

THIRD DIVISION

[G.R. No. 173165, February 17, 2010]

ATTY. LUCKY M. DAMASEN, PETITIONER, VS. OSCAR G. TUMAMAO, RESPONDENT.

DECISION

PERALTA, J.:

Before this Court is a Petition for Review on *Certiorari*,^[1] under Rule 45 of the 1997 Rules of Civil Procedure, assailing the June 14, 2006 Decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 90882.

The facts of the case are as follows:

On December 2, 2004, Nelia Tumamao, the Vice-Mayor of San Isidro, Isabela, died.^[3] As a result, a permanent vacancy was created in the Office of the Vice-Mayor.

Pursuant to Sec. 44 of Republic Act (RA) No. 7160,^[4] Ligaya C. Alonzo (Alonzo) was elevated to the position of Vice-Mayor, she being the highest-ranking member of the Sangguniang Bayan, that is, the one who garnered the highest number of votes for that office.^[5] As a result, a permanent vacancy was created in the Sangguniang Bayan.

To fill up the ensuing vacancy in the Sangguniang Bayan, San Isidro Mayor Abraham T. Lim (Mayor Lim) recommended to Governor Maria Gracia Cielo M. Padaca (Governor Padaca), the appointment of respondent Oscar G. Tumamao (Tumamao), a member of the Laban ng Demokratikong Pilipino (LDP), the same political party to which Alonzo belonged.^[6]

On April 15, 2005, Tumamao took his oath as a member of the Sangguninang Bayan before Mayor Lim.^[7]

On April 26, 2005 and May 3, 2006, Tumamao attended the regular sessions of the Sangguniang Bayan.^[8]

On May 5, 2005, petitioner Atty. Lucky Damasen (Damasen) became a member of the LDP after taking his oath of affiliation before the LDP Provincial Chairman, Ms. Ana Benita Balauag (Provincial Chairman Balauag).^[9] On even date, Damasen was able to secure from LDP Provincial Chairman Balauag a letter of nomination addressed to Governor Padaca for his appointment to the Sangguniang Bayan.^[10]

On May 12, 2005, Damasen was appointed as Sangguniang Bayan member by Governor Padaca.^[11]

On May 16, 2005, Damasen took his oath as member of the Sangguniang Bayan before Governor Padaca.^[12]

On May 17, 2005, Damasen attended the Sangguniang Bayan session, but with Tumamao present thereat, the former was not duly recognized.^[13] Hence, in the afternoon of the same day, Damasen filed with the Regional Trial Court of Santiago City (RTC) a Petition for Quo Warranto with Prayer for the Issuance of a Writ of Preliminary Injunction,^[14] seeking to be declared the rightful member of the Sangguniang Bayan, claiming that he had been nominated by LDP Provincial Chairman Balauag and had been appointed thereto by Governor Padaca.^[15] The case was docketed as Special Civil Action Case No. 0234.

The RTC issued a Temporary Restraining Order effective for 72 hours. Thereafter, the RTC issued an order extending the Temporary Restraining order to 17 days.

Later, in the hearing to determine the propriety of issuing a Writ of Preliminary Injunction, Damasen testified that he is a member of the LDP and was nominated to the position in question by LDP Provincial Chairman Balauag; that pursuant thereto, he was appointed by Governor Padaca as a member of the Sangguniang Bayan, and that he later took his oath before her; but that during session of the Sangguniang Bayan on May 12, 2005, he was not recognized by a majority of its members.^[16]

For his part, Tumamao called to the witness stand his counsel Atty. Ernest Soberano (Soberano), who identified a letter dated June 14, 2005, signed by LDP Provincial Chairman Balauag, which states that the latter was revoking her nomination of Damasen, and that she was confirming Tumamao's nomination made by Mayor Lim.^[17] Later, Tumamao presented Provincial Chairman Balauag who affirmed the contents of her letter revoking the nomination of Damasen.^[18]

On August 4, 2005, the RTC rendered a Decision^[19] ruling in favor of Damasen, the dispositive portion of which reads:

WHEREFORE, after careful evaluation of the evidence presented, the Court resolves the petition declaring petitioner, Atty. Lucky M. Damasen as the rightful person to have the right to occupy and exercise the functions of Sangguniang Bayan member of San Isidro, Isabela, enjoining, excluding respondent Oscar G. Tumamao from occupying and exercising the function of Sangguniang Bayan member of San Isidro, Isabela, from usurping and unlawfully holding or exercising said office. After determining that herein petitioner is the rightful person to occupy and exercise the functions of Sangguniang Bayan member of San Isidro, Isabela, it follows that he is entitled to the salaries, benefits and other emoluments appurtenant to the position. He is also entitled to recover his costs.

SO ORDERED.^[20]

The RTC based its decision on Sec. 45 (b) of RA 7160,^[21] which provides for the rule on succession in cases of permanent vacancies in the Sangguninan. The RTC ruled that the evidence submitted by Damasen proved that the requirements to be able to qualify for the position was fully complied with.^[22] Moreover, the RTC held that the revocation of the political nomination issued by LDP Provincial Chairman Balauag was done after Governor Padaca had acted on it and had issued the appointment of Damasen.^[23] Hence, the RTC declared that it could no longer undo what Governor Padaca had done, absent any showing of grave abuse of discretion.^[24]

Tumamao appealed the RTC Decision to the CA. On June 14, 2006, the CA rendered a Decision reversing the appealed Decision, the dispositive portion of which reads:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the judgment appealed from must be, as it hereby is, VACATED and SET ASIDE. The Quo Warranto case is hereby DISMISSED for lack of merit. Without special pronouncement as to costs.

SO ORDERED.^[25]

The CA held that Damasen was not entitled to assume the vacant position in the Sangguniang Bayan, thus:

While Atty. Damasen might have been appointed by Governor Padaca, this appointment must fly in the face of the categorical and unbending sine qua non requirements of the statute.

Indeed, Atty. Damasen was nominated simply by Ms. Balauag, the Provincial Chairman of the LDP, who obviously is not the highest official of this political party. It cannot escape notice that the quoted provision particularizes: "highest official of the political party concerned" without any additional qualifying or restrictive words.

According credence to the June 16, 2005 letter of the LDP Deputy Secretary Counsel Demaree Raval, (and we have no reason not to), it should be easy enough to see that Atty. Damasen also was not a member of the LDP, as his application for membership therein was not endorsed to the LDP's National Council for approval.

More importantly, Atty. Damasen's aforesaid nomination was eventually withdrawn, cancelled or revoked by Ms. Balauag, who declared that she was misled into accepting him as member of the LDP (owing to the fact that Atty. Damasen was affiliated with the Lakas CMD-Party and under the banner of this party indeed ran for Mayor of San Isidro against the LDP candidate for Mayor), and in nominating him. That much is clear from Ms. Balauag's letter of June 14, 2005 to Governor Padaca, the contents whereof she affirmed in her testimony, as follows: x x x

Oddly enough, Atty. Damasen helped accentuate Ms. Balauag's thesis by admitting that he was previously a member of the Lakas-CMD, and that he did not resign therefrom when he joined the LDP, and moreover, his joining the LDP was not based on party ideals but because he just wanted to.^[26]

Damasen did not file a motion for reconsideration of the CA Decision and instead sought direct relief from this Court *via* the present petition for review. In his petition, Damasen raised the following issues for this Court's resolution, to wit:

A.

THE COURT OF APPEALS ERRED IN DISMISSING THE QUO WARRANTO ON THE BASIS THAT THE NOMINATION OF THE PETITIONER DID NOT COMPLY WITH THE REQUIREMENTS OF SECTION 45 OF REPUBLIC ACT 7160.

B.

THE COURT OF APPEALS ERRED IN ITS DECISION WHEN IT DID NOT RULE ON THE VALIDITY OF THE ASSUMPTION TO OFFICE OF PRIVATE RESPONDENT AS SANGGUNIANG BAYAN.

C.

THE COURT OF APPEALS ERRED IN NOT DISMISSING THE APPEAL FAILED BY THE PRIVATE RESPONDENT THE LATTER HAVING NO AUTHORITY TO QUESTION THE VALIDITY OF THE APPOINTMENT OF PETITIONER.^[27]

The petition is not meritorious.

At the outset, this Court shall address a procedural matter raised by Damasen. Damasen argues that Tumamao was not appointed as Sangguniang Bayan and, therefore, the latter has no right to question his appointment by way of appeal.^[28] More specifically, Damasen argues in the wise:

By reason of the appeal, the situation of the parties had been changed since it is now the private respondent who is assailing petitioner's exercise of a public office. Else wise stated, the private respondent is now alleging that the petitioner is a person who usurps, intrudes into, or unlawfully holding the position of Sangguniang Bayan. This being the case, the proper legal remedy should be a separate case of Quo Warranto to be filed against petitioner.^[29]

Damasen's contention that Tumamao should have filed a separate case of *quo warranto* and not an appeal to the CA does not hold water. The determination of

who, between Damasen and Tumamao, is entitled to the contested position is the crux of the controversy in the case at bar. Hence, a separate action would only be tantamount to a multiplicity of suits, which is abhorred by law.

It is undisputed that the law applicable to herein petition is Sec. 45(b) of RA 7160, which provides for the rule on succession in cases of permanent vacancies in the Sanggunian, to wit:

Section 45. Permanent Vacancies in the Sanggunian. -

(a) Permanent vacancies in the sanggunian where automatic succession provided above do not apply shall be filled by appointment in the following manner:

(1) The President, through the Executive Secretary, in the case of the Sangguniang Panlalawigan and the Sangguniang Panlungsod of highly urbanized cities and independent component cities;

(2) The governor, in the case of the Sangguniang panlungsod of component cities and the Sangguniang Bayan;

(3) The city or municipal mayor, in the case of Sangguniang Barangay, upon recommendation of the Sangguniang Barangay concerned.

(b) Except for the Sangguniang Barangay, only the nominee of the political party under which the sanggunian member concerned had been elected and whose elevation to the position next higher in rank created the last vacancy in the sanggunian shall be appointed in the manner hereinabove provided. **The appointee shall come from the same political party as that of the sanggunian member who caused the vacancy and shall serve the unexpired term of the vacant office. In the appointment herein mentioned, a nomination and a certificate of membership of the appointee from the highest official of the political party concerned are conditions sine qua non**, and any appointment without such nomination and certification shall be null and void ab initio and shall be a ground for administrative action against the official responsible therefore.^[30]

As can be gleaned from the above provision, the law provides for conditions for the rule of succession to apply: First, the appointee shall come from the same political party as that of the Sanggunian member who caused the vacancy. Second, the appointee must have a nomination and a Certificate of Membership from the highest official of the political party concerned.

It is the contention of Damasen that he has complied with the requirements of Sec. 45 (b) of RA 7160. Specifically, Damasen's position is predicated on his submission of the following documents: