

**PURTO J. NAVARRO AND DANNY B. TAMAYO, PETITIONER, VS.
COURT OF APPEALS AND ADOLFO AQUINO, ROLANDO LALAS,
ABRAHAM MORALES, BLANDO QUINTO, ROMEO VISPERAS,
ANTONIO PENULIAR, EDUARD...**

G.R. No. 141307. March 28, 2001

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, assailing as erroneous the decision of the Court of Appeals, Fourth Division,[1] dated October 7, 1999 in CA-G.R. SP No. 5475 which granted the petition for certiorari filed by herein respondents and declared as null and void the appointment of herein petitioner Purto J. Navarro to the Sanggunian Bayan of Mapandan, Pangasinan.

The facts are undisputed.

In the May 11, 1997 local elections, the following officials were elected to office in the Municipality of Mapandan, Pangasinan:

Cesar M. Calimlim - Mayor - Lakas NUCD-KAMPI
Baltazar Aquino - Vice-Mayor - Lakas NUCD-KAMPI

Elected as members of the Sangguniang Bayan ranked according to the highest number of votes obtained were the following councilors:

Political Party

1. Danny B. Tamayo REFORMA-LM
2. Rolando S. Soriano REFORMA-LM
3. Leopoldo C. Biagtan REFORMA-LM
4. Florentino Z. Lalas REFORMA-LM
5. Mamerto Eden, Jr. REFORMA-LM
6. Victorio C. Lalangan LAKAS-NUCD-KAMPI
7. Judy A. Pascual REFORMA-LM
8. Rolando Lalas LAKAS-NUCD-KAMPI

On March 25, 1999, Mayor Cesar Calimlim died. A vacancy was thus created in the Office of the Mayor so by operation of law, Section 44 of Republic Act 7160, otherwise known as the Local Government Code of 1991, then Vice-Mayor Baltazar Aquino succeeded him. Accordingly, the highest ranking member of the Sangguniang

Bayan, i.e. the one who garnered the highest number of votes, was elevated to the position of the Vice-Mayor, pursuant to the same law. This was petitioner Danny B. Tamayo who belonged to the REFORMA-LM political party.

Since a vacancy occurred in the Sangguniang Bayan by the elevation of petitioner Tamayo to the office of the Vice-Mayor, Governor Victor Agbayani of Pangasinan appointed herein petitioner Purto J. Navarro as Member of the Sangguniang Bayan. Navarro belonged to the same political party as that of petitioner Tamayo.

Private respondents filed Civil Case No. 99-12958-D to nullify the appointment of petitioner Navarro before the Regional Trial Court of Dagupan City, Branch 44 presided by Judge Crispin Laron. Their motions for the issuance of a temporary restraining order and for the inhibition of Judge Laron having been denied, private respondents filed a Petition for Review on Certiorari with this Court.

In a Resolution dated August 25, 1999, this Court referred the case to the Court of Appeals due to the hierarchy of courts.

Private respondents argued before the Court of Appeals that it was the former vice-mayor, succeeding to the position of the mayor, who created the permanent vacancy in the Sanggunian Bayan because under the law he was also a member of the Sanggunian. Thus, the appointee must come from said former vice-mayor's political party, in this case, the Lakas-NUCD-Kampi.

Petitioners, on the other hand, contended that it was the elevation of petitioner Tamayo, who was the highest-ranking member of the Sanggunian Bayan, to the office of the Vice-Mayor which resulted in a permanent vacancy in the Sanggunian Bayan. Pursuant to Section 45 (b) of RA 7160, the person to be appointed to the position vacated by him should come from the same political party affiliation as that of petitioner Tamayo. Hence, the appointment extended by Governor Agbayani to petitioner Navarro, who was a member of and recommended by the REFORMA-LM, is valid.

The Court of Appeals in a decision dated October 7, 1999 resolved the petition in favor of private respondents but for the reason different from that posited by private respondents. According to the appellate court, the vacancy which resulted from the death of the mayor created a series of vacancies and successions by operation of law. By this interpretation, petitioner Tamayo's former position as the highest-ranking member of the Sanggunian Bayan was filled up by the second highest-ranking member and that vacated by the second highest-ranking member was succeeded by the third highest-ranking member, and so forth. And the last vacancy created was the position of the lowest ranking-member of the Sanggunian, that is, the eighth position occupied by Rolando Lalas. The Court of Appeals then concluded that it was the appointment of the eighth councilor, who was Rolando Lalas to the number seven position which created the "last vacancy;" therefore, the person to be appointed to the vacant position should come from the same political party to which Rolando Lalas belonged, which was the Lakas-NUCD-Kampi.

Aggrieved by the decision of the Court of Appeals, petitioners brought the instant petition.

We give due course to the petition.

Sections 44 and 45 of RA 7160 governing vacancies and succession are quoted hereunder:

Sec. 44. Permanent Vacancies in the Offices of the Governor, Mayor, and Vice-Mayor. -- If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. If a permanent vacancy in the offices of the governor, vice-governor, mayor or vice-mayor, the highest sanggunian member or, in case of his permanent inability, the second highest-ranking sanggunian member, shall become the governor, vice-governor, mayor or vice-mayor as the case may be.

Subsequent vacancies in the said office shall be filled automatically by the other sanggunian members according to their ranking as defined herein:

(b) If a permanent vacancy occurs in the office of the punong barangay, the highest ranking sanggunian barangay members or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the punong barangay.

(c) A tie between or among the highest ranking sanggunian members shall be resolved by the drawing of lots.

(d) The successors as defined herein shall serve only the unexpired terms of their predecessors.

For purposes of this Chapter, a permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office.

For purposes of succession as provided in this Chapter, ranking in the sanggunian shall be determined on the basis of the proportion of votes obtained by each winning candidate to the total number of registered voters in each district in the immediately preceding local election.

Sec. 45. Permanent Vacancies in the Sanggunian. - (a) Permanent vacancies in the sanggunian where automatic successions provided above do not apply shall be filled by appointment in the following manner:

(1) The President, through the Executive Secretary, in the case of the sangguniang panlalawigan and the sangguniang panglungsod of highly urbanized cities and independent component cities;

(2) The governor, in the case of the sangguniang panglungsod of component cities and the sangguniang bayan;

(3) The city or municipal mayor, in the case of sangguniang barangay, upon recommendation of the sangguniang barangay concerned;

(b) Except for the sangguniang barangay, only the nominee of the political party under which the sanggunian member concerned had been elected and whose elevation to the position next higher in rank created the last vacancy in the sanggunian shall be appointed in the manner hereinabove provided. The appointee shall come from the same political party as that of the sanggunian member who caused the vacancy and shall serve the unexpired term of the vacant office. In the appointment herein mentioned, a nomination and a certificate of membership of the appointee from the highest official of the political party concerned are conditions sine qua non, and any appointment without such nomination and certification shall be null and void ab initio and shall be a ground for administrative action against the official responsible therefor.

(c) In case the permanent vacancy is caused by a sanggunian member who does not belong to any political party, the local chief executive shall, upon recommendation of the sanggunian concerned, appoint a qualified person to fill the vacancy.

(d) In case of vacancy in the representation of the youth and the barangay in the sanggunian, said vacancy shall be filled automatically by the official next in rank of the organization concerned.

Under Section 44, a permanent vacancy arises when an elective official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office.

What is crucial is the interpretation of Section 45 (b) providing that "xxx only the nominee of the political party under which the Sanggunian member concerned has been elected and whose elevation to the position next higher in rank created the last vacancy in the Sanggunian shall be appointed in the manner hereinabove provided. The appointee shall come from the political party as that of the Sanggunian member who caused the vacancy xxx."

The reason behind the right given to a political party to nominate a replacement where a permanent vacancy occurs in the Sanggunian is to maintain the party representation as willed by the people in the election.[2]

With the elevation of petitioner Tamayo, who belonged to REFORMA-LM, to the position of Vice-Mayor, a vacancy occurred in the Sanggunian that should be filled up with someone who should belong to the political party of petitioner Tamayo. Otherwise, REFORMA-LM's representation in the Sanggunian would be diminished. To argue that the vacancy created was that formerly held by Rolando Lalas, a LAKAS-NUCD-Kampi member, would result in the increase of that party's representation in the Sanggunian at the expense of the REFORMA-LM. This interpretation is contrary to the letter and spirit of the law and thus violative of a fundamental rule in statutory construction which is to ascertain and give effect to the intent and purpose of the law.[3] As earlier pointed out, the reason behind par. (b), section 44 of the Local Government Code is the maintenance party representation in the Sanggunian in accordance with the will of the electorate.

The "last vacancy" in the Sanggunian refers to that created by the elevation of the member formerly occupying the next higher in rank which in turn also had become vacant by any of the causes already enumerated. The term "last vacancy" is thus used in Sec. 45 (b) to differentiate it from the other vacancy previously created. The term by no means refers to the vacancy in the No. 8 position which occurred with the election of Rolando Lalas to the seventh position in the Sanggunian. Such construction will result in absurdity.

Petitioners also allege that the Court of Appeals erred in giving due course to the petition because the verification is defective. It is argued that the affidavit merely stated that the allegations therein are "true and correct to the best of my own knowledge and information" whereas Section 4, Rule 7 of the Rules of Court specifically requires that the allegations be "true and correct of his knowledge and belief."

The contention is without merit. Verification based on the affiant's own knowledge and information is sufficient under the circumstances. Verification is merely a formal and not a jurisdictional requisite which does not affect the validity or efficacy of the pleading, or the jurisdiction of the court.[4] Therefore, a defective verification, as in the present case, does not render the pleading or the petition invalid and the Court of Appeals did not err in giving due course to the petition.

WHEREFORE, the petition is hereby GRANTED. The decision of the Court of Appeals in CA-G.R. SP No. 54675 dated October 7, 1999 is REVERSED and SET ASIDE. The appointment of petitioner Purto J. Navarro to the Sanggunian Bayan of Mapandan, Pangasinan is hereby AFFIRMED as valid and legal.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Pardo, and Ynares-Santiago, JJ., concur.
Puno J., on official leave.

[1] Penned by Associate Justice Teodoro Regino and concurred in by Associate Justices Salome A. montoya and Conrado Vasquez, Jr.

[2] Aquilino Pimentel, The Local Government Code of 1991, The Key to National development, p.150

[3] Manila Lodge No. 761 vs. Court of Appeals, 73 SCRA 12 (1976)

[4] Buenaventura vs. Uy, 149 SCRA 22 (1987)

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