

## EN BANC

[ G.R. No. 125249, February 07, 1997 ]

### JIMMY S. DE CASTRO, PETITIONER, VS. THE COMMISSION ON ELECTIONS AND AMANDO A. MEDRANO, RESPONDENTS.

#### DECISION

##### HERMOSISIMA, JR., J.:

Before us is a petition for *certiorari* raising twin issues as regards the effect of the contestant's death in an election protest: Is said contest a personal action extinguished upon the death of the real party in interest? If not, what is the mandatory period within which to effectuate the substitution of parties?

The following antecedent facts have been culled from the pleadings and are not in dispute:

Petitioner was proclaimed Mayor of Gloria, Oriental Mindoro during the May 8, 1995 elections.

In the same elections, private respondent was proclaimed Vice-Mayor of the same municipality.

On May 19, 1995, petitioner's rival candidate, the late Nicolas M. Jamilla, filed an election protest<sup>[1]</sup> before the Regional Trial Court of Pinamalayan, Oriental Mindoro.<sup>[2]</sup>

During the pendency of said contest, Jamilla died.<sup>[3]</sup> Four days after such death or on December 19, 1995, the trial court dismissed the election protest ruling as it did that "[a]s this case is personal, the death of the protestant extinguishes the case itself. The issue or issues brought out in this protest have become moot and academic."<sup>[4]</sup>

On January 9, 1995, private respondent learned about the dismissal of the protest from one Atty. Gaudencio S. Sadicon, who, as the late Jamilla's counsel, was the one who informed the trial court of his client's demise.

On January 15, 1996, private respondent filed his Omnibus Petition/Motion (For Intervention and/or Substitution with Motion for Reconsideration).<sup>[5]</sup> Opposition thereto was filed by petitioner on January 30, 1996.<sup>[6]</sup>

In an Order dated February 14, 1996,<sup>[7]</sup> the trial court denied private respondent's Omnibus Petition/Motion and stubbornly held that an election protest being personal to the protestant, is *ipso facto* terminated by the latter's death.

Unable to agree with the trial court's dismissal of the election protest, private respondent filed a petition for *certiorari* and *mandamus* before the Commission on Elections (COMELEC); private respondent mainly assailed the trial court orders as having been issued with grave abuse of discretion.

COMELEC granted the petition for *certiorari* and *mandamus*.<sup>[8]</sup> It ruled that an election contest involves both the private interests of the rival candidates and the public interest in the final determination of the real choice of the electorate, and for this reason, an election contest necessarily survives the death of the protestant or the protestee.

We agree.

It is true that a public office is personal to the public officer and is not a property transmissible to his heirs upon death.<sup>[9]</sup> Thus, applying the doctrine of *actio personalis moritur cum persona*, upon the death of the incumbent, no heir of his may be allowed to continue holding his office in his place.

But while the right to a public office is personal and exclusive to the public officer, an election protest is not purely personal and exclusive to the protestant or to the protestee such that the death of either would oust the court of all authority to continue the protest proceedings.

An election contest, after all, involves not merely conflicting private aspirations but is imbued with paramount public interests. As we have held in the case of *Vda. de De Mesa v. Mencias*:<sup>[10]</sup>

"x x x. It is axiomatic that an election contest, involving as it does not only the adjudication and settlement of the private interests of the rival candidates but also the paramount need of dispelling once and for all the uncertainty that beclouds the real choice of the electorate with respect to who shall discharge the prerogatives of the offices within their gift, is a proceeding imbued with public interest which raises it onto a plane over and above ordinary civil actions. For this reason, broad perspectives of public policy impose upon courts the imperative duty to ascertain by all means within their command who is the real candidate elected in as expeditious a manner as possible, without being fettered by technicalities and procedural barriers to the end that the will of the people may not be frustrated (*Ibasco vs. Ilao, et al.*, G.R. L-17512, December 29, 1960; *Reforma vs. De Luna*, G.R. L-13242, July 31, 1958). So inextricably intertwined are the interests of the contestants and those of the public that there can be no gainsaying the logic of the proposition that even the voluntary cessation in office of the protestee not only does not ipso facto divest him of the character of an adversary in the contest inasmuch as he retains a party interest to keep his political opponent out of the office and maintain therein his successor, but also does not in any manner impair or detract from the jurisdiction of the court to pursue the proceeding to its final conclusion (*De Los Angeles vs. Rodriguez*, 46 Phil. 595, 597; *Salcedo vs. Hernandez*, 62 Phil. 584, 587; *Galves vs. Maramba*, G.R. L-13206).