

TIMOTEO VALENCIA, JR. PROTESTANT AND APPELLANT, VS. FELIPE MABIIANGAN, PROTESTEE AND APPELLEE.*G. R. No. 13059. January 31, 1959*

Ponente: LABRADOR, J.

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Appeal from an order of the Court of First Instance of Quezon in Electoral Case No. 29-G of said court, entitled Timoteo Valencia, Jr., protestant, vs. Felipe Mabilangan, protestee, dismissing the protest and denying a motion for the reconsideration of the order of dismissal. The case was originally brought to the Court of Appeals, but as the questions raised on the appeal are of law, the case was certified to this Court. In the local elections of 1955 the protestant was defeated for the office of municipal mayor of Tagkawayan, Quezon by the protestee, with a plurality of 127 votes. The electoral protest was filed by him in the Court of First Instance of Quezon on November 28, 1955. The proceedings in the lower court which give rise to this appeal are as follows:

On December 6, 1955, the protestee filed a motion to dismiss the protest with damages and after an ex-parte hearing of said motion, the lower court dismissed the protest in an order dated December 15, 1955. This order, however, was set aside by the court on March 22, 1956, on motion for reconsideration filed by the protestant. The protestee filed his answer on May 1, 1956, and another on May 12, 1956. After the dismissal by us of a petition for certiorari on May 28, 1956, the protest was set for hearing on June 5, 1956, for the opening of the ballot boxes and the examination of the ballots by the commissioners submitted their report on June 9, 1956, and as the protestant did not take any action, promptly after the revision of the ballots, the court ordered him to explain in three days why his protest should not be dismissed for lack of diligence. The protestant explained that, after the opening of the boxes in the precincts which he had protested and the revision of the ballots therein, he had expected the protestee to indicate also in what precincts the latter desired that the ballot boxes be opened; so he, the protestant, did not take any immediate action in the premises. Satisfied with this explanation the court set the hearing of the case for November 15, 1956, but transferred it to August 14, 1956, upon motion of the protestant.

But before the hearing, the protestant filed a motion requesting the court to allow him to open the ballot boxes again and to examine the ballots therein, so that the number of ballots objected to by his commissioners could be reduced. It seems that this motion was granted (Record on Appeal has disappeared and has not been located as yet, although the same does not appear necessary).

On September 19, 1956, the protestee filed an ex-parte motion, alleging lack of interest on the part of the protestant. The court granted this motion, although the records show that the commissioners of the protestant had not finished the revision of the ballots and the record does not show what he had done in the case. The protestant prayed the court to reconsider the order of dismissal, at the same time filing a written offer of evidence, stating his objections to the admission of ballots of the protestee which have been marked by the commissioners and his reasons for urging the admission of certain ballots for the protestant. But the court denied this motion, so appeal was taken to the Court of Appeals against both the order of dismissal and the order denying the motion for reconsideration.

The assignments of error contained in the brief of the protestant-appellant are as follows:

- The lower court erred in declaring that the silence on the part of the protestant and his counsel shows lack of interest in the immediate termination of this protest.
- The lower court erred in entertaining the ex-parte petition of protestants counsel for the dismissal of this protest.
- The lower court erred in declaring that even if the protest is reinstated in the calendar of the court and the proceedings continued for the appreciation of the ballots mentioned in the written offer of evidence of the protestant, there would be no substantial change in the number of votes obtained by the protestant and the protestee and therefore the result of the election would not be affected thereby.
- The lower court erred in dismissing the protest.

In support of the first assignment of error 3 the appellant alleges that the failure of the protestant to act promptly in prosecuting the case was due to three circumstances (1) for three weeks counsel for the protestant attended daily trials of cases before other courts; (2) counsel for protestant was sick of influenza from September 8 to 11; (3) it took counsel for the protestant some time to prepare his written offer of evidence. The protestee has not filed a brief.

We agree with the protestant that the court below was quite unreasonable in expecting counsel for the protestant to take the necessary steps for the resolution of the protest promptly. We also agree with protestant that it was not lack of interest that delayed the case but the impossibility of terminating the case promptly because the revision of ballots, the hearing of the case and its submission to the court required time to finish.

In so far as the second error is concerned, it also appears that the court made a mistake in approving the motion for dismissal, without opportunity on the part of counsel for the protestant to object to it or be heard in defense. A motion for dismissal is indeed very important as it may lead to the quashing of a protest, and the constitutional right of due process requires that the adverse party should be notified of such motion and be given the opportunity to file an objection to the same and be heard thereon. No matter how baseless an action may appear to be to the judge, his impressions on the matter of its merit or lack of merit cannot justify a denial of the right on the part of the adverse party to be notified and to be heard. So the trial court also committed the error indicated in this assignment.

With respect to the third assignment of error, we also find that the order of the court does not show that all of the ballots objected to by the protestant had been examined conscientiously by the judge, or if he did the same, his order does not show that he has passed upon each and everyone of the ballots that have been presented, in evidence to sustain the protest. Perhaps, the trial judge following the Spanish saying, "Para muestra basta un boton," and believing that the petition has no merit refused to examine each and everyone of the ballots for each of the candidates. In this respect again the trial court made a mistake. However unfounded the claim of a party are or may be, courts are nevertheless under obligation to examine all the possible facts and circumstances in relation to the cause. In the case at bar, the mere fact that the first ballots examined showed that the claim of the protestant with respect thereto could not be sustained, did not justify the court in stopping the examination of said ballots then and there.

Under the facts and circumstances as above indicated, it would seem that the remedy in this case should be to remand the case to the court below for the continuation of the protest and the examination of the ballots by the lower court. But if we do so, since only 11 months remains of the four-year term corresponding to the office protested, we have decided, in order to do justice to the protestant-appellant, to examine the ballots ourselves to

determine whether the protest can be resolved in favor of the protestant or in favor of the protestee.

TIMOTEO VALENCIA, JR.

Precinct No.

Valid Vote

Rejected

1

20

2

22

2 (FM-10 & 12)

3

26

1 (FM-27)

4

40

5 (TV-58 to 62)

5

29

3 (TV-52, 53, 54)

6

42

2 (TV-41 & 42)

7

23

— —

8

18

8-A

32

1 (FM -8)

8-B

22

10

60

4 (FM-61 to 64)

13

14

13-A

34

1 (TV-47)

14

7

2 (TV-6 & 21)

15

10

17

13

1 (TV-28)

412

22

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FELIPE MABILANGAN

Precinct No.

Valid Vote

Rejected

1

33

3 (TV-1, 4 & 5)

2

18

2 (TV-8 & FM-5)

3

21

4 (FM-27 to 30)

4

34

5

44

6

40

7

38

2 (TV-22 & 45)

8

46

1 (TV-48)

8-A

36

5 (FM-1,2,3,22,24)

8-B

40

2 (TV-1 & 2)

10

43

2 (TV-61 & 62)

13

29

6 (FM-2, 2, 3, 4, 5 & 6)

13-A

27

9 (FM-6 to 12, 37 & 45)

14

20

5 (FM-1 & 3, 6 to 8)

15

85

9 (FM 3, 41, 42, 47, 60, 71, 73, 74 & 79)

17

17

2 (FM-14 & 15)

571

52

The result of the canvass of the ballots made by Us shows that protestant received a total of 412 valid votes, while the protestee, 571 votes. We have rejected 22 ballots for the protestant, and 52 ballots for the protestee. The result is a majority of 159 votes in favor of the protestee.

The revision has been made by us and our study has disclosed the following results in each and every one of the precincts contested by protestant;

Judgment is, therefore, entered holding that the protestee won the election over the protestant by a majority of 159 votes, and as a consequence, denying the petition of protest. Without costs.

Paras, C.J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Reyes, J.B.L., and Endencia, JJ., concur.

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