

ROY RODILLAS, PETITIONER, VS. COMMISSION ON ELECTIONS, ISABELO F. DOTIMAS AND JUDGE PEDRO L. HABON, RESPONDENTS.

G.R. No. 119055. July 10, 1995

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for certiorari under Rule 65 of the Revised Rules of Court questioning the dismissal of petitioner's appeal before the Commission on Elections (COMELEC) on the ground of tardiness in the payment of the appeal fee.

Petitioner and private respondent were both candidates for Punong Barangay in Barangay San Rafael, San Nicolas, Pangasinan in the May 9, 1994 elections. Petitioner obtained 65 votes as against private respondent's 61 votes.

An election protest was consequently filed by respondent with the 9th Municipal Circuit Trial Court of Tayug - San Nicolas presided by respondent Judge.

After due hearing, the Municipal Circuit Trial Court rendered its judgment on May 27, 1994 finding private respondent to have obtained 68 votes as against petitioner's 66 votes. Petitioner received a copy of the decision on May 30, 1994.

On May 31, 1994, petitioner filed a notice of appeal with the Municipal Circuit Trial Court and paid P150.00 as appeal fees with the Regional Trial Court, Tayug, Pangasinan.

In an order issued on the same date, the Municipal Circuit Trial Court ordered the elevation of the records to the Regional Trial Court.

Realizing that the appeal was made to the wrong forum, petitioner filed on June 2, 1994 an Amended Notice of Appeal with the Municipal Circuit Trial Court.

On June 6, 1994, the Municipal Circuit Trial Court thereby issued an Amended Order, directing the elevation of the records to the COMELEC (Rollo, p. 32).

On June 14, 1994, the Municipal Circuit Trial Court forwarded the records of the case to the COMELEC. At the same time, petitioner paid with the COMELEC the amount of P510.00.

On July 20, 1994, the First Division of the COMELEC denied the appeal for petitioner's belated filing of the appeal and legal research fees.

Hence, this petition.

Petitioner argues that he has initially paid the amount of P150.00 with the Regional Trial Court and it was only just a matter of completing the appeal fee of P510.00 for the COMELEC to take cognizance of his appeal. According to petitioner, the COMELEC committed grave abuse of discretion in dismissing the appeal outright

when the most it could have done was to refuse to take action on the case until the fees were paid in full, pursuant to Section 18, Rule 42 of the COMELEC Rules and Procedure.

Petitioner's contentions are untenable.

The procedure for perfecting an appeal from the decision of the Municipal Trial Court in a barangay election protest case is set forth in the COMELEC Rules of Procedure, as follows:

“SEC. 3. Notice of Appeal. - Within five (5) days after promulgation of the decision of the court, the aggrieved party may file with said court a notice of appeal, and serve a copy thereof upon the attorney of record of the adverse party” (Rule 22).

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SEC. 3. Appeal fees. - The appellant in election cases shall pay an appeal fee as follows:

xxx xxx xxx

(b) Election cases appealed from courts of limited jurisdiction P500.00.

In every case, a legal research fee of P20.00 shall be paid by the appellant in accordance with Sec. 4, Republic Act No. 3870, as amended.

SEC. 4. Where and When to pay. - The fees prescribed in Sections 1, 2, and 3 hereof shall be paid to, and deposited with the Cash Division of the Commission within a period to file the notice of appeal” (Rule 40).

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SEC. 9. Grounds for dismissal of appeal. -The appeal may be dismissed upon motion of either party or at the instance of the Commission on any of the following grounds:

xxx xxx xxx

(a) Failure of the appellant to pay the appeal fee (Rule 22).

xxx xxx xxx

SEC. 18. Non-payment of prescribed fees. If the fees above prescribed are not paid, the Commission may refuse to take action until they are paid and dismiss the action or proceeding” (Rule 40).

The mere filing of the notice of appeal was not enough. It should be accompanied by the payment of the correct amount of appeal fee (See *Galang v. Court of Appeals*, 199 SCRA 683 [1991]; *Guevarra v. Court of Appeals*, 157 SCRA 32 [1988]).

Petitioner had only five days from receipt of the decision of the Municipal Circuit Trial Court or until June 5, 1994 to perfect his appeal. While he timely filed his Amended Notice of Appeal on June 2, 1994, he paid the amount of P510.00 representing the appeal and legal research fees only on June 14, 1994. It is, therefore, evident that petitioner belatedly paid said amount. Besides, the correct amounts of the appeal and the research fees are P500.00 and P20.00 respectively, or P520.00 not P510.00 as paid by petitioner.

The payment of the full amount of the docket fee is an indispensable step for the perfection of an appeal (*Dorego v. Perez*, 22 SCRA 8 [1968]; *Bello v. Fernandez*, 4 SCRA 135 [1962]). In both original and appellate cases, the court acquires jurisdiction over the case only upon the payment of the prescribed docket fees as held in *Acda v. Minister of Labor*, 119 SCRA 306 (1982). The requirement of an appeal fee is by no means a mere technicality of law or procedure. It is an essential requirement without which the decision appealed from would become final and

executory as if no appeal was filed at all. The right to appeal is merely a statutory privilege and may be exercised only in the manner prescribed by, and in accordance with the provision of the law.

While the strict application of the rule on the payment of docket fees has been relaxed in some cases, (See cases cited in Quiason, *Philippine Courts and Their Jurisdiction* 24 [1993]), the Court took cognizance of the peculiar circumstances attendant to said cases. In *Segonia v. Barrios*, 75 Phil. 764 (1946), for example, the appellant paid the incorrect fees upon the advice of the justice of the peace and the clerk of court.

The fact that petitioner initially paid P150.00 with the Regional Trial Court is of no moment. The Regional Trial Court has no appellate jurisdiction over decisions of the Municipal Trial Court in election cases involving the barangay elections (*Flores v. Commission on Elections*, 184 SCRA 484 [1990]).

Petitioner cannot invoke to his aid the provision of Section 18, Rule 40 of the COMELEC Rules and Procedure for the simple reason that under said Rule, the COMELEC is precisely given the discretion, in a case where the prescribed fees are not paid, to either refuse to take action on the case until the fees are paid, or to dismiss the action or proceeding. The COMELEC, unfortunately for petitioner, chose to exercise the second option.

The COMELEC, therefore, did not commit an abuse of discretion in dismissing the appeal.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, and Francisco, JJ., concur.

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