

MATIAS ISELAKMINO, ET AL., PROTESTANTS AND APPELLEES, VS. PANTALEON F. ALIHAN, ET AL., PROTESTEES AND APPELLANTS.*G.R. No. 12078-79. March 25, 1959*

Ponente: LABRADOR, J.

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Appeal from an order of the Court of First Instance of Laguna in its election case No. 9518, entitled Severino Arambulo, protestant-appellee vs. Sesinando Rizal, protestee-appellant, disapproving the statement of expenses submitted for approval by the protestee, and from a similar order in election case No. 9519, entitled Matias Belarmino, et al., protestants-appellees vs. Pantaleon F. Alihan, et al., protestees-appellants. The appeals were certified to this Court by the Court of Appeals, to which appeal was prosecuted, for the reason that only questions of law are involved.

In a decision rendered by the Court of Appeals in CA-G. R. No. 11205-R, Arambulo vs. Rizal, the judgment of the Court of First Instance of Laguna in favor of the protestant-appellee was set aside and protestee-appellant Sesinando V. Rizal declared elected. In the dispositive part of the decision, it is expressly stated, "the appellee is hereby sentenced to pay the expenses incurred and costs." (In the other election case, No. 9519, all the protestees were declared winners "with costs and legal expenses of the proceedings against protestants." Upon the return of the above cases to the Court of First Instance of Laguna, protestee-appellant Rizal in election case No. 9518 submitted a statement of expenses of litigation (see Record on Appeal, pp. 5, 20-44). In the other case, No. 9519, the protestee submitted a bill of costs and expenses for P6,018, P1,000 for expenses incurred in the litigation and P5,000 for attorneys fees. In the first case, No. 9518, the expenses incurred, which are contained in Annex "A," are classified as follows: (1) transportation and subsistence (from January 8, 1952 to October 16, 1953) of protestee, his party and his representative; (2) expert witness fee. P200; (3) transportation and subsistence of witnesses (which are supposedly the actual amount spent); (4) counsel's fee for hearing; and (5) installment of attorney's fees,—all of which reach the total sum of P23,870.40. The bill of expenses was submitted to the Court of First Instance and the presiding judge, Hon. Federico C. Alikpala, in an order dated January 13, 1955, reduced the expenses and costs P728.50 (Record on Appeal, p. 63). The judge in his order held that the fees paid to attorneys and to the expert witness, the transportation and subsistence of the litigants and their counsel in going to and attending court trials, cannot be considered incidental expenses in an electoral protest and may not therefore be taxed as costs; and that only witness' fees and lawful traveling as provided in the Rules are collectible, that is, at the rate of one peso a day for each witness and ten centavos per kilometer for his transportation. In the other case, No. 9519, the lower court rejected the claim of P1,000 for expenses incurred for the reason that the same is not itemized. It also rejected the amount of P5,000 as attorneys' fees. It is against the above orders that the appeal has been taken.

The only provision in the Revised Election Code about expenses and costs in an election contest is that found in Section 180 which provides:

"Sec. 180. Bond or cash deposit.—Before the courts shall take cognizance of a protest or a counter-protest or

admit an appeal, the party who has filed the pleading or interposed the appeal shall file a bond with two sureties satisfactory to the court and for such amount as it may fix, to answer for the payment of all expenses and costs incidental to said motion or appeal, or shall deposit with the court cash in lieu of the bond or both as the court may order. * * *. In case the party who has paid the expenses and costs wins, the court shall assess, levy and collect the same as costs from the losing party."

As election contests are to be tried and decided by the courts, it is evident that with respect to costs such contests shall be governed by the Rules of Court on costs. The Rules of Court expressly provides that a witness is entitled to a daily subsistence of one peso and a travelling fee of ten centavos per kilometer for days of trial actually and necessarily attended. May a party in an election contest demand for travelling expenses and subsistence during trials amounts exceeding those expressly fixed in the Rules of Court? We do not believe so. There being no express provision fixing costs in election cases, those fixed by the Rules for ordinary court cases should govern, as trial of such cases are held by the courts. Neither do we believe that they can be justified as expenses because that would authorize a party to collect amounts beyond what the Rules provide. So when the Court of Appeals decreed that the loser shall pay costs it could not have meant that expenses which are ordinarily known as costs were chargeable against the losing party.

What then is the concept of the term "expenses" mentioned in the decision and in the law? Two cases decided by this Court, namely, those of *Torres vs. Ribo*, 92 Phil., 1019 and *Fojas vs. Garcia*, 92 Phil., 983 have explained the concept of this term. In the first case attorneys' fees and expenses incurred for securing stenographic notes as well as for printing the brief in the counter-protest were rejected, but the commissioners' fees of P2,008.00 paid for checking the ballots were considered taxable as expenses. In the second case, the sum of P4,672.00 paid to the revisors of the ballots and the sum of P200 as fee to the clerk of court for acting as chairman of said revisors, and P200 for transportation, handling and custody of the ballot boxes were allowed. These two decisions establish the rule that expenses incidental to an election contest, like revisors' or commissioners' fees are taxable as expenses. The work of commissioners is a part of the judicial process; so is that of revisors of ballots, and the handling of ballot boxes, etc. The word "expenses" in election contests, therefore, should mean actual expenses connected with the trial and not expenses that attorneys and their clients may have incurred in preparing for trial and in defending their side of the case. So should the collection of ballot boxes, their handling and preservation, the fees of commissioners or referees appointed by the court to examine the ballots and make their reports to the court be considered expenses contemplated in the law.

The supposed expenses included in the bill of costs submitted by the protestee-appellant which were not for transportation and subsistence of the protestee, his party or his representative, were either for his own attorney's fees and for his expert witness' fee, both of which are entirely for his own personal benefit.

Attorneys' fees are never considered as costs; unless it is expressly provided by the law or imposed by the judge as costs they may not be charged against the other party. Attorneys' fees are the subject of an express provision of the Civil Code in special cases. The Rules, on the other hand, allow P40.00 only for the appearance of a party and his attorney and this sum may not be increased except under express provisions of law or of the judgment of the court.

Finding that the judgments appealed from are in accordance with the law and the Rules, it is hereby affirmed, with costs of this appeal against the appellants. So ordered.

Bengzon, Padilla, Reyes, A., Bautista Angelo, Reyes, J. B. L., and Endencia, JJ., concur.

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