

MAKIL U. PUNDAODAYA, PETITIONER, VS. COMMISSION ON ELECTIONS AND ARSENIO DENSING NOBLE, RESPONDENTS.

G.R. No. 179313. September 17, 2009

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition[1] for certiorari under Rule 65 assails the August 3, 2007 Resolution[2] of the Commission on Elections (COMELEC) En Banc in SPA No. 07-202, which declared private respondent Arsenioensing Noble (Noble) qualified to run for municipal mayor of Kinoguitan, Misamis Oriental, in the May 14, 2007 Synchronized National and Local Elections.

The facts are as follows:

Petitioner Makil U. Pundaodaya (Pundaodaya) is married to Judith Pundaodaya, who ran against Noble for the position of municipal mayor of Kinoguitan, Misamis Oriental in the 2007 elections.

On March 27, 2007, Noble filed his Certificate of Candidacy, indicating therein that he has been a resident of Purok 3, Barangay Esperanza, Kinoguitan, Misamis Oriental for 15 years.

On April 3, 2007, Pundaodaya filed a petition for disqualification[3] against Noble docketed as SPA No. 07-202, alleging that the latter lacks the residency qualification prescribed by existing laws for elective local officials; that he never resided nor had any physical presence at a fixed place in Purok 3, Barangay Esperanza, Kinoguitan, Misamis Oriental; and that he does not appear to have the intention of residing therein permanently. Pundaodaya claimed that Noble is in fact a resident of Lapasan, Cagayan de Oro City, where he also maintains a business called OBERT Construction Supply.

In his Answer,[4] Noble averred that he is a registered voter and resident of Barangay Esperanza, Kinoguitan, Misamis Oriental; that on January 18, 1992, he married Bernadith Go, the daughter of then Mayor Narciso Go of Kinoguitan, Misamis Oriental; that he has been engaged in electoral activities since his marriage; and that he voted in the said municipality in the 1998, 2001 and 2004 elections.

In a resolution dated May 13, 2007,[5] the Second Division of the COMELEC ruled in favor of Pundaodaya and disqualified Noble from running as mayor, thus:

Respondent Noble's claim that he is a registered voter and has actually voted in the past three (3) elections in the said municipality does not sufficiently establish that he has actually elected residency at Kinoguitan, Misamis Oriental. Neither does campaigning in previous elections sufficiently establish residence.

Respondent Noble failed to show that he has indeed acquired domicile at Kinoguitan, Misamis Oriental. He failed to prove not only his bodily presence in the new locality but has likewise failed to show that he intends to remain at Kinoguitan, Misamis Oriental and abandon his residency at Lapasan, Cagayan de Oro City.

WHEREFORE, premises considered, the instant Petition to Disqualify Aresnio Densing Noble is hereby

GRANTED.

SO ORDERED.[6]

Noble filed a motion for reconsideration of the above resolution. In the meantime, he garnered the highest number of votes and was proclaimed the winning candidate on May 15, 2007. Pundaodaya then filed an Urgent Motion to Annul Proclamation.[7]

On August 3, 2007, the COMELEC En Banc reversed the decision of the Second Division and declared Noble qualified to run for the mayoralty position.

The COMELEC En Banc held that when Noble married Bernadith Go on January 18, 1992, the couple has since resided in Kinoguitan, Misamis Oriental; that he was a registered voter and that he participated in the last three elections; and although he is engaged in business in Cagayan de Oro City, the fact that he resides in Kinoguitan and is a registered voter and owns property thereat, sufficiently meet the residency requirement.[8] Thus:

WHEREFORE, premises considered, the Commission (en banc) RESOLVED, as it hereby RESOLVES, to GRANT the instant Motion for Reconsideration and to REVERSE AND SET ASIDE the Resolution promulgated on May 13, 2007 issued by the Commission (Second Division).

ACCORDINGLY, respondent ARSENIO DENSING NOBLE is QUALIFIED to run for the local elective position of Municipal Mayor of the Municipality of Kinoguitan, Misamis Oriental in the May 14, 2007 Synchronized National and Local Elections.

SO ORDERED.[9]

Pundaodaya filed the instant petition for certiorari, alleging that the COMELEC En Banc acted with grave abuse of discretion when it declared Noble qualified to run; when it did not annul Noble's proclamation; and when it failed to proclaim the true winning candidate, Judith Pundaodaya.

In a resolution dated November 13, 2007,[10] the Court required the respondents to comment on the petition.

Public respondent, through the Office of the Solicitor General, filed a Manifestation and Motion[11] praying that it be excused from filing a separate comment and that the said pleading be considered sufficient compliance with the November 13, 2007 Resolution.

Meanwhile, for Noble's failure to comply, the Court issued Resolutions[12] dated July 15, 2008 and December 9, 2008 requiring him to show cause why he should not be disciplinarily dealt with or held in contempt, imposing a fine of P1,000.00, and requiring him to file a comment. On June 2, 2009, the Court deemed Noble to have waived the filing of the comment.[13]

The issues for resolution are: whether the COMELEC En Banc gravely abused its discretion: 1) in declaring Noble qualified to run for the mayoralty position; and 2) in failing to order the annulment of Noble's proclamation and refusing to proclaim Judith Pundaodaya as the winning candidate.

Section 39 of Republic Act No. 7160, otherwise known as the Local Government Code, requires that an elective local official must be a resident in the barangay, municipality, city or province where he intends to serve for at least one year immediately preceding the election.[14]

In *Japzon v. Commission on Elections*,[15] it was held that the term "residence" is to be understood not in its common acceptance as referring to "dwelling" or "habitation," but rather to "domicile" or legal residence, that is, "the place where a party actually or constructively has his permanent home, where he, no matter where he may be found at any given time, eventually intends to return and remain (animus manendi)."

In *Domino v. Commission on Elections*,^[16] the Court explained that domicile denotes a fixed permanent residence to which, whenever absent for business, pleasure, or some other reasons, one intends to return. It is a question of intention and circumstances. In the consideration of circumstances, three rules must be borne in mind, namely: (1) that a man must have a residence or domicile somewhere; (2) when once established it remains until a new one is acquired; and (3) a man can have but one residence or domicile at a time.

If one wishes to successfully effect a change of domicile, he must demonstrate an actual removal or an actual change of domicile, a bona fide intention of abandoning the former place of residence and establishing a new one, and definite acts which correspond with the purpose.^[17] Without clear and positive proof of the concurrence of these three requirements, the domicile of origin continues.^[18]

Records show that Noble's domicile of origin was Lapasan, Cagayan de Oro City. However, he claims to have chosen Kinoguitan, Misamis Oriental as his new domicile. To substantiate this, he presented before the COMELEC his voter registration records;^[19] a Certification dated April 25, 2007 from Election Officer II Clavel Z. Tabada;^[20] his Marriage Certificate;^[21] and affidavits of residents of Kinoguitan^[22] attesting that he established residence in the municipality after his marriage to Bernadith Go. In addition, he presented receipts^[23] from the Provincial Treasurer for payment of his water bills, and Certifications from the Municipal Treasurer and Municipal Engineer that he has been a consumer of the Municipal Water System since June 2003. To prove ownership of property, he also presented a Deed of Sale^[24] over a real property dated June 3, 1996.

The above pieces of documentary evidence, however, fail to convince us that Noble successfully effected a change of domicile. As correctly ruled by the COMELEC Second Division, private respondent's claim that he is a registered voter and has actually voted in the past 3 elections in Kinoguitan, Misamis Oriental do not sufficiently establish that he has actually elected residency in the said municipality. Indeed, while we have ruled in the past that voting gives rise to a strong presumption of residence, it is not conclusive evidence thereof. ^[25] Thus, in *Perez v. Commission on Elections*,^[26] we held that a person's registration as voter in one district is not proof that he is not domiciled in another district. The registration of a voter in a place other than his residence of origin is not sufficient to consider him to have abandoned or lost his residence.^[27]

To establish a new domicile of choice, personal presence in the place must be coupled with conduct indicative of that intention. It requires not only such bodily presence in that place but also a declared and probable intent to make it one's fixed and permanent place of abode.^[28]

In this case, Noble's marriage to Bernadith Go does not establish his actual physical presence in Kinoguitan, Misamis Oriental. Neither does it prove an intention to make it his permanent place of residence. We are also not persuaded by his alleged payment of water bills in the absence of evidence showing to which specific properties they pertain. And while Noble presented a Deed of Sale for real property, the veracity of this document is belied by his own admission that he does not own property in Kinoguitan, Misamis Oriental.^[29]

On the contrary, we find that Noble has not abandoned his original domicile as shown by the following: a) Certification dated April 12, 2007 of the Barangay Kagawad of Barangay Lapasan, Cagayan de Oro City stating that Noble is a resident of the barangay;^[30] b) Affidavit^[31] of the Barangay Kagawad of Esperanza, Kinoguitan, Misamis Oriental dated April 14, 2007, attesting that Noble has not resided in Barangay Esperanza in Kinoguitan; c) photos^[32] and official receipts^[33] showing that Noble and his wife maintain their residence and businesses in Lapasan; d) tax declarations^[34] of real properties in Cagayan de Oro City under the name of Noble; and e) the "Household Record of Barangay Inhabitants"^[35] of Mayor Narciso Go, which did not include Noble or his wife, Bernadith Go, which disproves Noble's claim that he resides with his father-in-law.

From the foregoing, we find that Noble's alleged change of domicile was effected solely for the purpose of

qualifying as a candidate in the 2007 elections. This we cannot allow. In *Torayno, Sr. v. Commission on Elections*, [36] we held that the one-year residency requirement is aimed at excluding outsiders "from taking advantage of favorable circumstances existing in that community for electoral gain." Establishing residence in a community merely to meet an election law requirement defeats the purpose of representation: to elect through the assent of voters those most cognizant and sensitive to the needs of the community.[37] Thus, we find Noble disqualified from running as municipal mayor of Kinoguitan, Misamis Oriental in the 2007 elections.

Notwithstanding Noble's disqualification, we find no basis for the proclamation of Judith Pundaodaya, as mayor. The rules on succession under the Local Government Code, explicitly provides:

SECTION 44. Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor. - If a permanent vacancy occurs in the office of the xxx mayor, the xxx vice-mayor concerned shall become the xxx mayor.

x x x x

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 or is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office.

x x x x (Emphasis ours)

Thus, considering the permanent vacancy in the Office of the Mayor of Kinoguitan, Misamis Oriental occasioned by Noble's disqualification, the proclaimed Vice-Mayor shall then succeed as mayor.[38]

WHEREFORE, the petition is GRANTED. The August 3, 2007 Resolution of the COMELEC En Banc in SPA No. 07-202 declaring respondent Arsenio Densing Noble qualified to run as Mayor of Kinoguitan, Misamis Oriental, is REVERSED AND SET ASIDE. In view of the permanent vacancy in the Office of the Mayor of Kinoguitan, Misamis Oriental, the proclaimed Vice-Mayor is ORDERED to succeed as Mayor.

SO ORDERED.

Puno, C.J., Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, and Abad, JJ., concur.
Quisumbing and Carpio, JJ., on official leave.

[1] Rollo, pp. 9-35.

[2] *Id.* at 58-64. Penned by Commissioner Resurreccion Z. Borra and concurred in by Commissioners Benjamin S. Abalos, Sr., Romeo A. Brawner, and Nicodemo T. Ferrer. Commissioners Florentino A. Tuason, Jr. and Rene V. Sarmiento dissented.

[3] Comelec Records, pp. 1-11.

[4] *Id.* at 27-41.

[5] Rollo, pp. 50-57. Penned by Commissioner Florentino A. Tuason, Jr.

[6] *Id.* at 56.

[7] *Id.* at 59.

[8] *Id.* at 62.

[9] Id. at 63.

[10] Id. at 65.

[11] Id. at 66-67.

[12] Id. at 71 and 73.

[13] Id. at 75.

[14] (a) An elective local official must be a citizen of the Philippines; a registered voter in the barangay, municipality, city, or province or, in the case of a member of the sangguniang panlalawigan, sangguniang panlungsod, or sangguniang bayan, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect.

[15] G.R. No. 180088, January 19, 2009.

[16] 369 Phil. 798, 818 (1999).

[17] Id. at 819.

[18] In the Matter of the Petition for Disqualification of Tess Dumpit-Michelena, G.R. Nos. 163619-20, November 17, 2005, 475 SCRA 290, 303.

[19] Comelec Records, pp. 44-45.

[20] Id. at 43.

[21] Id. at 75.

[22] Id. at 46-48.

[23] Id. at 49-73.

[24] Id. at 74.

[25] *Domino v. Commission on Elections*, supra note 16 at 820.

[26] 375 Phil. 1106 (1999).

[27] Id. at 1118, citing *Faypon v. Quirino*, 96 Phil. 294 (1954).

[28] *Domino v. Commission on Elections*, supra note 16 at 819.

[29] Comelec Records, p. 33.

[30] Rollo, p. 36.

[31] Id. at 40.

[32] Id. at 37, 43.

[33] Id. at 37, 44.

[34] Id. at 45-49.

[35] Id. at 41-42.

[36] G.R. No. 137329, August 9, 2000, 337 SCRA 574.

[37] Id. at 584, citing *Aquino v. Commission on Elections*, G.R. No. 120265, September 18, 1995, 248 SCRA 400, 420-421.

[38] *Limbona v. Commission on Elections*, G.R. No. 181097, June 25, 2008, 555 SCRA 391, 404.

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