

**ALBERTO LAGAHIT, PETITIONER, VS. SIMEON NENGASCA, AND
ADOLPH WISLIZENUS, JUDGE OF FIRST INSTANCE, RESPONDENTS.***G.R. No. 4762. January 08, 1909*

Ponente: ARELLANO, C.J.

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The plaintiff has brought certiorari proceedings before this Supreme Court, against the decision of the Court of First Instance of Cebu, praying that the judgment rendered by the said court be held to be null and void, particularly with respect to the proclaiming of Simeon Nengasca as municipal president of Aloguisan; that the returns; submitted by the board of election of the said town in November, 1907, be confirmed; that they be so certified to the Governor-General of the Islands for such action as he may consider proper; that the attachment levied upon the property of the petitioner herein be set aside; that a writ of final injunction be served upon Simeon Nengasca ordering him to abstain from performing the duties of the office of municipal president of Aloguisan, unless he be duly elected at an election properly convened and held, or unless he be so ordered by the Governor-General of the Philippine Islands. The petitioner alleges the following facts:

(1) That Alberto Lagahit and Simeon Nengasca were candidates for the office of municipal president of the municipality of Aloguisan, Province of Cebu; (2) that the result of said election, according to the returns of the election board were, Alberto Lagahit 33 votes, Simeon Nengasca 24, and Gregorio Yanong 11; (3) that on the 16th of November, 1907, Simeon Nengasca filed a protest with the Court of First Instance of Cebu against the above-mentioned election so far as the office of municipal president was concerned, alleging that the ballots of fifty-two qualified electors who voted for the said Nengasca had been abstracted and changed by the election inspectors, who, according to the protest, in addition, when filling up the ballots of electors who were unable to write, did not comply with their request to name Nengasca for the office of president, but on the contrary, put down the name of Alberto Lagahit; (4) that in the said protest the only remedy prayed for was, that the municipal elections in Aloguisan be annulled with respect to the office of municipal president, and that the court below certify to the Governor-General of the Philippine Islands that no person had been duly elected for the said office in said municipality of Aloguisan at the elections held in the month of November, 1907; (5) that on the 27th of December, 1907, the judge below, exceeding his jurisdiction, granted Simeon Nengasca, the protesting party, remedies which he had not asked for in his protest, and rendered judgment in the matter, holding that the said Nengasca was the president elect, and so proclaimed him, and that by virtue of said decision and proclamation, the latter took possession of said office on the 6th of January, 1908; (6) that nothing has been alleged in the protest, nor any evidence offered at the trial to show the complicity of Alberto Lagahit in the, fraud supposed to have been committed by the election inspectors, nor even that the said Alberto had presented his candidacy or allowed the same to be presented for the office of municipal president of Aloguisan, but that notwithstanding, the judge below has sentenced the petitioner herein to pay Simeon Nengasca the sum of P150 as costs, and has already ordered the execution of said portion of the judgment and attached his property in order to satisfy the same; and (7) that no appeal can be taken in the present case, and the only remedy left to the petitioner is that of certiorari before the Supreme Court.

Under date of the 26th of August of this [last] year this court ordered the Court of First Instance of Cebu to submit a certified copy of all the proceedings and the action taken in connection with the election of a municipal president held in the municipality of Aloguisan in said province, for the purposes of this appeal. The same having been submitted and the appeal heard it now appears that the judgment rendered in the matter of the protest of Simeon Nengasca contains the following findings:

"(1) The court believes that the majority of the electors at the past election voted in favor of the petitioner, Simeon Nengasca; (2) Simeon Nengasca is recognized by the court as president elect at the elections held on the 5th day of November, 1907, at the municipality of Aloguisan for the office of municipal president; (3) the court orders that judgment be entered in favor of the plaintiff and against the defendant for the sum of P150, of which P20 shall be for compensation to the stenographer, P40 for compensation to the commissioner, and the balance for fees of the lawyer and other costs and expenses."

Inasmuch as the original appeal now at issue is solely directed to inquire into the regularity of certain judicial proceedings in so far as they refer to the powers and jurisdiction of the lower court acting thereon, the provision in the election law determining the jurisdiction of the Court of First Instance with respect to contested elections is here transcribed.

"SECTION 27. Election contests.-* * * Contests in all elections for the determination of which provision has not been made otherwise shall be heard by the Court of First Instance having jurisdiction in the judicial district in which the election was held, upon motion by any candidate voted for at such election, which motion must be made within two weeks after the election, and such court shall have exclusive and final jurisdiction and shall forthwith cause the registry lists and all ballots used at such election to be brought before it and examined, and to appoint the necessary officers therefor and to fix their compensation, which shall be payable in the first instance out of the provincial treasury, and to issue its mandamus directed to the boards of canvassers to correct its canvass in accordance with the facts as found. If in any case the court shall determine that no person was lawfully elected, it shall forthwith so certify to the Governor-General, who shall order a special election to fill the office or offices in question as hereinbefore provided."

In consequence of the protest the court below appointed a commissioner to hear and record the necessary evidence, and after the testimony of witnesses had been taken, the court rendered the findings above stated.

According to the provision of law cited and transcribed above the second of these findings is not within the jurisdiction of the lower court. The law does not authorize the court to recognize any particular candidate as the president-elect. Therefore said finding should be reversed. The third finding in connection with the costs is based on the following provision of the law:

"If the party paying such expenses and costs shall be successful they shall be taxed by the court and entered and be collectible as a judgment against the defeated party."

Whether or not the court below acted rightly in considering the other candidate as the "adverse party" and the party defeated in the proceedings, is not a matter on which action may be taken by this court in the exercise of its appellate jurisdiction. It is evident that it was a matter within the jurisdiction of the court below to tax the "adverse party" with the costs. The remedy of certiorari is, therefore, not available, as the purpose thereof is to prevent and remedy extralimitations of jurisdiction and authority, not to correct errors in decisions or mistakes of law, which are proper subjects for appeal and cassation.

The first finding is perfectly in accordance with the provision of the law. The court below in deciding upon the protest against the contested election for president of Aloguisan said: "The court believes that the majority of the electors at the past election voted in favor of the petitioner, Simeon Nengasca." Whether or not this opinion of the court below is proper, can not be the subject of review by this court. It is a decision which is within the

jurisdiction of the lower court, as conferred by law.

As a result of this opinion of the court below, and in compliance with the provision of the law, the judgment should have been: "Let a writ of mandamus be issued against the board of canvassers requiring the board to correct its canvass in accordance with the facts as found."

For the reasons above set forth we decide: that the order of the Court of First Instance of Cebu recognizing Nengasca as president-elect at the elections in the municipality of Aloguisan, in said province, should be, and is hereby annulled for the reason that it is not within the jurisdiction of the said court to recognize or proclaim a president in a contested election; that it is unnecessary to make any ruling as to the costs; and that with respect to and as a consequence of the first finding of the court below, that court should issue a writ of mandamus directed to the board of canvassers of the municipality of Aloguisan requiring the board to correct its canvass in accordance with the facts as found by the said court. No special ruling as to costs is made. So ordered.

Torres, Mapa, Johnson, Carson, Willard, and Tracey, JJ., concur.

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