

## EN BANC

[ G.R. No. 216637, March 07, 2017 ]

**AGAPITO J. CARDINO, PETITIONER, VS. COMMISSION ON ELECTIONS *EN BANC* AND ROSALINA G. JALOSJOS A.K.A. ROSALINA JALOSJOS JOHNSON, RESPONDENTS.**

### RESOLUTION

**LEONARDO-DE CASTRO, J.:**

The Court resolves the instant petition for *certiorari*<sup>[1]</sup> under Rule 64 in relation to Rule 65 of the Rules of Court filed by petitioner Agapito J. Cardino (Cardino), which assails the Resolution<sup>[2]</sup> dated December 16, 2014 of the Commission on Elections (COMELEC) Second Division and the Resolution<sup>[3]</sup> dated January 30, 2015 of the COMELEC *En Banc* in EPC No. 2013-06. Both resolutions denied the petition for *quo warranto*<sup>[4]</sup> filed by Cardino against private respondent Rosalina G. Jalosjos (Jalosjos).

#### **The Facts**

During the May 13, 2013 Elections, Cardino and Jalosjos both ran for the position of Mayor of Dapitan City, Zamboanga del Norte. On May 15, 2013, Jalosjos was proclaimed the winner after garnering 18,414 votes compared to Cardino's 16,346 votes.

Cardino immediately filed a petition for *quo warranto* before the COMELEC, which sought to nullify the candidacy of Jalosjos on the ground of ineligibility. Said petition was docketed as EPC No. 2013-06 before the COMELEC Second Division.

Cardino alleged that Jalosjos was a former natural-born Filipino citizen who subsequently became a naturalized citizen of the United States of America (USA). Jalosjos later applied for the reacquisition of her Filipino citizenship under Republic Act No. 9225<sup>[5]</sup> before the Consulate General of the Philippines in Los Angeles, California, USA. On August 2, 2009, Jalosjos took her Oath of Allegiance to the Republic of the Philippines and an Order of Approval of citizenship retention and reacquisition was issued in her favor. However, when Jalosjos filed her Certificate of Candidacy (COC) for Mayor of Dapitan City on October 1, 2012, she attached therein an Affidavit of Renunciation of her American citizenship that was subscribed and sworn to on **July 16, 2012** before Judge Veronica C. De Guzman-Laput of the Municipal Trial Court (MTC) of Manukan, Zamboanga del Norte.

Cardino averred that based on the certification from the Bureau of Immigration, Jalosjos left the Philippines for the USA on May 30, 2012 and she presented her US passport to the immigration authorities. Jalosjos then arrived back in the Philippines via Delta Airlines Flight No. 173 on July 17, 2012 at around 10:45 p.m. using her US

passport. Cardino, therefore, argued that it was physically impossible for Jalosjos to have personally appeared in Manukan, Zamboanga del Norte before Judge De Guzman-Laput on July 16, 2012 to execute, sign and swear to her Affidavit of Renunciation.

Cardino alleged that Jalosjos' Affidavit of Renunciation was a falsified document that had no legal effect. As such, when Jalosjos filed her COC for Mayor of Dapitan City, she still possessed both Philippine and American citizenships and was therefore disqualified from running for any elective local position. Given that Jalosjos' COC was void *ab initio*, she was never a candidate for Mayor of Dapitan City. Cardino, thus, prayed for Jalosjos to be declared ineligible to run for Mayor of Dapitan City, that her proclamation be set aside, and that he be proclaimed as the duly-elected Mayor of Dapitan City.

Jalosjos answered<sup>[6]</sup> that the date of "16th day of July, 2012" was mistakenly indicated in the Affidavit of Renunciation instead of its actual execution date of **July 19, 2012**. Jalosjos claimed that it was on the latter date that she appeared before Judge De Guzman-Laput to execute a personal and sworn renunciation of her American citizenship. Jalosjos further contended that Cardino failed to show that Judge De Guzman-Laput denied having administered the oath that Jalosjos took as she renounced said citizenship. Jalosjos averred that she had no reason to make it appear that she renounced her American citizenship on July 16, 2012. The actual date of Jalosjos' renunciation of her American citizenship on July 19, 2012 allegedly complied with the requirements under Republic Act No. 9225 such that she remained eligible for the position of Mayor of Dapitan City.

Before the COMELEC Second Division, Cardino offered the following pieces of documentary evidence, among others, to prove that it was physically impossible for Jalosjos to have personally appeared, signed and sworn to her Affidavit of Renunciation on July 16, 2012: (a) a certification<sup>[7]</sup> from the Bureau of Immigration, reflecting Jalosjos' arrival in the country on July 17, 2012; (b) Jalosjos' vacation and sick leave applications<sup>[8]</sup> from May 29, 2012 up to July 18, 2012; and (c) a certification<sup>[9]</sup> from the Houston Eye Associates, showing that Jalosjos underwent a medical examination in Houston, Texas, USA on July 15, 2012.

On the other hand, Jalosjos offered, *inter alia*, the following evidence: (a) the judicial affidavit of Jalosjos,<sup>[10]</sup> which narrated the events involving the execution of her Affidavit of Renunciation on July 19, 2012; (b) the judicial affidavit of Eric Corro (Corro),<sup>[11]</sup> a member of the staff of Jalosjos who drafted the Affidavit of Renunciation; and (c) the letter complaint filed by Cardino against Judge De Guzman-Laput before the Office of the Court Administrator (OCA), docketed as OCA IPI No. 13-2627-MTJ, and its attachments.<sup>[12]</sup>

On July 22, 2014, Judge De Guzman-Laput testified by deposition before the Provincial Election Supervisor in Dipolog City wherein she positively stated that it was on July 19, 2012 that Jalosjos personally appeared before her to subscribe to the Affidavit of Renunciation.<sup>[13]</sup>

In the assailed **Resolution dated December 16, 2014**, the COMELEC Second Division dismissed Cardino's petition for *quo warranto* in this wise:

[Cardino] stated herein that [Jalosjos'] Affidavit of Renunciation is falsified and therefore invalid. The Affidavit of Renunciation was allegedly executed and subscribed before [Judge De Guzman-Laput] on July 16, 2012 or one day before respondent Jalosjos arrived in Manila.

[Jalosjos] did not dispute the date indicated in the Affidavit of Renunciation. However, the said date was only a result of a clerical error as it was on July 19, 2012 that [Jalosjos] made a personal and sworn renunciation of all foreign citizenships before a public officer. The Affidavit of Renunciation cannot be considered falsified but only one containing clerical error in the date of execution.

x x x x

To the mind of this Commission, [Judge De Guzman-Laput] amply explained the discrepancy as to the date indicated in the affidavit. [Cardino] never refuted the assertion of clerical error. He only relied on the date of the affidavit which appears to be erroneous. The premise that the affidavit was subscribed to on July 16, 2012 is already debunked by the admission by the public officer authorized to administer oaths that there was a clerical error in the said Affidavit.

We lend credence to the testimony of [Judge De Guzman-Laput] as she was the public officer who administered the oath. Furthermore, [Cardino] did not provide any assertion contradicting her. [Cardino] did not provide any proof on the insinuation that the Judge has motives to falsely testify in the case. [Cardino] failed to present even a single testimony to support his claim. The negative testimony that the renunciation did not take place cannot overcome the positive testimony that there was one. The testimony of [Judge De Guzman-Laput] goes to show that [Jalosjos] made a personal and sworn renunciation of any and all foreign citizenship [s]. The document Affidavit of Renunciation was the evidence and result of such. The eligibility of [Jalosjos] cannot just be negated by the clerical error in a document evidencing her renunciation of any and all foreign citizenships.

Lastly, [Jalosjos] obtained the plurality of votes for the position of mayor of Dapitan City in the May 13, 2013 Elections. This Commission cannot hold hostage the will of the electorate on the unproven allegation that a requirement was not met by [Jalosjos]. x x x.

x x x x

**WHEREFORE**, the instant petition is hereby **DISMISSED** for lack of merit.<sup>[14]</sup>

Cardino moved for a reconsideration<sup>[15]</sup> of the above resolution but the same was denied in the assailed Resolution dated January 30, 2015 of the COMELEC *En Banc*.

In the petition before this Court, Cardino faults the COMELEC for refusing to declare the ineligibility of Jalosjos for her failure to comply with the requirement of Republic Act No. 9225 of making a personal and sworn renunciation of any and all foreign

citizenships before any public officer authorized to administer an oath when she filed her COC for Mayor of Dapitan City on October 1, 2012. Cardino insists that Jalosjos' Affidavit of Renunciation was falsified and, therefore, void *ab initio* as it was physically impossible for her to have executed, signed and sworn to her Affidavit of Renunciation before Judge De Guzman-Laput on July 16, 2012. Consequently, there was no valid personal sworn renunciation of any and all foreign citizenships on the part of Jalosjos.

As to the testimonial evidence adduced by Jalosjos, Cardino brushed them aside as mere self-serving and inconsistent testimonies of biased witnesses. Cardino alleged that Judge De Guzman-Laput had every reason to falsely testify in favor of Jalosjos given the pendency of the administrative case that Cardino filed against Judge De Guzman-Laput before the Supreme Court (OCA IPI No. 13-2627-MTJ) involving the allegedly fraudulent execution of Jalosjos' Affidavit of Renunciation.

In her Comment<sup>[16]</sup> to the petition, Jalosjos maintains that her Affidavit of Renunciation is not falsified, but one that merely contains a clerical error in the date of execution. The same was actually executed and sworn to before Judge De Guzman-Laput on July 19, 2012 and it was through an error of the personnel who prepared the affidavit that the date of July 16, 2012 was indicated thereon. Jalosjos admits that she could not have executed the affidavit on July 16, 2012 as she was still in the USA on said date.

Jalosjos explains that after she arrived in Manila on July 17, 2012, she bought a ticket for a flight to Dipolog City in Zamboanga del Norte on July 19, 2012. Jalosjos then informed Corro that she wanted to appear before Judge De Guzman-Laput on July 19, 2012 so that her staff could make the necessary arrangements. Jalosjos did in fact fly from Manila to Dipolog City on board Cebu Pacific Flight No. 5J-703 and arrived there around 2:00 p.m. of July 19, 2012. At around 5:00 p.m. that day, Jalosjos personally appeared before Judge De Guzman-Laput at the latter's sala in the MTC of Manukan, Zamboanga del Norte and renounced her American citizenship by executing the Affidavit of Renunciation under oath.

Jalosjos stresses that Judge De Guzman-Laput herself confirmed that Jalosjos personally appeared on July 19, 2012 before the latter at her sala in the MTC of Manukan, Zamboanga del Norte to renounce her American citizenship. Cardino, on the other hand, failed to present any evidence that would controvert the testimonies of Jalosjos and her witnesses that she in fact appeared before Judge De Guzman-Laput on July 19, 2012 to personally renounce her American citizenship.

Jalosjos asserts that the mistake in the entry for the date of execution of the Affidavit of Renunciation did not negate the fact she still performed the necessary acts to renounce her American citizenship under oath before she filed her COC for Mayor in the May 13, 2013 Elections.

In its Comment<sup>[17]</sup> to the petition, the COMELEC argues that Cardino's petition for *quo warranto* was correctly dismissed as Jalosjos validly executed a personal and sworn renunciation of her American citizenship before Judge De Guzman-Laput prior to the filing of her COC. The COMELEC avers that the date July 16, 2012 written on Jalosjos' Affidavit of Renunciation was proven to be a mere clerical error. This fact was explained by Judge De Guzman-Laput when she testified that Jalosjos

personally appeared before her and sworn to the Affidavit of Renunciation on July 19, 2012. The COMELEC posits that since Jalosjos won the elections, all doubts should be resolved in favor of her eligibility.

In his Consolidated Reply<sup>[18]</sup> to the above comments, Cardino stands pat on his position that Jalosjos' defense of clerical error cannot be used to override the established fact that it was physically impossible for Jalosjos to appear before Judge De Guzman-Laput on July 16, 2012 to renounce her American citizenship under oath.

After evaluating the facts and evidence of this case, the Court fails to find any action on the part of the COMELEC that constitutes grave abuse of discretion amounting to lack or excess of jurisdiction.

At the outset, the Court notes that term of the contested office in this case, *i.e.*, the mayorship of Dapitan City following the May 13, 2013 Elections, already expired on June 30, 2016. The issues regarding the eligibility of Jalosjos for the said position and Cardino's supposed right to be declared the winner for said term had been rendered moot and academic. However, we deem it appropriate to resolve the petition on the merits considering that litigation on the question of Jalosjos' citizenship is capable of repetition in that it is likely to recur if she would run again for public office.<sup>[19]</sup>

The present case arose from a petition for *quo warranto* filed by Cardino under Section 253 of the Omnibus Election Code, which pertinently reads:

Sec. 253. *Petition for quo warranto.* - Any voter contesting the election of any Member of the Batasang Pambansa, regional, provincial, or city officer on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall file a sworn petition for *quo warranto* with the [COMELEC] within ten days after the proclamation of the results of the election.

According to Cardino, the ineligibility of Jalosjos stemmed from the fact that she was a dual citizen of the Philippines and the USA when she submitted her COC for Mayor in the May 13, 2013 elections. This is proscribed by Section 40 (d) of the Local Government Code, which reads:

Sec. 40. *Disqualifications.* - The following persons are disqualified from running for any elective local position:

x x x x

(d) Those with dual citizenship[.]

In *Sobejana-Condon v. Commission on Elections*,<sup>[20]</sup> the Court explained in detail the requirements that must be complied with under Republic Act No. 9225 before a person with dual citizenship can be qualified to run for any elective public office, to wit:

[Republic Act] No. 9225 allows the retention and re-acquisition of Filipino citizenship for natural-born citizens who have lost their Philippine citizenship by taking an oath of allegiance to the Republic, thus: