

RONALD ALLAN POE A.K.A. FERNANDO POE, JR., PROTESTANT, VS. GLORIA MACAPAGAL-ARROYO, PROTESTEE.

P.E.T. CASE NO. 002. March 29, 2005

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

The moving finger writes, says Omar Khayyam in the Rubayyat, and having writ, moves on. Nor all your piety nor wit, adds the poet, could lure it back to cancel half a line; nor all your tears wash out a word of it.

Such is my view on the providential case for our consideration.

Before this Electoral Tribunal, composed pursuant to the Constitution, by all the fifteen members of the Supreme Court, is a matter of first impression. We are tasked not only to determine, as originally prayed for, who between the Protestant and the Protestee was the true winner in the May 10, 2004 Presidential Elections, but also to decide now whether the Protestant's widow (Mrs. Jesusa Sonora Poe, popularly known as the cinema star Susan Roces) could intervene and/or substitute for the deceased party, assuming *arguendo* that the protest could survive his death.

If one were guided by folk wisdom expressed in the adage that in a democracy, the voice of the people is the voice of God, then it would appear our task had been made easy by fateful events. Past midnight, in the early hours of June 24, 2004, the Congress as the representatives of the sovereign people and acting as the National Board of Canvassers, in a near-unanimous roll-call vote, proclaimed Mrs. Gloria Macapagal Arroyo (GMA) the duly elected President of the Philippines. She obtained 12,905,808 votes, as against 11,782,232 votes for the second-placer, the movie actor Fernando Poe, Jr. (FPJ).[1] She took her Oath of Office before the Chief Justice of the Supreme Court on June 30, 2004.

Refusing to concede defeat, the second-placer in the elections, Mr. FPJ, filed seasonably an election protest before this Electoral Tribunal on July 23, 2004. Mrs. GMA, through counsel, filed her Answer with Counter Protest on August 5, 2004. As counsels for the parties exchanged lively motions to rush the presentation of their respective positions on the controversy, an act of God intervened. On December 14, 2004, the Protestant died in the course of his medical treatment at St. Luke's Hospital. The medical certificate, filed by counsel as part of the Notice of Death of the Protestant, showed that he died of cardio-pulmonary arrest, secondary to cerebral infarction.

However, neither the Protestee's proclamation by Congress nor the death of her main rival as a fortuitous intervening event, appears to abate the present controversy in the public arena. Instead, notice may be taken of periodic mass actions, demonstrations, and rallies raising an outcry for this Tribunal to decide the electoral protest of Mr. FPJ against Mrs. GMA once and for all. The oracular function of this Tribunal, it would appear, needs to be fully exercised to make manifest here and abroad who is the duly elected leader of the Filipino nation. All these, despite the fact that the submissions by the parties on their respective sides in the protest and the counter-protest are thus far, far from completed.

Needless to stress, this Tribunal cannot shirk its constitutional duty. Yet, neither could it go beyond its mandate under the Constitution and the law. Further, this Tribunal is guided by its Rules, as well as the Rules of Court in a suppletory manner. Considering the transcendental importance of the electoral contest involving the Presidency, a rush to judgment is simply out of the question. Yet decide the matter we must, without further delay, to prevent popular unrest and avoid further destabilization of government at the highest level.

Together with the formal Notice of the Death of Protestant, his counsel has submitted to the Tribunal, dated January 10, 2005, a “MANIFESTATION with URGENT PETITION/MOTION to INTERVENE AS A SUBSTITUTE FOR DECEASED PROTESTANT FPJ,” by the widow, Mrs. Jesusa Sonora Poe, who signed the verification and certification therein.

As movant/intervenor, Mrs. FPJ claims that because of the untimely demise of her husband and in representation not only of her deceased husband but more so because of the paramount interest of the Filipino people, there is an urgent need for her to continue and substitute for her late husband in the election protest initiated by him to ascertain the true and genuine will of the electorate in the 2004 elections. In support of her assertion, she cites *De Castro v. Commission on Elections*,^[2] and *Lomugdang v. Javier*,^[3] to the effect that the death of the protestant does not constitute a ground for the dismissal of the contest nor oust the trial court of the jurisdiction to decide the election contest. She stresses nevertheless that even if the instant protest case succeeds, she is cognizant that as a mere substitute she cannot succeed, assume or be entitled to said elective office, and her utmost concern is not personal but one that involves the public’s interest. She prays, however, that if subsequently determined that the protestee Gloria Macapagal-Arroyo did not get the highest number of votes for president, for protestee to be disallowed from remaining in office, and thus prevented from exercising the powers, duties, responsibilities and prerogatives reserved only to the duly-elected president or her legitimate successor.

In her Comment, the Protestee, Mrs. GMA, relying on *Vda. de De Mesa v. Mencias*^[4] and subsequent cases including analogous cases decided by the House of Representatives Electoral Tribunal (HRET), asserts that the widow of a deceased candidate is not the proper party to replace the deceased protestant since a public office is personal and not a property that passes on to the heirs. She points out that the widow has no legal right to substitute for her husband in an election protest, since no such right survives the husband, considering that the right to file an election protest is personal and non-transmissible.

Protestee also contends Mrs. FPJ cannot substitute for her deceased husband because under the Rules of the Presidential Electoral Tribunal, only the registered candidates who obtained the 2nd and 3rd highest votes for the presidency may contest the election of the president and patently, Mrs. FPJ did not receive the 2nd and 3rd highest votes for she was not even a candidate for the presidency in the election that is being contested.

Citing pertinent PET Rules, protestee also stresses that this Tribunal has no jurisdiction over actions of surviving spouses to ascertain the vote of the electorate as the Tribunal has jurisdiction only over election protests and quo warranto cases.

According to protestee, movant/intervenor Mrs. FPJ cannot use “the public interest” to justify her request to be substituted for her husband. “Public interest”, i.e. the need to dispel uncertainty over the real choice of the electorate, is applicable only in election contests, not in an action to merely “ascertain the true and genuine will of the people.” She asserts that the only case herein cognizable by this Tribunal is an election protest involving a protestant and a protestee, not between the electorate and the protestee. Citing analogous HRET cases, protestee avers that in a case where the protestant, the primary adversary in an election protest case dies, the public interest in said protest dies with him.

Protestee also contends that in the adversarial nature of a protest case where one of the parties dies, a correct

ruling cannot be had because the dead protestant could no longer refute his adversary's allegations because death has rendered him hors de combat.

Further citing *Defensor-Santiago v. Ramos*,^[5] protestee points out that this Tribunal, nonetheless, confirmed its power to dismiss an electoral case on technical grounds. She adds that if the Tribunal can do so on a technicality, all the more it could for a stronger reason, that of protestant's death.

In her Reply, movant/intervenor argues that reference of protestee to the HRET case of *Abadilla v. Ablan*,^[6] was erroneous inasmuch as said case was a congressional protest and the controlling case is *De Castro*. She likewise contends that protestant failed to distinguish between a right to an office which protestant concedes is personal and non-transmissible vis-à-vis the right to pursue the process which is not personal but imbued with public interest. She likewise stresses that the death of the protestant abolished the personal/private character of the protest, as protestant's right to assume if he prevails, necessarily disappears, and the same cannot be transferred to anyone else, protestant's widow included. She insists, however, that the public interest remains. Further, movant/intervenor posits that the protest having been commenced cannot be abated by the death of the protestant and the only real issue is the determination of the proper substitute. She avers that the Tribunal's rule is clear on who can commence and initiate a protest compared to the persons who can initiate a quo warranto. She admits that in the former, only the second and third placers in the presidential election are authorized to commence the contest, while in the latter, any voter may initiate the petition. She contends that with no personal interest involved, any registered voter can continue the duly-commenced protest as the real-party-in-interest which is analogous to a quo warranto. She contradicts protestee and insists that allowing "any voter" to substitute just like in a quo warranto will not open the floodgate to whimsical protests, and the imagined political instability feared by protestee will even more be pronounced if the protest is dismissed. Movant/intervenor reiterates that the issue at hand involves just the continuation of proceedings by allowing substitution and the taking over by the substitute of the prosecution of the protest already "duly commenced."

Plainly, the issue here is: May the widow substitute/intervene for the protestant who died during the pendency of the latter's protest case?

The fundamental rule applicable in a presidential election protest is Rule 14 of the PET Rules. It provides,

Rule 14. Election Protest.—Only the registered candidate for President or for Vice-President of the Philippines who received the second or third highest number of votes may contest the election of the President or the Vice-President, as the case may be, by filing a verified petition with the Clerk of the Presidential Electoral Tribunal within thirty (30) days after the proclamation of the winner.

Pursuant to this rule, only two persons, the 2nd and 3rd placers, may contest the election. By this express enumeration, the rule makers have in effect determined the real parties in interest concerning an on-going election contest. It envisioned a scenario where, if the declared winner had not been truly voted upon by the electorate, the candidate who received that 2nd or the 3rd highest number of votes would be the legitimate beneficiary in a successful election contest.

This Tribunal, however, does not have any rule on substitution nor intervention but it does allow for the analogous and suppletory application of the Rules of Court, decisions of the Supreme Court, and the decisions of the electoral tribunals.^[7]

Rule 3, Section 16 is the rule on substitution in the Rules of Court.^[8] This rule allows substitution by a legal representative. It can be gleaned from the citation of this rule that movant/intervenor seeks to appear before this Tribunal as the legal representative/substitute of the late protestant prescribed by said Section 16. However, in our application of this rule to an election contest, we have every time ruled that a public office is personal to the

public officer and not a property transmissible to the heirs upon death.[9] Thus, we consistently rejected substitution by the widow or the heirs in election contests where the protestant dies during the pendency of the protest. In *Vda. de De Mesa v. Mencias*,^[10] we recognized substitution upon the death of the protestee but denied substitution by the widow or heirs since they are not the real parties in interest. Similarly, in the later case of *De la Victoria v. Commission on Elections*,^[11] we struck down the claim of the surviving spouse and children of the protestee to the contested office for the same reason. Even in analogous cases before other electoral tribunals,^[12] involving substitution by the widow of a deceased protestant, in cases where the widow is not a real party in interest, we denied substitution by the wife or heirs.

This is not to say that death of the protestant necessarily abates the pending action. We have held as early as *Vda. de De Mesa* (1966) that while the right to a public office is personal and exclusive to the public officer, an election protest is not purely personal and exclusive to the protestant or to the protestee such that the death of either would oust the court of all authority to continue the protest proceedings.^[13] Hence, we have allowed substitution and intervention but only by a real party in interest. A real party in interest is the party who would be benefited or injured by the judgment, and the party who is entitled to the avails of the suit.^[14] In *Vda. de De Mesa v. Mencias*^[15] and *Lomugdang v. Javier*,^[16] we permitted substitution by the vice-mayor since the vice-mayor is a real party in interest considering that if the protest succeeds and the protestee is unseated, the vice-mayor succeeds to the office of the mayor that becomes vacant if the one duly elected cannot assume office. In contrast, herein movant/intervenor, Mrs. FPJ, herself denies any claim to the august office of President. Thus, given the circumstances of this case, we can conclude that protestant's widow is not a real party in interest to this election protest.

We are not unaware that a contest before election tribunals has two aspects. First, it is in pursuit of one's right to a public office, and second, it is imbued with public interest.

Indeed the personal aspect of the case is inextricably linked with the public interest. For an election protest involves not merely conflicting private aspirations but is imbued with public interest which raises it into a plane over and above ordinary civil actions.^[17] But herein movant/intervenor, Mrs. FPJ, has overly stressed that it is with the "paramount public interest" in mind that she desires "to pursue the process" commenced by her late husband. She avers that she is "pursuing the process" to determine who truly won the election, as a service to the Filipino people. We laud her noble intention and her interest to find out the true will of the electorate. However, nobility of intention is not the point of reference in determining whether a person may intervene in an election protest. Rule 19, Section 1 of the Rules of Court^[18] is the applicable rule on intervention in the absence of such a rule in the PET Rules. In such intervention, the interest which allows a person to intervene in a suit must be in the matter of litigation and of such direct and immediate character that the intervenor will either gain or lose by the effect of the judgment. In this protest, Mrs. FPJ will not immediately and directly benefit from the outcome should it be determined that the declared president did not truly get the highest number of votes. We fully appreciate counsel's manifestation that movant/intervenor herself claims she has no interest in assuming the position as she is aware that she cannot succeed to the presidency, having no legal right to it. Yet thus far, in this case, no real parties such as the vice-presidential aspirants in the 2004 elections, have come forward to intervene, or to be substituted for the deceased protestant. In our view, if persons not real parties in the action could be allowed to intervene, proceedings will be unnecessarily complicated, expensive and interminable – and this is not the policy of the law.^[19] It is far more prudent to abide by the existing strict limitations on intervention and substitution under the law and the rules.

Conformably then with the law, the rules and prevailing jurisprudence, this Tribunal finds no justifiable reason to grant the petition/motion for intervention and substitution.

WHEREFORE, the motion of movant/intervenor JESUSA SONORA POE a.k.a. SUSAN ROCES to intervene and substitute for the deceased protestant is DENIED for lack of merit.

Acting on the protest and considering the Notice of the Death, submitted by counsel of protestant RONALD ALLAN POE, a.k.a. FERNANDO POE, JR., we also resolve that Presidential Electoral Tribunal Case No. 002, entitled Ronald Allan Poe a.k.a. Fernando Poe, Jr. v. Gloria Macapagal-Arroyo, should be as it is hereby DISMISSED on the ground that no real party in interest has come forward within the period allowed by law, to intervene in this case or be substituted for the deceased protestant.

No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.

[1] Resolution of Both Houses No. 01, 12th Cong., Joint Public Session (2004).

[2] G.R. No. 125249, 7 February 1997, 267 SCRA 806.

[3] No. L-27535, 30 September 1967, 21 SCRA 402.

[4] No. L-24583, 29 October 1966, 18 SCRA 533.

[5] P.E.T. Case No. 001, 13 February 1996, 253 SCRA 559.

[6] HRET Case No. 95-005, 11 September 1996, 9 HRET Reports 102.

[7] Rule 69. Applicability.—The following shall be applicable by analogy or in suppletory character and effect in so far as they may be applicable and are not inconsistent with these Rules and with the orders, resolutions and decisions of the Tribunal, namely: 1) The Rules of Court; 2) Decisions of the Supreme Court; 3) Decisions of the Electoral Tribunals.

[8] SEC. 16. Death of party; duty of counsel.—Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian ad litem for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

[9] De Castro v. Commission on Elections, G.R. No. 125249, 7 February 1997, 267 SCRA 806, 809.

[10] No. L-24583, 29 October 1966, 18 SCRA 533, 545.

[11] G.R. Nos. 95275-76, 23 July 1991, 199 SCRA 561, 565-566.

[12] *Abadilla v. Ablan*, HRET Case No. 95-005, 11 September 1996, 9 HRET Reports 102; *Alberto v. Tapia*, HRET Case No. 37, 23 January 1989, 1 HRET Reports 52.

[13] *De Castro v. Commission on Elections*, *supra* at 809.

[14] *Francisco, Jr. v. Nagmamalasakit na mga Manananggol ng Mga Manggagawang Pilipino, Inc.*, G.R. Nos. 160261-63 & 160277, 10 November 2003, 415 SCRA 44, 135 citing *Kilosbayan Incorporated v. Morato*, G.R. No. 118910, 17 July 1995, 246 SCRA 540, 563.

[15] No. L-24583, 29 October 1966, 18 SCRA 545.

[16] No. L-27535, 30 September 1967, 21 SCRA 402, 407.

[17] *Vda. de De Mesa v. Mencias*, *supra* at 538.

[18] SECTION 1. Who may intervene.—A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

[19] *Magsaysay-Labrador v. Court of Appeals*, G.R. No. 58168, 19 December 1989, 180 SCRA 266, 271.

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