

ASUNCION CONUI-OMEGA, PROTESTANT-APPELLEE, VS. CESAR SAMSON, PROTESTEE-APPELLANT.

G.R. No. L-22821. August 15, 1967

Ponente: REYES, J.B.L., Acting C.J.

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REYES, J.B.L., Acting C.J.:

Direct appeal from an order of the Court of First Instance of Leyte (Ormoc) in its Election Case No. 3-O, approving a taxation of costs against appellant, Cesar Samson.

The background of the case is as follows:

By final decision of this Court in case G. R. No. L-21910, protestant-appellee Asuncion Conui-Omega was declared to have obtained a plurality of ten (10) votes over appellant protestee Cesar Samson. Costs were imposed against the latter. Upon the case being remanded to the Court below for execution, appellee submit-*ted* a bill of costs for P1,236.10, of which the Clerk taxed only P346.10 against appellant Samson. The former protested the taxation in so far as the same failed to include P400.00 for a tran-script of stenographic notes, and P300.00 for the printing of her brief; and she appealed to the Court of First Instance. The latter sustained the appeal and ordered protestee-appellant to pay not only the P346.10 allowed by the Clerk, but also the additional items claimed by Conui-Omega.

His motion for reconsideration having proved fruitless, Samson resorted to this Court.

The issue now is limited to whether appellee is entitled to recover from the losing party the cost of a copy of the transcript and the cost of printing her brief on appeal.

We find for appellant. Section II, paragraph (d), Rule 131 of the old Rules of Court, as well as Section 11(d) of Rule 142 of the Revised Rules of Court, specifically provide as follows:

"SEC. 11. Costs in Court of Appeals and in Supreme Court. -- In an action or proceeding pend-ing in the Court of Appeals or in the Supreme Court, the prevailing party may recover the following costs, and no other:

xxx xxx xxx

(d) No allowance shall be made to the prevail-ing party in the Supreme Court or Court of Appeals for the brief or written or printed arguments of his attorney, or copies thereof, aside from the thirty or fifty pesos above stated."

These rules apply to election cases in suppletory character, by express prescription of Rule 143 of the Revised Rules, since the Election Code is silent on the point; hence, the items claimed by protestant-appellee should be disallowed.

Appellee and the Court below invoke our ruling in election case, *Tiongco vs. Porras*, G. R. No. L-15452, October 11, 1963, wherein the fees the Commissioners who revised the ballots were allowed as costs. These Commissioners, however, were officers appointed by the Court and their fees were recoverable under the Rules of Court, section 11(f) of Rule 131 (old, as well as sec. 11[f] of the Revised Rule 142), that expressly provide:

"(f) The lawful fees of a commissioner in an action may also be taxed against the defeated party, or apportioned as justice requires."

Moreover, the payment for a copy of the transcript of the stenographic notes taken at the trial was not really indispensable to appellee, since she or her counsel could have utilized the original transcript attached to original records. As for her printed brief, the cost thereof redounded to her sole and exclusive benefit. While contestant in an election case undertakes to pay for all expenses and costs incidental to the protest, such obligation is subject to regulation by the Court, and we do not deem that the imposition of the items herein claimed are justified in the absence of a finding that the original contest was without justification or that it was filed in bad faith.

WHEREFORE, the orders appealed from are reversed, and the original taxation of costs approved. No costs.

Makalintal, Bengzon, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

Concepcion, C.J., and Dizon, J., on leave.

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