

## EN BANC

[ G.R. No. 210164, August 18, 2015 ]

### ROMMEL C. ARNADO, PETITIONER, VS. COMMISSION ON ELECTIONS AND FLORANTE CAPITAN, RESPONDENTS.

#### D E C I S I O N

##### DEL CASTILLO, J.:

*Only natural-born Filipinos who owe total and undivided allegiance to the Republic of the Philippines could run for and hold elective public office.*

Before this Court is a Petition for *Certiorari*<sup>[1]</sup> filed under Rule 64 in relation to Rule 65 of the Rules of Court assailing the *Per Curiam* Resolution<sup>[2]</sup> dated December 9, 2013 of respondent Commission on Elections (Comelec) *En Banc* in SPA No. 13-309 (DC), which affirmed the Resolution<sup>[3]</sup> dated September 6, 2013 of the Comelec Second Division. The Comelec, relying on our ruling in *Maquiling v. Commission on Elections*,<sup>[4]</sup> disqualified petitioner Rommel C. Arnado (Arnado) from running in the May 13, 2013 elections, set aside his proclamation as elected mayor of Kauswagan, Lanao del Norte, and declared respondent Florante T. Capitan (Capitan) as the duly elected mayor of said municipality.

##### ***Factual Antecedents***

Petitioner Arnado is a natural-born Filipino citizen who lost his Philippine citizenship after he was naturalized as citizen of the United States of America (USA). Subsequently, and in preparation for his plans to run for public office in the Philippines, Arnado applied for repatriation under Republic Act No. 9225<sup>[5]</sup> (RA 9225) before the Consul General of the Philippines in San Francisco, USA. He took an Oath of Allegiance to the Republic of the Philippines on July 10, 2008 and, on even date, an Order of Approval of Citizenship Retention and Re acquisition was issued in his favor. On April 3, 2009, Arnado executed an Affidavit of Renunciation of his foreign citizenship.

On November 30, 2009, Arnado filed his Certificate of Candidacy (CoC) for the mayoralty post of Kauswagan, Lanao del Norte for the May 10, 2010 national and local elections.

Linog C. Balua (Balua), another mayoralty candidate, however, filed a petition to disqualify Arnado and/or to cancel his CoC on the ground, among others, that Arnado remained a US citizen because he continued to use his US passport for entry to and exit from the Philippines after executing aforesaid Affidavit of Renunciation.

While Balua's petition remained pending, the May 10, 2010 elections proceeded where Arnado garnered the highest number of votes for the mayoralty post of

Kauswagan. He was proclaimed the winning candidate.

On October 5, 2010, the Comelec First Division issued a Resolution holding that Arnado's continued use of his US passport effectively negated his April 3, 2009 Affidavit of Renunciation. Thus, he was disqualified to run for public office for failure to comply with the requirements of RA 9225. The Comelec First Division accordingly nullified his proclamation and held that the rule on succession should be followed.

Arnado moved for reconsideration. In the meantime, Casan Macode Maquiling (Maquiling), another mayoralty candidate who garnered the second highest number of votes, intervened in the case. He argued that the Comelec First Division erred in applying the rule on succession.

On February 2, 2011, the Comelec *En Banc* rendered a Resolution reversing the ruling of the Comelec First Division. It held that Arnado's use of his US passport did not operate to revert his status to dual citizenship. The Comelec *En Banc* found merit in Arnado's explanation that he continued to use his US passport because he did not yet know that he had been issued a Philippine passport at the time of the relevant foreign trips. The Comelec *En Banc* further noted that, after receiving his Philippine passport, Arnado used the same for his subsequent trips.

Maquiling then sought recourse to this Court by filing a petition docketed as G.R No. 195649.

While G.R No. 195649 was pending, the period for the filing of CoCs for local elective officials for the May 13, 2013 elections officially began. On October 1, 2012, Arnado filed his CoC<sup>[6]</sup> for the same position. Respondent Capitan also filed his CoC for the mayoralty post of Kauswagan.

On April 16, 2013, this Court rendered its Decision in *Maquiling*. Voting 10-5, it annulled and set aside the Comelec *En Banc*'s February 2, 2011 Resolution, disqualified Arnado from running for elective position, and declared Maquiling as the duly elected mayor of Kauswagan, Lanao Del Norte in the May 10, 2010 elections. In so ruling, the majority of the Members of the Court opined that in his subsequent use of his US passport, Arnado effectively disavowed or recalled his April 3, 2009 Affidavit of Renunciation. Thus:

We agree with the pronouncement of the COMELEC First Division that "Arnado's act of consistently using his US passport effectively negated his "Affidavit of Renunciation." Tills does not mean that he failed to comply with the twin requirements under R.A. No. 9225, for he in fact did. It was after complying with the requirements that he performed positive acts which effectively disqualified him from running for an elective public office pursuant to Section 40(d) of the Local Government Code of 1991.

The purpose of the Local Government Code in disqualifying dual citizens from running for any elective public office would be thwarted if we were to allow a person who has earlier renounced his foreign citizenship, but who subsequently represents himself as a foreign citizen, to hold any public office.

x x x x

We therefore hold that Arnado, by using his US passport after renouncing his American citizenship, has recanted the same Oath of Renunciation he took. Section 40(d) of the Local Government Code applies to his situation. He is disqualified not only from holding the public office but even from becoming a candidate in the May 2010 elections.<sup>[7]</sup>

The issuance of this Court's April 16, 2013 Decision sets the stage for the present controversy.

On May 9, 2013 or shortly after the Court issued its Decision in *Maquiling*, Arnado executed an Affidavit Affirming Rommel C. Arnado's "Affidavit of Renunciation Dated April 3, 2009."<sup>[8]</sup>

The following day or on May 10, 2013, Capitan, Arnado's lone rival for the mayoralty post, filed a Petition<sup>[9]</sup> seeking to disqualify him from running for municipal mayor of Kauswagan and/or to cancel his CoC based on the ruling of this Court in *Maquiling*. The case was docketed as SPA No. 13-309 (DC) and was raffled to the Comelec's Second Division. The resolution of said petition was, however, overtaken by the May 13, 2013 elections where Arnado garnered 8,902 votes (84% of the total votes cast) while Capitan obtained 1,707 (16% of the total votes cast) votes only.

On May 14, 2013, Arnado was proclaimed as the winning candidate.

Unfazed, Capitan filed another Petition<sup>[10]</sup> this time seeking to nullify Arnado's proclamation. He argued that with the April 16, 2013 Decision of this Court in *Maquiling*, there is no doubt that Arnado is disqualified from running for any local elective office. Hence, Arnado's proclamation is void and without any legal effect.

### ***Ruling of the Comelec Second Division***

On September 6, 2013, the Comelec Second Division promulgated a Resolution granting the petition in SPA No. 13-309 (DC) and disqualify Arnado from running in the May 13, 2013 elections. Following *Maquiling*, it ratiocinated that at the time he filed his CoC on October 1, 2012, Arnado still failed to comply with the requirement of RA 9225 of making a personal and sworn renunciation of any and all foreign citizenship. While he executed the April 3, 2009 Affidavit of Renunciation, the same was deemed withdrawn or recalled when he subsequently traveled abroad using his US passport, as held in *Maquiling*.

The Comelec Second Division also noted that Arnado failed to execute another Affidavit of Renunciation for purposes of the May 13, 2013 elections. While a May 9, 2013 Affidavit Affirming Rommel C. Arnado's "Affidavit of Renunciation dated April 3, 2009" was submitted in evidence, the same would not suffice because it should have been executed on or before the filing of the CoC on October 1, 2012.

The dispositive portion of the Comelec Second Division's Resolution reads:

WHEREFORE, premises considered, the instant Petition is granted. Respondent Rommel Cagoco Arnado is disqualified from running in the 13 May 2013 National and Local Elections.

SO ORDERED.<sup>[11]</sup>

### ***Ruling of the Comelec En Banc***

Aggrieved, Arnado filed a Verified Motion for Reconsideration.<sup>[12]</sup> He argued that the Comelec Second Division erred in applying *Maquiling* claiming that the said case is not on all fours with the present controversy; that Capitan's Petition was filed beyond the 25-day reglementary period reckoned from the filing of the CoC sought to be cancelled; and, that the Comelec must uphold the sovereign will of the people of Kauswagan who expressed, thru the ballots, their overwhelming support for him as their mayor. Arnado prayed that the Comelec Second Division's September 6, 2013 Resolution be reversed and that he be declared as eligible to run for mayor of Kauswagan.

On December 9, 2013, the Comelec *En Banc* affirmed the ruling of the Comelec Second Division. It accordingly annulled the proclamation of Arnado and declared Capitan as the duly elected mayor of Kauswagan. The dispositive portion of the Comelec *En Banc*'s Resolution reads:

WHEREFORE, premises considered, the instant motion for reconsideration is hereby DISMISSED. The Proclamation of Private Respondent Rommel C. Arnado as the duly elected mayor of Kauswagan, Lanao del Norte is hereby ANNULLED and SET ASIDE. FLORANTE T. CAPITAN is hereby DECLARED the duly elected Mayor of Kauswagan, Lanao del Norte in the May 13, 2013 Elections.

SO ORDERED.<sup>[13]</sup>

Hence, on December 16, 2013 Arnado filed the instant Petition with ancillary prayer for injunctive relief to maintain the status *quo ante*. On December

26, 2013, Arnado filed an Urgent Motion for Issuance of Status Quo Ante Order or Temporary Restraining Order<sup>[14]</sup> in view of the issuance by the Comelec *En Banc* of a Writ of Execution to implement its December 9, 2013 Resolution.

On January 14, 2014, this Court issued a Resolution<sup>[15]</sup> requiring the respondents to file their respective comments on the petition. In the same Resolution, this Court granted Arnado's ancillary relief for temporary restraining order.

Capitan thus filed an Urgent Motion to Lift and/or Dissolve Temporary Restraining Order dated January 14, 2014,<sup>[16]</sup> contending that the acts sought to be restrained by Arnado are already *fait accompli*. He alleged that the Comelec *En Banc* had already issued a Writ of Execution<sup>[17]</sup> and pursuant thereto a Special Municipal Board of Canvassers was convened. It proclaimed him to be the duly elected mayor

of Kauswagan and on January 2, 2014 he took his oath of office. Since then, he has assumed and performed the duties and functions of his office.

In a Resolution<sup>[18]</sup> dated February 25, 2014, this Court ordered the issuance of a *Status Quo Ante* Order directing the parties to allow Arnado to continue performing his functions as mayor of Kauswagan pending resolution of this case.

### **Issues**

In support of his Petition, Arnado raises the following issues:

#### **I**

WHETHER x x x THE COMELEC EN BANC AND 2<sup>ND</sup> DIVISION VIOLATED PROCEDURAL DUE PROCESS AND COMMITTED GRAVE ABUSE OF DISCRETION IN FAILING TO DISMISS THE PETITIONS OF RESPONDENT CAPITAN ON THE GROUND OF FORUM-SHOPPING AND/OR LATE FILING, ETC.

#### **II**

WHETHER x x x THE COMELEC EN BANC VIOLATED DUE PROCESS AND COMMITTED GRAVE ABUSE OF DISCRETION BY ALLOWING COM. ELIAS YUSOPH TO REVIEW THE DECISION HE WROTE FOR THE 2<sup>ND</sup> DIVISION.

#### **III**

WHETHER x x x THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION IN DISENFRANCHISING 84% OF THE VOTERS OF KAUSWAGAN IN THE MAY 2013 ELECTIONS.

#### **IV**

WHETHER x x x THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION IN DISQUALIFYING PETITIONER WHO HAS FULLY COMPLIED WITH THE REQUIREMENTS OF RA 9225 BEFORE THE FILING OF HIS COC ON OCTOBER 1, 2012.<sup>[19]</sup>

Arnado claims that the Comelec committed grave abuse of discretion and violated his right to procedural due process in not dismissing Capitan's Petition in SPA No. 13-309 (DC). He avers that Capitan is guilty of forum-shopping because the latter subsequently filed a similar case docketed as SPC No. 13-019. In addition, SPA No. 13-309 (DC) was filed beyond the 25-day prescriptive period reckoned from the time of the filing of his CoC on October 1, 2012.

Arnado likewise claims that the proceeding before the Comelec is peppered with procedural infirmities. He asserts that the Comelec violated its own rules in deciding SPA No. 13-309 (DC) without first resolving Capitan's motion to consolidate; that SPA No. 13-309 (DC) was not set for trial and no hearing for the reception of evidence was ever conducted; and, that the Comelec did not follow its own rules