

EN BANC

[G.R. No. 178024, October 17, 2008]

LAWRENCE B. WACNANG, PETITIONER, VS. COMMISSION ON ELECTIONS AND FLOYDELIA R. DIASEN, RESPONDENTS.

DECISION

BRION, J.:

This Petition for *Certiorari* filed - under Rule 64, in relation with Rule 65, of the Rules of Court - by Lawrence B. Wacnang (*petitioner*) seeks to set aside and annul Resolution No. 7911 issued on May 11, 2007 by the Commission on Elections (COMELEC) *En Banc*. The assailed resolution gave due course to the Certificate of Candidacy (COC) of Floydelia R. Diasen (*private respondent*) for the position of Governor of Kalinga Province.

THE ANTECEDENTS

The petitioner was the official candidate of the LAKAS-CMD-LP-KAMPI-NPC Team Unity (LAKAS-CMD) for the position of Governor of Kalinga Province in the May 14, 2007 elections. He was initially opposed by Rommel W. Diasen (*Rommel*), the private respondent's husband.

Rommel originally filed his COC for the House of Representatives to represent the lone district of Kalinga Province at 9:15 p.m. on March 29, 2007 - the last day for filing COCs. Before midnight of the same day, Rommel, through his son Rommel, Jr., withdrew his candidacy for the House of Representatives and at the same time filed a new COC for the position of Governor.

On April 7, 2007 or nine (9) days after filing his COC, Rommel was shot dead during one of his campaign sorties. On April 18, 2007, the private respondent filed her COC for Governor as substitute candidate for her deceased husband. The COMELEC of Kalinga Province did not act on the private respondent's COC. Instead, Provincial Election Supervisor (PES) Thomas L. Uyam, in a Memorandum dated April 23, 2007, referred the determination of whether to give due course to the private respondent's COC to the COMELEC *En Banc*, through the Law Department.

In his report, the PES narrated the circumstances surrounding the filing of the private respondent's COC and formulated the issue to be: (a) whether the filing by Floydelia Diasen of her COC for Governor last April 18, 2007 was in accordance with law and should be given due course, and (b) whether by her filing of her COC, she would be automatically considered as a substitute candidate for Governor in lieu of her deceased husband.^[1] In the "Findings and Recommendations," the PES Report concluded:

The COC and the Certificate of Nomination and Acceptance submitted by Floydelia Diasen on April 18, 2007 to this Office were filed out of time in violation of the Comelec Resolution No. 7799, promulgated 5 January 2007, which prescribes March 29, 2007 as the deadline for the filing of COCs for the local level elective positions.

Neither will the filing of the COC automatically convert Floydelia Diasen as a substitute candidate in place of her deceased husband. First, there was no petition for substitution filed, the same could not be countenanced because the deceased husband Atty. Rommel Diasen filed his COC for Governor as an independent candidate as borne out by the Comelec records. Attached herewith is a machine copy of the list of local candidates (Provincial level) for the Province of Kalinga, hereto marked as Annex "B" certifying that Rommel Diasen was an independent candidate for Governor because he did not submit Certificate of Nomination and Acceptance for Governor position when he filed his COC for said position. Hence, being an independent candidate, substitution is not allowed pursuant to Section 14 of Comelec Resolution No. 7799 implementing the provisions of the Omnibus Election Code.

Therefore, premises considered, the undersigned urgently requests for a final and definite resolution of the above issues to ease out [sic] the already tense situation in the Province. In the meantime, this Office does not and will not give due course to the Certificate of Candidacy filed by Floydelia R. Diasen on April 18, 2007, unless ordered otherwise by Comelec Manila.

Further, it is hereby recommended that the public be warned not to make a mockery of the Comelec rules with the intention to confuse the people with their vested personal interests.

Counsel for the private respondent objected to PES Uyam's Memorandum *via* a letter dated April 26, 2007 sent to the COMELEC through Director Alioden Dalaig of the COMELEC's Legal Department. Counsel claimed that there was a valid and proper substitution of candidate. To support this position, he attached, among other documents, a copy of: (a) Rommel's COCs (for membership in the House of Representatives and for Governorship) and their corresponding LAKAS-CMD Certificate of Nomination and Acceptance (CONA); (b) private respondent's COC and its corresponding LAKAS-CMD CONA; and (c) Atty. Raul Lambino's (*Lambino*, LAKAS-CMD Deputy Secretary-General for Legal Affairs) letter to the Office of the PES, Kalinga, informing the PES that LAKAS-CMD was withdrawing the CONA for Rommel, and was issuing a new CONA in private respondent's favor.

The Law Department fully agreed with the findings of the PES and recommended the denial of the private respondent's COC, "there being no proper case of substitution under Section 77 of the Omnibus Election Code." The Law Department found:

Lakas-CMD claimed that it issued a certificate of nomination to Rommel Diasen as its official candidate for Governor on March 16, 2007. While it may be true that Lakas-CMD may have issued a nomination to any candidate, but the important factor is the submission of said nomination not later than March 29, 2007 with the proper Comelec office as

mandated by Comelec Resolution No. 7799. Furthermore, an examination of the machine copy of the nominations for Congressman and Governor issued by Lakas-CMD on March 16, 2007 to Rommel Diasen shows that they have the same Doc. No. 47, Page No. 11, Book No. VIII, Series of 1007 [sic, should be 2007] of Notary Public Mervin Jovito S. Samadan of Makati City.

On May 7, 2007, Commissioner Florentino A. Tuazon, Commissioner-in-Charge of the Law Department, endorsed the Law Department's recommendation to the COMELEC *En Banc*.

On May 9, 2007, Lambino faxed a letter to the COMELEC Law Department to clarify the suspicion - allegedly raised by Director Dalaig in their (Dalaig's and Lambino's) discussion - that Rommel's CONA was not properly issued by LAKAS-CMD because the Rommel's CONA for Governor bore the same notarial entries as his earlier CONA for Congressman. He wrote:

We reiterate and assured [sic] your good office that Lakas-CMD had issued two CONA for him (referring to Rommel), on the same day, March 16, 2007. the [sic] first for Congressman was signed by Speaker Jose de Venecia, as Party President and Rep. Marcelino Libanan as Acting Secretary-General of the Party; and the second, for Governor was signed by former Senator Heherson Alvarez as Vice Executive Director of the Party who are likewise authorize [sic] to sign CONA. This latter CONA was issued to him in the afternoon as an assurance that Lakas CMD will not be left out with no candidate for Governor in the event that the other potential candidates for said position in the province will not file under Lakas CMD. Hence, while the late Rommel Diasen earlier filed on March 29, 2007 as certificate of candidacy for Congressman, he subsequently withdrew the same and opted to run for Governor instead at the last minute before the deadline at 12 midnight of even date with the CONA for Governor that Lakas CMD validly issued him. [Parenthetical notes supplied]

In this connection, we are attaching herewith the affidavit of the notary public who notarized both CONA explaining in details the oversight committed at that time, for your information and guidance."

On May 10, 2007, the COMELEC *En Banc* issued Resolution No. 7905 approving the recommendation of the Law Department and denying due course to the private respondent's COC. It directed the PES of Kalinga not to include the name of the private respondent in the Certified List of Candidates for Governor of Kalinga Province.

The next day or on May 11, 2007, the COMELEC reversed its previous ruling and gave due course to the private respondent's COC. It set aside Resolution No. 7905 and issued Resolution No. 7911 (the assailed resolution), directing the PES of Kalinga to include the private respondent's name in the Certified List of Candidates. The reversal was based on the following considerations: (a) the records showed that the Law Department recommendation was not supported by any evidence; there was nothing on record to show that, at the time of the filing of Rommel's COC, it was not accompanied by the corresponding CONA from his political party, while Floydelia Diasen submitted proof that Rommel's COC, filed on March 29, 2007, was

duly received by the Office of the Provincial Election Supervisor, Kalinga; (b) no less than the deputy Secretary General of LAKAS-CMD claimed that the late Rommel W. Diasen was their official candidate for the gubernatorial post of Kalinga; (c) the discrepancy in the notarial document numbers has been sufficiently explained by affidavit by the notary public, Mervin Jovito Samadan.^[2] Thus, the COMELEC *En Banc* concluded:

In sum, we find that there is sufficient basis to set aside the earlier Resolution dated May 10, 2007 which denied due course to the certificate of candidate [sic] of FLOYDELIA R. DIASEN as a substitute candidate for the position of Governor, vice the late ROMMEL W. DIASEN.

The private respondent garnered the most number of votes in the election for the position of Governor of Kalinga Province and was accordingly proclaimed elected Governor.

Days after the election or on May 21, 2007, the petitioner filed with the COMELEC a **Petition for Disqualification** against the private respondent, docketed as SPA No. 07-455 (the *disqualification case*). A certain Johnny D. Mayamaya likewise filed on June 1, 2007 a **Petition for Quo Warranto** with the COMELEC against the private respondent which was entitled *Johnny D. Maymaya v. Floydelia Diasen* and docketed EPC No. 2007-45.

THE PETITION AND THE SUBMITTED ISSUES

On June 12, 2007, the petitioner filed the present petition with us assailing COMELEC Resolution No. 7911. He imputes grave abuse of discretion on the COMELEC for issuing the assailed resolution, essentially claiming that the private respondent cannot validly substitute for her deceased husband as candidate for the gubernatorial position of Kalinga Province for the following reasons:

1. Rommel W. Diasen was an independent candidate who could not be substituted such that his purported substitution by respondent was invalid, as correctly held by COMELEC in its Resolution No. 7905;
2. Rommel W. Diasen could not be substituted as a candidate for the position of Governor of Kalinga because he did not validly file his COC for the said position; and
3. In any event, private respondent cannot be considered LAKAS-CMD's substitute candidate for the position of Governor of Kalinga because she did not file a valid CONA for said party together with her COC.

The petitioner maintains that although LAKAS-CMD subsequently claimed that it issued a CONA to Rommel as the party's official candidate for Governor on March 16, 2007, the CONA is spurious and invalid for it was notarized on the same date as his CONA for Representative, and the notarial document numbers of both CONAs are the same - the CONAs identically state the following entries: Doc. No. 47, Page No. 11, Book No. VIII, Series of 2007 of Notary Public Mervin Jovito S. Samadan. The petitioner additionally argues that the CONA of private respondent herself is spurious and invalid, as its notarization was defective - allegedly, a Certification issued by the Notarial Section of the Office of the Clerk of Court of Makati shows

that the notarial entries for the CONA were instead reported by the same notary public (Atty. Samadan) as entries to an Affidavit of a certain James U. Que.

The petitioner discloses in his petition that he earlier filed a petition for disqualification and that it was still pending with the COMELEC at the time of the filing of the present petition. Additionally, he alleges that he later learned of the *quo warranto* case which, as far as he knows, is still pending. In his Verification and Certification Against Forum Shopping attached to the present petition, he claimed that *while the petition may be premised upon a similar set of facts, the case* (referring to the disqualification case) *does not involve the same issues, and the filing of this Petition does not amount to forum shopping.*

Asked to comment on the petition, the private respondent claims that the present petition raises the same issues and arguments in the disqualification case (SPA No. 07-455) the petitioner filed with the COMELEC and the Petition for *Quo Warranto* filed by Johnny Mayamaya with the COMELEC Electoral Contests Adjudication Department, docketed as EPC No. 2007-45. The private respondent also argues that the petition is rendered academic, redundant, and inconsequential with her election, and that the petitioners' submissions have been foreclosed by intervening events and developments. She claims that the petition should therefore be dismissed for forum shopping and for lack of merit.

In his reply, the petitioner insists that he is not guilty of forum shopping because the present petition and the petition for disqualification seek different reliefs; that the relief prayed for in this petition is for the nullification and setting aside of COMELEC Resolution No. 7911, whereas SPA No. 07-455 does not seek the nullification of the same resolution and cannot provide the same relief prayed for in this petition. With respect to EPC No. 2007-45, he maintains that there is no identity of parties with the present petition.

In his Memorandum, the petitioner additionally claims that the present petition is the only plain, speedy, and adequate remedy against the assailed resolution, as the disqualification and *quo warranto* cases do not provide adequate relief from the assailed resolution; that, unless questioned through the present petition and annulled and set aside by the Court, the assailed resolution will most likely be invoked to justify the dismissal of these cases.

Via a Most Urgent Manifestation she filed on January 16, 2008, the private respondent informed us that the COMELEC Second Division issued a Resolution dated January 7, 2008 dismissing the petition for disqualification in SPA No. 07-455.

In her Memorandum, the private respondent reiterated her forum shopping argument; argued that the petition is mooted by her election; and posited that factual and/or evidentiary matters are not proper in a petition for *certiorari*.

We are called upon to resolve the following issues: (1) **whether the petitioner is guilty of forum shopping**; (2) **whether the COMELEC committed grave abuse of discretion in setting aside Resolution No. 7905 and issuing in its place Resolution No. 7911**; and (3) **has the private respondent's victory in the elections mooted the present case?**

THE COURT'S RULING