

## EN BANC

[ G.R. No. 195649, April 16, 2013 ]

### CASAN MACODE MAQUILING, PETITIONER, VS. COMMISSION ON ELECTIONS, ROMMEL ARNADO Y CAGOCO, LINOG G. BALUA, RESPONDENTS.

#### DECISION

SERENO, C.J.:

#### THE CASE

This is a Petition for Certiorari under Rule 64 in conjunction with Rule 65 of the Rules of Court to review the Resolutions of the Commission on Elections (COMELEC). The Resolution<sup>[1]</sup> in SPA No. 10-109(DC) of the COMELEC First Division dated 5 October 2010 is being assailed for applying Section 44 of the Local Government Code while the Resolution<sup>[2]</sup> of the COMELEC En Banc dated 2 February 2011 is being questioned for finding that respondent Rommel Arnado y Cagoco (respondent Arnado/Arnado) is solely a Filipino citizen qualified to run for public office despite his continued use of a U.S. passport.

#### FACTS

Respondent Arnado is a natural born Filipino citizen.<sup>[3]</sup> However, as a consequence of his subsequent naturalization as a citizen of the United States of America, he lost his Filipino citizenship.

Arnado applied for repatriation under Republic Act (R.A.) No. 9225 before the Consulate General of the Philippines in San Francisco, USA and took the Oath of Allegiance to the Republic of the Philippines on 10 July 2008.<sup>[4]</sup> On the same day an Order of Approval of his Citizenship Retention and Re-acquisition was issued in his favor.<sup>[5]</sup>

The aforementioned Oath of Allegiance states:

I, Rommel Cagoco Arnado, solemnly swear that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion.<sup>[6]</sup>

On 3 April 2009 Arnado again took his Oath of Allegiance to the Republic and

executed an Affidavit of Renunciation of his foreign citizenship, which states:

I, Rommel Cagoco Arnado, do solemnly swear that I absolutely and perpetually renounce all allegiance and fidelity to the UNITED STATES OF AMERICA of which I am a citizen, and I divest myself of full employment of all civil and political rights and privileges of the United States of America.

I solemnly swear that all the foregoing statement is true and correct to the best of my knowledge and belief.<sup>[7]</sup>

On 30 November 2009, Arnado filed his Certificate of Candidacy for Mayor of Kauswagan, Lanao del Norte, which contains, among others, the following statements:

I am a natural born Filipino citizen / naturalized Filipino citizen.

I am not a permanent resident of, or immigrant to, a foreign country.

I am eligible for the office I seek to be elected to.

I will support and defend the Constitution of the Republic of the Philippines and will maintain true faith and allegiance thereto. I will obey the laws, legal orders and decrees promulgated by the duly constituted authorities.

I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion.<sup>[8]</sup>

On 28 April 2010, respondent Linog C. Balua (Balua), another mayoralty candidate, filed a petition to disqualify Arnado and/or to cancel his certificate of candidacy for municipal mayor of Kauswagan, Lanao del Norte in connection with the 10 May 2010 local and national elections.<sup>[9]</sup> Respondent Balua contended that Arnado is not a resident of Kauswagan, Lanao del Norte and that he is a foreigner, attaching thereto a certification issued by the Bureau of Immigration dated 23 April 2010 indicating the nationality of Arnado as "USA-American."<sup>[10]</sup>

To further bolster his claim of Arnado's US citizenship, Balua presented in his Memorandum a computer-generated travel record<sup>[11]</sup> dated 03 December 2009 indicating that Arnado has been using his US Passport No. 057782700 in entering and departing the Philippines. The said record shows that Arnado left the country on 14 April 2009 and returned on 25 June 2009, and again departed on 29 July 2009, arriving back in the Philippines on 24 November 2009.

Balua likewise presented a certification from the Bureau of Immigration dated 23 April 2010, certifying that the name "Arnado, Rommel Cagoco" appears in the available Computer Database/Passenger manifest/IBM listing on file as of 21 April 2010, with the following pertinent travel records:

DATE OF Arrival	:	01/12/2010
NATIONALITY	:	USA-AMERICAN
PASSPORT	:	057782700
DATE OF Arrival	:	03/23/2010

NATIONALITY : USA-AMERICAN  
PASSPORT : 057782700<sup>[12]</sup>

On 30 April 2010, the COMELEC (First Division) issued an Order<sup>[13]</sup> requiring the respondent to personally file his answer and memorandum within three (3) days from receipt thereof.

After Arnado failed to answer the petition, Balua moved to declare him in default and to present evidence ex-parte.

Neither motion was acted upon, having been overtaken by the 2010 elections where Arnado garnered the highest number of votes and was subsequently proclaimed as the winning candidate for Mayor of Kauswagan, Lanao del Norte.

It was only after his proclamation that Arnado filed his verified answer, submitting the following documents as evidence:<sup>[14]</sup>

1. Affidavit of Renunciation and Oath of Allegiance to the Republic of the Philippines dated 03 April 2009;
2. Joint-Affidavit dated 31 May 2010 of Engr. Virgil Seno, Virginia Branzuela, Leoncio Daligdig, and Jessy Corpin, all neighbors of Arnado, attesting that Arnado is a long-time resident of Kauswagan and that he has been conspicuously and continuously residing in his family's ancestral house in Kauswagan;
3. Certification from the *Punong Barangay* of Poblacion, Kauswagan, Lanao del Norte dated 03 June 2010 stating that Arnado is a bona fide resident of his barangay and that Arnado went to the United States in 1985 to work and returned to the Philippines in 2009;
4. Certification dated 31 May 2010 from the Municipal Local Government Operations Office of Kauswagan stating that Dr. Maximo P. Arnado, Sr. served as Mayor of Kauswagan, from January 1964 to June 1974 and from 15 February 1979 to 15 April 1986; and
5. Voter Certification issued by the Election Officer of Kauswagan certifying that Arnado has been a registered voter of Kauswagan since 03 April 2009.

### **THE RULING OF THE COMELEC FIRST DIVISION**

Instead of treating the Petition as an action for the cancellation of a certificate of candidacy based on misrepresentation,<sup>[15]</sup> the COMELEC First Division considered it as one for disqualification. Balua's contention that

Arnado is a resident of the United States was dismissed upon the finding that "Balua failed to present any evidence to support his contention,"<sup>[16]</sup> whereas the First Division still could "not conclude that Arnado failed to meet the one-year residency requirement under the Local Government Code."<sup>[17]</sup>

In the matter of the issue of citizenship, however, the First Division disagreed with Arnado's claim that he is a Filipino citizen.<sup>[18]</sup>

We find that although Arnado appears to have substantially complied with the requirements of R.A. No. 9225, Arnado's act of consistently using his US passport after renouncing his US citizenship on 03 April 2009 effectively negated his Affidavit of Renunciation.

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Arnado's continued use of his US passport is a strong indication that Arnado had no real intention to renounce his US citizenship and that he only executed an Affidavit of Renunciation to enable him to run for office. We cannot turn a blind eye to the glaring inconsistency between Arnado's unexplained use of a US passport six times and his claim that he re-acquired his Philippine citizenship and renounced his US citizenship. As noted by the Supreme Court in the Yu case, "[a] passport is defined as an official document of identity and nationality issued to a person intending to travel or sojourn in foreign countries." Surely, one who truly divested himself of US citizenship would not continue to avail of privileges reserved solely for US nationals.<sup>[19]</sup>

The dispositive portion of the Resolution rendered by the COMELEC First Division reads:

**WHEREFORE**, in view of the foregoing, the petition for disqualification and/or to cancel the certificate of candidacy of Rommel C. Arnado is hereby **GRANTED**. Rommel C. Arnado's proclamation as the winning candidate for Municipal Mayor of Kauswagan, Lanao del Nore is hereby **ANNULLED**. Let the order of succession under Section 44 of the Local Government Code of 1991 take effect.<sup>[20]</sup>

### ***The Motion for Reconsideration and the Motion for Intervention***

Arnado sought reconsideration of the resolution before the COMELEC En Banc on the ground that "the evidence is insufficient to justify the Resolution and that the said Resolution is contrary to law."<sup>[21]</sup> He raised the following contentions:<sup>[22]</sup>

1. The finding that he is not a Filipino citizen is not supported by the evidence consisting of his Oath of Allegiance and the Affidavit of Renunciation, which show that he has substantially complied with the requirements of R.A. No. 9225;
2. The use of his US passport subsequent to his renunciation of his American citizenship is not tantamount to a repudiation of his Filipino citizenship, as he did not perform any act to swear allegiance to a country other than the Philippines;
3. He used his US passport only because he was not informed of the issuance of his Philippine passport, and that he used his Philippine passport after he obtained it;

4. Balua's petition to cancel the certificate of candidacy of Arnado was filed out of time, and the First Division's treatment of the petition as one for disqualification constitutes grave abuse of discretion amounting to excess of jurisdiction;<sup>[23]</sup>
5. He is undoubtedly the people's choice as indicated by his winning the elections;
6. His proclamation as the winning candidate ousted the COMELEC from jurisdiction over the case; and
7. The proper remedy to question his citizenship is through a petition for *quo warranto*, which should have been filed within ten days from his proclamation.

Petitioner Casan Macode Maquiling (Maquiling), another candidate for mayor of Kauswagan, and who garnered the second highest number of votes in the 2010 elections, intervened in the case and filed before the COMELEC En Banc a Motion for Reconsideration together with an Opposition to Arnado's Amended Motion for Reconsideration. Maquiling argued that while the First Division correctly disqualified Arnado, the order of succession under Section 44 of the Local Government Code is not applicable in this case. Consequently, he claimed that the cancellation of Arnado's candidacy and the nullification of his proclamation, Maquiling, as the legitimate candidate who obtained the highest number of lawful votes, should be proclaimed as the winner.

Maquiling simultaneously filed his Memorandum with his Motion for Intervention and his Motion for Reconsideration. Arnado opposed all motions filed by Maquiling, claiming that intervention is prohibited after a decision has already been rendered, and that as a second-placer, Maquiling undoubtedly lost the elections and thus does not stand to be prejudiced or benefitted by the final adjudication of the case.

### **RULING OF THE COMELEC EN BANC**

In its Resolution of 02 February 2011, the COMELEC En Banc held that under Section 6 of Republic Act No. 6646, the Commission "shall continue with the trial and hearing of the action, inquiry or protest even after the proclamation of the candidate whose qualifications for office is questioned."

As to Maquiling's intervention, the COMELEC En Banc also cited Section 6 of R.A. No. 6646 which allows intervention in proceedings for disqualification even after elections if no final judgment has been rendered, but went on further to say that Maquiling, as the second placer, would not be prejudiced by the outcome of the case as it agrees with the dispositive portion of the Resolution of the First Division allowing the order of succession under Section 44 of the Local Government Code to take effect.

The COMELEC En Banc agreed with the treatment by the First Division of the petition as one for disqualification, and ruled that the petition was filed well within the period prescribed by law,<sup>[24]</sup> having been filed on 28 April 2010, which is not later than 11 May 2010, the date of proclamation.

However, the COMELEC En Banc reversed and set aside the ruling of the First Division and granted Arnado's Motion for Reconsideration, on the following