

HADJI LOMONTOD MACASUNDIG, PROTESTANT AND APPELLANT, VS. DIRUGUNGUN MACALANGAN, PROTESTEE AND APPELLEE.

G. R. No. L-22779. March 31, 1965

Ponente: ZALDIVAR. J.

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ZALDIVAR. J.:

This is an appeal from the resolution of this Court of First Instance of Lanao del Sur dismissing the motion of protest filed by the protestant-appellant.

On November 24, 1963, the Municipal Board of Canvassers, of the municipality of Poonabayabao, Lanao del Sur, proclaimed Dirugungun Macalangan, protestee-appollee herein, as the duly elected Municipal Mayor of said municipality in the elections held on November 12, 1963.

On November 29, 1963, Sheik Bolug, G. B. Nuska, one of the defeated candidates for mayor, having obtained the fifth place, filed a motion of protest against the election of Dirugungun Macalangan. This election protest was docketed as Election Case No. 1300.

On December 2, 1963, Hadji Lomontod Macasundig, protestant-appellant "herein, also filed a motion of protest against the election of Dirugungun Macalangan. This election protest was docketed as Election Case No. 1305.

The records show that the protestant in Election Case No. 1300 was behind by 105 votes from the votes obtained by the protestee; while the protestant in Election Case No. 1305 (the case now before this Court) was behind by 23 votes obtained by the protestee.

The protestee-appellee in Case No. 1305 filed a motion to the motion of protest alleging: (1) that the protest states no cause of action; (2) that the Court has no Jurisdiction over the case; and (3) that the provisions of lie Revised Election Code had not been followed or complied with and such non-compliance amounts to lack of jurisdiction the part of the parties and subject-matter of the action.

The motion to dismiss was at first denied by the lower court, but upon motion for reconsideration filed by the protestee-appellee, the court reversed its previous ruling and ordered the dismissal of the motion of protest. The order of the court reads as follows:

"Considering the motion for reconsideration filed by the protestee, the court finds that Dirugungun Macalangan is a protestee in two cases. One is Election Case No. 1300, entitled Sheik Rulog G. B. Nuska vs. Dirugungun Macalangan, and the other one is the above-entitled case.

These two (2), cases present a dilemma to the court in proclaiming the winner for mayoralty position of Poonabayabao, Lanao del Sur. Suppose the protestant in Election Case No. 1300 wins over the protestee and the protestant in the above-entitled case also wins the protest over the protestee, the question is, who will be proclaimed by the court to be the elected mayor of Poonabayabao, Lanao del Sur. It is obvious therefore that nobody will be proclaimed by the court for the simple reason that there are two (2) winners. So it should have been better for the parties if there is only one case in which their positions as party litigants are determined by

the court. So much so, that it should have been clearer for the court to determine who is the elected mayor if the protestant in the above-entitled case has followed the provision of Section 176, par. (g) of the Revised Election Code. The protestant in this case cannot avail of the provision of Section 171 of the Revised Election Code because there is already a case filed under said provision which is Election Case No. 1300. This being the case, the recourse of the protestant in the above-entitled case is to intervene in this case against Dirugungun Macalangan.

WHEREFORE, the motion for reconsideration is hereby granted and the case is hereby dismissed for the right of the protestant has not been ascertained in accordance with the provision of Section 176 par. (g) of the Revised Election Code."

His motion for reconsideration of the above-quoted order having been denied, the protestant-appellant appealed directly to this Court.

The principal question to be resolved in the present appeal is whether a motion of protest against a protestee which contains all the jurisdictional facts and statements of a cause of action to warrant the hearing of the case on its merits should be dismissed simply because another motion of protest against the same protestee had previously been filed in the same court.

It is contended by the appellee that what the appellant in the present case should have done was to intervene in the election protest that had already been filed and ask for affirmative relief in his favor by a petition in intervention, as provided in paragraph (g) of Section 176 of the Revised Election Code.

While it is true that the appellant herein had not filed his protest against the appellee in a manner as provided in paragraph (g) of Section 170 of the Revised Election Code, We believe that this circumstance alone is not sufficient to dismiss the protest that was filed by the appellant and deprive him of the right and the opportunity to prove that he was the duly elected Municipal Mayor of the municipality of Poonabayabao, Lanao del Sur, in the elections of November 12, 1963. The motion of protest in question was filed in due time. The motion of protest contains allegations of facts that confer jurisdiction upon that court to hear and determine the case. It would indeed be a recourse to sheer technicality if the election protest of the appellant is thrown out of court simply because he had not strictly complied with the requirements of the above-mentioned Paragraph (g) Section 176 of the Revised Election Code. This Court has held that an election protest involves Public interest, and technicalities should not be sanctioned when it will be an obstacle in the determination of the true will of the electorate in the choice of its public officials. It is a recognized principle that laws governing election protests must be liberally interpreted to the end that the popular will expressed in the election of public officers not, by reason of purely technical objections, be defeated (*Gardiner vs. Romulo*, 26 Phil. 521 ; *Galang vs. Miranda*, 35 Phil, 269; *Jalandoni vs. Sareon*, 94 Phil., 266; 50 Off. Gaz., 587). There is more so in the present case if We consider the fact that the appellant here obtained the second place among the candidates that were voted for Municipal Mayor, the appellant being behind by only 23 votes from the appellee; in contrast to the case of the protestant in the other election protest (Case No. 1300) who obtained the fifth place and was 105 votes behind the protestee.

There is merit in the contention of the appellant that the lower court could have the two election cases heard together and decide the cases in one decision. We believe that the rights of the protestant in both cases can very well be determined by the court in a joint hearing of the two cases, and one decision can be rendered for the two cases. This is really what the lower court should have done. To sustain the ruling of the lower court dismissing the appellant's motion of protest would be to prevent altogether the appellant to contest the election of the appellee, because then it is too late for him to file a petition in intervention in the election case that had been filed ahead of the one that he filed.

In the reply brief filed by the appellant information is given to this Court that Election Case No. 1300, entitled

"Sheik Bolug G. B. Nuaka vs. Dirugungun Maealangan" had been dismissed by the lower court on October 23, 1964. The records do not show that the appellee has confirmed this information. If this information is true, with more reason the present case should be heard on the merits in the court below.

Wherefore, the order of the lower court dismissing the motion of protest filed by the appellant is set aside, and this case is hereby remanded to the lower court for further proceedings, with instructions that the same be heard and decided jointly with Election Case No. 1300, entitled Sheik Bolug G. B. Nuska vs. Dirugungun Maealangan. If the latter case has already been dismissed, then the present case alone be heard and decided on its merits. Costs against the appellee.

Bengzon, C. J., Bautista Angelo, Conception, Reyes, J. B. L., Barrera, Paredes, Dizon, Regain, Makalintal, and Bengzon, J. P., JJ., concur.

Order set aside.

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