

EN BANC

[G.R. No. 191124, April 27, 2010]

LUIS A. ASISTIO, PETITIONER, VS. HON. THELMA CANLAS TRINIDAD-PE AGUIRRE, PRESIDING JUDGE, REGIONAL TRIAL COURT, CALOOCAN CITY, BRANCH 129; HON. ARTHUR O. MALABAGUIO, PRESIDING JUDGE, METROPOLITAN TRIAL COURT, CALOOCAN CITY, BRANCH 52; ENRICO R. ECHIVERRI, BOARD OF ELECTION INSPECTORS OF PRECINCT 1811A, BARANGAY 15, CALOOCAN CITY; AND THE CITY ELECTION OFFICER, CALOOCAN CITY, RESPONDENTS.

RESOLUTION

NACHURA, J.:

This is a petition^[1] for *certiorari*, with prayer for the issuance of a *status quo ante* order, under Rule 65 of the Rules of Court, assailing the Order^[2] dated February 15, 2010 issued, allegedly with grave abuse of discretion amounting to lack or excess of jurisdiction, by public respondent Judge Thelma Canlas Trinidad-Pe Aguirre (Judge Aguirre) of the Regional Trial Court (RTC), Branch 129, Caloocan City in SCA No. 997. The petition likewise ascribes error in, and seeks to nullify, the decision dated February 5, 2010, promulgated by the Metropolitan Trial Court (MeTC), Branch 52, Caloocan City in SCA No. 10-582.

The Antecedents

On January 26, 2010, private respondent Enrico R. Echiverri (Echiverri) filed against petitioner Luis A. Asistio (Asistio) a Petition^[3] for Exclusion of Voter from the Permanent List of Voters of Caloocan City (Petition for Exclusion) before the MeTC, Branch 52, Caloocan City. Public respondent Judge Arthur O. Malabaguio (Judge Malabaguio) presides over MeTC Branch 52. The petition was docketed as SCA No. 10-582, entitled "*Atty. Enrico R. Echiverri v. Luis Aquino Asistio, the Board of Election Inspectors of Precinct No. 1811A, Barangay 15, Caloocan City and the City Election Officer of Caloocan.*"

In his petition, Echiverri alleged that Asistio is not a resident of Caloocan City, specifically not of 123 Interior P. Zamora St., *Barangay* 15, Caloocan City, the address stated in his Certificate of Candidacy (COC) for Mayor in the 2010 Automated National and Local Elections. Echiverri, also a candidate for Mayor of Caloocan City, was the respondent in a Petition to Deny Due Course and/or Cancellation of the Certificate of Candidacy filed by Asistio. According to Echiverri, when he was about to furnish Asistio a copy of his Answer to the latter's petition, he found out that Asistio's address is non-existent. To support this, Echiverri attached to his petition a Certification^[4] dated December 29, 2009 issued by the *Tanggapan ng Punong Barangay* of *Barangay* 15 - Central, Zone 2, District II of Caloocan City. He mentioned that, upon verification of the 2009 Computerized Voters' List (CVL) for

Barangay 15, Asistio's name appeared under voter number 8, with address at 109 Libis Gochuico, *Barangay 15*, Caloocan City.^[5]

Echiverri also claimed that Asistio was no longer residing in this address, since what appeared in the latter's COC for Mayor^[6] in the 2007 elections was No. 110 Unit 1, P. Zamora St., *Barangay 15*, Caloocan City,^[7] but that the address used in Asistio's current COC is situated in *Barangay 17*. He said that, per his verification, the voters^[8] duly registered in the 2009 CVL using the address No. 123 P. Zamora St., *Barangay 17*, Caloocan City did not include Asistio.^[9]

On January 28, 2010, the MeTC issued a Notice of Hearing^[10] notifying Asistio, through Atty. Carlos M. Caliwara, his counsel of record in SPA No. 09-151 (DC), entitled "*Asistio v. Echiverri*," before the Commission on Elections (COMELEC), of the scheduled hearings of the case on February 1, 2 and 3, 2010.

On February 2, 2010, Asistio filed his Answer *Ex Abundante Ad Cautelam* with Affirmative Defenses.^[11] Asistio alleged that he is a resident of No. 116, P. Zamora St., Caloocan City, and a registered voter of Precinct No. 1811A because he mistakenly relied on the address stated in the contract of lease with Angelina dela Torre Tengco (Tengco), which was 123 Interior P. Zamora St., *Barangay 15*, Caloocan City.^[12]

Trial on the merits ensued, after which Judge Malabaguio directed the parties to file their respective position papers on or before February 4, 2010.

Echiverri filed his Memorandum^[13] on February 4, 2010. Asistio, on the other hand, failed to file his memorandum since the complete transcripts of stenographic notes (TSN) were not yet available.^[14]

On February 5, 2010, Judge Malabaguio rendered a decision,^[15] disposing, as follows —

WHEREFORE, premises considered, the Election Registration Board, Caloocan City is hereby directed to remove the name of LUIS AQUINO ASISTIO from the list of permanent voters of Caloocan City.

SO ORDERED.^[16]

Meanwhile, on January 26, 2010, Echiverri filed with the COMELEC a Petition for Disqualification,^[17] which was docketed as SPA No. 10-013 (DC). The Petition was anchored on the grounds that Asistio is not a resident of Caloocan City and that he had been previously convicted of a crime involving moral turpitude. Asistio, in his Answer with Special and Affirmative Defenses (Com Memorandum),^[18] raised the same arguments with respect to his residency and also argued that the President of the Philippines granted him an absolute pardon.

On February 10, 2010, Asistio filed his Notice of Appeal^[19] and his Appeal (from the

Decision dated February 5, 2010)^[20] and paid the required appeal fees through postal money orders.^[21]

On February 11, 2010, Echiverri filed a Motion^[22] to Dismiss Appeal, arguing that the RTC did not acquire jurisdiction over the Appeal on the ground of failure to file the required appeal fees.

On the scheduled hearing of February 15, 2010, Asistio opposed the Motion and manifested his intention to file a written comment or opposition thereto. Judge Aguirre directed Echiverri's counsel to file the appropriate responsive pleading to Asistio's appeal in her Order^[23] of same date given in open court.

Judge Aguirre, however, cancelled her February 15, 2010 Order, and issued an Amended Order^[24] on that date holding in abeyance the filing of the responsive pleading of Echiverri's counsel and submitting the Motion for resolution.

In another Order also dated February 15, 2010, Judge Aguirre granted the Motion on the ground of non-payment of docket fees essential for the RTC to acquire jurisdiction over the appeal. It stated that Asistio paid his docket fee only on February 11, 2010 per the Official Receipt of the MeTC, Office of the Clerk of Court.

Hence, this petition.

Per Resolution^[25] dated February 23, 2010, this Court required the respondents to comment on the petition, and issued the *Status Quo Ante* Order prayed for.

On March, 8, 2010, Echiverri filed his Comment to the Petition (with Motion to Quash Status Quo Ante Order). Departing from Echiverri's position against the Petition, the Office of the Solicitor General (OSG), on March 30, 2010, filed its Comment *via* registered mail. The OSG points out that Asistio's family is "known to be one of the prominent political families in Caloocan City, and that there is no indication whatsoever that [Asistio] has ever intended to abandon his domicile, Caloocan City." Further, the OSG proposes that the issue at hand is better resolved by the people of Caloocan City. In all, the OSG propounds that technicalities and procedural niceties should bow to the sovereign will of the people of Caloocan City.

Our Ruling

In her assailed Order, Judge Aguirre found —

The payment of docket fees is an essential requirement for the perfection of an appeal.

The record shows that Respondent-Appellant paid his docket fee only on February 11, 2010, evidenced by O.R. No. 05247240 for Php1,510.00 at the Metropolitan Trial Court, Office of the Clerk of Court, yet the Notice of Appeal was filed on February 10, 2010, at 5:30 p.m., which is way beyond the official office hours, and a copy thereof was filed at the Office of the Clerk of Court, Metropolitan Trial Court at 5:00 p.m. of February 10, 2010. Thus, it is clear that the docket fee was not paid

simultaneously with the filing of the Notice of Appeal.

It taxes the credulity of the Court why the Notice of Appeal was filed beyond the regular office hours, and why did respondent-appellant had to resort to paying the docket fee at the Mall of Asia when he can conveniently pay it at the Office of the Clerk of Court, Metropolitan Trial Court along with the filing of the Notice of Appeal on February 10, 2010 at 5:30 p.m. at the Metropolitan Trial Court, which is passed [sic] the regular office hours.

The conclusion is then inescapable that for failure to pay the appellate docket fee, the Court did not acquire jurisdiction over the case.^[26]

This Court observes, that while Judge Aguirre declares in her Order that the appellate docket fees were paid on February 11, 2010, she conveniently omits to mention that the postal money orders obtained by Asistio for the purpose were purchased on February 10, 2010.^[27] It is noteworthy that, as early as February 4, 2010, Asistio already manifested that he could not properly file his memorandum with the MeTC due to the non-availability of the TSNs. Obviously, these TSNs were needed in order to prepare an intelligent appeal from the questioned February 5, 2010 MeTC Order. Asistio was able to get copies of the TSNs only on February 10, 2010, the last day to file his appeal, and, naturally, it would take some time for him to review and incorporate them in his arguments on appeal. Understandably, Asistio filed his notice of appeal and appeal, and purchased the postal money orders in payment of the appeal fees on the same day. To our mind, Asistio, by purchasing the postal money orders for the purpose of paying the appellate docket fees on February 10, 2010, although they were tendered to the MeTC only on February 11, 2010, had already substantially complied with the procedural requirements in filing his appeal.

This appeal to the RTC assails the February 5, 2010 MeTC Order directing Asistio's name to be removed from the permanent list of voters [in Precinct 1811A] of Caloocan City. The Order, if implemented, would deprive Asistio of his right to vote.

The right to vote is a most precious political right, as well as a bounden duty of every citizen, enabling and requiring him to participate in the process of government to ensure that it can truly be said to derive its power solely from the consent of its constituents.^[28] Time and again, it has been said that every Filipino's right to vote shall be respected, upheld, and given full effect.^[29] A citizen cannot be disenfranchised for the flimsiest of reasons. Only on the most serious grounds, and upon clear and convincing proof, may a citizen be deemed to have forfeited this precious heritage of freedom.

In this case, even if we assume for the sake of argument, that the appellate docket fees were not filed on time, this incident alone should not thwart the proper determination and resolution of the instant case on substantial grounds. Blind adherence to a technicality, with the inevitable result of frustrating and nullifying the constitutionally guaranteed right of suffrage, cannot be countenanced.^[30]

On more than one occasion, this Court has recognized the emerging trend towards a