte with the election case, said court not only acted with grave abuse of discretion but actually committed a clear extra-limitation of its lawful jurisdiction which, perforce, tainted all its proceedings with the indelible stigma of nullity (*Barrameda, et al. vs. Barbara*, 90 Phil., 718, 722, 723; *Ferreria vs. Ibarra Vda. de Gonzales, et al*, 55 O.G., No. 8, 1358, 1362-63; *Sarmiento, etc., et al. vs. Ortiz, et al.*, G.R. No. L-18583, January 31, 1964; *Caisip vs. Cabangon*, G.R. Nos. L-14684-14686, August 26, 1960).

It is no argument against this conclusion to contend that the requirement for the procurement of a legal representative of a deceased litigant is couched in the permissive term "may" instead of the mandatory word "shall". While the ordinary acceptations of these terms may indeed be resorted to as guides in the ascertainment of the mandatory or directory character of statutory provisions, they are in no wise absolute and inflexible criteria in the vast areas of law and equity. Depending upon a consideration of the entire provision, its nature, its object and the consequences that would follow from construing it one way or the other, the convertibility of said terms either as mandatory or permissive is a standard recourse in statutory construction. Thus, Black is authority for the rule that "Where the statute provides for the doing of some act which is required by justice or public duty, or where it invests a public body, municipality or public officer with power and authority to take some action which concerns the public interest or rights of individuals, the permissive language will be construed as mandatory and the execution of the power may be insisted upon as a duty" (Black, *Interpretation of Laws*, pp. 540-543). The matter here involved not only concerns public interest but also goes into the jurisdiction of the trial court and is of the essence of the proceedings taken thereon. On this point, there is authority to the effect that in statutes relating to procedure, as is the one now under consideration, every act which is jurisdictional, or of the essence of the proceedings, or is prescribed for the protection or benefit of the party affected, is mandatory (*Gonzaga, Statutes and their Construction*, p. 98, citing; *Estate of Naval*, G. R. No. L-6736, May 4, 1954). The present case is well within the purview of this doctrine.

Nor may the motu proprio appointment by the trial court of Ramon Antiñon, Jr. as commissioner for the deceased protestee in the revision proceedings be deemed a substantial compliance with the legal requirement. As aptly observed in the dissent to the decision under review, said commissioner was not the legal representative contemplated by the Rules to be substituted for the deceased protestee. Said commissioner was not supposed to represent the protestee as a party litigant. His appointment as such was made exclusively upon the initiative of the trial court and is authorized by the law, Section 175, Revised Election Code, merely as a time-saving device for the convenience of the court and the parties in the purely mechanical operation of opening the ballots and tabulating the count and in the interest of a speedy and expeditious revision and recount of the contested ballots (*Hontiveros vs. Altavas*, 24 Phil., 632, 649-650; *Raymundo vs. Gonzales*, 80 Phil., 719, 721). For all legal intents and purposes, while said commissioner's appointment may be proposed by the contestants themselves, he is nevertheless exclusively an officer or an agent of the court under its direct control and supervision.

Equally unacceptable is the proposition that, because time is of the essence in an election contest, recourse to the appointment of a legal representative of a deceased protestee which can only protract and delay the progress of the case is but a finical matter of procedure which can justifiably be dispensed with. The validity of the injunction for the prompt disposal of election controversies as repeatedly postulated in a consistent array of jurisprudence is not open to debate. The terms of office of elective officials are relatively brief. To dissipate within the shortest time possible any aura of doubt upon the true result of elections is a much sought-after desideratum. But, salutary though the precept may be, it is no justification for cutting procedural corners or taking legal short-cut not

warranted in a system of procedure where the rule of law is still held paramount over and above all considerations of mere convenience and expediency. We would be the last to advocate a departure from the policy of early settlement of electoral disputes, but we are not prepared to lend our approval to a course of action which would tend to achieve one object of desire at the expense of the orderly administration of justice and with the sacrifice of the fundamental right of litigants to due process of law. Otherwise, the speedy trial required by the law would be converted into a denial of justice (*Querubin vs. Court of Appeals*, 82 Phil., 226, 230). In law - as in any other sphere of human / relations - the end very seldom, if at all, justifies the means. And, in the case at bar, the admittedly imperative demand for a speedy disposition of the controversy cannot deter our hand from striking down illegality in the proceedings therein and remanding the case for new trial, despite the concomitant delay that may be occasioned thereby, since that is the only course open if the ends of justice are to be subserved (*Salcedo vs. Hernandez*, 62 Phil., 584, 587).

Consequent to the conclusion we have just reached, we confront the issue of who is the legal representative of the deceased protestee entitled to be substituted in his stead.

As the record of the case reveals, three different aspirants vied for that legal representation: Demetrio R. Loresca, the vice-mayor who succeeded to the position of mayor upon the protestee's demise; Magdalena Sibulo Vda. de De Mesa, the protestee's widow; and the local chapter of the Liberal Party at Muntinlupa, Rizal, to which the deceased protestee belonged, as represented by its officers who are co-petitioners herein. An examination of the countervailing interests of these parties seems in order.

By virtue of Section 7 of the Local Autonomy Act, Republic Act 2264, the vice-mayor stands next in line of succession to the mayor in case of a permanent vacancy in the latter's position. Upon the death of the protestee mayor in the case at bar, Loresca as then incumbent vice-mayor succeeded by operation of law to the vacated office and, as a matter of right, is entitled to occupy the same for the unexpired term thereof or until the protest against his predecessor is decided adversely against the latter. The outcome of that contest thus bears directly upon his right to his present position and, amongst all, he is the person most keenly concerned and interested in the fair and regular conduct thereof in order that the true will of the electorate will be upheld. His status as a real party in interest in the continuation of the proceedings - a fact conceded by the decision under review itself - cannot thus be disputed.

It is not correct to subject Loresca, as the Court of Appeals did, respecting his interest in the controversy, to the operation of the equitable principle of laches. The initiative to cause his substitution in lieu of the deceased protestee was not Loresca's. It was the trial court's as well as the protestant's duty, upon being apprised of the protestee's death, to cause the appointment of his legal representative according to the procedure delineated in the Rules. Failing in this duty, it never became the obligation of Loresca to take it upon himself to be appointed as such legal representative, as in fact, he was not even duly and seasonably notified, much less ordered, to appear and be so substituted. In this posture, and particularly because, as above held, the trial court did not even acquire jurisdiction over him, no room exists for the operation of the rule on laches against him. His intervention should not have been denied.

The same cannot, however, be said of the protestee's widow or of the local Liberal Party chapter of Muntinlupa. The protestee's claim to the contested office is not in any sense a right transmissible to his widow or heirs. Said widow's only remaining interest in the outcome of the case is limited to no more than the possible award of costs against the deceased protestee. Besides not being such an interest as would justify her substitution for her deceased husband as an indispensable legal representative, the right to such an award if eventually made has already been waived by the protestant Argana. This effectively withdraws the widow from the picture altogether. Much less has the local Liberal Party Chapter any claim to substitution. Not being duly incorporated as a juridical

person, it can have no personality to sue or be sued as such. And while it conceivably may derive some indirect benefit consequent to the resolution of the contest in favor of the deceased protestee, neither the chapter itself nor the officers thereof would become entitled thereby to any right to the contested office in case of a favorable judgment, nor, for that matter, do they stand to sustain any direct prejudice in case of an adverse one. No basis therefore exists upon which to predicate their claim to substitution.

The foregoing views render academic the alternative issue raised by the petitioners regarding the propriety of their appeal from the trial court's decision in the main case.

ACCORDINGLY, the judgment under review is reversed and, in lieu thereof, another is rendered ‘

(1) Declaring null and void the judgment of the Court of First Instance of Rizal in election case 7924 thereof, dated August 10, 1964, which proclaimed the protestant Maximino A. Argana the duly elected mayor of Muntinlupa, Rizal in the 1963 elections, for having been rendered without jurisdiction over the person of the legal representative of the deceased protestee Francisco De Mesa, and all other proceedings taken by said court in said election case subsequent to the death of the said protestee;

(2) Ordering the protestant Maximino A. Argana, without delay, to vacate the office of mayor of Muntinlupa, Rizal and to relinquish the same in favor of Demetrio R. Loresca; and

(3) Ordering the Court of First Instance of Rizal to forthwith appoint the petitioner Demetrio R. Loresca as the legal representative of the deceased protestee Francisco De Mesa and allow his appearance as such in substitution of the said deceased for purposes of said election case 7924 of said court, to conduct a new trial in said election case, and thereafter to render judgment therein as the evidence may warrant.

No pronouncement as to costs.

Concepcion, C.J., Reyes, J. B. L., Dizon, Regala, Makalintal, Bengzon, J. P., Zaldivar and Sanchez, JJ., concur.

Barrera, J., on leave.

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