

PABLO C. CORTES ET AL., PETITIONERS, VS. SIXTO DE LA COSTA, JUDGE OF FIRST INSTANCE OF RIZAL, ET AL., RESPONDENTS.*G.R. No. 46065. August 09, 1938*

Ponente: LAUREL, J.

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This is a petition for mandamus to compel the respondent judge of the Court of First Instance of Rizal to proceed with the hearing of the election contest filed against the other respondents by the petitioners herein. Petitioner Pablo C. Cortes and respondents Deogracias Luciano, Sabino Gutierrez, and Irineo Aviado were candidates, in the elections held on December 14, 1937, for the office of municipal vice-mayor of Makati, Rizal. The other petitioners and the other respondents, except the respondent judge, were candidates, in the same elections, for the office of councilor, in the same municipality and province. A motion of protest was filed in time by the petitioners herein but was dismissed by the respondent judge, upon motion by the protestees (the other respondents herein), on the ground of failure to allege the jurisdictional fact that the said protestees were proclaimed elected candidates. Reconsideration of the order of dismissal was sought but was refused.

The respondent judge correctly states that failure to allege in the motion of protest that the protestees were proclaimed elected candidates is fatal to the protest. (Manalo vs. Sevilla, 24 Phil., 609; Ferrer vs. Gutierrez David and Lucot, 43 Phil., 795; Yumul vs. Palma, 52 Phil., 412; Saldana rs. Consunji, 52 Phil., 433.) An examination of the motion of protest, however, shows that it contains allegations from which the jurisdictional fact of proclamation may be clearly inferred. In paragraph 4 of the motion, it is alleged:

"4. Que, en la proclamacion verificada por la Junta Municipal de Escrutinio en 18 de diciembre de 1937, aparacen los siguientes votos a favor de los recurrentes y recurridos respectivamente:

"RECURRENTES

Votes

Pablo C. Cortes

1,773

Marcos Concepcion

1,009

Dionisio Afable

996

Tomas Gonzalez

1,008

Ventura Canilao

900

Fidel Dionisio

965

Tomas Estacio

845

Maximo Arcangel

750

Monico Policarpio

796

"RECURRIDOS

Deogracias Luciano

2,017

Sabino Gutierrez

610

Irineo Aviado

662

Felix Blanco

1,781

Diego Benito

1,681

Amado E. Diaz

1,628

Martin Santos

1,478

Pedro Santiago

1,369

Luis Anastasio

1,365

Eliseo Viray

1,164

Jose Cunanan

1,005"

From the foregoing portion of the motion of protest, it is obvious that the victorious candidates were the protestees, except Sabino Gutierrez and Irineo Aviado, and that said candidates were duly proclaimed. The language used could have been more clear and precise but the fact of proclamation of the protestees is there.

Precision in pleadings is desirable but it is not to be strictly required. A single fact may be alleged in different ways with the same effect.

The writ prayed for is hereby granted, without any pronouncement regarding costs. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Concepcion, JJ., concur.

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