

EN BANC

[G.R. No. 185222, January 19, 2010]

JESUS M. CALO, PETITIONER, VS. COMMISSION ON ELECTIONS AND RAMON "MONCHING RMC" M. CALO, RESPONDENTS.

DECISION

CORONA, J.:

This case could have been an ordinary election contest. However, despite the rather technical issue that we are tasked to resolve here, this case shows that, while blood is usually thicker than water, politics, in some very few instances, may actually be thicker than blood and may be no respecter even of family ties.

Respondent Ramon M. Calo was proclaimed winner in the May 14, 2007 mayoralty race in the Municipality of Carmen, Province of Agusan del Sur. His opponent, petitioner Jesus M. Calo, is his brother, whom he beat by 278 votes. Petitioner filed an election protest in the Regional Trial Court (RTC) of Butuan City, Branch 3, questioning the election results in 36 of out of the 56 precincts.

On February 8, 2008, the RTC issued its decision on the protest finding petitioner to have received the majority votes and declaring him the duly elected mayor, on two grounds: (1) 981 votes were considered by the RTC as stray votes and deducted from respondent's 4,818 votes giving petitioner, who had 4,540 votes, an edge of 703 votes in his favor and (2) based on marked ballots, claimed ballots, written by one (WBO) ballots, written by two (WBT) ballots and stray ballots, 315 votes were also deducted from respondent, leaving the latter with 4,503 votes as against petitioner's 4,540 or a difference of 37 votes.^[1]

Petitioner filed a motion for the issuance of a writ of execution pending appeal on February 12, 2008. On the same date, respondent filed his notice of appeal.

On February 15, 2008, the RTC issued its special order granting petitioner's motion for the issuance of a writ of execution pending appeal. Respondent sought reconsideration of this special order on February 19, 2008. On the same date, the RTC ordered the transmittal of the records to the COMELEC.

Before the RTC could act on the motion for reconsideration filed by respondent on February 19, 2008, respondent forthwith filed a petition for certiorari and prohibition with the Commission on Elections (COMELEC) docketed as SPR No. 46-2008, raising as ground the grave abuse of discretion committed by the RTC.

On July 30, 2008, the COMELEC First Division issued its resolution granting the petition in SPR No. 46-2008, setting aside the RTC special order dated February 15, 2008, quashing the accompanying writ of execution, issuing a *status quo ante* order directing the parties to observe the status quo prevailing prior to the February 15,

2008 special order and directing respondent to continue as the municipal mayor of the Municipality of Carmen. Petitioner filed a motion for reconsideration, which was denied by the COMELEC En Banc per resolution dated November 13, 2008.

Hence, the present petition for certiorari and prohibition under Rule 65 of the Rules of Court, based on the following grounds:

- A. The COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in finding, through the questioned Resolutions dated 30 July 2008 and 13 November 2008, that the RTC Judge committed grave abuse of discretion amounting to lack of jurisdiction in issuing that Special Order dated 15 February, 2008.
- B. The petitioner is entitled to injunctive relief from the Honorable Supreme Court.

The Court finds merit in the petition.

Section 11, Rule 14 of A.M. No. 07-4-15-SC^[2] sets the standards in the grant or denial of a motion for execution pending appeal in election contests involving elective municipal and *barangay* officials, to wit -

SEC. 11. *Execution pending appeal.* - On motion of the prevailing party with notice to the adverse party, the court, while still in possession of the original records, may, at its discretion, order the execution of the decision in an election contest before the expiration of the period to appeal, subject to the following rules:

(a) There must be a motion by the prevailing party with three-day notice to the adverse party. Execution pending appeal shall not issue without prior notice and hearing. There must be good reasons for the execution pending appeal. The court, in a special order, must state the good or special reasons justifying the execution pending appeal. Such reasons must:

(1) constitute superior circumstances demanding urgency that will outweigh the injury or damage should the losing party secure a reversal of the judgment on appeal; and

(2) be manifest, in the decision sought to be executed, that the defeat of the protestee or the victory of the protestant has been clearly established.

(b) If the court grants execution pending appeal, an aggrieved party shall have twenty working days from notice of the special order within which to secure a restraining order or *status quo order* from the Supreme Court or the Commission on Elections. The corresponding writ of execution shall issue