

CASAN MACODE MACQUILING, PETITIONER, VS. COMMISSION ON ELECTIONS, ROMMEL ARNADO Y CAGOCO, AND LINOG G. BALUA. RESPONDENTS.

G.R. No. 195649. July 02, 2013

Ponente: SERENO, J.

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SERENO, J.:

This Resolution resolves the Motion for Reconsideration filed by respondent on May 10, 2013 and the Supplemental Motion for Reconsideration filed on May 20, 2013.

We are not unaware that the term of office of the local officials elected in the May 2010 elections has already ended on June 30, 2010. Arnado, therefore, has successfully finished his term of office. While the relief sought can no longer be granted, ruling on the motion for reconsideration is important as it will either affirm the validity of Arnado's election or affirm that Arnado never qualified to run for public office.

Respondent failed to advance any argument to support his plea for the reversal of this Court's Decision dated April 16, 2013. Instead, he presented his accomplishments as the Mayor of Kauswagan, Lanao del Norte and reiterated that he has taken the Oath of Allegiance not only twice but six times. It must be stressed, however, that the relevant question is the efficacy of his renunciation of his foreign citizenship and not the taking of the Oath of Allegiance to the Republic of the Philippines. Neither do his accomplishments as mayor affect the question before this Court.

Respondent cites Section 349 of the Immigration and Naturalization Act of the United States as having the effect of expatriation when he executed his Affidavit of Renunciation of American Citizenship on April 3, 2009 and thus claims that he was divested of his American citizenship. If indeed, respondent was divested of all the rights of an American citizen, the fact that he was still able to use his US passport after executing his Affidavit of Renunciation repudiates this claim.

The Court cannot take judicial notice of foreign laws,[1] which must be presented as public documents[2] of a foreign country and must be "evidenced by an official publication thereof." [3] Mere reference to a foreign law in a pleading does not suffice for it to be considered in deciding a case.

Respondent likewise contends that this Court failed to cite any law of the United States "providing that a person who is divested of American citizenship thru an Affidavit of Renunciation will re-acquire such American citizenship by using a US Passport issued prior to expatriation." [4]

American law does not govern in this jurisdiction. Instead, Section 40(d) of the Local Government Code calls for application in the case before us, given the fact that at the time Arnado filed his certificate of candidacy, he was not only a Filipino citizen but, by his own declaration, also an American citizen. It is the application of this law and not of any foreign law that serves as the basis for Arnado's disqualification to run for any local elective position.

With all due respect to the dissent, the declared policy of Republic Act No. (RA) 9225 is that “all Philippine citizens who become citizens of another country shall be deemed not to have lost their Philippine citizenship under the conditions of this Act.”[5] This policy pertains to the reacquisition of Philippine citizenship. Section 5(2)[6] requires those who have re-acquired Philippine citizenship and who seek elective public office, to renounce any and all foreign citizenship.

This requirement of renunciation of any and all foreign citizenship, when read together with Section 40(d) of the Local Government Code[7] which disqualifies those with dual citizenship from running for any elective local position, indicates a policy that anyone who seeks to run for public office must be solely and exclusively a Filipino citizen. To allow a former Filipino who reacquires Philippine citizenship to continue using a foreign passport – which indicates the recognition of a foreign state of the individual as its national – even after the Filipino has renounced his foreign citizenship, is to allow a complete disregard of this policy.

Further, we respectfully disagree that the majority decision rules on a situation of doubt.

Indeed, there is no doubt that Section 40(d) of the Local Government Code disqualifies those with dual citizenship from running for local elective positions.

There is likewise no doubt that the use of a passport is a positive declaration that one is a citizen of the country which issued the passport, or that a passport proves that the country which issued it recognizes the person named therein as its national.

It is unquestioned that Arnado is a natural born Filipino citizen, or that he acquired American citizenship by naturalization. There is no doubt that he reacquired his Filipino citizenship by taking his Oath of Allegiance to the Philippines and that he renounced his American citizenship. It is also indubitable that after renouncing his American citizenship, Arnado used his U.S. passport at least six times.

If there is any remaining doubt, it is regarding the efficacy of Arnado’s renunciation of his American citizenship when he subsequently used his U.S. passport. The renunciation of foreign citizenship must be complete and unequivocal. The requirement that the renunciation must be made through an oath emphasizes the solemn duty of the one making the oath of renunciation to remain true to what he has sworn to. Allowing the subsequent use of a foreign passport because it is convenient for the person to do so is rendering the oath a hollow act. It devalues the act of taking of an oath, reducing it to a mere ceremonial formality.

The dissent states that the Court has effectively left Arnado “a man without a country”. On the contrary, this Court has, in fact, found Arnado to have more than one. Nowhere in the decision does it say that Arnado is not a Filipino citizen. What the decision merely points out is that he also possessed another citizenship at the time he filed his certificate of candidacy.

Well-settled is the rule that findings of fact of administrative bodies will not be interfered with by the courts in the absence of grave abuse of discretion on the part of said agencies, or unless the aforementioned findings are not supported by substantial evidence.[8] They are accorded not only great respect but even finality, and are binding upon this Court, unless it is shown that the administrative body had arbitrarily disregarded or misapprehended evidence before it to such an extent as to compel a contrary conclusion had such evidence been properly appreciated.[9]

Nevertheless, it must be emphasized that COMELEC First Division found that Arnado used his U.S. Passport at least six times after he renounced his American citizenship. This was debunked by the COMELEC En Banc, which found that Arnado only used his U.S. passport four times, and which agreed with Arnado’s claim that he only used his U.S. passport on those occasions because his Philippine passport was not yet issued. The

COMELEC En Banc argued that Arnado was able to prove that he used his Philippine passport for his travels on the following dates: 12 January 2010, 31 January 2010, 31 March 2010, 16 April 2010, 20 May 2010, and 4 June 2010.

None of these dates coincide with the two other dates indicated in the certification issued by the Bureau of Immigration showing that on 21 January 2010 and on 23 March 2010, Arnado arrived in the Philippines using his U.S. Passport No. 057782700 which also indicated therein that his nationality is USA-American. Adding these two travel dates to the travel record provided by the Bureau of Immigration showing that Arnado also presented his U.S. passport four times (upon departure on 14 April 2009, upon arrival on 25 June 2009, upon departure on 29 July 2009 and upon arrival on 24 November 2009), these incidents sum up to six.

The COMELEC En Banc concluded that “the use of the US passport was because to his knowledge, his Philippine passport was not yet issued to him for his use.”[10] This conclusion, however, is not supported by the facts. Arnado claims that his Philippine passport was issued on 18 June 2009. The records show that he continued to use his U.S. passport even after he already received his Philippine passport. Arnado’s travel records show that he presented his U.S. passport on 24 November 2009, on 21 January 2010, and on 23 March 2010. These facts were never refuted by Arnado.

Thus, the ruling of the COMELEC En Banc is based on a misapprehension of the facts that the use of the U.S. passport was discontinued when Arnado obtained his Philippine passport. Arnado’s continued use of his U.S. passport cannot be considered as isolated acts contrary to what the dissent wants us to believe.

It must be stressed that what is at stake here is the principle that only those who are exclusively Filipinos are qualified to run for public office. If we allow dual citizens who wish to run for public office to renounce their foreign citizenship and afterwards continue using their foreign passports, we are creating a special privilege for these dual citizens, thereby effectively junking the prohibition in Section 40(d) of the Local Government Code.

WHEREFORE, the Motion for Reconsideration and the Supplemental Motion for Reconsideration are hereby DENIED with finality.

SO ORDERED.

Carpio, Velasco, Jr., Peralta, Bersamin, Abad, Villarama, Jr., Perez, Reyes, and Perlas-Bernabe, JJ., concur.
Leonardo-De Castro, Del Castillo, Mendoza, and Leonen, JJ., joins the dissent of J. Brion.
Brion, J., I dissent.

[1] *Benedicto v. CA*, G.R. No. 125359, 4 September 2001, citing *Vda. de Perez v. Tolete*, 232 SCRA 722, 735 (1994), which in turn cited *Philippine Commercial and Industrial Bank v. Escolin*, 58 SCRA 266 (1974).

[2] See Sec. 19, Rule 132 of the Rules of Court:

SEC. 19. Classes of Documents. – For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country.

[3] Sec. 24, Rule 132 of the Rules of Court

SEC. 24. Proof of official record. – The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

[4] Motion for Reconsideration, p. 2

[5] Sec. 2, RA 9225.

[6] Sec. 5. Civil and Political Rights and Liabilities. — Those who retain or reacquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:

(2) Those seeking elective public office in the Philippines shall meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath;

[7] SECTION 40. Disqualifications. — The following persons are disqualified from running for any elective local position:

[...]

(d) Those with dual citizenship;

[8] *Raniel v. Jochico*, G.R. No. 153413, 2 March 2007, 517 SCRA 221, 227, citing *Gala v. Ellice Agro-Industrial Corporation*, 463 Phil. 846, 859 (2003).

[9] *Id.*, citing *Industrial Refractories Corporation of the Philippines v. Court of Appeals*, 439 Phil. 36, 48 (2002).

[10] *Rollo*, p. 66.

DISSENTING OPINION

BRION, J.:

I maintain my dissent and vote to reconsider the Court's April 16, 2013 Decision. I so vote for the reasons stated in my main Dissent, some of which I restate below for emphasis. Most importantly, I believe that the majority's ruling runs counter to the policy behind Republic Act No. (RA) 9225[1], is legally illogical and unsound, and should thus be reversed.

a) The assailed Decision rules on a situation of doubt and in the relatively uncharted area of application where RA 9225 overlaps with our election laws. It reverses the Commission on Elections (COMELEC) ruling that respondent Rommel C. Arnado's use of his United States (U.S.) passport was isolated and did not affect his renunciation of his previous U.S. citizenship and his re-acquisition of Filipino citizenship. These, to my mind, should have been the starting points in the Court's consideration of the present case and the motion for reconsideration.

b) After complying with the twin requirements of RA 9225, Arnado not only became a “pure” Filipino citizen but also became eligible to run for public office. To be sure, the majority in fact concedes that Arnado’s use of his U.S. passport is not a ground for loss of Filipino citizenship under Commonwealth Act No. 63 as the law requires express renunciation and not by implication or inference from conduct. Why the norm will be any different with respect to the loss of citizenship rights is, to my mind, a question that the majority ruling left hanging and unanswered as it disregards a directly related jurisprudential landmark – *Aznar v. Commission on Elections*[2] - where the Court ruled that the mere fact that therein respondent Emilio Mario Renner Osmeña was a holder of a certificate that he is an American did not mean that he was no longer a Filipino, and that an application for an alien certificate of registration did not amount to a renunciation of his Philippine citizenship. Through the Court’s ruling in the present case (that by Arnado’s isolated use of his U.S. passport, he is reverted to the status of a dual citizen), the Court effectively reversed Aznar and, under murky facts and the flimsiest of reasons, created a new ground for the loss of the political rights of a Filipino citizen.

c) In a situation of doubt, doubts should be resolved in favor of full Filipino citizenship since the thrust of RA 9225 is to encourage the return to Filipino citizenship of natural-born Filipinos who lost their Philippine citizenship through their acquisition of another citizenship.[3] Note in this regard that Arnado consciously and voluntarily gave up a very much sought after citizenship status in favor of returning to full Filipino citizenship and participating in Philippine governance.

From the perspective of our election laws, doubts should also be resolved in favor of Arnado since his election to the office of Mayor of Kauswagan, Lanao del Norte was never in doubt. The present voters of Kauswagan, Lanao del Norte have eloquently spoken and approved Arnado’s offer of service not only once but twice – in 2010 and now in 2013. Note that the present case was very much alive in the minds of the Kauswagan voters in the immediately past May 13, 2013 elections, yet they again voted Arnado into office.

d) To reiterate what I have stated before, under RA 9225, natural-born citizens who were deemed to have lost their Philippine citizenship because of their naturalization as citizens of a foreign country and who subsequently complied with the requirements of RA 9225 are deemed not to have lost their Philippine citizenship. RA 9225 cured and negated the presumption made under CA 63. Hence, as in *Japzon v. Commission on Elections*,[4] Arnado assumed “pure” Philippine citizenship again after taking the Oath of Allegiance and executing an Oath of Renunciation of his American citizenship under RA 9225.

In this light, the proper framing of the main issue in this case should be whether Arnado’s use of his U.S. passport affected his status as a “pure” Philippine citizen. In question form – did Arnado’s use of a U.S. passport amount to a ground under the law for the loss of his Filipino citizenship under CA 63 or his rights thereunder or, alternatively, the retention of his dual citizenship status?

That Arnado’s use of his U.S. passport amounts to an express renunciation of his Filipino citizenship or some of his rights as a citizen – when its use was an isolated act that he sufficiently explained and fully justified – is not a conclusion that is easy to accept under the available facts of the case and the prevailing law. I emphasize that the law requires express renunciation in order to lose Philippine citizenship. The term means a renunciation that is made distinctly and explicitly and is not left to inference or implication; it is a renunciation manifested by direct and appropriate language, as distinguished from that which is inferred from conduct.[5] The appreciation of Arnado’s use of his U.S. passport should not depart from this norm, particularly in a situation of doubt.

Aznar, already cited above, presents a clear and vivid example, taken from jurisprudence, of what “express renunciation” is not. The Court ruled that the mere fact that Osmeña was a holder of a certificate that he is an American did not mean that he is no longer a Filipino, and that an application for an alien certificate of

registration did not amount to a renunciation of his Philippine citizenship.

In the present case, other than the use of his U.S. passport in two trips to and from the U.S., the record does not bear out any indication, supported by evidence, of Arnado's intention to re-acquire U.S. citizenship. In the absence of clear and affirmative acts of re-acquisition of U.S. citizenship either by naturalization or by express acts (such as the re-establishment of permanent residency in the U.S.), Arnado's use of his U.S. passport cannot but be considered an isolated act that did not undo his renunciation of his U.S. citizenship. What he might in fact have done was to violate American law on the use of passports, but this is a matter irrelevant to the present case. Thus, Arnado remains to be a "pure" Filipino citizen and the loss of his Philippine citizenship or of citizenship rights cannot be presumed or inferred from his isolated act of using his U.S. passport for travel purposes.

I do not dispute that an Oath of Renunciation is not an empty or formal ceremony that can be perfunctorily professed at any given day, only to be disregarded on the next. As a mandatory requirement under Section 5(2) of RA 9225, it allows former natural-born Filipino citizens who were deemed to have lost their Philippine citizenship by reason of naturalization as citizens of a foreign country to enjoy full civil and political rights, foremost among them, the privilege to run for public office.

It is another matter, however, to say that Arnado effectively negated his Oath of Renunciation when he used his U.S. passport for travel to the U.S. To reiterate, if only for emphasis, Arnado sufficiently justified the use of his U.S. passport despite his renunciation of his U.S. citizenship: when he travelled on April 14, 2009, June 25, 2009 and July 29, 2009, he had no Philippine passport that he could have used to travel to the U.S. to attend to the business and other affairs that he was leaving. If at all, he could be faulted for using his U.S. passport by the time he returned to the Philippines on November 24, 2009 because at that time, he had presumably received his Philippine passport. However, given the circumstances of Arnado's use and that he consistently used his Philippine passport for travel after November 24, 2009, the true character of his use of his U.S. passport stands out and cannot but be an isolated and convenient act that did not negate his Oath of Renunciation.

In these lights, I maintain the conclusion that no basis exists to overturn the ruling of the COMELEC for grave abuse of discretion; its ruling was neither capricious nor arbitrary as it had basis in law and in fact.

e) With the Court's assailed pronouncement and its underlying negative policy implication, the Court has effectively left Arnado "[A] MAN WITHOUT A COUNTRY"[6] - neither a U.S. citizen by U.S. law, nor a Filipino citizen with full political rights despite his compliance with all the requirements of RA 9225. The only justification given for the treatment was the isolated use of Arnado's old U.S. passport in traveling between the U.S. and the Philippines before the duly applied for Philippine passport could be issued. Under this situation, read in the context of the election environment under which *Japzon v. Commission on Elections*[7] was made, the following ruling was apparently lost on the majority:

Finally, when the evidence of x x x lack of residence qualification of a candidate for an elective position is weak or inconclusive and it clearly appears that the purpose of the law would not be thwarted by upholding the victor's right to the office, the will of the electorate should be respected. For the purpose of election laws is to give effect to, rather than frustrate, the will of the voters. x x x In this case, Japzon failed to substantiate his claim that Ty is ineligible to be Mayor of the Municipality of General Macarthur, Eastern Samar, Philippines.[8]

For all these reasons, I urge the Court to reconsider its position in the assailed April 16, 2013 Decision and grant Rommel C. Arnado's motion for reconsideration.

[1] An Act Making The Citizenship Of Philippine Citizens Who Acquire Foreign Citizenship Permanent.

Amending For The Purpose Commonwealth Act No. 63, As Amended And For Other Purposes.

[2] 264 Phil. 307 (1990).

[3] See *Japzon v. Commission on Elections*, G.R. No. 180088, January 19, 2009, 576 SCRA 331; and *Advocates and Adherents of Social Justice for School Teachers and Allied Workers (AASJS) Member v. Datumanong*, G.R. No. 160869, May 11, 2007, 523 SCRA 108.

[4] *Supra*.

[5] *Board of Immigration Commissioners, et al. v. Callano, et al.*, 134 Phil. 901, 910 (1968).

[6] The title of an 1863 short story by American writer Edward Everett Hale. *The Atlantic Monthly*, Vol. XII - December 1863 - No. LXXIV, pp. 665-679, available online at <http://www.bartleby.com/310/6/1.html> (last visited June 23, 2013).

[7] *Supra* note 3.

[8] *Id.* at 353; italics and emphasis ours.

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