

**LUIS A. ASISTIO, PETITIONER, VS. HON. THELMA CANLAS
TRINIDAD-PE AGUIRRE, PRESIDING JUDGE, REGIONAL TRIAL
COURT, CALOOCAN CITY, BRANCH 129; HON. ARTHUR O.
MALABAGUIO, PRESIDING J...**

G.R. No. 191124. April 27, 2010

Ponente: NACHURA, J.

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NACHURA, J.:

This is a petition[1] for certiorari, with prayer for the issuance of a status quo ante order, under Rule 65 of the Rules of Court, assailing the Order[2] dated February 15, 2010 issued, allegedly with grave abuse of discretion amounting to lack or excess of jurisdiction, by public respondent Judge Thelma Canlas Trinidad-Pe Aguirre (Judge Aguirre) of the Regional Trial Court (RTC), Branch 129, Caloocan City in SCA No. 997. The petition likewise ascribes error in, and seeks to nullify, the decision dated February 5, 2010, promulgated by the Metropolitan Trial Court (MeTC), Branch 52, Caloocan City in SCA No. 10-582.

The Antecedents

On January 26, 2010, private respondent Enrico R. Echiverri (Echiverri) filed against petitioner Luis A. Asistio (Asistio) a Petition[3] for Exclusion of Voter from the Permanent List of Voters of Caloocan City (Petition for Exclusion) before the MeTC, Branch 52, Caloocan City. Public respondent Judge Arthur O. Malabaguio (Judge Malabaguio) presides over MeTC Branch 52. The petition was docketed as SCA No. 10-582, entitled "Atty. Enrico R. Echiverri v. Luis Aquino Asistio, the Board of Election Inspectors of Precinct No. 1811A, Barangay 15, Caloocan City and the City Election Officer of Caloocan."

In his petition, Echiverri alleged that Asistio is not a resident of Caloocan City, specifically not of 123 Interior P. Zamora St., Barangay 15, Caloocan City, the address stated in his Certificate of Candidacy (COC) for Mayor in the 2010 Automated National and Local Elections. Echiverri, also a candidate for Mayor of Caloocan City, was the respondent in a Petition to Deny Due Course and/or Cancellation of the Certificate of Candidacy filed by Asistio. According to Echiverri, when he was about to furnish Asistio a copy of his Answer to the latter's petition, he found out that Asistio's address is non-existent. To support this, Echiverri attached to his petition a Certification[4] dated December 29, 2009 issued by the Tanggapan ng Punong Barangay of Barangay 15 - Central, Zone 2, District II of Caloocan City. He mentioned that, upon verification of the 2009 Computerized Voters' List (CVL) for Barangay 15, Asistio's name appeared under voter number 8, with address at 109 Libis Gochuico, Barangay 15, Caloocan City.[5]

Echiverri also claimed that Asistio was no longer residing in this address, since what appeared in the latter's COC for Mayor[6] in the 2007 elections was No. 110 Unit 1, P. Zamora St., Barangay 15, Caloocan City,[7] but that the address used in Asistio's current COC is situated in Barangay 17. He said that, per his verification, the voters[8] duly registered in the 2009 CVL using the address No. 123 P. Zamora St., Barangay 17, Caloocan City did not include Asistio.[9]

On January 28, 2010, the MeTC issued a Notice of Hearing[10] notifying Asistio, through Atty. Carlos M. Caliwara, his counsel of record in SPA No. 09-151 (DC), entitled "Asistio v. Echiverri," before the Commission on Elections (COMELEC), of the scheduled hearings of the case on February 1, 2 and 3, 2010.

On February 2, 2010, Asistio filed his Answer Ex Abundante Ad Cautelam with Affirmative Defenses.[11] Asistio alleged that he is a resident of No. 116, P. Zamora St., Caloocan City, and a registered voter of Precinct No. 1811A because he mistakenly relied on the address stated in the contract of lease with Angelina dela Torre Tengco (Tengco), which was 123 Interior P. Zamora St., Barangay 15, Caloocan City.[12]

Trial on the merits ensued, after which Judge Malabaguio directed the parties to file their respective position papers on or before February 4, 2010.

Echiverri filed his Memorandum[13] on February 4, 2010. Asistio, on the other hand, failed to file his memorandum since the complete transcripts of stenographic notes (TSN) were not yet available.[14]

On February 5, 2010, Judge Malabaguio rendered a decision,[15] disposing, as follows —

WHEREFORE, premises considered, the Election Registration Board, Caloocan City is hereby directed to remove the name of LUIS AQUINO ASISTIO from the list of permanent voters of Caloocan City.

SO ORDERED.[16]

Meanwhile, on January 26, 2010, Echiverri filed with the COMELEC a Petition for Disqualification,[17] which was docketed as SPA No. 10-013 (DC). The Petition was anchored on the grounds that Asistio is not a resident of Caloocan City and that he had been previously convicted of a crime involving moral turpitude. Asistio, in his Answer with Special and Affirmative Defenses (Com Memorandum),[18] raised the same arguments with respect to his residency and also argued that the President of the Philippines granted him an absolute pardon.

On February 10, 2010, Asistio filed his Notice of Appeal[19] and his Appeal (from the Decision dated February 5, 2010)[20] and paid the required appeal fees through postal money orders.[21]

On February 11, 2010, Echiverri filed a Motion[22] to Dismiss Appeal, arguing that the RTC did not acquire jurisdiction over the Appeal on the ground of failure to file the required appeal fees.

On the scheduled hearing of February 15, 2010, Asistio opposed the Motion and manifested his intention to file a written comment or opposition thereto. Judge Aguirre directed Echiverri's counsel to file the appropriate responsive pleading to Asistio's appeal in her Order[23] of same date given in open court.

Judge Aguirre, however, cancelled her February 15, 2010 Order, and issued an Amended Order[24] on that date holding in abeyance the filing of the responsive pleading of Echiverri's counsel and submitting the Motion for resolution.

In another Order also dated February 15, 2010, Judge Aguirre granted the Motion on the ground of non-payment of docket fees essential for the RTC to acquire jurisdiction over the appeal. It stated that Asistio paid his docket fee only on February 11, 2010 per the Official Receipt of the MeTC, Office of the Clerk of Court.

Hence, this petition.

Per Resolution[25] dated February 23, 2010, this Court required the respondents to comment on the petition, and issued the Status Quo Ante Order prayed for.

On March, 8, 2010, Echiverri filed his Comment to the Petition (with Motion to Quash Status Quo Ante Order). Departing from Echiverri's position against the Petition, the Office of the Solicitor General (OSG), on March 30,

2010, filed its Comment via registered mail. The OSG points out that Asistio's family is "known to be one of the prominent political families in Caloocan City, and that there is no indication whatsoever that [Asistio] has ever intended to abandon his domicile, Caloocan City." Further, the OSG proposes that the issue at hand is better resolved by the people of Caloocan City. In all, the OSG propounds that technicalities and procedural niceties should bow to the sovereign will of the people of Caloocan City.

Our Ruling

In her assailed Order, Judge Aguirre found —

The payment of docket fees is an essential requirement for the perfection of an appeal.

The record shows that Respondent-Appellant paid his docket fee only on February 11, 2010, evidenced by O.R. No. 05247240 for Php1,510.00 at the Metropolitan Trial Court, Office of the Clerk of Court, yet the Notice of Appeal was filed on February 10, 2010, at 5:30 p.m., which is way beyond the official office hours, and a copy thereof was filed at the Office of the Clerk of Court, Metropolitan Trial Court at 5:00 p.m. of February 10, 2010. Thus, it is clear that the docket fee was not paid simultaneously with the filing of the Notice of Appeal.

It taxes the credulity of the Court why the Notice of Appeal was filed beyond the regular office hours, and why did respondent-appellant had to resort to paying the docket fee at the Mall of Asia when he can conveniently pay it at the Office of the Clerk of Court, Metropolitan Trial Court along with the filing of the Notice of Appeal on February 10, 2010 at 5:30 p.m. at the Metropolitan Trial Court, which is passed [sic] the regular office hours.

The conclusion is then inescapable that for failure to pay the appellate docket fee, the Court did not acquire jurisdiction over the case.[26]

This Court observes, that while Judge Aguirre declares in her Order that the appellate docket fees were paid on February 11, 2010, she conveniently omits to mention that the postal money orders obtained by Asistio for the purpose were purchased on February 10, 2010.[27] It is noteworthy that, as early as February 4, 2010, Asistio already manifested that he could not properly file his memorandum with the MeTC due to the non-availability of the TSNs. Obviously, these TSNs were needed in order to prepare an intelligent appeal from the questioned February 5, 2010 MeTC Order. Asistio was able to get copies of the TSNs only on February 10, 2010, the last day to file his appeal, and, naturally, it would take some time for him to review and incorporate them in his arguments on appeal. Understandably, Asistio filed his notice of appeal and appeal, and purchased the postal money orders in payment of the appeal fees on the same day. To our mind, Asistio, by purchasing the postal money orders for the purpose of paying the appellate docket fees on February 10, 2010, although they were tendered to the MeTC only on February 11, 2010, had already substantially complied with the procedural requirements in filing his appeal.

This appeal to the RTC assails the February 5, 2010 MeTC Order directing Asistio's name to be removed from the permanent list of voters [in Precinct 1811A] of Caloocan City. The Order, if implemented, would deprive Asistio of his right to vote.

The right to vote is a most precious political right, as well as a bounden duty of every citizen, enabling and requiring him to participate in the process of government to ensure that it can truly be said to derive its power solely from the consent of its constituents.[28] Time and again, it has been said that every Filipino's right to vote shall be respected, upheld, and given full effect.[29] A citizen cannot be disenfranchised for the flimsiest of reasons. Only on the most serious grounds, and upon clear and convincing proof, may a citizen be deemed to have forfeited this precious heritage of freedom.

In this case, even if we assume for the sake of argument, that the appellate docket fees were not filed on time, this incident alone should not thwart the proper determination and resolution of the instant case on substantial grounds. Blind adherence to a technicality, with the inevitable result of frustrating and nullifying the constitutionally guaranteed right of suffrage, cannot be countenanced.[30]

On more than one occasion, this Court has recognized the emerging trend towards a liberal construction of procedural rules to serve substantial justice. Courts have the prerogative to relax rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily end litigation and the parties' right to due process.

It is true that, faced with an appeal, the court has the discretion whether to dismiss it or not. However, this discretion must be sound; it is to be exercised pursuant to the tenets of justice, fair play and equity, in consideration of the circumstances obtaining in each case. Thus, dismissal of appeals on purely technical grounds is frowned upon as the policy of the Court is to encourage resolution of cases on their merits over the very rigid and technical application of rules of procedure used only to help secure, not override, substantial justice. Verily, it is far better and more prudent for the court to excuse a technical lapse and afford the parties a review of the case on appeal rather than dispose of it on a technicality that would cause grave injustice to the parties.[31]

The primordial issue in this case is whether Asistio should be excluded from the permanent list of voters of [Precinct 1811A] of Caloocan City for failure to comply with the residency required by law.

Section 117 of The Omnibus Election Code (Batas Pambansa Bilang 881) states:

SECTION 117. Qualifications of a voter.--Every citizen of the Philippines, not otherwise disqualified by law, eighteen years of age or over, who shall have resided in the Philippines for one year and in the city or municipality wherein he proposes to vote for at least six months immediately preceding the election, may be registered as a voter.

Any person who transfers residence to another city, municipality or country solely by reason of his occupation; profession; employment in private or public service; educational activities; work in military or naval reservations; service in the army, navy or air force; the constabulary or national police force; or confinement or detention in government institutions in accordance with law, shall be deemed not to have lost his original residence.

This provision is echoed in Section 9 of The Voters Registration Act of 1996 (Republic Act No. 8189), to wit:

SEC. 9. Who May Register.--All citizens of the Philippines not otherwise disqualified by law who are at least eighteen (18) years of age and who shall have resided in the Philippines for at least one (1) year and in the place wherein they propose to vote for at least six (6) months immediately preceding the election, may register as a voter.

Any person who temporarily resides in another city, municipality or country solely by reason of his occupation, profession, employment in private or public service, educational activities, work in the military or naval reservations within the Philippines, service in the Armed Forces of the Philippines, the National Police Force, or confinement or detention in government institutions in accordance with law, shall not be deemed to have lost his original residence.

Any person who, on the day of registration may not have reached the required age or period of residence but who, on the day of election shall possess such qualifications, may register as a voter.

From these provisions, the residency requirement of a voter is at least one (1) year residence in the Philippines and at least six (6) months in the place where the person proposes or intends to vote. "Residence," as used in the

law prescribing the qualifications for suffrage and for elective office, is doctrinally settled to mean "domicile," importing not only an intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention[32] inferable from a person's acts, activities, and utterances.[33] "Domicile" denotes a fixed permanent residence where, when absent for business or pleasure, or for like reasons, one intends to return.[34] In the consideration of circumstances obtaining in each particular case, three rules must be borne in mind, namely: (1) that a person must have a residence or domicile somewhere; (2) once established, it remains until a new one is acquired; and (3) that a person can have but one residence or domicile at a time.[35]

Domicile is not easily lost. To successfully effect a transfer thereof, one must demonstrate: (1) an actual removal or change of domicile; (2) a bona fide intention of abandoning the former place of residence and establishing a new one; and (3) acts which correspond with that purpose.[36] There must 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.[37]

Asistio has always been a resident of Caloocan City since his birth or for more than 72 years. His family is known to be among the prominent political families in Caloocan City. In fact, Asistio served in public office as Caloocan City Second District representative in the House of Representatives, having been elected as such in the 1992, 1995, 1998, and 2004 elections. In 2007, he also sought election as City Mayor. In all of these occasions, Asistio cast his vote in the same city. Taking these circumstances into consideration, gauged in the light of the doctrines above enunciated, it cannot be denied that Asistio has qualified, and continues to qualify, as a voter of Caloocan City. There is no showing that he has established domicile elsewhere, or that he had consciously and voluntarily abandoned his residence in Caloocan City. He should, therefore, remain in the list of permanent registered voters of Precinct No. 1811A, Barangay 15, Caloocan City.

That Asistio allegedly indicated in his Certificate of Candidacy for Mayor, both for the 2007 and 2010 elections, a non-existent or false address, or that he could not be physically found in the address he indicated when he registered as a voter, should not operate to exclude him as a voter of Caloocan City. These purported misrepresentations in Asistio's COC, if true, might serve as basis for an election offense under the Omnibus Election Code (OEC),[38] or an action to deny due course to the COC.[39] But to our mind, they do not serve as proof that Asistio has abandoned his domicile in Caloocan City, or that he has established residence outside of Caloocan City.

With this disquisition, we find no necessity to discuss the other issues raised in the petition.

WHEREFORE, the petition is GRANTED. The assailed Order dated February 15, 2010 of the Regional Trial Court, Branch 129, Caloocan City in SCA No. 997 and the decision dated February 5, 2010 of the Metropolitan Trial Court, Branch 52, Caloocan City in SCA No. 10-582 are REVERSED and SET ASIDE. Petitioner Luis A. Asistio remains a registered voter of Precinct No. 1811A, Barangay 15, Caloocan City. The Status Quo Ante Order issued by this Court on February 23, 2010 is MADE PERMANENT.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Del Castillo, Abad, Villarama, Jr., and Mendoza, JJ., concur.
Bersamin, J., no part, relation to a party.

[1] Rollo, pp. 3-64.

[2] Id. at 65-66.

[3] Id. at 67-72.

[4] Id. at 75.

[5] Id. at 81.

[6] Id. at 79.

[7] Id. at 68.

[8] The voters listed as residing in 123 P. Zamora St., Barangay 17, Caloocan City are: Garcia, Romana de Vera; Ramos, Adoracion Pajarillo; Ramos, Daisy Nuarin; Ramos, Sonio Jr. Pajarillo; Nuarin, Marilou Lubiano; and Nuarin, Joseph dela Cruz.

[9] Rollo, pp. 76-78.

[10] Id. at 82.

[11] Id. at 88.

[12] Per the Sworn Statement of Tengco dated January 8, 2010; id. at 104-105.

[13] Rollo, pp. 111-124.

[14] Per the Manifestation of Asistio dated February 4, 2010; id. at 107-110.

[15] Rollo, pp. 125-138.

[16] Id. at 138.

[17] Id. at 140-145.

[18] Id. at 157-174.

[19] Id. at 190-192.

[20] Id. at 193-244.

[21] Id. at 245.

[22] Id. at 248-252.

[23] Id. at 254.

[24] Id. at 255.

[25] Id. at 264.

[26] Id. at 66.

[27] Id. at 245.

[28] Romualdez v. RTC, Branch 7, Tacloban City, G.R. No. 104960, September 14, 1993, 226 SCRA 408.

[29] Akbayan-Youth v. Commission on Elections, G.R. Nos. 147066 & 147179, March 26, 2001, 355 SCRA 318.

[30] Bince, Jr. v. Comelec, 312 Phil. 316 (1995).

[31] *Barangay Sangalang v. Barangay Maguihan*, G.R. No. 1579792, December 23, 2009, citing *Ong Lim Sing, Jr. v. FEB Leasing and Finance Corporation*, 524 SCRA 333, 343-344 (2007).

[32] *Domino v. COMELEC*, 369 Phil. 798 (1999); *Romualdez v. RTC, Branch 7, Tacloban City*, supra note 28, at 415; *Nuval v. Guray*, 52 Phil. 645 (1928).

[33] *Abella v. Commission on Elections*, G.R. Nos. 100710 & 100739, September 3, 1991, 201 SCRA 253.

[34] *Romualdez v. RTC, Branch 7, Tacloban City*, supra note 28; *Ong Huan Tin v. Republic*, No. L-20997, April 27, 1967, 19 SCRA 966.

[35] *Domino v. COMELEC*, supra note 32; *Alcantara v. Secretary of the Interior*, 61 Phil. 459, 465 (1935).

[36] *Romualdez-Marcos v. Commission on Elections*, G.R. No. 119976, September 18, 1995, 248 SCRA 300, 331.

[37] *Papandayan, Jr. v. Commission on Elections*, 430 Phil. 754 (2002); *Romualdez v. RTC, Branch 7, Tacloban City*, supra note 28.

[38] See Section 74. in relation to Section 262 of the Omnibus Election Code.

[39] See Section 78 of the Omnibus Election Code. Echiverri filed with the COMELEC a Petition for Disqualification against Asistio grounded on the latter's previous conviction by final judgment of an offense involving moral turpitude, and his lack of residency in Caloocan City. However, the COMELEC (First Division) dismissed the Petition for lack of merit. To date, Echiverri has filed a Manifestation dated April 8, 2010 asking the Court to note that his Motion for Reconsideration of the Resolution of the COMELEC (First Division) is now pending with the COMELEC en banc.

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