

**ASAN “SONNY” CAMLIAN, PETITIONER,
VS.COMMISSION ON ELECTIONS AND LEONARDO A. PIOQUINTO,
RESPONDENTS.**

G.R. No. 124169. April 18, 1997

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

What is to be resolved in this case is whether or not the Commission on Elections (COMELEC) committed grave abuse of discretion in setting aside the Regional Trial Court's order of execution pending appeal of its decision declaring petitioner as duly elected mayor of Isabela, Basilan in the May 8, 1995 elections.

The facts are as follows:

Petitioner Asan "Sonny" Camlian and private respondent Leonardo A. Pioquinto were among the candidates for the mayoralty of Isabela, Basilan during the May 8, 1995 elections.

After the canvassing, private respondent was found to have obtained a total of eight thousand two hundred seventeen (8,217) votes while petitioner garnered a total of five thousand nine hundred forty six (5,946) votes. Consequently, private respondent was proclaimed winner by the Municipal Board of Canvassers of Isabela, Basilan on May 12, 1995. He, thereafter, assumed office and discharged the duties and responsibilities of the same.

On May 19, 1995, petitioner filed an electoral protest before the Regional Trial Court (RTC) of Basilan, Branch II.

On January 22, 1996, the RTC rendered a decision declaring petitioner as the duly elected mayor of Isabela, Basilan after finding that he obtained a total of five thousand eight hundred thirty six (5,836) votes over private respondent's two thousand two hundred ninety one (2,291) votes.[1]

On the same day, private respondent filed a notice of appeal while petitioner filed a motion for execution pending appeal.

On January 29, 1996, a hearing was conducted on the motion for execution pending appeal.

On January 31, 1996, the RTC issued an order granting petitioner's motion for execution pending appeal.[2] Accordingly, a writ of execution was issued. On the same day, petitioner assumed office and commenced to discharge the functions appurtenant thereto.

On February 6, 1996, private respondent filed a petition for certiorari with prayer for preliminary injunction and issuance of a temporary restraining order with respondent COMELEC, docketed as SPR No. 5-96.

On February 8, 1996, respondent COMELEC issued a temporary restraining order directing (a) Judge Salvador Memoracion to cease and desist from implementing the January 31, 1996 order of execution and (b) petitioner

from assuming and discharging the functions of the office of the mayor of Isabela, Basilan until further orders therefrom.[3]

On February 29, 1996, hearing and oral arguments on the petition and the preliminary injunction was conducted by respondent COMELEC.

On March 14, 1996, respondent COMELEC issued an order granting the issuance of a writ of preliminary injunction.[4]

On March 18, 1996, respondent COMELEC issued another order declaring that the preliminary injunction it issued was in the nature of a mandatory injunction by reason of which petitioner must cease from discharging the functions of the office of the mayor of Isabela, Basilan.

On March 27, 1996, petitioner filed the instant petition for certiorari seeking the nullification of the orders of respondent COMELEC directing (a) RTC Judge Salvador Memoracion to cease and desist from implementing his order granting petitioner's motion for execution pending appeal and (b) petitioner to cease and desist from discharging the functions of the office of the mayor of Isabela, Basilan.

On March 29, 1996, this Court issued a temporary restraining order ordering respondent COMELEC to cease and desist from implementing and enforcing its March 14, 1996 order.[5]

On April 16, 1996, respondent COMELEC issued yet another resolution resolving on the merits SPR No. 5-96. The decretal portion of the same reads:

WHEREFORE, the petition of Leonardo A. Pioquinto is hereby GRANTED. Judgment is hereby rendered:

1. DECLARING NULL AND VOID ab initio, the Order dated January 31, 1996 granting the issuance of writ of execution in Electoral Protest No. 1-95;
2. DECLARING likewise, null and void AND OF NO EFFECT, the writ of execution dated January 31, 1996, being based on null and void Order of January 31, 1996;
3. The proclamation of respondent Asan Camlian on January 22, 1996 is likewise declared null and void;
4. DIRECTING respondent Asan Camliam (sic) to vacate the office of Mayor of Isabela, Basilan and to relinquish the said position to Leonardo A. Pioquinto.

The above resolution is without prejudice to the final resolution of the appeal filed before this Commission by Leonardo A. Pioquinto protestee-appellant docketed as EAC No. 4-96.

SO ORDERED.[6]

Consequently, petitioner filed a motion for leave to file supplemental and/or amended petition attaching thereto his supplemental and/or amended petition, this time including in his cause the prayer for nullification of the April 16, 1996 order of respondent COMELEC.

The sole issue for resolution in the instant case hinges on whether or not respondent COMELEC committed, or acted in, grave abuse of discretion amounting to lack of jurisdiction in issuing the assailed orders nullifying the RTC's January 31, 1996 order granting the motion for execution pending appeal.

The remedy of certiorari is proper only to correct errors of jurisdiction committed by a lower court, tribunal, board or agency exercising judicial functions, or grave abuse of discretion which is tantamount to lack of jurisdiction. Where the error is not one of jurisdiction but an error of law or fact which is a mistake of judgment, certiorari is not available. In the instant case, herein petitioner asseverates that the challenged orders were issued by

respondent COMELEC with grave abuse of discretion amounting to lack of jurisdiction and should therefore be set aside.

We do not agree.

At the outset, we note that there is no dispute with respect to the jurisdiction of the Regional Trial Courts to rule on motions for execution pending appeal filed within the reglementary period for perfecting an appeal.[7] Consequently, the filing of a notice of appeal within the same period does not divest the trial court of its jurisdiction over a case and resolve pending incidents.[8] Neither is there any doubt that the COMELEC has the authority to issue the extraordinary writs of certiorari, prohibition and mandamus in election cases over which it has appellate jurisdiction by virtue of Section 50 of Batas Pambansa Bilang 697.[9] What petitioner would like this Court to consider is solely the issue of whether or not respondent COMELEC erred in annulling and setting aside the order of the RTC granting the motion for execution pending appeal in the absence of good reasons for the immediate execution of the questioned judgment.

Pursuant to Section 1, Rule 41 of the COMELEC Rules of Procedure, Section 2, Rule 39 of the Rules of Court,¹⁰ which allows Regional Trial Courts to order execution pending appeal upon good reasons stated in a special order,¹¹ may be made to apply suppletorily or by analogy to election cases decided by them.¹² While execution pending appeal may be allowed under the foregoing rule, the said provision must be strictly construed against the movant as it is an exception to the general rule on execution of judgments.¹³ Following civil law jurisprudence, the reason allowing for immediate execution must be of such urgency as to outweigh the injury or damage of the losing party should it secure a reversal of the judgment on appeal. Absent any such justification, the order of execution must be struck down as flawed with grave abuse of discretion.¹⁴

In the case before us, no such justification exists.

Records bear that petitioner, in his pleading entitled "Supplemental Reasons and Arguments on the Matter of the Propriety for the Immediate Issuance of a Writ of Execution" (his earlier "Motion for Execution" contained no good reasons) cited the following as alleged "good" reasons for immediate execution pending appeal, to wit:

- 1.) This is an Election Case and as such enjoys preference over all action (sic) except habeas corpus (Art. 258, P.B. 881, otherwise known as the Omnibus Election Code);
- 2.) Public interest demands that any cloud as to the true result of an election should be dispelled as soon as possible. The legislative policy embodied in these sections which hastens the administration of justice in election contests is aimed at making more effective the constitutional principle that sovereignty resides in the people (QUERUBIN v. CA, G.R. 2581, cited in GONZALES, Administrative Law, Law on Public Officers, and Election Law, 1966 ed., P. 518);
- 3.) Even before the judgment has become executory and before appeal was perfected, the Court, in its discretion, may order execution upon good reason (sic) to be stated in the special order such as where the appeal is clearly dilatory. (RODRIGUEZ v. CA, May 23, 1959; DE VER v. SANTOS, 1-24351, Sept. 22, 1977), 1 An appeal for delay is good for execution pending appeal. When an appeal is taken for purpose of delay, such fact is good reason for granting execution pending appeal; (PRESBITERO v. RODAS, 77 PHIL. 300; ILOILO TRADING CENTER v. RODAS, 77 PHIL. 327), 2 A dilatory tactic to unduly delay the restoration of the possession of the land in question (Office of this Case) and the fruitful use thereof in violation of plaintiff's rights is good enough reason to execute judgment pending appeal; (TOLEDO v. TIZON, CA, G.R. No. 27412-R, Sept. 2, 1960), 3 The absence of a good defense on appeal is a good reason for execution pending appeal. There was consequently no excuse to Felix Feria waiting for the outcome of the proceedings on appeal, which obviously will not affect his

right to recover; (NAVARRA v. MARTINEZ, 66 PHIL. 178; LUZON SURETY COMPANY, INC., v. ENRIQUEZ, No. L-9744, JAN. 29, 1957), 4 Another good reason for the grant of immediate execution is where the prevailing party posts sufficient bond to answer for damages in case of reversal of the judgment; (HDA. NAVARRA v. LABRADOR, 65 PHIL. 336; GF PVTA v. LUCERO, ET. AL., L-32550, OCT. 27, 1983), 5 The losing party, however, can post a supersedes (sic) bond to prevent execution pending appeal; (NAWASA v. CATOLICO, L-21705 AND L-24327, APRIL 27, 1967; CITY OF MANILA v. CA, ET. AL., L-35253, JULY 26, 1976), 6 But, where the needs of the prevailing party and that of public interest are urgent, the Court can order the IMMEDIATE EXECUTION DESPITE THE SUPERSEDEAS BOND.¹⁵

In the trial court's order for execution pending appeal, it merely adopted some of the alleged "good" reasons invoked by the petitioner, namely: (a) public interest in the true outcome of the election; (b) finding that private respondent "illegally manufactured votes;" and (c) appeal was interposed merely for the purpose of delay.¹⁶

Respondent COMELEC found the foregoing reasons inadequate and insufficient to constitute as "good reasons" within the purview of the law. It discussed:

A reading of the disputed Order of execution pending appeal dated January 31, 1996 shows that respondent judge just quoted the reasons advanced by protestant for the propriety of the issuance of the execution pending appeal and tackled the jurisdiction of the trial court in issuing the execution pending appeal citing the cases of Norbi H. Edding versus Commission on Elections, GR No. 112060, July 17, 1995 and the case of Tomas Tobon Uy versus Commission on Elections, 206 SCRA 779 and its findings after examination of the contested ballots that protestee garnered only 2,291 votes as against protestant's 5,916 votes and concluded that protestee was able to illegally manufacture 5,836 votes in his favor to the prejudice of protestant and the sovereign will of the people of the Municipality of Isabela, Basilan.

Thus, a mere reading of the assailed Order of execution pending appeal shows no good reasons. It must be emphasized that Section 2 of Rule 39 must be strictly complied with. The reason advanced by the respondent judge that his ruling finding that protestee manufactured votes in his favor is one of the good reasons is untenable. In SPR NO. 2-93 (Antonio Dictado vs. Hon. Rodrigo Cosico), the Commission En Banc had occasion to say: "It has been the consistent ruling of this Commission that while it is true that when an election protest is filed the protestee is only considered a presumptive winner until the protest is resolved, in the same way, when a protestant is adjudged the winner by a court of law but the case is on appeal with the Commission, such appeal likewise makes the protestant a presumptive winner and, unless meritorious grounds exist to execute judgment pending appeal, it is illogical to replace a presumptive winner proclaimed by a board of canvassers, by another presumptive winner so declared by a court. It needs no explanation that when a protestant is installed as a winner pending appeal, that in itself is already disruptive of the government service. How much more if the protestee wins the appeal in which case he will have to be reinstalled again to the office which he was forced to vacate?¹⁷

We agree. Not every invocation of public interest with particular reference to the will of the electorate can be appreciated as a good reason especially so if the same appears to be self-serving and has not been clearly established. Public interest will be best served when the candidate voted for the position is finally proclaimed and adjudged winner in the elections. Urgency and expediency can never be substitutes for truth and credibility. The appeal interposed by private respondent to the COMELEC does not seem to be merely dilatory as it aims to resolve decisively the question as to who is the true winner in the last elections. Moreover, apart from petitioner's sweeping and self-serving allegation that the appeal is dilatory, no supporting argument or explanation whatsoever is offered why he considers it so. The omission militates against the pretended urgency of the motion for execution pending appeal. We are sure that both petitioner and private respondent would want to see the light at the end of the tunnel. Finally, the issue of "illegally manufactured votes" is best ventilated, and must accordingly be threshed out, in the election case before the COMELEC.

WHEREFORE, the instant petition is hereby DENIED and the challenged resolutions of the Commission on Elections dated February 8, 1996 and April 16, 1996 in SPR No. 5-96 are AFFIRMED.

The temporary restraining order issued by this Court on March 29, 1996 is hereby LIFTED.
SO ORDERED.

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

Vitug, J., concurs; I should like to only stress that COMELEC would appear not to have abused its discretion in concluding that the reasons advanced by the trial court were inadequate to justify its order of execution pending appeal.

Hermosisima, Jr., J., on leave.

[1] Rollo, pp. 220-221.

[2] Id., at 234.

[3] Id., at 253-254.

[4] Id., at 277.

[5] Id., at 282-283.

[6] COMELEC Resolution in SPR No. 5-96 dated April 16, 1996, pp. 5-6.

[7] Edding v. COMELEC, 246 SCRA 502 [1995].

[8] Eudela v. Court of Appeals, 211 SCRA 546 [1992].

[9] Relampagos v. Cumba, 243 SCRA 690 [1995].

[10] Sec. 2. Execution pending appeal. On motion of the prevailing party with notice to the adverse party the court may, in its discretion, order execution to issue even before the expiration of the time to appeal, upon good reasons to be stated in a special order. If a record on appeal is filed thereafter, the motion and the special order shall be included therein.

[11] Requisites for execution although judgment has been appealed:

(a) There must be a motion by the prevailing party with notice to the adverse party;

(b) There must be "good reasons;" and (c) The good reasons must be stated in the special order for execution. (Valencia v. Court of Appeals, 184 SCRA 561 [1990]; Engineering Construction, Inc. v. National Power Corporation, 163 SCRA 9 [1988]; Lao v. Mencias, 21 SCRA 1021 [1967].

[12] See also Garcia v. de Jesus, 206 SCRA 779 [1992].

[13] The general rule in Rule 39, Section 1 of the Rules of Court is that a judgment can be executed only after it has become final and executory. Such execution shall issue as a matter of right upon expiration of the final appeal therefrom if the appeal has been duly perfected.

[14] City of Manila v. Court of Appeals, 204 SCRA 362 [1991]; Valencia v. Court of Appeals, 184 SCRA 561 [1990].

[15] See Note 1, p. 227.

[16] Id., at 232-233.

[17] See Note 6, pp. 3-4.

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