

ESTEBAN M. ZAMORAS, PETITIONER, VS. COMMISSION ON ELECTIONS (FIRST DIVISION) AND BARTOLOME BASTASA, RESPONDENTS.

G.R. No. 158610. November 12, 2004

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Petitioner Esteban M. Zamoras (“Zamoras”) filed this petition for certiorari^[1] to annul the following Orders of the Commission on Elections First Division^[2] (“COMELEC”) in EAC No. 4-2003: (1) the Order dated 10 March 2003 dismissing Zamoras’ appeal; (2) the Order dated 4 April 2003 denying his motion for reconsideration; and (3) the Order and entry of judgment dated 8 May 2003 and 12 May 2003, respectively.

The Antecedents

Zamoras and private respondent Bartolome Bastasa (“Bastasa”) were candidates for punong barangay of Barangay Galas, Dipolog City in the elections held on 15 July 2002. The Barangay Board of Canvassers proclaimed Bastasa as the duly elected punong barangay with 1,891 votes against Zamoras’ 1,836, or a margin of 55 votes.

Zamoras filed an election protest before the Municipal Trial Court in Cities, Branch 1, Dipolog City (“MTCC”), docketed as Election Case No. 3559. Claiming that fraud and serious irregularities marred the elections in nine precincts, Zamoras prayed for revision or recount of the ballots in these nine precincts. On 4 November 2002, the MTCC rendered its Decision,^[3] the dispositive portion of which reads:

ACCORDINGLY, judgment is hereby rendered dismissing the Protest and declaring the Protestee as having garnered and/or obtained Two Hundred Twelve (212) Votes in his favor as determined by the Court’s appreciation of the recounting and/or revision of the Ballots in this instant Case, and declaring the Protestant as having garnered and/or obtained Eleven (11) Votes in his favor as determined by the above-said appreciation.

No award of Damages and Attorney’s Fees, the latter by way of Damages, are to be granted to the Protestee without prejudice to the Attorney’s Fees for the professional services of the latter’s (Protestee’s) Counsel. (Quirante vs. IAC, *supra*.)

SO ORDERED.^[4]

Aggrieved, Zamoras filed a notice of appeal^[5] with the MTCC. In a notice dated 17 January 2003, the COMELEC’s Judicial Records Division directed Zamora to remit P2,600 representing the deficiency in the payment of the required filing fees within three days from receipt of the notice.^[6] Zamoras allegedly received the notice on 28 January 2003 and remitted the deficiency by postal money order on the same day.

On 10 March 2003, the COMELEC issued an Order^[7] dismissing Zamoras’ appeal for failure to perfect his

appeal within the 5-day reglementary period pursuant to Sections 3 and 9(d), Rule 22 of the COMELEC Rules of Procedure. The Order contained a footnote that “[p]rotestant-appellant received the November 4, 2002 Decision on November 29, 2002. He filed his appeal on December 9, 2002 or ten (10) days from receipt of the decision sought to be appealed.”

Zamoras filed a motion for reconsideration by registered mail on 21 March 2003. In its Order[8] dated 4 April 2003, the COMELEC denied the motion for reconsideration “for failure of the movant to pay the necessary motion fees under Sec. 7(f), Rule 40 of the Comelec Rules of Procedure.”

On 8 May 2003, the COMELEC issued an Order[9] stating as follows:

Considering that the Urgent Motion for Reconsideration with Manifestation of Merits filed by Protestant-Appellant was denied per Order dated 4 April 2003, the 10 March 2003 Order dismissing Protestant-Appellant’s appeal for non-payment of the correct appeal fee is now final and executory.

WHEREFORE, let an Entry of Judgment be issued in the instant case. The Judicial Records Division-ECAD, this Commission, is hereby directed to remand within three (3) days from receipt hereof the records of this case to the court of origin for its proper disposition.

Meanwhile, Zamoras filed another motion for reconsideration by registered mail on 16 May 2003. He also remitted the fees required for the motion by postal money order on the same date.

The COMELEC deemed the Orders dated 10 March 2003 and 4 April 2003 final and ordered their entry in the Book of Entries of Judgment on 12 May 2003.[10] Zamoras received by registered mail a copy of the Order dated 8 May 2003 and a copy of the Entry of Judgment on 27 May 2003.

Hence, the instant petition.

The Issue

Zamoras failed to formulate in his petition the issues for our resolution. However, we gather that the sole issue is whether the COMELEC gravely abused its discretion amounting to lack or excess of jurisdiction in dismissing Zamoras’ appeal and in denying his motion for reconsideration.

The Court’s Ruling

The petition lacks merit.

Zamoras argues that the COMELEC dismissed his appeal on the mistaken belief that he filed his appeal on 9 December 2002 or ten (10) days from his receipt on 29 November 2002 of the decision. Zamoras claims that he filed his appeal on 2 December 2002, which is three (3) days from 29 November 2002.

Section 3, Rule 22 of the 1993 COMELEC Rules of Procedure specifically mandates that in appeals from decisions of courts in election protest cases, the notice of appeal must be filed within five (5) days after the promulgation of the decision. This section states:

Sec. 3. Notice of Appeal. – Within five (5) days after promulgation of the decision of the court, the aggrieved party may file with said court a notice of appeal, and serve a copy thereof upon the attorney of record of the adverse party.

Otherwise, the appeal is dismissible under Section 9 of the same rule which reads:

Sec. 9. Grounds for Dismissal of Appeal. - The appeal may be dismissed upon motion of either party or at the instance of the Commission on any of the following grounds:

- (a) Failure of the appellant to pay the correct appeal fee;
- (b) x x x;
- (c) x x x; and
- (d) Failure to file notice of appeal within the prescribed period.

We grant that Zamoras filed his notice of appeal on 2 December 2003 which is within the 5-day reglementary period. However, Zamoras paid only P600 as appeal fee which is deficient by P2,600. Sections 3 and 4, Rule 40 of the 1993 COMELEC Rules of Procedure provide:

Sec. 3. Appeal Fees. - The appellant in election cases shall pay an appeal fee as follows:

- (a) x x x
- (b) Election cases appealed from courts of limited jurisdiction... P500.00.

In every case, a legal research fee of P20.00 shall be paid by the appellant in accordance with Section 4, Republic Act No. 3870, as amended.

Sec. 4. Where and When to pay. - The fees prescribed in Sections 1, 2 and 3 hereof shall be paid to, and deposited with, the Cash Division of the Commission within a period to file the notice of appeal. (Emphasis supplied)

COMELEC's Resolution No. 02-0130, issued on 18 September 2002, prescribes P3,000 as appeal fee plus P50 for legal research fee and P150 for bailiff's fee.

After the Judicial Records Division informed Zamoras of the deficiency, he paid the total amount of P2,600 only on 28 January 2003, or almost two (2) months beyond the 5-day reglementary period to appeal.

Zamoras had only five days from receipt of the decision of the MTCC or until 4 December 2002 to perfect his appeal. While he may have timely filed his notice of appeal on 2 December 2004, he only paid P600 as appeal fee. He paid the deficiency of P2,600 representing the appeal and legal research fees only on 28 January 2003.

This case is on all fours with *Rodillas v. Comelec*,^[11] where the necessary appeal fees were likewise paid out of time. The Court held:

The mere filing of the notice of appeal was not enough. It should be accompanied by the payment of the correct amount of appeal fee (See *Galang v. Court of Appeals*, 199 SCRA 683 [1991]; *Guevarra v. Court of Appeals*, 157 SCRA 32 [1988]).

xxx

The payment of the full amount of the docket fee is an indispensable step for the perfection of an appeal (*Dorego v. Perez*, 22 SCRA 8 [1968]; *Bello v. Fernandez*, 4 SCRA 135 [1962]). In both original and appellate cases, the court acquires jurisdiction over the case only upon the payment of the prescribed docket fees as held in *Acda v. Minister of Labor*, 119 SCRA 306 (1982). xxx

The subsequent payment of the filing fee on 28 January 2003 did not relieve Zamoras of his mistake. A case is not deemed duly registered and docketed until full payment of the filing fee.^[12] Otherwise stated, the date of the payment of the filing fee is deemed the actual date of the filing of the notice of appeal.^[13] The subsequent full payment of the filing fee on 28 January 2003 did not cure the jurisdictional defect. The date of payment on 28 January 2003 is the actual date of filing the appeal which is almost two (2) months after Zamoras received the MTCC Decision on 29 November 2002. This is way beyond the 5-day reglementary period to file an appeal.

The fact that the Judicial Records Division gave Zamoras three (3) days to complete payment of the filing fee in a notice dated 17 January 2003 is of no moment. At the time of the notice's issuance on 17 January 2003, the 5-day reglementary period to file an appeal had long lapsed since 5 December 2002. The Judicial Records Division had no authority to extend the 5-day reglementary period or revive the lapsed reglementary period by issuing the notice on 17 January 2003. Zamoras cannot rely on such notice as basis for arguing that he filed his appeal on time.

The Court stressed in *Loyola v. COMELEC*,^[14] promulgated on 25 March 1997, that there is no longer any excuse for shortcomings in the payment of filing fees. The Court ruled that the case bars "any claim of good faith, excusable negligence or mistake in any failure to pay the full amount of filing fees in election cases which may be filed after the promulgation of this decision." The Court reiterated the *Loyola* doctrine in *Miranda v. Castillo*,^[15] *Soller v. Commission on Elections*,^[16] and *Villota v. Commission on Elections*.^[17] In these cases, the Court warned that error in the payment of filing fees in election cases is no longer excusable. The Court declared that "it would no longer tolerate any mistake in the payment of the full amount of filing fees for election cases filed after the promulgation of the *Loyola* decision on March 25, 1997."

Zamoras is not only chargeable with the incomplete payment of the appeal fees but he also failed to remit the required filing fees for his motion for reconsideration. The payment of the filing fee is a jurisdictional requirement and non-compliance is a valid basis for the dismissal of the case. The subsequent full payment of the filing fee after the lapse of the reglementary period does not cure the jurisdictional defect. Such procedural lapse by Zamoras clearly warrants the outright dismissal of his appeal.^[18] This left the COMELEC with no choice except to declare the Orders final and executory.

Finally, Zamoras cannot invoke the argument that courts must liberally construe technical rules of procedure to promote the ends of justice. The right to appeal is merely a statutory privilege and a litigant may exercise such right to appeal only in the manner prescribed by law.^[19] The requirement of an appeal fee is by no means a mere technicality of law or procedure.^[20] It is an essential requirement without which the decision appealed from would become final and executory as if there was no appeal filed at all.^[21]

WHEREFORE, we DISMISS the petition for lack of merit. We AFFIRM the COMELEC First Division's Orders dated 10 March 2003, 4 April 2003, 8 May 2003 and 12 May 2003 in EAC No. 4-2003.

SO ORDERED.

Davide, Jr., C.J., Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Carpio-Morales, Callejo, Sr., Azcuna, Chico-Nazario, and Garcia, JJ., concur.

Puno, J., on official leave.

Corona, and Tinga, JJ., on leave.

[1] Under Rule 65 of the 1997 Rules of Civil Procedure.

[2] Composed of Commissioners Rufino S. Javier, Luzviminda G. Tancangco and Resurreccion Z. Borra.

[3] Penned by Judge Felipe M. Abalos.

[4] Rollo, pp. 242-243.

[5] *Ibid.*, pp. 244-246.

[6] *Ibid.*, p. 262. The notice dated 17 January 2003 reads:

This office is in receipt of your notice of appeal with payment of P600.00 as appeal fee. May we respectfully remind you that pursuant to the Commission's Resolution No. 02-0130 promulgated on September 18, 2002, the appeal fee is P3,000.00 plus P50.00 for legal research fee and P150.00 for the bailiff's fee, a total of P3,200.00. Since you have already paid P600.00, you still have to pay P2,600.00 within 3 days from receipt hereof. Non payment of the same is a ground for the dismissal of the case.

[7] Ibid., p. 342.

[8] Ibid., p. 349.

[9] Ibid., p. 356.

[10] Ibid., p. 357.

[11] 315 Phil. 789 (1995).

[12] Melendres, Jr. v. COMELEC, 377 Phil. 275 (1999).

[13] Ibid.

[14] 337 Phil. 134 (1997).

[15] G.R. No. 126361, 19 June 1997, 274 SCRA 503.

[16] G.R. No. 139853, 5 September 2000, 339 SCRA 685.

[17] 415 Phil. 87 (2001).

[18] Banaga, Jr. v. Commission on Elections, 391 Phil. 596 (2000).

[19] Antonio v. COMELEC, 373 Phil. 680 (1999).

[20] Rodillas v. Comelec, supra note 11.

[21] Ibid.

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