

LUIS MALALUAN, PETITIONER, VS. COMMISSION ON ELECTIONS AND JOSEPH EVANGELISTA, RESPONDENTS.

G.R. No. 120193. March 06, 1996

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

Novel is the situation created by the decision of the Commission on Elections which declared the winner in an election contest and awarded damages, consisting of attorney's fees, actual expenses for xerox copies, unearned salary and other emoluments for the period, from March, 1994 to April, 1995, en masse denominated as actual damages, notwithstanding the fact that the electoral controversy had become moot and academic on account of the expiration of the term of office of the Municipal Mayor of Kidapawan, North Cotabato.

Before us is a petition for certiorari and prohibition, with a prayer for the issuance of a temporary restraining order and writ of preliminary injunction, seeking the review of the decision en banc[1] of the Commission on Elections (COMELEC) denying the motion for reconsideration of the decision[2] of its First Division,[3] which reversed the decision[4] of the Regional Trial Court[5] in the election case[6] involving the herein parties. While the Regional Trial Court had found petitioner Luis Malaluan to be the winner of the elections for the position of Municipal Mayor of Kidapawan, North Cotabato, the COMELEC, on the contrary, found private respondent Joseph Evangelista to be the rightful winner in said elections.

Petitioner Luis Malaluan and private respondent Joseph Evangelista were both mayoralty candidates in the Municipality of Kidapawan, North Cotabato, in the Synchronized National and Local Elections held on May 11, 1992. Private respondent Joseph Evangelista was proclaimed by the Municipal Board of Canvassers as the duly elected Mayor for having garnered 10,498 votes as against petitioner's 9,792 votes. Evangelista was, thus, said to have a winning margin of 706 votes. But, on May 22, 1992, petitioner filed an election protest with the Regional Trial Court contesting 64 out of the total 181 precincts of the said municipality. The trial court declared petitioner as the duly elected municipal mayor of Kidapawan, North Cotabato with a plurality of 154 votes. Acting without precedent, the court found private respondent liable not only for Malaluan's protest expenses but also for moral and exemplary damages and attorney's fees. On February 3, 1994, private respondent appealed the trial court decision to the COMELEC.

Just a day thereafter that is, on February 4, 1994, petitioner filed a motion for execution pending appeal. The motion was granted by the trial court, in an order, dated March 8, 1994, after petitioner posted a bond in the amount of P500,000.00. By virtue of said order, petitioner assumed the office of Municipal Mayor of Kidapawan, North Cotabato, and exercised the powers and functions of said office. Such exercise was not for long, though. In the herein assailed decision adverse to Malaluan's continued governance of the Municipality of Kidapawan, North Cotabato, the First Division of the Commission on Elections (COMELEC) ordered Malaluan to vacate the office, said division having found and so declared private respondent to be the duly elected Municipal Mayor of said municipality. The COMELEC en banc affirmed said decision.

Malaluan filed this petition before us on May 31, 1995 as a consequence.

It is significant to note that the term of office of the local officials elected in the May, 1992 elections expired on June 30, 1995. This petition, thus, has become moot and academic insofar as it concerns petitioner's right to the mayoralty seat in his municipality^[7] because expiration of the term of office contested in the election protest has the effect of rendering the same moot and academic.^[8]

When the appeal from a decision in an election case has already become moot, the case being an election protest involving the office of mayor the term of which had expired, the appeal is dismissible on that ground, unless the rendering of a decision on the merits would be of practical value.^[9] This rule we established in the case of *Yorac vs. Magalona*^[10] which we dismissed because it had been mooted by the expiration of the term of office of the Municipal Mayor of Saravia, Negros Occidental. This was the object of contention between the parties therein. The recent case of *Atienza vs. Commission on Elections*,^[11] however, squarely presented the situation that is the exception to that rule.

Comparing the scenarios in those two cases, we explained:

"Second, petitioner's citation of *Yorac vs. Magalona* as authority for his main proposition is grossly inappropriate and misses the point in issue. The sole question in that case centered on an election protest involving the mayoralty post in Saravia, Negros Occidental in the general elections of 1955, which was rendered moot and academic by the expiration of the term of office in December, 1959. It did not involve a monetary award for damages and other expenses incurred as a result of the election protest. In response to the petitioner's contention that the issues presented before the court were novel and important and that the appeal should not be dismissed, the Court held - citing the same provision of the Rules of Court upon which petitioner staunchly places reliance - that a decision on the merits in the case would have no practical value at all, and forthwith dismissed the case for being moot. That is not the case here. In contradistinction to *Yorac*, a decision on the merits in the case at bench would clearly have the practical value of either sustaining the monetary award for damages or relieving the private respondent from having to pay the amount thus awarded."^[12]

Indeed, this petition appears now to be moot and academic because the herein parties are contesting an elective post to which their right to the office no longer exists. However, the question as to damages remains ripe for adjudication. The COMELEC found petitioner liable for attorney's fees, actual expenses for xerox copies, and unearned salary and other emoluments from March, 1994 to April, 1995, en mUsse denominated as actual damages, default in payment by petitioner of which shall result in the collection of said amount from the bond posted by petitioner on the occasion of the grant of his motion for execution pending appeal in the trial court. Petitioner naturally contests the propriety and legality of this award upon private respondent on the ground that said damages have not been alleged and proved during trial.

What looms large as the issue in this case is whether or not the COMELEC gravely abused its discretion in awarding the aforesaid damages in favor of private respondent.

The Omnibus Election Code provides that "actual or compensatory damages may be granted in all election contests or in quo warranto proceedings in accordance with law."^[13] COMELEC Rules of Procedure provide that "in all election contests the Court may adjudicate damages and attorney's fees as it may deem just and as established by the evidence if the aggrieved party has included such claims in his pleadings."^[14] This appears to require only that the judicial award of damages be just and that the same be borne out by the pleadings and evidence. The overriding requirement for a valid and proper award of damages, it must be remembered, is that the same is in accordance with law, specifically, the provisions of the Civil Code pertinent to damages.

Article 2199 of the Civil Code mandates that "except as provided by law or by stipulation, one is entitled to an

adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages." The Civil Code further prescribes the proper setting for allowance of actual or compensatory damages in the following provisions:

"ART. 2201. In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.

In case of fraud, bad faith, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation.

ART. 2202. In crimes and quasi-delicts, the defendant shall be liable for all damages which are the natural and probable consequences of the act or omission complained of. It is not necessary that such damages have been foreseen or could have reasonably been foreseen by the defendant."

Considering that actual or compensatory damages are appropriate only in breaches of obligations in cases of contracts and quasi-contracts and on the - occasion of crimes and quasi-delicts where the defendant may be held liable for all damages the proximate cause of which is the act or omission complained of, the monetary claim of a party in an election case must necessarily be hinged on either a contract or a quasi-contract or a tortious act or omission or a crime, in order to effectively recover actual or compensatory damages.[15] In the absence of any or all of these, "the claimant must be able to point out a specific provision of law authorizing a money claim for election protest expenses against the losing party." [16] For instance, the claimant may cite any of the following provisions of the Civil Code under the chapter on human relations, which provisions create obligations not by contract, crime or negligence, but directly by law:

"ART. 19. Every person must in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

ART. 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

xxx xxx xxx

ART. 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

xxx xxx xxx

(5) Freedom of suffrage;

xxx xxx xxx

In any of the cases referred to in this article, whether or not the defendant's act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. x x x"[17]

Claimed as part of the damages to which private respondent is allegedly entitled to, is P169,456.00 constituting salary and other emoluments from March, 1994 to April, 1995 that would have accrued to him had there not been an execution of the trial court's decision pending appeal therefrom in the COMELEC.

The long-standing rule in this jurisdiction is that notwithstanding his subsequent ouster as a result of an election protest, an elective official who has been proclaimed by the COMELEC as winner in an electoral contest and who assumed office and entered into the performance of the duties of that office, is entitled to the compensation, emoluments and allowances legally provided for the position.[18] We ratiocinated in the case of Rodriguez vs.

Tan that:

"This is as it should be. This is in keeping with the ordinary course of events. This is simple justice. The emolument must go to the person who rendered the service unless the contrary is provided. There is no averment in the complaint that he is linked with any irregularity vitiating his election. This is the policy and the rule that has been followed consistently in this jurisdiction in connection with positions held by persons who had been elected thereto but were later ousted as a result of an election protest. The right of the persons elected to compensation during their incumbency has always been recognized. We cannot recall of any precedent wherein the contrary rule has been upheld." [19]

In his concurring opinion in the same case, however, Justice Padilla equally stressed that, while the general rule is that the ousted elective official is not obliged to reimburse the emoluments of office that he had received before his ouster, he would be liable for damages in case he would be found responsible for any unlawful or tortious acts in relation to his proclamation. We quote the pertinent portion of that opinion for emphasis:

"Nevertheless, if the defendant, directly or indirectly, had committed unlawful or tortious acts which led to and resulted in his proclamation as senator-elect, when in truth and in fact he was not so elected, he would be answerable for damages. In that event the salary, fees and emoluments received by or paid to him during his illegal incumbency would be a proper item of recoverable damage." [20]

The criterion for justifiable award of election protest expenses and salaries and emoluments, thus, remains to be the existence of a pertinent breach of obligations arising from contracts or quasi-contracts, tortious acts, crimes or a specific legal provision authorizing the money claim in the context of election cases. Absent any of these, we could not even begin to contemplate liability for damages in election cases, except insofar as attorney's fees are concerned, since the Civil Code enumerates the specific instances when the same may be awarded by the court.

"ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered." [21]

Given the aforecited laws, and jurisprudence on the matter at issue, let us now look into the basis of respondent COMELEC for awarding actual damages to private respondent in the form of reimbursement for attorney's fees,

actual expenses for xerox copies, and salary and other emoluments that should have accrued to him from March, 1994 to April, 1995 had the RTC not issued an order for execution pending appeal.

The First Division of the COMELEC ruled on private respondent's claim for actual or compensatory damages in this wise:

"x x x under the present legal setting, it is more difficult than in the past to secure an award of actual or compensatory damages either against the protestant or the protestee because of the requirements of the law.

In the instant case, however, We are disposed to conclude that the election protest filed by the protestant is clearly unfounded. As borne out by the results of the appreciation of ballots conducted by this Commission, apparently the protest was filed in bad faith without sufficient cause or has been filed for the sole purpose of molesting the protestee-appellant for which he incurred expenses. The erroneous ruling of the Court which invalidated ballots which were clearly valid added more injury to the protestee-appellant. This would have been bearable since he was able to perfect his appeal to this Commission. The final blow, however, came when the Court ordered the execution of judgment pending appeal which, from all indications, did not comply with the requirements of Section 2, Rule 39 of the Rules of Court. There was no good and special reason at all to justify the execution of judgment pending appeal because the protestee's winning margin was 149 votes while that of the protestant - after the Court declared him a winner - was only a margin of 154 votes. Clearly, the order of execution of judgment pending appeal was issued with grave abuse of discretion.

For these reasons, protestee-appellant seeks to recover the following:

'1. Actual damages representing attorney's fees for the new counsel who handled the Appeal and the Petition for Certiorari before the Court of Appeals x x x -P3 72, 5 00.00

2. Actual expenses for xerox copying of Appellant's Brief and the annexes (14 copies at P 1.50 x x x -P11,235.00

3. Actual expenses for xerox copying of ballots x x x - P3,919.20

4. Actual damages for loss of salary and other emoluments since March 1994 as per attached Certification issued by the Municipal Account of Kidapawan x x x - P96,832.00 (up to October 1994 only)'

Under Article 2208 of the New Civil Code attorney's fees and expenses of litigation can be recovered (as actual damages) in the case of clearly unfounded civil action or proceeding. And, while the case of Eulogio Rodriguez, Sr. vs. Carlos Tan (91 Phil. 724) disallowed recovery of salaries and allowances (as damages) from elected officials who were later ousted, under the theory that persons elected has (sic) a right to compensation during their incumbency, the instant case is different. The protestee-appellant was the one elected. He was ousted not by final judgment but by an order of execution pending appeal which was groundless and issued with grave abuse of discretion. Protestant-appellee occupied the position in an illegal manner as a usurper and, not having been elected to the office, but merely installed through a baseless court order, he certainly had no right to the salaries and emoluments of the office.

Actual damages in the form of reimbursement for attorney's fees (P3 72,500.00), actual expenses for xerox copies (P15,154.00), unearned salary and other emoluments from March 1994 to April 1995 or 14 months at P12,104.00 a month (P169,456.00), totalled P557,110.00. To (sic) this amount, however, P3 00,000.00 representing that portion of attorney's fees denominated as 'success fee' must be deducted this being premised on a contingent event the happening of which was uncertain from the beginning. Moral damages and exemplary damages claimed are, of course, disallowed not falling within the purview of Section 259 of the Omnibus Election Code.

It goes without saying that if the protestant-appellee fails to pay the actual damages of P257,110.00, the

amount will be assessed, levied and collected from the bond of P500,000.00 which he put up before the Court as a condition for the issuance of the order of execution of judgment pending appeal." [22]

Petitioner filed a motion for reconsideration of the aforecited decision on March 29, 1995. The COMELEC en banc, however, did not find any new matter substantial in nature, persuasive in character or sufficiently provocative to compel reconsideration of said decision and accordingly affirmed in toto the said decision. Hence, this petition raises, among others, the issue now solely remaining and in need of final adjudication in view of the mootness of the other issues anent petitioner's right to the contested office the term for which has already expired.

We have painstakingly gone over the records of this case and we can attribute to petitioner no breach of contract or quasi-contract; or tortious act nor crime that may make him liable for actual damages. Neither has private respondent been "able to point out to a specific provision of law authorizing a money claim for election protest expenses against the losing party." [23]

We find respondent COMELEC's reasoning in awarding the damages in question to be fatally flawed. The COMELEC found the election protest filed by the petitioner to be clearly unfounded because its own appreciation of the contested ballots yielded results contrary to those of the trial court. Assuming, *ex gratia argumentis*, that this is a reasonable observation not without basis, it is nonetheless fallacious to conclude a malicious intention on the part of petitioner to molest private respondent on the basis of what respondent COMELEC perceived as an erroneous ruling of the trial court. In other words, the actuations of the trial court, after the filing of a case before it, are its own, and any alleged error on its part does not, in the absence of clear proof, make the suit "clearly unfounded" for which the complainant ought to be penalized. Insofar as the award of protest expenses and attorney's fees are concerned, therefore we find them to have been awarded by respondent COMELEC without basis, the election protest not having been a clearly unfounded one under the aforementioned circumstances.

Respondent COMELEC also found the order granting execution of judgment pending appeal to be defective because of alleged non-compliance with the requirement that there be a good and special reason [24] to justify execution pending appeal. We, however, find that the trial court acted judiciously in the exercise of its prerogatives under the law in issuing the order granting execution pending appeal. First, it should be noted that the applicability of the provisions of the Rules of Court, relating to execution pending appeal, has ceased to be debatable after we definitively ruled in *Garcia vs. de Jesus* [25] that "Section 2, Rule 39 of the Rules of Court, which allows Regional Trial Courts to order executions pending appeal upon good reasons stated in a special order, may be made to apply by analogy or suppletorily to election contests decided by them." [26] It is not disputed that petitioner filed a bond in the amount of P500,000.00 as required under the Rules of Court.

It is also now a settled rule that "as much recognition should be given to the value of the decision of a judicial body as a basis for the right to assume office as that given by law to the proclamation made by the Board of Canvassers." [27]

"x x x Why should the proclamation by the board of canvassers suffice as basis of the right to assume office, subject to future contingencies attendant to a protest, and not the decision of a court of justice? Indeed x x x the board of canvassers is composed of persons who are less technically prepared to make an accurate appreciation of the ballots, apart from their being more apt to yield extraneous considerations x x x the board must act summarily, practically raising (sic) against time, while, on the other hand, the judge has the benefit of all the evidence the parties can offer and of admittedly better technical preparation and background, apart from his being allowed ample time for conscientious study and mature deliberation before rendering judgment x x x." [28]

Without evaluating the merits of the trial court's actual appreciation of the ballots contested in the election

protest, we note on the face of its decision that the trial court relied on the findings of the National Bureau of Investigation (NBI) handwriting experts which findings private respondent did not even bother to rebut. We thus see no reason to disregard the presumption of regularity in the performance of official duty on the part of the trial court judge. Capping this combination of circumstances which impel the grant of immediate execution is the undeniable urgency involved in the political situation in the Municipality of Kidapawan, North Cotabato. The appeal before the COMELEC would undoubtedly cause the political vacuum in said municipality to persist, and so the trial court reasonably perceived execution pending appeal to be warranted and justified. Anyway, the bond posted by petitioner could cover any damages suffered by any aggrieved party. It is true that mere posting of a bond is not enough reason to justify execution pending appeal, but the nexus of circumstances aforechronicled considered together and in relation to one another, is the dominant consideration for the execution pending appeal.[29]

Finally, we deem the award of salaries and other emoluments to be improper and lacking legal sanction. Respondent COMELEC ruled that inapplicable in the instant case is the ruling in *Rodriguez vs. Tan*[30] because while in that case the official ousted was the one proclaimed by the COMELEC, in the instant case, petitioner was proclaimed winner only by the trial court and assumed office by virtue of an order granting execution pending appeal. Again, respondent COMELEC sweepingly concluded, in justifying the award of damages, that since petitioner was adjudged the winner in the elections only by the trial court and assumed the functions of the office on the strength merely of an order granting execution pending appeal, the petitioner occupied the position in an illegal manner as a usurper.

We hold that petitioner was not a usurper because, while a usurper is one who undertakes to act officially without any color of right,[31] the petitioner exercised the duties of an elective office under color of election thereto.[32] It matters not that it was the trial court and not the COMELEC that declared petitioner as the winner, because both, at different stages of the electoral process, have the power to so proclaim winners in electoral contests. At the risk of sounding repetitive, if only to emphasize this point, we must reiterate that the decision of a judicial body is no less a basis than the proclamation made by the COMELEC-convened Board of Canvassers for a winning candidate's right to assume office, for both are undisputedly legally sanctioned. We deem petitioner, therefore, to be a "de facto officer who, in good faith, has had possession of the office and had discharged the duties pertaining thereto"[33] and is thus "legally entitled to the emoluments of the office." [34]

To recapitulate, Section 259 of the Omnibus Election Code only provides for the granting in election cases of actual and compensatory damages in accordance with law. The victorious party in an election case cannot be indemnified for expenses which he has incurred in an electoral contest in the absence of a wrongful act or omission or breach of obligation clearly attributable to the losing party. Evidently, if any damage had been suffered by private respondent due to the execution of judgment pending appeal, that damage may be said to be equivalent to *damnum absque injuria*, which is, damage without injury, or damage or injury inflicted without injustice, or loss or damage without violation of a legal right, or a wrong done to a man for which the law provides no remedy.[35]

WHEREFORE, the petition for certiorari is GRANTED. While we uphold the COMELEC decision dated May 5, 1995 that private respondent Joseph Evangelista is the winner in the election for mayor of the Municipality of Kidapawan, North Cotabato, that portion of the decision is deemed moot and academic because the term of office for mayor has long expired. That portion of the decision awarding actual damages to private respondent Joseph Evangelista is hereby declared null and void for having been issued in grave abuse of discretion and in excess of jurisdiction.

SO ORDERED.

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

[1] Promulgated on May 5, 1995 in EAC No. 8-94; Rollo, pp. 36-40.

[2] Promulgated on March 24, 1995 in EAC No. 8-94; Rollo, pp. 41-89.

[3] Formerly Second Division with members, Commissioners Regalado E. Maambong, Graduacion A.R. Claravall, and Julio F. Desamito.

[4] Dated January 31, 1994; Rollo, pp. 90-135.

[5] Regional Trial Court of Kidapawan, Cotabato, 12th Judicial Region, presided by Judge Rodolfo M. Serrano.

[6] Election Case No. 881.

[7] Amatong v. COMELEC, G.R. No.71003, April 28, 1988, En Banc, Minute Resolution; Artano v. Arcillas, G.R. No. 76823, April 26, 1988, En Banc, Minute Resolution.

[8] Atienza v. Commission on Elections, 239 SCRA 298; Abeja v. Tafiada, 236 SCRA 60; Yorac v. Magalona, 3 SCRA 76.

[9] Yorac v. Magalona, supra.

[10] 3 SCRA 76.**[11] 239 SCRA 298.**

[12] Atienza v. Commission on Elections, supra.

[13] B.P. Blg. 881, Sec. 259.

[14] COMELEC Rules of Procedure, Rule 35, Sec. 19.

[15] Atienza v. Commission on Elections, 239 SCRA 298.

[16] Ibid.

[17] Civil Code of the Philippine Preliminary Title, Chapter 2.

[18] Rodriguez v. Tan, 91 Phil. 724.

[19] Ibid.

[20] Concurring Opinion of Justice Padilla in Rodriguez v. Tan, supra.

[21] Civil Code of the Philippines, Book IV, Title XVIII, Chapter 2.

[22] Decision rendered by the First Division of the Commission on Elections (COMELEC), promulgated on March 24, 1995, pp. 45-48; Rollo, pp. 85-88.

[23] Atienza v. COMELEC, 239 SCRA 298.

[24] Rules of Court, Rule 39, Section 2

[25] 206 SCRA 779.

[26] Ibid.

[27] Garcia v. De Jesus, 206 SCRA 779.

[28] Gahol v. Riodique, 64 SCRA 494.

[29] Roxas v. Court of Appeals, 157 SCRA 370.

[30] 91 Phil. 724.

[31] Tayco v. Capistrano, 53 Phil. 866.

[32] Ibid.

[33] Civil Liberties Union v. The Executive Secretary, 194 SCRA 317.

[34] Ibid.

[35] Escano v. CA, 100 SCRA 197; Atienza v. COMELEC, 239 SCRA 298.

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