

EN BANC

[G.R. No. 158610, November 12, 2004]

ESTEBAN M. ZAMORAS, PETITIONER, VS. COMMISSION ON ELECTIONS (FIRST DIVISION) AND BARTOLOME BASTASA, RESPONDENTS.

DECISION

CARPIO, J.:

The Case

Petitioner Esteban M. Zamoras ("Zamoras") filed this petition for certiorari^[1] to annul the following Orders of the Commission on Elections First Division^[2] ("COMELEC") in EAC No. 4-2003: (1) the Order dated 10 March 2003 dismissing Zamoras' appeal; (2) the Order dated 4 April 2003 denying his motion for reconsideration; and (3) the Order and entry of judgment dated 8 May 2003 and 12 May 2003, respectively.

The Antecedents

Zamoras and private respondent Bartolome Bastasa ("Bastasa") were candidates for punong barangay of Barangay Galas, Dipolog City in the elections held on 15 July 2002. The Barangay Board of Canvassers proclaimed Bastasa as the duly elected punong barangay with 1,891 votes against Zamoras' 1,836, or a margin of 55 votes.

Zamoras filed an election protest before the Municipal Trial Court in Cities, Branch 1, Dipolog City ("MTCC"), docketed as Election Case No. 3559. Claiming that fraud and serious irregularities marred the elections in nine precincts, Zamoras prayed for revision or recount of the ballots in these nine precincts. On 4 November 2002, the MTCC rendered its Decision,^[3] the dispositive portion of which reads:

ACCORDINGLY, judgment is hereby rendered dismissing the Protest and declaring the Protestee as having garnered and/or obtained Two Hundred Twelve (212) Votes in his favor as determined by the Court's appreciation of the recounting and/or revision of the Ballots in this instant Case, and declaring the Protestant as having garnered and/or obtained Eleven (11) Votes in his favor as determined by the above-said appreciation.

No award of Damages and Attorney's Fees, the latter by way of Damages, are to be granted to the Protestee without prejudice to the Attorney's Fees for the professional services of the latter's (Protestee's) Counsel. (Quirante vs. IAC, supra.)

SO ORDERED.^[4]

Aggrieved, Zamoras filed a notice of appeal^[5] with the MTCC. In a notice dated 17 January 2003, the COMELEC's Judicial Records Division directed Zamora to remit P2,600 representing the deficiency in the payment of the required filing fees within three days from receipt of the notice.^[6] Zamoras allegedly received the notice on 28 January 2003 and remitted the deficiency by postal money order on the same day.

On 10 March 2003, the COMELEC issued an Order^[7] dismissing Zamoras' appeal for failure to perfect his appeal within the 5-day reglementary period pursuant to Sections 3 and 9(d), Rule 22 of the COMELEC Rules of Procedure. The Order contained a footnote that "[p]rotestant-appellant received the November 4, 2002 Decision on November 29, 2002. He filed his appeal on December 9, 2002 or ten (10) days from receipt of the decision sought to be appealed."

Zamoras filed a motion for reconsideration by registered mail on 21 March 2003. In its Order^[8] dated 4 April 2003, the COMELEC denied the motion for reconsideration "for failure of the movant to pay the necessary motion fees under Sec. 7(f), Rule 40 of the Comelec Rules of Procedure."

On 8 May 2003, the COMELEC issued an Order^[9] stating as follows:

Considering that the *Urgent Motion for Reconsideration with Manifestation of Merits* filed by Protestant-Appellant was denied per Order dated 4 April 2003, the 10 March 2003 Order dismissing Protestant-Appellant's appeal for non-payment of the correct appeal fee is now final and executory.

WHEREFORE, let an *Entry of Judgment* be issued in the instant case. The Judicial Records Division-ECAD, this Commission, is hereby directed to remand **within three (3) days from receipt** hereof the records of this case to the court of origin for its proper disposition.

Meanwhile, Zamoras filed another motion for reconsideration by registered mail on 16 May 2003. He also remitted the fees required for the motion by postal money order on the same date.

The COMELEC deemed the Orders dated 10 March 2003 and 4 April 2003 final and ordered their entry in the Book of Entries of Judgment on 12 May 2003.^[10] Zamoras received by registered mail a copy of the Order dated 8 May 2003 and a copy of the Entry of Judgment on 27 May 2003.

Hence, the instant petition.

The Issue

Zamoras failed to formulate in his petition the issues for our resolution. However, we gather that the sole issue is whether the COMELEC gravely abused its discretion amounting to lack or excess of jurisdiction in dismissing Zamoras' appeal and in denying his motion for reconsideration.

The Court's Ruling

The petition lacks merit.

Zamoras argues that the COMELEC dismissed his appeal on the mistaken belief that he filed his appeal on 9 December 2002 or ten (10) days from his receipt on 29 November 2002 of the decision. Zamoras claims that he filed his appeal on 2 December 2002, which is three (3) days from 29 November 2002.

Section 3, Rule 22 of the 1993 COMELEC Rules of Procedure specifically mandates that in appeals from decisions of courts in election protest cases, the notice of appeal must be filed within five (5) days after the promulgation of the decision. This section states:

Sec. 3. *Notice of Appeal.* – Within five (5) days after promulgation of the decision of the court, the aggrieved party may file with said court a notice of appeal, and serve a copy thereof upon the attorney of record of the adverse party.

Otherwise, the appeal is dismissible under Section 9 of the same rule which reads:

Sec. 9. *Grounds for Dismissal of Appeal.* - The appeal may be dismissed upon motion of either party or at the instance of the Commission on any of the following grounds:

- (a) Failure of the appellant to pay the correct appeal fee;
- (b) x x x;
- (c) x x x; and
- (d) Failure to file notice of appeal within the prescribed period.

We grant that Zamoras filed his notice of appeal on 2 December 2003 which is within the 5-day reglementary period. However, Zamoras paid only P600 as appeal fee which is deficient by P2,600. Sections 3 and 4, Rule 40 of the 1993 COMELEC Rules of Procedure provide:

Sec. 3. *Appeal Fees.* - The appellant in election cases shall pay an appeal fee as follows:

- (a) x x x
- (b) Election cases appealed from courts of limited jurisdiction... P500.00.

In every case, a legal research fee of P20.00 shall be paid by the appellant in accordance with Section 4, Republic Act No. 3870, as amended.

Sec. 4. *Where and When to pay.* - The fees prescribed in Sections 1, 2 and 3 hereof shall be paid to, and deposited with, the Cash Division of the Commission **within a period to file the notice of appeal.** (Emphasis supplied)