

EN BANC

[G.R. No. 184286, February 26, 2010]

**MAYOR JOSE MARQUEZ LISBOA PANLILIO, PETITIONER, VS.
COMMISSION ON ELECTIONS AND SAMUEL ARCEO DE JESUS,
SR., RESPONDENTS.**

D E C I S I O N

ABAD, J.:

This case is about an attempt by the Regional Trial Court (RTC) to install the winning protestant in an election protest case pending appeal by the protestee to the Commission on Elections (COMELEC) despite the latter's order to the parties to maintain the *status quo*.

The Facts and the Case

Petitioner Jose Panlilio (Panlilio) and respondent Samuel de Jesus, Sr. (De Jesus) ran against each other for Mayor of Busuanga, Palawan, in the May 14, 2007 elections. De Jesus got 3,902 votes as against Panlilio's 3,150 votes, with De Jesus winning by 752 votes. On May 25, 2007 Panlilio filed an election protest^[1] with the RTC, Branch 51, Puerto Princesa City. On March 7, 2008 the RTC declared Panlilio the winner over De Jesus by two votes.^[2]

De Jesus appealed the RTC decision to the COMELEC.^[3] Pending resolution of the appeal, petitioner Panlilio filed with the RTC a motion for execution of its judgment pending appeal.^[4] Initially, the RTC denied the motion on the grounds a) that Panlilio gave no good reason that would justify immediate execution; and b) that public interest would be better served if there were no disruptions in governance.^[5] On April 17, 2008, however, the RTC issued an order,^[6] reversing itself and allowing execution pending appeal because its previous order had brought more confusion and chaos in the municipality^[7] and Panlilio had the support of the provincial government and the congressional district.

Respondent De Jesus filed a motion for reconsideration^[8] but the RTC denied it on April 28, 2008.^[9] Thus, he filed a petition for *certiorari* with application for a temporary restraining order (TRO) and preliminary injunction with the COMELEC against the RTC and petitioner De Jesus,^[10] seeking to annul the order of execution pending appeal.^[11]

On May 15, 2008 the COMELEC's Second Division issued a 60-day TRO, enjoining the execution pending appeal or, in case petitioner Panlilio had already taken his oath, directing a return to the *status quo* prior to the issuance of the order of execution pending appeal. The Second Division also directed respondent De Jesus to

continue discharging his duties as Mayor until further orders. Lastly, it required Panlilio to answer De Jesus' petition.^[12]

On July 15, 2008 the Second Division issued a resolution, granting respondent De Jesus' petition and setting aside the RTC's orders of April 17 and 28, 2008.^[13] The Second Division did not find good reasons for allowing execution of the RTC decision pending an appeal from it to the COMELEC. The RTC declared petitioner Panlilio winner on a mere 2-vote margin, said the Second Division, after the RTC deducted 754 votes from De Jesus. Before the people's will can be enforced, it must be first ascertained. Thus, the Second Division directed all parties "to observe the *status quo*" prior to the issuance of the RTC's order of April 17, 2008 and directed respondent De Jesus to keep his post "until the finality of the March 7, 2008 decision of the court *a quo*."

On July 19, 2008 Panlilio filed a motion for reconsideration of the July 15, 2008 order,^[14] which motion the COMELEC division elevated to the *en banc* for its resolution.^[15] Meanwhile, on July 21, 2008 Panlilio asked the RTC to implement the writ of execution it earlier issued in his favor, given that the COMELEC's 60-day TRO had already expired. The Court granted the motion in its order of August 27, 2008.^[16] After the sheriff served the writ of execution on the parties or on September 3, 2008, Panlilio took his oath as Mayor.

On September 4, 2008 respondent De Jesus hurried to the COMELEC *en banc* to seek relief from petitioner Panlilio's threatened takeover of the mayor's office.^[17]

On September 5, 2008 the *en banc* set aside the RTC's order.^[18] It also ordered the RTC and Panlilio to maintain the July 15, 2008 *status quo* order of the COMELEC Second Division. Acting on a query of the Department of Interior and Local Government regarding which mayor to recognize, the COMELEC *en banc* issued an order on September 11, 2008, declaring incumbent De Jesus as the Mayor of Busuanga.^[19]

Undeterred, on September 12, 2008 petitioner Panlilio filed this petition for *certiorari* and prohibition with application for TRO and preliminary injunction against COMELEC and respondent De Jesus.^[20] He asks this Court to annul the actions of the COMELEC that allowed De Jesus to keep the post of Mayor of Busuanga.

The Issue

The key issue in this case is whether or not the COMELEC *en banc* acted with grave abuse of discretion when it enjoined the implementation of the RTC's order of execution pending appeal notwithstanding the lapse of the 60-day TRO that the COMELEC Second Division had earlier issued.

The Court's Ruling

Petitioner Panlilio points out that since the COMELEC Second Division did not issue a preliminary injunction order after its 60-day TRO lapsed, nothing prevented the RTC from implementing its earlier order installing Panlilio as Busuanga Mayor pending respondent De Jesus' appeal from the decision against him. And, since the resolution annulling the RTC orders of execution pending appeal had not yet become