

ABENCIO TORRES, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF CAPE, SEVENTEENTH JUDICIAL DISTRICT, AND DEOGRACIAS MOLO, RESPONDENTS.

G.R. No. 30510, December 21, 1928

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an original petition for certiorari filed by Abencio Torres against the Court of First Instance of Capiz and Deogracias Molo, praying that this court annul all the proceedings had, as well as orders and the judgment rendered in election contest No. 2447 of the Court of First Instance of Capiz, wherein Deogracias Molo is the protestant and Abencio Torres, the protestee, on the ground that said court had no jurisdiction to try the motion of protest filed in said contest, hear the evidence, and decide it, for the reason that the facts alleged therein are insufficient to confer jurisdiction on the court, inasmuch as the other candidates voted for the same office of municipal vice-president at the general elections held in the municipality of Makato, Capiz, have not been included as parties therein.

As we have before us all the evidence necessary to decide the question of jurisdiction raised in the present proceeding by virtue of the application and the documents accompanying it, there is no need to order the transmission of the original record of the election contest to this court; hence, with such evidence before us, we shall proceed to the solution of this proceeding.

The following are the pertinent facts necessary for the solution of the questions of procedural law raised here:

On June 15, 1928, the herein respondent Deogracias Molo filed the following motion of protest:

"Comes now the above-named protestant, and to the court respectfully represents and alleges:

"I. That the protestant and the protestee are both of age, residents, and duly qualified electors in election precinct No. 2 of the municipality of Makato, Capiz, Philippine Islands, and both had full capacity to vote and be voted for in the last elections of June 5, 1928.

"II. That both the protestant and the protestee were candidates for the office of municipal vice-president, with certificates duly presented and registered, and as such were voted for, as well as the other candidates for the same office at the general elections of June 5, 1928, held at Makato.

"III. That according to the municipal board of canvassers, the protestant received 314 votes, the protestee 318, one Alejandro Legaspi 274, and one Baeelides Tabernilla 12, all for the office of municipal vice-president; in pursuance whereof said board of canvassers proclaimed the protestee Abencio Torres victorious and elected, having obtained a plurality of ballots lawfully cast in his favor.

"IV. That the protestant contests the election of the protestee as such municipal vice-president for the next triennium of 1928 to 1931, on the following grounds:

"(a) Because in the aforementioned precinct No. 2, there were 29 ballots in the name of Alejandro Legaspi for the office of vice-president which were awarded to Abencio Torres; (b) because 8 ballots in the name of the protestant Deogracias Molo were also awarded to said Abencio Torres, the protestee; (c) and because 6 other ballots in the name of Baselides Tabernilla were also awarded to the said Abencio Torres.

"V. That, such fraudulent proceedings or acts committed in election precinct No. 2, consisted in the chairman of the election, board reading one name for another, with the knowledge and consent of its two members, thus defrauding the will of the electors and changing the result of the election, which should have been as follows: For the office of vice-president: Deogracias Molo, the protestant, with 322 votes: Abencio Torres, the protestee, with 275 votes; Alejandro Legaspi with 303 votes; and Baselides Tabernilla with 18 votes.

"Wherefore, the protestant prays the court: (1) That a subpoena duces tecum be issued to the municipal treasurer of Makato, commanding him to appear, bring, and exhibit to the court, the ballot boxes and all the papers or documents of the election pertaining to precinct No. 2 of said municipality; (2) that a subpoena duces tecum be issued to the municipal secretary commanding him to appear, bring, and exhibit to the court, all the papers and returns concerning the canvass made by the municipal council on June 12, 1928; (3) that the opening of said ballot boxes of precinct No. 2, be ordered, and all the ballots contained therein be revised and recounted before the said court; (4) that in accordance with such recount and revision, the candidate who thus obtained the greatest number of votes be proclaimed elected as municipal vice-president; (5) that should it result that the protestee loses this contest by his fraudulent election, he be sentenced to pay the costs of this instance and all the damages suffered by the protestant, if the latter is elected and so proclaimed by the court, to the office of municipal vice-president; and (6) that the protestant be granted such further remedy as in law may be proper.

"Makato, Capiz, 15 of June, 1928.

(Sgd.) "DEOGRACIAS MOLO

"Protestant."

On June 28, 1928, the protestee Abencio Torres filed the following motion for dismissal:

"The undersigned Abencio Torres, protestee in the aboveentitled proceeding, to the honorable court shows:

"That he hereby enters a special appearance to impugn the aforementioned proceeding and therefore prays for the dismissal thereof on the following grounds:

"**GROUND**S

"1. That this court has no jurisdiction over the person of the herein protestee and, consequently, no power to try and decide this case, other than to dismiss it, and

"2. That in the motion of protest filed by Deogracias Molo, the other candidates to the same office of municipal vice-president, Messrs. Alejandro Legaspi and Basilides Tabernilla, who respectively obtained votes in the last elections in the municipality of Makato, Capiz do not appear either as protestants or as protestees.

"Wherefore, the undersigned prays the honorable court to issue an order dismissing the motion of protest of the protestant Deogracias Molo with costs against the latter.

"Makato for Ibajay, Capiz, June 28, 1928.

(Sgd.) "ABENCIO TORRES

"NOTE.—Copy of this motion was sent by registered mail to the protestant Deogracias Molo who lives in Tangalan, municipality of Makato, Capiz, as evidenced by the attached post-office receipt."

On July 14, 1928, the other registered candidates voted for the office of vice-president, Alejandro Legaspi and Basilides Tabernilla, entered a voluntary appearance.

On July 21, 1928, the protestant Deogracias Molo filed an amended protest including all the candidates voted for the office of municipal vice-president as protestees.

On August 4, 1928, after having heard the parties, the respondent court denied the motion for dismissal.

Later on the court rendered judgment in favor of the protestant and against the protestee.

In the case of *Ferrer vs. Gutierrez David and Lucot* (43 Phil., 795), cited by this court in recent decisions rendered in the election contests of *Saldana vs. Consunji* (G. R. No. 30173 [1928])[1] and *Yumul vs. Palma* (G. R. No. 30174 [1928]) [2] this court laid down the doctrine that in order that the court may acquire jurisdiction to try an election contest, it is sufficient to allege in the motion of protest the essential facts pointed out by the law for conferring jurisdiction over the contest, among which are the following: (a) that the protestant has duly registered his candidacy and has received votes at the election (*Tengco vs. Jocson*, 43 Phil., 715); (b) that the protestee has been proclaimed elected in said election (*Manalo vs. Sevilla*, 24 Phil., 609); and (c) that the motion of protest must be presented within two weeks after the proclamation (*Navarro vs. Veloso*, 23 Phil., 625; *Manalo vs. Sevilla*, supra; *Hontiveros vs. Altavas*, 39 Phil., 226).

It is not contended in the election contest now before us that any of these essential facts for conferring jurisdiction has not been alleged, but only the fact that the other registered candidates voted for the office of municipal vice-president were not included as protestees.

It is true that in order that a court may decide a case and that its decision become effective, it is necessary that it have jurisdiction over the subject matter of the controversy and over the parties litigant. Jurisdiction over the person of the protestant is acquired by the presentation of the protest, and jurisdiction over the person or persons of the protestee or protestees, is acquired by the summons.

Jurisdiction over the subject matter of the controversy is acquired by the court through the presentation of the motion of protest alleging the essential facts for conferring jurisdiction.

While it is true that section 481 of the Election Law as lastly amended by Act No. 3387, provides that proceedings for the judicial contest of an election shall be by virtue of a protest with summons, and that unless the name of the protestee or protestees appear in the motion of protest they cannot be summoned, yet the omission of said names does not prevent the court from acquiring jurisdiction over the subject matter of the controversy, and over the party protestant. The mere act of putting in the name or names of the party or parties protested against is not sufficient for the court to acquire jurisdiction over their persons. It is necessary that they be summoned upon the protest in the form provided by law in order that the judgment to be rendered may affect them.

This same section 481 provides furthermore, that "the candidate whose election is contested and all other registered candidates voted for may reply thereto within fifteen days after the summons, or if they have appeared without being summoned, within fifteen days from the date of their appearance, but in all cases before the beginning of the hearing of the case in court." This same provision of law, in stating "the candidate whose election is contested and all other registered candidates voted for" seems to indicate that it is not necessary that all the registered candidates voted for be made parties protestees, but it is sufficient that their names appear in the protest so that the sheriff may summon them all.

Now then; it not only happens that the names of the other candidates, Alejandro Legaspi and Basilides Tabernilla, appear in the motion of protest, but that, moreover, the latter appear voluntarily, thus conferring jurisdiction on

the court over their persons.

In conclusion, then, it appears that since the motion of protest alleged all the essential facts for conferring jurisdiction on the court and included the names of the parties, protestant and protestee, which latter was summoned, and of the other registered candidates voted for, who appeared of their own free will, the Court of First Instance of Capiz acquired jurisdiction to try and decide the case.

By virtue whereof, and not finding any merit in the present proceeding the same is denied and dismissed, with costs against the petitioner. So ordered.

Avanceña, C. J., Johnson, Villamor, Johns, and Romualdez, JJ., concur.

[1] Page 433, ante.

[2] Page 412, ante.

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