

AURELIO ALEMAN, PETITIONER, VS. HON. MELECIO GENATO (RETIRED) AS FORMER PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF MISAMIS OCCIDENTAL (NOW REGIONAL TRIAL COURT, BRANCH XV...

G.R. No. 63510. December 26, 1984

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This special civil action for Certiorari seeks to reverse the Decision of the then Court of First Instance of Misamis Occidental declaring private respondent Nicanor CARAMBA the duly elected Barangay Captain of Mialen, Clarin, Misamis Occidental.

In the Barangay elections of May 17, 1982, Aurelio ALEMAN (petitioner herein) and Nicanor CARAMBA (the private respondent) were candidates for the position of Barangay Captain of Mialen, Clarin, Misamis Occidental.

On May 17, 1982, the Board of Canvassers proclaimed ALEMAN as the duly elected Barangay Captain, with 393 votes as against 358 votes for CARAMBA, or a margin of 35 votes.

On May 24, 1982, CARAMBA filed an election protest against ALEMAN before the Municipal Circuit Court of Clarin-Tudela, Misamis Occidental, alleging, among others, that non-registered voters were allowed to vote in certain precincts, and that a good number of ballots were incorrectly appreciated in ALEMAN's favor.

ALEMAN denied all material allegations and contended that the names of voters named in the protest appear in the permanent list of voters and that those whose names did not were given election cards by the COMELEC upon verification that they were permanent voters in their respective precincts.

After hearing, the Municipal Circuit Court, on July 20, 1982, invalidated 12 votes and deducted them from the 393 votes of ALEMAN on the ground that they were cast by non-registered voters. ALEMAN's votes were thus reduced to 381, but still with a margin of 23 votes over those of CARAMBA's 358 votes.

On appeal, respondent Court of First Instance, on December 27, 1982, invalidated 26 more votes and deducted them from the votes of ALEMAN on the ground that they were cast by flying voters. This left ALEMAN with only 355 votes as against 358 votes for CARAMBA, who was then declared as the duly elected Barangay Captain.

Finding validity in ALEMAN's argument that granting arguendo that the questioned voters were "flying voters", there is no evidence to prove that they had cast their votes in his favor, hence, their votes should not be deducted from the total votes obtained by him, we required Judge Melecio Genato, who had penned the Decision, to specify his basis for deducting the ballots cast by flying voters from the votes cast in favor of protestee ALEMAN. But because said Judge had already retired, his successor, respondent Judge Glicerio V. Carriaga, Jr., who had, in the meantime, denied ALEMAN's Motion for Reconsideration, explained that he had relied on his "presumption in

good faith that when Judge Genato decided the (case) he was very meticulous in reading the transcript as well as the records of the case."

In the meantime, we issued a Temporary Restraining Order enjoining respondent Court from implementing its judgment, thereby restraining CARAMBA from taking his oath and as-suming the position of Barangay Captain of Mialen.

Considering that an examination of the record yields no evidentiary proof that the questioned flying voters, had, in fact, cast their votes for ALEMAN, which votes should be deducted from the total votes obtained by the latter, the Court has RESOLVED, in order to determine with certainty in whose favor those votes were cast, and to be able to better determine the true will of the electorate, that the ballots be recounted in the presence of the parties.

ACCORDINGLY, respondent Judge is hereby required to make the recount with deliberate speed and to resolve the election protest anew according to his own appreciation of the ballots cast.

No costs.

SO ORDERED.

Teehankee, (Chairman), Plana, Gutierrez, Jr., and De la Fuente, JJ., concur.

Relova, J., took no part.

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