

**OTTOMAMA BENITO, PETITIONER, VS. COMMISSION ON ELECTIONS,
ABDALAWA M. PAGRANGAN, AND THE HEIRS OF THE DECEASED
MAYORALTY CANDIDATE MURAD KISMEN SAMPIANO OGCA,
REPRESENTED BY CAB...**

G.R. No. 106053. August 17, 1994

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This special civil action for certiorari seeks to set aside the following resolutions of respondent Commission on Elections (COMELEC), viz: (a) Resolution dated June 11, 1992 in SPA No. 92-147 and SPA No. 92-145 denying the Motion to Suspend the Proclamation of Murad Kismen Sampiano Ogca in the event that he is elected mayor of Balabagan, Lanao del Sur; (b) Resolution dated June 29, 1992 in SPC No. 92-303 directing the Municipal Board of Canvassers of Balabagan, Lanao del Sur to proclaim the candidate who obtained the highest number of votes during the May 11, 1992 election as the winner for the contested office; and (c) Resolution dated July 6, 1992 in SPC No. 92-163, SPC No. 92-303, and SPC No. 92-357 declaring the proclamation of Ottomama Benito as winning candidate for mayor of Balabagan, Lanao del Sur null and void and of no force and effect. In the last resolution, the Municipal Board of Canvassers was likewise directed to set aside the certificate of canvass and proclamation and to prepare a new certificate of canvass indicating therein that the winning candidate for mayor is Hadji Murad Ogca but placing the information that he died on May 20, 1992 for the purpose of applying the rule on legal succession to office pursuant to Section 44 of R.A. 7160.

Petitioner assails the above-mentioned resolutions on the ground that they were issued without jurisdiction and/or with grave abuse of discretion amounting to lack of jurisdiction.

The facts of the case are as follows:

Petitioner Ottomama Benito and the deceased Hadji Murad Kismen Sampiano Ogca were candidates for mayor in the municipality of Balabagan, Lanao del Sur in the May 11, 1992 election.

On May 1, 1992, Commission on Elections (COMELEC) Deputy for Balabagan, Lanao del Sur, Sultan Kisa D. Mikunug filed a petition for disqualification against Murad Kismen Sampiano Ogca. Mikunug alleged that at around five o'clock in the afternoon of April 28, 1992, while inside a billiard hall, Ogca asked him to work for the former's re-election. However, when Mikunug refused, Ogca struck him on the head with a billiard cue.[1]

On May 6, 1992, the COMELEC referred the disqualification petition to its Law Department for investigation.[2] In turn, the Law Department referred the same to the Director of the Office of the Regional Election Director of Cotabato City for investigation.[3]

On June 10, 1992, the Regional Election Director of Cotabato City issued a resolution stating that there was a prima facie case against Ogca and that the latter was probably guilty of the charges in the petition for disqualification.[4]

Thereafter, nothing more was heard of the petition for disqualification.

In the meantime, on May 20, 1992, candidate Ogca was killed in an ambush while returning home from the residence of Lanao del Sur Governor Saidamen Pangarungan in Marawi City.

On the same date, petitioner, probably not aware of the death of his opponent, filed a motion to suspend the proclamation of Ogca as elected mayor of Balabagan, Lanao del Sur, contending that there was strong evidence of guilt against him in the disqualification case.[5]

Resolving the motion to suspend proclamation, the COMELEC, on June 11, 1992, denied the same stating that Murad Kismen Sampiano Ogca was dead, hence, his proclamation as winner was essential to pave the way for succession by the Vice-Mayor-elect as provided for in Section 44 of the Local Government Code of 1991 (R.A. 7160).[6]

Meanwhile, the Municipal Board of Canvassers when asked to exclude from tallying, counting and canvassing all votes for and in the name of deceased mayoralty candidate Ogca, ruled, on May 30, 1992, that:

1. The Board shall continue counting/tabulating all the votes cast for deceased Mayoralty Candidate Murad K.S. Ogca and Vice Mayoralty Candidate Cadal Luks in the Statement of Votes by Municipality/Precinct (CE Form No. 20-A) for purposes of records only and for the reference and guidance of the Commission on Elections, but it shall not include them (Deceased Candidates) in the Certificate of Canvass and Proclamation of winning candidates (CE Form No. 25) in case they won (sic), it being moot and academic.
2. The Board shall exclude the names of the deceased Mayoralty candidate Murad K.S. Ogca and Vice Mayoralty candidate Cadal Luks from the list of the LIVING candidates including the votes obtained by them (Deceased Candidates), considering that their deaths are of public knowledge and admitted by both parties, and thereafter proclaim the winning candidates for Municipal Officials, subject to the confirmation of the Commission on Elections.[7]

On June 4, 1992, herein private respondents appealed the above ruling to the COMELEC praying that the Municipal Board of Canvassers be enjoined from implementing its ruling and that it be directed to ascertain the results of the elections and to proclaim the candidate obtaining the highest number of votes as the winner.[8]

On June 29, 1992, the COMELEC resolved to direct the Municipal Board of Canvassers of Balabagan, Lanao del Sur to proclaim as winner for the contested office the candidate who obtained the highest number of votes during the May 11, 1992 election.[9]

On June 30, 1992 at two o'clock in the afternoon, the Municipal Board of Canvassers proclaimed petitioner Ottomama Benito as the duly elected mayor of the municipality of Balabagan, Lanao del Sur.[10]

On July 1, 1992, the Election Registrar and Chairman of the Board of Canvassers of Balabagan, Lanao del Sur submitted a memorandum to the COMELEC informing it that the Board of Canvassers of Balabagan had proclaimed Ottomama Benito as mayor-elect of the said town.

On July 2, 1992, petitioner took his oath of office before Secretary of Interior and Local Government Rafael Alunan III.[11]

On July 6, 1992, the COMELEC issued a resolution declaring the proclamation of petitioner an absolute nullity and of no force and effect. The certificate of canvass and proclamation was set aside. The Municipal Board of Canvassers was likewise directed to prepare a new certificate of canvass indicating therein that the winning candidate for mayor was Hadji Murad Ogca but with the information, in parenthesis, that he died on May 20, 1992, for the purpose of applying the rule on legal succession to office pursuant to Section 44 of R.A. No.

7160.[12]

Hence, the instant petition.

Petitioner faults the COMELEC with lack of jurisdiction and/or with grave abuse of discretion amounting to lack of jurisdiction for the following reasons, viz:

xxx xxx xxx

COMELEC HAS NO JURISDICTION OVER SPC NO. 92--303. THE JUNE 29, 1992 RESOLUTION IS NULL AND VOID AB INITIO

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THE COMELEC RESOLUTION OF JULY 6, 1992 [ANNEX A] IS ALSO NULL AND VOID BECAUSE THE COMELEC HAS NO JURISDICTION. IT WAS ALSO ISSUED IN VIOLATION OF DUE PROCESS OF LAW

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THE INTERLOCUTORY ORDER OF JUNE 11, 1992. ISSUED IN SPA NOS. 92-147 AND 92-146 (sic) DENYING THE MOTION TO SUSPEND PROCLAMATION WAS ISSUED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION.[13]

The petition must fail.

The proclamation of petitioner Ottomama Benito as mayor-elect of Balabagan, Lanao del Sur, by the Municipal Board of Canvassers was not a valid proclamation. It appears from the record that during the May 11, 1992 election, the deceased mayoralty candidate Murad Sampiano Ogca obtained a total of 3,699 votes as against petitioner's 2,644. Thereupon, it was the duty of the Municipal Board of Canvassers to proclaim as winner the candidate who obtained the highest number of votes. However, the Municipal Board of Canvassers, instead of performing what was incumbent upon it, that is, to proclaim Ogca as the winner but with the information that he died, to give way to legal succession to office, went on to proclaim herein petitioner, the candidate who obtained the second highest number of votes as winner, believing that the death of Ogca rendered his victory and proclamation moot and academic.[14] This cannot be countenanced.

In every election, the people's choice is the paramount consideration and their expressed will must, at all times, be given effect. When the majority speaks and elects into office a candidate by giving him the highest number of votes cast in the election for that office, no one can be declared elected in his place.

The fact that the candidate who obtained the highest number of votes dies, or is later declared to be disqualified or not eligible for the office to which he was elected does not necessarily entitle the candidate who obtained the second highest number of votes to be declared the winner of the elective office.[15] For to allow the defeated and repudiated candidate to take over the mayoralty despite his rejection by the electorate is to disenfranchise the electorate without any fault on their part and to undermine the importance and meaning of democracy and the people's right to elect officials of their choice.[16]

It is petitioner's further submission that the appeal filed by the heirs of the deceased mayoralty candidate from the May 30, 1992 ruling of the Balabagan Municipal Board of Canvassers was filed out of time, the same having been submitted a day late. Records bear out that herein private respondents filed their appeal from the May 30, 1992 ruling only on June 4, 1992, in violation of Section 19 of Republic Act No. 7166, which provides that a party adversely affected by a ruling of the Board of Canvassers must appeal the same to the Commission within three (3) days from the said ruling. However, adherence to a technicality here would put a stamp of validity on

petitioner's palpably void proclamation, with the inevitable result of frustrating the popular will. Adjudication of cases on substantive merits and not on technicalities has been consistently observed by this Court. In the case of *Juliano vs. Court of Appeals*[17] cited in *Duremdes vs. Commission on Elections*,[18] this Court had the occasion to declare that:

Well-settled is the doctrine that election contests involve public interest, and technicalities and procedural barriers should not be allowed to stand if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. And also settled is the rule that laws governing election contests must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections. (*Gardiner v. Romulo*, 26 Phil. 521; *Galang v. Miranda*, 35 Phil. 269; *Jalandoni v. Sarcon*, G.R. No. L-6496, January 27, 1962; *Macasunding v. Macalañgan*, G.R. No. L-22779, March 31, 1965; *Cauton v. Commission on Elections*, G.R. No. L-25467, April 27, 1967). In an election case the court has an imperative duty to ascertain by all means within its command who is the real candidate elected by the electorate (*Ibasco v. Ilao* G.R. No. L-17512, December 29, 1960). xxx.[19]

In the later case of *Rodriguez vs. Commission on Elections*,[20] this doctrine was reiterated and the Court went on to state that:

Since the early case of *Gardiner v. Romulo* (26 Phil. 521), this Court has made it clear that it frowns upon any interpretation of the law or the rules that would hinder in any way not only the free and intelligent casting of the votes in an election but also the correct ascertainment of the results. This bent or disposition continues to the present.[21]

The same principle still holds true today. Technicalities of the legal rules enunciated in the election laws should not frustrate the determination of the popular will.

Where, as in this case, the proclamation is null and void, the same is no proclamation at all and the proclaimed candidate's assumption of office does not deprive the COMELEC of the power to declare such nullity and annul the proclamation.[22]

Consequently, petitioner's contention that the Commission on Elections had no jurisdiction to resolve the appeal filed by herein private respondents turns to naught. The said appeal, though filed a day too late, was not frivolous. Neither was it interposed for dilatory purposes. It sought to give effect, not to frustrate, the will of the people. Therefore, we declare the questioned resolutions dated June 29, 1992 and July 6, 1992 of the public respondent valid and effective.

Finally, the resolution of the COMELEC dated June 11, 1992 denying the petitioner's motion to suspend proclamation of deceased candidate Ogca is likewise assailed. Petitioner argues that the votes for deceased Ogca should not have been counted based on Section 6 of R.A. No. 6640. This provision, however, applies only to candidates who have been declared by final judgment to be disqualified. In the present case, there is no final judgment declaring the deceased Ogca disqualified, hence, the provision does not cover him.

WHEREFORE, premises considered, the instant petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Melo, Quiason, Puno, Vitug, and Mendoza, JJ., concur.

Cruz and Bellosillo, JJ., on official leave.

[1] Rollo, pp. 33-37.

[2] Id., at pp. 42-43.

[3] Id., at p. 49.

[4] Id., at p. 51.

[5] Id., at pp. 44-46.

[6] Id., at pp. 30-32.

[7] Id., at p. 51.

[8] Id., at pp. 52-57.

[9] Id., at pp. 26-29.

[10] Id., at pp. 74; 79-80.

[11] Id., at p. 81.

[12] Id., at pp. 22-25.

[13] Id., at pp. 11-16.

[14] Id., at p. 51.

[15] Labo, Jr. vs. Commission on Elections, 211 SCRA 297, 308-309; Abella vs. Commission on Elections, 201 SCRA 253, 275-276; Geronimo vs. Ramos, 136 SCRA 435, 447.

[16] Badelles vs. Cabile, 27 SCRA 121.

[17] 20 SCRA 808.

[18] 178 SCRA 746.

[19] Juliano vs. Court of Appeals, supra, pp. 818-819.

[20] 119 SCRA 465.

[21] Id., at p. 474.

[22] Duremdes vs. Commission on Elections, supra, and Aguam vs. Commission on Elections, 23 SCRA 883).

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