

NICASIO M. VIVERO, PLAINTIFF AND APPELLANT, VS. MATEO G. MURILLO, DEFENDANT AND APPELLEE.

G.R. No. 30271. January 30, 1929

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This quo warranto proceeding is before us upon an appeal taken by the protestant Nicasio M. Vivero from the judgment of the Court of First Instance of Leyte denying the remedy sought, dismissing the proceeding and sentencing the plaintiff to pay the costs.

To support his appeal the appellant assigns eight alleged errors which we shall consider in the course of this decision.

The following were facts established at the trial by a preponderance of the evidence:

Mateo G. Murillo, the defendant-appellee, was born in the barrio of Paliway, municipality of La Paz, of the Province of Leyte, where he lived with his parents and received his primary education. In order to continue his studies he removed first to Tacloban, Leyte, and later to Calbayog, Samar, and finally to Manila until the year 1927, at the same time acting as private secretary to Senator Veloso. Every year he returned to his native town to spend his vacations which usually lasted from two weeks to one month, remaining alternately in his parents' house and in that of his brothers. While he studied he was supported by his parents. With the approach of the general elections of 1925 Senator Veloso assigned him to Burauen, Leyte, for the purpose of campaigning for him. While in that municipality he registered there as a voter. But before the elections of that year Murillo returned to Manila in order to continue his law studies. In December 1926, he went back to La Paz and formally, though verbally, announced his candidacy for the office of municipal president of said municipality at the general elections of 1928. In the same year of 1926 he ordered some wood to be prepared or sawed to be used in the construction of a house for his residence. Later on Murillo returned to Manila and thence wrote to his friends, relatives, and acquaintances, telling them of his candidacy for the office of municipal president of La Paz. For the purposes of said candidacy, Murillo frequently went to his native town. In the month of February, 1927, he brought his family there, leaving them in his parents' house when he went back to Manila. In the month of July of the same year he returned to La Paz and lived there with his aforesaid family and later came to Manila. Lastly, in the month of November, 1927, he returned to said municipality, and did not leave it until the general elections in June, 1928. On April 4, 1928, Mateo G. Murillo went to Pascual Esplanada, a notary public in the town of the municipality of Burauen, Leyte, to subscribe to a petition under oath which was presented to the municipal treasurer of that municipality to have his name as a voter in Burauen cancelled. On April 14, of the same year, in registering as a voter in the second precinct of La Paz, said defendant Mateo G. Murillo presented a copy of his petition for cancellation to the chairman of the board of inspectors of said municipality, Pedro Tubio. The municipality of La Paz was formerly a barrio of the municipality of Burauen, having been organized as an independent municipality in 1918.

The only question to decide in this appeal is whether or not the defendant-appellee, Mateo G. Murillo, had a legal residence in the municipality of La Paz before the general elections of 1928, in order to be eligible to the office of the president of said municipality.

It will be seen that Mateo G. Murillo has always, since his childhood, been a resident of La Paz, not only while it was still a barrio of the municipality of Burauen, but also after it became an independent municipality, and he did not absent himself therefrom except when studying, first in Tacloban, Leyte, later in Calbayog, Samar, and finally in Manila. By the mere fact of having lived in Tacloban, Leyte, in Calbayog, Samar, and in Manila, as a student, the defendant-appellee did not acquire legal residence in said towns, nor lose his residence in La Paz, because, being single, and supported by his parents while studying, he was dependent on them and their residence was his and it does not appear that he acquired an independent legal residence anywhere else.

While it is true that the defendant-appellee registered as a voter in Burauen in the general elections of 1925, yet he did so without any right thereto, for it does not appear that he resided in Burauen at any time after the separation of the barrio of La Paz from said municipality and its organization as an independent municipality, nor that he transferred his residence to the former abandoning that of his parents. On the contrary, having continued his studies in Manila, supported by his parents, returning to the latter's home during his vacations, it is presumed that he continued to reside with them until the month of November, 1927, when he established his residence in the town of La Paz.

Moreover, it is sufficiently proven that Mateo G. Murillo had applied in due time and form, for the cancellation of his name as a voter in the municipality of Burauen, and for his registration as a voter in the municipality of La Paz. Although it does not appear that said cancellation was registered he is not thereby rendered ineligible to the office of municipal president according to the doctrine recently laid down by this court in the quo warranto proceeding of Yra vs. Abano (p. 380, ante), wherein this court said the following:

"1. ELECTIONS; 'QUO WARRANTO'; MUNICIPAL CORPORATIONS; QUALIFICATIONS OF ELECTIVE MUNICIPAL OFFICERS; ELECTION LAW, SECTIONS 404, 431, AND 432, AND THE ADMINISTRATIVE CODE, SECTION 2174, CONSTRUED.—A candidate who was elected to the office of municipal president and who at the time of the election was registered as a voter of Manila and not of the municipality in which he was a candidate, is nevertheless eligible to the office, and proceedings in the nature of quo warranto instituted by virtue of the provisions of section 408 of the Election Law, as amended, by the vice-president elect of the municipality, who challenged the right of the municipal president elect, to the position to which elected on the ground that the municipal president was ineligible, cannot be successfully maintained.

"2. ID.; ID.; ID.; ID.; ID.—The Election Law makes use of the terms 'qualified voter in his municipality' and 'qualified elector therein.' To be a qualified voter, does not necessarily mean that a person must be a registered voter. It is sufficient for the candidate to possess all of the qualifications prescribed in section 431 and none of the disqualifications prescribed in section 432. The fact that a candidate failed to register as an elector in the municipality does not deprive him of the right to become a candidate and to be voted for.

"3. ID.; ID.; ID.; ID.; ID.—One may be a qualified voter without exercising the right to vote. Registering does not confer the right; it is but a condition precedent to the exercise of the right. Registration regulates the exercise of the right of suffrage. It is not a qualification for such right."

In view of the foregoing considerations, we are of opinion and so hold, that a student living with his parents in a certain barrio of a municipality, which barrio is later separated to be organized as an independent municipality, who for several years pursues his studies in several provinces of the archipelago, supported by his parents, returning to the latter's home during his vacations in the newly

organized municipality, does not lose his residence in said municipality, either on account of having resided in different provinces as a student, or of having registered as a voter in the former municipality and is eligible as municipal president of the new municipality even if his registration as a voter in the municipality to which the new one originally belonged has not been cancelled.

By virtue whereof, and finding no error in the judgment appealed from, the same is hereby affirmed in its entirety, with costs against the appellant. So ordered.

Johnson, Street, Malcolm, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

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