

EN BANC

[G.R. No. 186224, August 25, 2009]

CONSTANCIO D. PACANAN, JR., PETITIONER, VS. COMMISSION ON ELECTIONS AND FRANCISCO M. LANGI, SR., RESPONDENTS.

DECISION

LEONARDO-DE CASTRO, J.:

Before the Court is a petition for certiorari which seeks to set aside 1) the Order^[1] dated March 17, 2008 of the Commission on Elections (Comelec) First Division and 2) the Resolution^[2] dated January 21, 2009 of the Comelec En Banc dismissing petitioner Constancio D. Pacanan, Jr.'s appeal from the Decision^[3] of the Regional Trial Court (RTC), Branch 27, Catbalogan, Samar, in Election Case No. 07-1, which declared private respondent Francisco M. Langi, Sr. as the winning Mayor of Motiong, Samar.

In the Order of March 17, 2008, the Comelec First Division dismissed the appeal for failure to pay the correct appeal fee as prescribed by the Comelec Rules of Procedure within the five-day reglementary period.

In the assailed Resolution dated January 21, 2009, the Comelec En Banc denied petitioner's motion for reconsideration, declaring that the Comelec did not acquire jurisdiction over the appeal because of the non-payment of the appeal fee on time, and that the Comelec First Division was correct in dismissing the said appeal.

The antecedent facts are as follows:

Petitioner Constancio D. Pacanan, Jr. and private respondent Francisco M. Langi, Sr. were candidates for mayor in the municipality of Motiong, Samar during the May 14, 2007 elections. After the canvassing of votes, the Municipal Board of Canvassers (MBC) of Motiong, Samar proclaimed petitioner as the duly elected mayor, having garnered a total of 3,069 votes against private respondent's 3,066 votes.

Thereafter, private respondent filed with the RTC a Protest^[4] dated May 25, 2007 which was docketed as Election Case No. 07-1, contesting the results of the elections in ten (10) of the forty-nine (49) precincts in Motiong, Samar, and alleging acts of violence and intimidation and other election irregularities in the appreciation of the votes by the MBC. Thereafter, petitioner filed his Verified Answer with Counter-Protest^[5] dated June 4, 2007, asserting that private respondent's allegations of threat and intimidation, fraud and other irregularities in the conduct of elections were mere allegations unsupported by any documentary evidence. Petitioner also disputed the election results with respect to seven (7) precincts.

On January 7, 2008, the RTC rendered a decision^[6] in Election Case 07-1, which

declared private respondent as the winner in the May 14, 2007 mayoralty race for Motiong, Samar with a plurality of six (6) votes, viz:

Wherefore, in view of the foregoing Protestant Francisco M. Langi, Sr. having obtained the over all total votes of 3,074 and the Protestee's 3,068 total and final votes is declared the winner in the Mayoralty contest in Motiong, Samar with a plurality of (6) votes. Therefore the proclamation on May 17, 2007 is hereby annulled and declared Francisco Langi, Sr. y Maceren as the duly elected Mayor of Motiong, Samar. The winner is awarded the amount of P 32,510 as actual damages and no evidence aliunde for damages for the court to award. xxx

On January 10, 2008, petitioner filed a notice of appeal and paid P3,000.00 appeal fee per Official Receipt No. 6822663 before the RTC, Branch 27, Catbalogan, Samar. He also appealed the RTC decision dated January 7, 2008 to the Comelec which docketed the case as EAC No. A-13-2008. Out of the P3,000.00 appeal fee required by Section 3, Rule 40 of the Comelec Rules of Procedure, petitioner only paid the amount of P1,000.00 (plus P200.00 to cover the legal research/bailiff fees) to the Cash Division of the Comelec, per Official Receipt No. 0510287. The said payment was made on February 14, 2008.^[7]

On March 17, 2008, the Comelec First Division issued an Order^[8] dismissing the appeal, viz.:

Pursuant to Sections 3 and 4, Rule 40 of the COMELEC Rules of Procedure which provide for the payment of appeal fee in the amount of P3,000.00 within the period to file the notice of appeal, and Section 9 (a), Rule 22 of the same Rules which provides that failure to pay the correct appeal fee is a ground for the dismissal of the appeal, the Commission (First Division) **RESOLVED** as it hereby **RESOLVES** to **DISMISS** the instant case for Protestee-Appellant's failure to pay the correct appeal fee as prescribed by the Comelec Rules of Procedure within the five-(5)-day reglementary period.

SO ORDERED.

On March 28, 2008, petitioner filed a Motion for Reconsideration^[9] which the Comelec En Banc denied in the Resolution^[10] dated January 21, 2009, declaring that the appeal was not perfected on time for non-payment of the complete amount of appeal fee and for late payment as well. The Comelec En Banc held that the Comelec did not acquire jurisdiction over the appeal because of the non-payment of the appeal fee on time. Thus, the Comelec First Division correctly dismissed the appeal.

Hence, the instant petition for certiorari raising the following grounds:

The respondent COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in holding that the correct appeal fee was not paid on time.

The respondent COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in failing to consider that assuming that the correct appeal fee was not paid on time, the alleged non-payment of the correct appeal fee is not in anyway attributable to herein petitioner.

The respondent COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in failing to consider that assuming that the correct appeal fee was not paid on time, there are highly justifiable and compelling reasons to resolve the subject case on the merits in the interest of justice and public interest.

Petitioner further claims that he paid a total of P4,215.00 for his appeal, as follows:

a. To RTC on January 10, 2008 -----	P3,000.00
	10.00
	5.00
TOTAL	<hr/> P3,015.00
b. To Comelec on February 14, 2008 --	P1,000.00
	50.00
	150.00
TOTAL	<hr/> P1,200.00

Petitioner submits that it is incumbent upon the RTC to transmit to the Comelec the entire P3,000.00 appeal fee that he paid on January 10, 2008. Petitioner also advances another interpretation of the Comelec Rules that the RTC is under obligation to remit to the Comelec the P2,000.00 representing the excess amount of the P1,000.00 appeal fee. Thus, petitioner claims that he must be deemed to have complied, in full or at least substantially, with the Comelec Rules on the payment of appeal fees.

Petitioner maintains that the alleged non-payment of the correct appeal fee is not due to his own fault or negligence. He claims that the laws on appeals in election protest cases are not yet well-established, thus, he must not be made to suffer for an oversight made in good faith. The Resolution No. 8486 of July 15, 2008 adopted by the Comelec to clarify the rules on compliance with the required appeal fees in election cases should not be applied retroactively to the subject election protest.

Lastly, petitioner invokes liberality in the application of the election law. He asserts that the popular will of the people expressed in the election of public officers should not be defeated by reason of sheer technicalities. Petitioner argues that the true will

of the people of Motiong in the May 14, 2007 elections should be determined by ordering the Comelec to give due course to his appeal and to resolve the same on the merits.

In his Comment, respondent Langi, Sr. states that the petition was just a mere rehash of the Motion for Reconsideration that petitioner filed with the Comelec En Banc. Respondent maintains that for the Comelec to exercise its authority to administer proceedings, grant leniency, issue orders, and pass judgment on issues presented, it must first be shown that it has acquired the requisite jurisdiction over the subject matter pursuant to the initiatory acts and procedural compliance set as conditions precedent.

Respondent also argues that the negligence and mistakes of petitioner's counsel bind petitioner. He then reiterates the cases where this Court held that the non-payment or insufficiency of payment of filing fees is a valid ground for the dismissal of the appeal and that the subsequent full payment thereof does not cure the jurisdictional defect.

We grant the petition.

Section 3, Rule 22 (Appeals from Decisions of Courts in Election Protest Cases) of the Comelec Rules of Procedure mandates that the notice of appeal must be filed within five (5) days after promulgation of the decision, thus:

SEC. 3. Notice of Appeal. - Within five (5) days after promulgation of the decision of the court, the aggrieved party may file with said court a notice of appeal, and serve a copy thereof upon the attorney of record of the adverse party.

Moreover, Sections 3 and 4, Rule 40 of the Comelec rules require the payment of appeal fees in appealed election protest cases, the amended amount of which was set at P3,200.00 in Comelec Minute Resolution No. 02-0130,^[11] to wit:

SEC. 3. Appeal Fees. - The appellant in election cases shall pay an appeal fee as follows:

- (a) For election cases appealed from Regional Trial Courts.....P3,000.00 (per appellant)
- (b) For election cases appealed from courts of limited jurisdiction.....P3,000.00 (per appellant)

SEC. 4. Where and When to Pay. - The fees prescribed in Sections 1, 2 and 3 hereof shall be paid to, and deposited with, the Cash Division of the Commission within a period to file the notice of appeal.

Sections 8 and 9, Rule 14 of A.M. No. 07-4-15-SC^[12] also provide the procedure for instituting an appeal and the required appeal fees to be paid for the appeal to be given due course, to wit:

SEC. 8. Appeal. - An aggrieved party may appeal the decision to the Commission on Elections, within five days after promulgation, by filing a notice of appeal with the court that rendered the decision, with copy served on the adverse counsel or party if not represented by counsel.

SEC. 9. Appeal fee. - The appellant in an election contest shall pay to the court that rendered the decision an appeal fee of One Thousand Pesos (P1,000.00), simultaneously with the filing of the notice of appeal.

A reading of the foregoing provisions reveals that two different tribunals (the trial court that rendered the decision and the Comelec) require the payment of two different appeal fees for the perfection of appeals of election cases. This requirement in the payment of appeal fees had caused much confusion, which the Comelec addressed through the issuance of Comelec Resolution No. 8486.^[13] Thus, to provide clarity and to erase any ambiguity in the implementation of the procedural rules on the payment of appeal fees for the perfection of appeals of election cases, the resolution provides:

WHEREAS, the Commission on Elections is vested with appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, and those involving elective barangay officials, decided by trial courts of limited jurisdiction;

WHEREAS, Supreme Court Administrative Order No. 07-4-15 (Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials) promulgated on May 15, 2007 provides in Sections 8 and 9, Rule 14 thereof the procedure in instituting the appeal and the required appeal fees to be paid for the appeal to be given due course, to wit:

Section 8. Appeal. - *An aggrieved party may appeal the decision to the Commission on Elections, within five days after promulgation, by filing a notice of appeal with the court that rendered the decision, with copy served on the adverse counsel or party if not represented by counsel.*

Section 9. Appeal Fee. - *The appellant in an election contest shall pay to the court that rendered the decision an appeal fee of One Thousand Pesos (P1,000.00), simultaneously with the filing of the notice of appeal.*

WHEREAS, payment of appeal fees in appealed election protest cases is also required in Section 3, Rule 40 of the COMELEC Rules of Procedure the amended amount of which was set at P3,200.00 in COMELEC Minute Resolution No. 02-0130 made effective on September 18, 2002.

WHEREAS, the requirement of these two appeal fees by two different jurisdictions had caused confusion in the implementation by the Commission on Elections of its procedural rules on payment of appeal