

NORLAINIE MITMUG LIMBONA, PETITIONER, VS. COMMISSION ON ELECTIONS AND MALIK “BOBBY” T. ALINGAN, RESPONDENTS.

G.R. No. 181097. June 25, 2008

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

This petition for certiorari with prayer for issuance of a temporary restraining order and/or writ of preliminary injunction seeks to reverse and nullify the September 4, 2007 Resolution[1] of the Commission on Elections (Comelec) in SPA Case No. 07-611 disqualifying petitioner to run as mayor of the municipality of Pantar, Lanao del Norte, as well as the January 9, 2008 Resolution[2] denying the motion for reconsideration.

Petitioner Norlaine Mitmug Limbona (Norlaine), her husband, Mohammad G. Limbona (Mohammad), and respondent Malik "Bobby" T. Alingan (Malik) were mayoralty candidates in Pantar, Lanao del Norte during the 2007 Synchronized National and Local Elections. Mohammad and Norlaine filed their certificates of candidacy with Acting Election Officer, Alauya S. Tago, on January 22, 2007 and March 29, 2007, respectively; while Malik filed his certificate of candidacy with the Office of the Election Officer on March 26, 2007.

On April 2, 2007, Malik filed a petition to disqualify Mohammad for failure to comply with the residency requirement. The petition was docketed as SPA No. 07-188. Subsequently, on April 12, 2007, Malik filed another petition to disqualify Norlaine also on the ground of lack of the one-year residency requirement. The petition was docketed as SPA No. 07-611.[3]

On April 21, 2007, Norlaine filed an Affidavit of Withdrawal of Certificate of Candidacy.[4] Thereafter, on May 2, 2007, she filed before the Office of the Provincial Election Supervisor a Motion to Dismiss[5] the petition for disqualification in SPA No. 07-611 on the ground that the petition had become moot in view of the withdrawal of her certificate of candidacy.

The Comelec en banc granted the withdrawal of Norlaine's certificate of candidacy in Resolution No. 7949[6] dated May 13, 2007, the dispositive portion of which provides:

The Commission RESOLVED, as it hereby RESOLVES, to approve the foregoing recommendations of the Law Department, as concurred in by Commissioner Florentino A. Tuason, Jr., as follows:

- To GIVE due course to the Affidavits of Withdrawal of Certificates of Candidacy of the following candidates:

x x x x

Norlaine M. Limbona Mayor Pantar, Lanao del Norte

x x x x

- To direct the Election Officers concerned to DELETE the aforementioned names of candidates from the Certified List of Candidates.

Let the Law Department implement this resolution with dispatch.

SO ORDERED.

Meanwhile, the First Division of Comelec issued on May 24, 2007 a Resolution[7] in SPA No. 07-188 granting the petition filed by Malik and disqualifying Mohammad from running as municipal mayor of Pantar, Lanao del Norte for failing to satisfy the one year residency requirement and for not being a registered voter of the said place, thus:

WHEREFORE, premises considered, the instant petition is GRANTED. Respondent Mohammad "Exchan" G. Limbona is hereby disqualified. Accordingly, his name is ordered deleted from the official list of candidates for the position of mayor of the municipality of Pantar, Lanao del Norte.

SO ORDERED.

The May 24, 2007 Resolution became final and executory on June 2, 2007.[8]

Consequently, Norlaine filed a new certificate of candidacy as substitute candidate for Mohammad which was given due course by the Comelec en banc in its Resolution No. 8255[9] dated July 23, 2007, the dispositive portion of which states:

The Commission RESOLVED, as it hereby RESOLVES, to approve the foregoing recommendations of the Law Department, as follows:

- To GIVE due course to the Certificate of Candidacy and Certificate of Nomination and Acceptance of Norlaine "Lai-Exchan" Mitmug Limbona as substitute candidate for Mohammad "Exchan" G. Limbona for Mayor, Pantar, Lanao del Norte; and

- To direct the Election Officer of Pantar, Lanao del Norte to DELETE the name of Mohammad "Exchan" G. Limbona from the Certified List of Candidates for Mayor, Pantar, Lanao del Norte and to INCLUDE therein the name of Norlaine "Lai-Exchan" Mitmug Limbona.

Let the Law Department implement this resolution with dispatch.

SO ORDERED.

Thus, Malik filed a second petition for disqualification against Norlaine docketed as SPA No. 07-621.

After the elections, Norlaine emerged as the winning candidate and accordingly took her oath and assumed office.

However, on September 4, 2007, the Second Division of Comelec in SPA No. 07-611 disqualified Norlaine on three grounds: lack of the one-year residency requirement; not being a registered voter of the municipality; and, nullity of her certificate of candidacy for having been filed at a place other than the Office of the Election Officer.

Norlaine filed an Omnibus Motion to declare the petition in SPA No. 07-611 moot and/or for reconsideration, arguing that the Comelec en banc had approved the withdrawal of her first certificate of candidacy and had given due course to her new certificate of candidacy as a substitute candidate for Mohammad. Malik opposed the omnibus motion.

Meanwhile, the Second Division of Comelec in SPA No. 07-621, promulgated on November 23, 2007 a Resolution[10] disqualifying Norlaine from running as mayor of Pantar, Lanao del Norte. It held thus:

As regards the residency requirement, We rule for petitioner.

As borne out from the record, respondent's domicile of origin was in Maguing, Lanao del Norte, which is her place of birth. When she got married, she became a resident of Marawi City, specifically, in Barangay Rapasun where her husband served as Barangay Chairman until November 2006. This is her domicile by operation of law pursuant to the Family Code as applied in the case of *Larrazabal v. Comelec* (G.R. No. 100739, September 3, 1991).

What respondent now is trying to impress upon Us is that she has changed her aforesaid domicile and resided in Pantar, Lanao del Norte. x x x

In the present case, the evidence adduced by respondent, which consists merely of self-serving affidavits cannot persuade Us that she has abandoned her domicile of origin or her domicile in Marawi City. It is alleged that respondent "has been staying, sleeping and doing business in her house for more than 20 months" in Lower Kalanganan and yet, there is no independent and competent evidence that would corroborate such statement.

Further, We find no other act that would indicate respondent's intention to stay in Pantar for an indefinite period of time. The filing of her Certificate of Candidacy in Pantar, standing alone, is not sufficient to hold that she has chosen Pantar as her new residence. We also take notice of the fact that in SPA No. 07-611, this Commission has even found that she is not a registered voter in the said municipality warranting her disqualification as a candidate.[11]

On January 9, 2008, the Comelec en banc in SPA No. 07-611 denied Norlaine's motion for reconsideration.

Hence, the instant petition alleging that the Comelec gravely abused its discretion in proceeding to resolve the petition in SPA No. 07-611 despite the approval of petitioner's withdrawal of certificate of candidacy.[12]

On January 29, 2008, the Court resolved to issue a temporary restraining order effective immediately enjoining respondents from enforcing and implementing the Comelec Resolutions disqualifying petitioner as a candidate for mayor in Pantar, Lanao del Norte.[13]

The petition lacks merit.

The withdrawal of a certificate of candidacy does not necessarily render the certificate void ab initio. Once filed, the permanent legal effects produced thereby remain even if the certificate itself be subsequently withdrawn.[14] Section 73 of the Omnibus Election Code of the Philippines (B.P. Blg. 881, as amended) provides:

Sec. 73. Certificate of candidacy. - No person shall be eligible for any elective public office unless he files a sworn certificate of candidacy within the period fixed herein. A person who has filed a certificate of candidacy may, prior to the election, withdraw the same by submitting to the office concerned a written declaration under oath. No person shall be eligible for more than one office to be filled in the same election, and if he files his certificate of candidacy for more than one office, he shall not be eligible for any of them. However, before the expiration of the period for the filing of certificate of candidacy, the person who has filed more than one certificate of candidacy may declare under oath the office for which he desires to be eligible and cancel the certificate of candidacy for the other office or offices. The filing or withdrawal of a certificate of candidacy shall not affect whatever civil, criminal or administrative liabilities which a candidate may have incurred. (Emphasis supplied)

Thus, when petitioner filed her certificate of candidacy on March 29, 2007, such act produced legal effects, and the withdrawal of the same, despite the approval of the Comelec, did not bar or render nugatory the legal proceedings it had set in motion. As such, the Comelec did not commit grave abuse of discretion when it ruled on the merits of the petition despite the withdrawal of petitioner's certificate of candidacy. The Comelec correctly

held that a case only becomes moot when "there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits." [15] In the instant case, although petitioner withdrew her first certificate of candidacy, the subsequent disqualification of her husband required that she file a new certificate of candidacy as a substitute candidate. The second filing of a certificate of candidacy thus once again put her qualifications in issue. Hence, a ruling upon the same is necessary.

The fact that petitioner's certificate of candidacy as a substitute candidate was given due course by the Comelec did not bar the Comelec from deciding on her qualifications to run as municipal mayor. As correctly found by the Comelec:

Said resolution (Comelec Resolution No. 8255) discloses only the following: a) movant is given the green lights to be the substitute candidate for her husband who was disqualified; b) her certificate of candidacy was duly accomplished in form and substance and c) the certificate of candidacy will not cause confusion among the voters. Clearly, no issue of disqualification was passed upon by the Commission in the said resolution.

Movant may have been given the impression that the Commission's act of giving due course to her substitute certificate of candidacy constitutes a pronouncement that she is not disqualified. It must be pointed out, however, that the bases for giving due course to a certificate of candidacy are totally different from those for enunciating that the candidate is not disqualified. x x x [16]

Moreover, the Electoral Reforms Law of 1987 (R.A. No. 6646) "authorizes the Commission (Comelec) to try and decide petitions for disqualifications even after the elections," [17] thus:

SEC. 6. Effect of Disqualification Case. - Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong. (Emphasis ours)

As such, the Comelec did not err when it continued with the trial and hearing of the petition for disqualification.

The Comelec correctly found that petitioner failed to satisfy the one-year residency requirement. The term "residence" as used in the election law is synonymous with "domicile," which imports not only intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention. [18] The manifest intent of the law in fixing a residence qualification is to exclude a stranger or newcomer, unacquainted with the conditions and needs of a community and not identified with the latter, from an elective office to serve that community. [19]

For purposes of election law, the question of residence is mainly one of intention. There is no hard and fast rule by which to determine where a person actually resides. [20] Three rules are, however, well established: first, that a man must have a residence or domicile somewhere; second, that where once established it remains until a new one is acquired; and third, a man can have but one domicile at a time. [21]

In order to acquire a domicile by choice, there must concur (1) residence or bodily presence in the new locality, (2) an intention to remain there, and (3) an intention to abandon the old domicile. [22] A person's "domicile" once established is considered to continue and will not be deemed lost until a new one is established. [23]

To successfully effect a change of domicile one 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. In other words, there must basically be *animus manendi* coupled

with animus non revertendi. The purpose to remain in or at the domicile of choice must be for an indefinite period of time; the change of residence must be voluntary; and the residence at the place chosen for the new domicile must be actual.[24]

Petitioner's claim that she has been physically present and actually residing in Pantar for almost 20 months prior to the elections,[25] is self-serving and unsubstantiated. As correctly observed by the Comelec:

In the present case, the evidence adduced by respondent, which consists merely of self-serving affidavits cannot persuade Us that she has abandoned her domicile of origin or her domicile in Marawi City. It is alleged that respondent "has been staying, sleeping and doing business in her house for more than 20 months" in Lower Kalanganan and yet, there is no independent and competent evidence that would corroborate such statement.

Further, We find no other act that would indicate respondent's intention to stay in Pantar for an indefinite period of time. The filing of her Certificate of Candidacy in Pantar, standing alone, is not sufficient to hold that she has chosen Pantar as her new residence. We also take notice of the fact that in SPA No. 07-611, this Commission has even found that she is not a registered voter in the said municipality warranting her disqualification as a candidate.[26]

We note the findings of the Comelec that petitioner's domicile of origin is Maguing, Lanao del Norte,[27] which is also her place of birth; and that her domicile by operation of law (by virtue of marriage) is Rapasun, Marawi City. The Comelec found that Mohammad, petitioner's husband, effected the change of his domicile in favor of Pantar, Lanao del Norte only on November 11, 2006. Since it is presumed that the husband and wife live together in one legal residence,[28] then it follows that petitioner effected the change of her domicile also on November 11, 2006. Articles 68 and 69 of the Family Code provide:

Art. 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.

Art. 69. The husband and wife shall fix the family domicile. In case of disagreement, the court shall decide. The court may exempt one spouse from living with the other if the latter should live abroad or there are other valid and compelling reasons for the exemption. However, such exemption shall not apply if the same is not compatible with the solidarity of the family. (Emphasis ours)

Considering that petitioner failed to show that she maintained a separate residence from her husband, and as there is no evidence to prove otherwise, reliance on these provisions of the Family Code is proper and is in consonance with human experience.[29]

Thus, for failure to comply with the residency requirement, petitioner is disqualified to run for the office of mayor of Pantar, Lanao del Norte. However, petitioner's disqualification would not result in Malik's proclamation who came in second during the special election.

The rules on succession under the Local Government Code shall apply, to wit:

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)

Considering the disqualification of petitioner to run as mayor of Pantar, Lanao del Norte, the proclaimed Vice-Mayor shall then succeed as mayor.

WHEREFORE, the petition for certiorari is DISMISSED. The September 4, 2007 Resolution of the Commission on Elections in SPA Case No. 07-611 disqualifying petitioner Norlainie Mitmug Limbona from running for office of the Mayor of Pantar, Lanao del Norte, and the January 9, 2008 Resolution denying the motion for reconsideration, are AFFIRMED. In view of the permanent vacancy in the Office of the Mayor, the proclaimed Vice-Mayor shall SUCCEED as Mayor. The temporary restraining order issued on January 29, 2008 is ordered LIFTED.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-De Castro, and Brion, JJ., concur.

[1] Rollo, pp. 30-36; penned by Commissioner Rene V. Sarmiento and concurred in by Commissioners Florentino A. Tuason, Jr. and Nicodemo T. Ferrer.

[2] Id. at 39-43; signed by Acting Chairman Resurreccion Z. Borra and Commissioners Florentino A. Tuason, Jr., Romeo A. Brawner, Rene V. Sarmiento, Nicodemo T. Ferrer, and Moslemen T. Macarambon.

[3] Id. at 106-115.

[4] Id. at 157.

[5] Id. at 155-156.

[6] Id. at 198-200.

[7] Annex 1 of Comment. Per Commissioners Resurreccion Z. Borra and Romeo A. Brawner.

[8] Per Order of the COMELEC En Banc dated July 19, 2007. See Annex "2" to the Comment.

[9] Rollo, pp. 152-154.

[10] Annex 4 of Comment.

[11] Annex 4-D to 4-E of Comment.

[12] Rollo, p. 5.

[13] Id. at 211.

[14] *Monroy v. Court of Appeals*, 127 Phil. 1, 6 (1967).

[15] *Enrile v. Senate Electoral Tribunal*, G.R. No. 132986, May 19, 2004, 428 SCRA 472, 477.

[16] Rollo, p. 41.

[17] *Frivaldo v. Commission on Elections*, 327 Phil. 521, 568 (1996).

[18] *Gallego v. Verra*, 73 Phil 453, 456 (1941).

[19] Id. at 458.

[20] *Alcantara v. Secretary of Interior*, 61 Phil 459, 465 (1935).

[21] *Id.*

[22] *Gallego v. Verra*, *supra*.

[23] *Domino v. Commission on Elections*, 369 Phil. 798, 819 (1999).

[24] *Id.*

[25] *Rollo*, p. 18.

[26] Annex 4-E of Comment.

[27] Should be Lanao del Sur.

[28] *Abella v. Comelec*, G.R. Nos. 100710 & 100739, September 3, 1991, 201 SCRA 259, 264.

[29] *Id.* at 262.

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