

JOAQUIN ORTEGA, PROTESTANT AND APPELLANT, VS. EULOGIO F. DE GUZMAN, PROTESTEE AND APPELLEE.

G.R. No. 25758. February 18, 1967

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

This is an appeal from the order of the Court of First Instance of La Union of October 28, 1965, dismissing the protest filed by Joaquin Ortega against the election of Eulogio F. de Guzman as provincial governor of La Union in the elections held on November 12, 1963, on the ground of "abandonment of the case, failure to prosecute."

On December 14, 1963 the protestant lodged a protest in the aforementioned court (Election Case 1913), contesting the election of the protestee as governor of the province of La Union in the elections held on November 12, 1963. To the answer with counter-protest filed by the protestee, the protestant submitted his reply.

The issues having been joined, on September 8, 1964, or almost nine months after he filed his protest, the protestant filed a "Motion for authority to submit some contested ballots for examination by expert", which motion was granted by the lower court on the same day.

Some thirteen months later, or more precisely on October 18, 1965, the protestee moved to dismiss the protest on two grounds, namely, (1) failure of the protestant to prosecute for an unreasonable length of time, and (2) loss of the latter's "legal personality to maintain the suit, having forfeited the same when he publicly announced his candidacy for another office." Attached to the motion was the protestant's certificate of candidacy for the position of Representative, 1st district of La Union, in the general elections then to be held on November 9, 1966, filed by him with the Commission on Elections on September 9, 1965. The motion was set for hearing on October 18, 1965. On that date the counsel for the protestant was granted time to file a written opposition to the motion to dismiss. The written opposition never came, the said counsel limiting himself to orally opposing the motion. In its order of October 28, 1965, the lower court dismissed the protest on the ground of protestant's "abandonment of the case, failure to prosecute." In its subsequent order of January 12, 1966, it denied the protestant's motion for reconsideration of the order of dismissal.

Hence this appeal.

The appellant's assignments of error tender for resolution only one vital issue: whether the lower court erred in dismissing his election protest on the ground of "abandonment of the case, failure to prosecute."

A court may dismiss an action at the behest of the defendant when the plaintiff fails to prosecute his action for an unreasonable length of time. The dismissal of an action on this ground rests on the sound discretion of the court which must duly consider the facts and circumstances surrounding each particular case (*Brandt vs. Behn, Meyer & Co.*, 38 Phil., 351; see also *Smith Bell & Co., et al. vs. American President Lines, Ltd. and Manila Terminal Co.*, 94 Phil. 879; *Adorable vs. Bonifacio*, L-10698, April 22, 1959; *Flores vs. Phil. Alien Property Administrator*, 107 Phil. 773).

The record shows that the appellant on September 8, 1964, filed a "Motion for authority to submit some contested ballots for examination by expert." The motion was granted by the lower court. Col. Jolly Bugarin, the expert named by the appellant, made an examination of some contested ballots on October 26 and 27, 1964, but from then on nothing was heard of or from him, nor has a further examination of the remaining contested ballots been made by anyone else, in spite of "NOTIFICATIONS" filed by the appellant's counsel on November 7, 1964 and on the following December 1, making it known that said expert would continue with his examination, investigation, comparison, and copying of all the unexamined contested ballots on November 11 and December 14, 1964. Up to the present time Col. Bugarin has not even submitted a report. The record further shows that no actual photographing of the remaining contested ballots has ever been made, in spite of the order of the lower court of December 10, 1964 that photographing of all the ballots contained in the ballot boxes mentioned in the motion of September 8, 1964, was to be made on December 16, 1964 in the "presence of the expert on questioned documents."

It was only on December 27, 1965, or more than one year later, when the lower court first learned why Col. Bugarin failed to continue with his examination, investigation and comparison of all the unexamined contested ballots: the said expert had been hired by Senate President Ferdinand Marcos in connection with the Blaustein receipts case then pending investigation in the Senate.

This explanation advanced by the appellant to justify the delay in the examination of the remaining contested ballots, to our mind, cannot extricate him from a predicament he himself has created. For if Col. Bugarin after October 27, 1964,—the last date he made an examination of contested ballots—was not in a position to continue with his assigned tasks, the appellant and his counsel should have replaced him by employing another fingerprint or handwriting expert, and opportunely advised the lower court of such developments. These were not done, and the explanation now given is altogether belated. Being the protestant, the appellant should, in the very least, have advised the lower court as to the steps he intended to take to have the protest finally disposed of, considering that the term of the contested position grows shorter with the passing of each day, and by the time the said term shall have expired the appellee shall have already served the full 4-year term, and new elections held, thereby rendering the protest moot and academic (see *Baquilod, et al. vs. Bobadilla, et al.*, L-20509, March 24, 1965).

For more than ten months, therefore, or from December 1, 1964 to October 13, 1965, when the appellee filed his "Motion to Dismiss", the election protest remained dormant because of the inaction of the protestant and his counsel. The unmistakable indication of lack of interest on the part of the protestant and his counsel is the undisputed fact that faced with a motion to dismiss, and although given a period of time to file a written opposition thereto, the said counsel never filed a written opposition, contenting himself in orally and perfunctorily opposing the motion.

The failure of the appellant to prosecute his protest for an unreasonable length of time cannot be blinked away by the fact that he ran for Congressman in the 1st district of La Union and that after losing his congressional bid, he was too preoccupied with two election protests that he filed against Congresswoman Magnolia Antonino with the House Electoral Tribunal (House Electoral Tribunal Nos. 173 and 174). We do not venture a surmise with respect to which position the appellant is more in earnest in seeking, that of provincial governor or that of congressman, but there is much sense in the statement of the lower court that it "cannot disregard the atmosphere of political activity, the posters, the broadcast and even the environment that clearly denotes that the protestant is one of the earnest leading candidates" for congressman. From this and the added circumstance that after losing in his congressional bid, he filed two protests against Congresswoman Antonino, impugning her eligibility for office, we unavoidably gather the impression that the appellant is more in earnest in his bid for the position of congressman, completely relegating to the background his bid for the gubernatorial post.

With the view that we take of this case, we do not consider it profitable to pass upon the other points raised by the appellant, as the environmental circumstances described above are clearly demonstrative of his lack of interest in the speedy disposition of the instant protest.

Upon the foregoing disquisition, and upon the peremptory mandate that election contests should be concluded as speedily as possible to the end that any doubt as to the true expression of the will of the electorate will be dissipated without delay, and that the public faith, confidence and cooperation so essential to the success of government will not be undermined (*Arnedo vs. The Hon. Court of Appeals*, 82 Phil. 226; *Almeda vs. Silvosa, et al.*, 100 Phil. 844; *Sibulo Vda. de Mesa, et al. vs. Mencias, et al.* L-24583, October 29, 1966), we are constrained to uphold the lower court's order of dismissal.

Accordingly, the order appealed from is affirmed, at appellant's cost.

Concepcion, C. J., Reyes, J. B. L., Dizon, Regala, Makalintal, Bengzon, J. P., Zaldivar, and Sanchez, JJ., concur.

Order affirmed.

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