

## EN BANC

[ G.R. No. 179313, September 17, 2009 ]

### MAKIL U. PUNDAODAYA, PETITIONER, VS. COMMISSION ON ELECTIONS AND ARSENIO DENSING NOBLE, RESPONDENTS.

#### DECISION

##### YNARES-SANTIAGO, J.:

This petition<sup>[1]</sup> for *certiorari* under Rule 65 assails the August 3, 2007 Resolution<sup>[2]</sup> of the Commission on Elections (COMELEC) *En Banc* in SPA No. 07-202, which declared private respondent Arsenio Densing Noble (Noble) qualified to run for municipal mayor of Kinoguitan, Misamis Oriental, in the May 14, 2007 Synchronized National and Local Elections.

The facts are as follows:

Petitioner Makil U. Pundaodaya (Pundaodaya) is married to Judith Pundaodaya, who ran against Noble for the position of municipal mayor of Kinoguitan, Misamis Oriental in the 2007 elections.

On March 27, 2007, Noble filed his Certificate of Candidacy, indicating therein that he has been a resident of Purok 3, Barangay Esperanza, Kinoguitan, Misamis Oriental for 15 years.

On April 3, 2007, Pundaodaya filed a petition for disqualification<sup>[3]</sup> against Noble docketed as SPA No. 07-202, alleging that the latter lacks the residency qualification prescribed by existing laws for elective local officials; that he never resided nor had any physical presence at a fixed place in Purok 3, Barangay Esperanza, Kinoguitan, Misamis Oriental; and that he does not appear to have the intention of residing therein permanently. Pundaodaya claimed that Noble is in fact a resident of Lapasan, Cagayan de Oro City, where he also maintains a business called OBERT Construction Supply.

In his Answer,<sup>[4]</sup> Noble averred that he is a registered voter and resident of Barangay Esperanza, Kinoguitan, Misamis Oriental; that on January 18, 1992, he married Bernadith Go, the daughter of then Mayor Narciso Go of Kinoguitan, Misamis Oriental; that he has been engaged in electoral activities since his marriage; and that he voted in the said municipality in the 1998, 2001 and 2004 elections.

In a resolution dated May 13, 2007,<sup>[5]</sup> the Second Division of the COMELEC ruled in favor of Pundaodaya and disqualified Noble from running as mayor, thus:

Respondent Noble's claim that he is a registered voter and has actually voted in the past three (3) elections in the said municipality does not sufficiently establish that he has actually elected residency at Kinoguitan, Misamis Oriental. Neither does campaigning in previous elections sufficiently establish residence.

Respondent Noble failed to show that he has indeed acquired domicile at Kinoguitan, Misamis Oriental. He failed to prove not only his bodily presence in the new locality but has likewise failed to show that he intends to remain at Kinoguitan, Misamis Oriental and abandon his residency at Lapasan, Cagayan de Oro City.

WHEREFORE, premises considered, the instant Petition to Disqualify Arsenio Densing Noble is hereby GRANTED.

SO ORDERED.<sup>[6]</sup>

Noble filed a motion for reconsideration of the above resolution. In the meantime, he garnered the highest number of votes and was proclaimed the winning candidate on May 15, 2007. Pundaodaya then filed an Urgent Motion to Annul Proclamation.<sup>[7]</sup>

On August 3, 2007, the COMELEC *En Banc* reversed the decision of the Second Division and declared Noble qualified to run for the mayoralty position.

The COMELEC *En Banc* held that when Noble married Bernadith Go on January 18, 1992, the couple has since resided in Kinoguitan, Misamis Oriental; that he was a registered voter and that he participated in the last three elections; and although he is engaged in business in Cagayan de Oro City, the fact that he *resides in Kinoguitan and is a registered voter and owns property thereat, sufficiently meet the residency requirement.*<sup>[8]</sup> Thus:

WHEREFORE, premises considered, the Commission (en banc) RESOLVED, as it hereby RESOLVES, to GRANT the instant Motion for Reconsideration and to REVERSE AND SET ASIDE the Resolution promulgated on May 13, 2007 issued by the Commission (Second Division).

ACCORDINGLY, respondent ARSENIO DENSING NOBLE is QUALIFIED to run for the local elective position of Municipal Mayor of the Municipality of Kinoguitan, Misamis Oriental in the May 14, 2007 Synchronized National and Local Elections.

SO ORDERED.<sup>[9]</sup>

Pundaodaya filed the instant petition for *certiorari*, alleging that the COMELEC *En Banc* acted with grave abuse of discretion when it declared Noble qualified to run; when it did not annul Noble's proclamation; and when it failed to proclaim the true winning candidate, Judith Pundaodaya.

In a resolution dated November 13, 2007,<sup>[10]</sup> the Court required the respondents to comment on the petition.

Public respondent, through the Office of the Solicitor General, filed a Manifestation and Motion<sup>[11]</sup> praying that it be excused from filing a separate comment and that the said pleading be considered sufficient compliance with the November 13, 2007 Resolution.

Meanwhile, for Noble's failure to comply, the Court issued Resolutions<sup>[12]</sup> dated July 15, 2008 and December 9, 2008 requiring him to show cause why he should not be disciplinarily dealt with or held in contempt, imposing a fine of P1,000.00, and requiring him to file a comment. On June 2, 2009, the Court deemed Noble to have waived the filing of the comment.<sup>[13]</sup>

The issues for resolution are: whether the COMELEC *En Banc* gravely abused its discretion: 1) in declaring Noble qualified to run for the mayoralty position; and 2) in failing to order the annulment of Noble's proclamation and refusing to proclaim Judith Pundaodaya as the winning candidate.

Section 39 of Republic Act No. 7160, otherwise known as the Local Government Code, requires that an elective local official must be a resident in the barangay, municipality, city or province where he intends to serve for at least one year immediately preceding the election.<sup>[14]</sup>

In *Japzon v. Commission on Elections*,<sup>[15]</sup> it was held that the term "residence" is to be understood not in its common acceptance as referring to "dwelling" or "habitation," but rather to "domicile" or legal residence, that is, "the place where a party actually or constructively has his permanent home, where he, no matter where he may be found at any given time, eventually intends to return and remain (*animus manendi*)."

In *Domino v. Commission on Elections*,<sup>[16]</sup> the Court explained that domicile denotes a fixed permanent residence to which, whenever absent for business, pleasure, or some other reasons, one intends to return. It is a question of intention and circumstances. In the consideration of circumstances, three rules must be borne in mind, namely: (1) that a man must have a residence or domicile somewhere; (2) when once established it remains until a new one is acquired; and (3) a man can have but one residence or domicile at a time.

If one wishes to successfully effect a change of domicile, he must demonstrate an actual removal or an actual change of domicile, a *bona fide* intention of abandoning the former place of residence and establishing a new one, and definite acts which correspond with the purpose.<sup>[17]</sup> Without clear and positive proof of the concurrence of these three requirements, the domicile of origin continues.<sup>[18]</sup>

Records show that Noble's domicile of origin was Lapasan, Cagayan de Oro City. However, he claims to have chosen Kinoguitan, Misamis Oriental as his new domicile. To substantiate this, he presented before the COMELEC his voter registration records;<sup>[19]</sup> a Certification dated April 25, 2007 from Election Officer II Clavel Z. Tabada;<sup>[20]</sup> his Marriage Certificate;<sup>[21]</sup> and affidavits of residents of