

EN BANC

[G.R. No. 181097, June 25, 2008]

**NORLAINIE MITMUG LIMBONA, PETITIONER, VS. COMMISSION
ON ELECTIONS AND MALIK "BOBBY" T. ALINGAN,
RESPONDENTS.**

DECISION

YNARES-SATIAGO, J.:

This petition for certiorari with prayer for issuance of a temporary restraining order and/or writ of preliminary injunction seeks to reverse and nullify the September 4, 2007 Resolution^[1] of the Commission on Elections (Comelec) in SPA Case No. 07-611 disqualifying petitioner to run as mayor of the municipality of Pantar, Lanao del Norte, as well as the January 9, 2008 Resolution^[2] denying the motion for reconsideration.

Petitioner Norlaine Mitmug Limbona (Norlaine), her husband, Mohammad G. Limbona (Mohammad), and respondent Malik "Bobby" T. Alingan (Malik) were mayoralty candidates in Pantar, Lanao del Norte during the 2007 Synchronized National and Local Elections. Mohammad and Norlaine filed their certificates of candidacy with Acting Election Officer, Alauya S. Tago, on January 22, 2007 and March 29, 2007, respectively; while Malik filed his certificate of candidacy with the Office of the Election Officer on March 26, 2007.

On April 2, 2007, Malik filed a petition to disqualify Mohammad for failure to comply with the residency requirement. The petition was docketed as SPA No. 07-188. Subsequently, or on April 12, 2007, Malik filed another petition to disqualify Norlaine also on the ground of lack of the one-year residency requirement. The petition was docketed as SPA No. 07-611.^[3]

On April 21, 2007, Norlaine filed an Affidavit of Withdrawal of Certificate of Candidacy.^[4] Thereafter, or on May 2, 2007, she filed before the Office of the Provincial Election Supervisor a Motion to Dismiss^[5] the petition for disqualification in SPA No. 07-611 on the ground that the petition had become moot in view of the withdrawal of her certificate of candidacy.

The Comelec *en banc* granted the withdrawal of Norlaine's certificate of candidacy in Resolution No. 7949^[6] dated May 13, 2007, the dispositive portion of which provides:

The Commission **RESOLVED**, as it hereby **RESOLVES**, to **approve** the foregoing recommendations of the Law Department, as concurred in by Commissioner Florentino A. Tuason, Jr., as follows:

1. To **GIVE** due course to the Affidavits of Withdrawal of Certificates of Candidacy of the following candidates:

x x x x

Norlaine M. Limbona Mayor Pantar, Lanao del Norte

x x x x

2. To direct the Election Officers concerned to **DELETE** the aforementioned names of candidates from the Certified List of Candidates.

Let the Law Department implement this resolution with dispatch.

SO ORDERED.

Meanwhile, the First Division of Comelec issued on May 24, 2007 a Resolution^[7] in SPA No. 07-188 granting the petition filed by Malik and disqualifying Mohammad from running as municipal mayor of Pantar, Lanao del Norte for failing to satisfy the one year residency requirement and for not being a registered voter of the said place, thus:

WHEREFORE, premises considered, the instant petition is GRANTED. Respondent Mohammad "Exchan" G. Limbona is hereby disqualified. Accordingly, his name is ordered deleted from the official list of candidates for the position of mayor of the municipality of Pantar, Lanao del Norte.

SO ORDERED.

The May 24, 2007 Resolution became final and executory on June 2, 2007.^[8]

Consequently, Norlaine filed a new certificate of candidacy as substitute candidate for Mohammad which was given due course by the Comelec *en banc* in its Resolution No. 8255^[9] dated July 23, 2007, the dispositive portion of which states:

The Commission **RESOLVED**, as it hereby **RESOLVES**, to **approve** the foregoing recommendations of the Law Department, as follows:

1. To **GIVE** due course to the Certificate of Candidacy and Certificate of Nomination and Acceptance of **Norlaine "Lai-Exchan" Mitmug Limbona** as substitute candidate for **Mohammad "Exchan" G. Limbona** for Mayor, Pantar, Lanao del Norte; and
2. To direct the Election Officer of Pantar, Lanao del Norte to **DELETE** the name of **Mohammad "Exchan" G. Limbona** from the Certified List of Candidates for Mayor, Pantar, Lanao del Norte and to **INCLUDE** therein the name of **Norlaine "Lai-Exchan" Mitmug Limbona**.

Let the Law Department implement this resolution with dispatch.

SO ORDERED.

Thus, Malik filed a second petition for disqualification against Norlaine docketed as SPA No. 07-621.

After the elections, Norlaine emerged as the winning candidate and accordingly took her oath and assumed office.

However, on September 4, 2007, the Second Division of Comelec in SPA No. 07-611 disqualified Norlaine on three grounds: lack of the one-year residency requirement; not being a registered voter of the municipality; and, nullity of her certificate of candidacy for having been filed at a place other than the Office of the Election Officer.

Norlaine filed an Omnibus Motion to declare the petition in SPA No. 07-611 moot and/or for reconsideration, arguing that the Comelec *en banc* had approved the withdrawal of her first certificate of candidacy and had given due course to her new certificate of candidacy as a substitute candidate for Mohammad. Malik opposed the omnibus motion.

Meanwhile, the Second Division of Comelec in SPA No. 07-621, promulgated on November 23, 2007 a Resolution^[10] disqualifying Norlaine from running as mayor of Pantar, Lanao del Norte. It held thus:

As regards the residency requirement, We rule for petitioner.

As borne out from the record, respondent's domicile of origin was in Maguing, Lanao del Norte, which is her place of birth. When she got married, she became a resident of Marawi City, specifically, in Barangay Rapasun where her husband served as Barangay Chairman until November 2006. This is her domicile by operation of law pursuant to the Family Code as applied in the case of *Larrazabal v. Comelec* (G.R. No. 100739, September 3, 1991).

What respondent now is trying to impress upon Us is that she has changed her aforesaid domicile and resided in Pantar, Lanao del Norte.

x x x

In the present case, the evidence adduced by respondent, which consists merely of self-serving affidavits cannot persuade Us that she has abandoned her domicile of origin or her domicile in Marawi City. It is alleged that respondent "*has been staying, sleeping and doing business in her house for more than 20 months*" in Lower Kalanganan and yet, there is no independent and competent evidence that would corroborate such statement.

Further, We find no other act that would indicate respondent's intention to stay in Pantar for an indefinite period of time. The filing of her Certificate of Candidacy in Pantar, standing alone, is not sufficient to hold that she has chosen Pantar as her new residence. We also take notice of the fact that in SPA No. 07-611, this Commission has even found that

she is not a registered voter in the said municipality warranting her disqualification as a candidate.^[11]

On January 9, 2008, the Comelec *en banc* in SPA No. 07-611 denied Norlaine's motion for reconsideration.

Hence, the instant petition alleging that the Comelec gravely abused its discretion in proceeding to resolve the petition in SPA No. 07-611 despite the approval of petitioner's withdrawal of certificate of candidacy.^[12]

On January 29, 2008, the Court resolved to issue a temporary restraining order effective immediately enjoining respondents from enforcing and implementing the Comelec Resolutions disqualifying petitioner as a candidate for mayor in Pantar, Lanao del Norte.^[13]

The petition lacks merit.

The withdrawal of a certificate of candidacy does not necessarily render the certificate void *ab initio*. Once filed, the permanent legal effects produced thereby remain even if the certificate itself be subsequently withdrawn.^[14] Section 73 of the Omnibus Election Code of the Philippines (B.P. Blg. 881, as amended) provides:

Sec. 73. **Certificate of candidacy.** - No person shall be eligible for any elective public office unless he files a sworn certificate of candidacy within the period fixed herein. **A person who has filed a certificate of candidacy may, prior to the election, withdraw the same by submitting to the office concerned a written declaration under oath.** No person shall be eligible for more than one office to be filled in the same election, and if he files his certificate of candidacy for more than one office, he shall not be eligible for any of them. However, before the expiration of the period for the filing of certificate of candidacy, the person who has filed more than one certificate of candidacy may declare under oath the office for which he desires to be eligible and cancel the certificate of candidacy for the other office or offices. **The filing or withdrawal of a certificate of candidacy shall not affect whatever civil, criminal or administrative liabilities which a candidate may have incurred.** (Emphasis supplied)

Thus, when petitioner filed her certificate of candidacy on March 29, 2007, such act produced legal effects, and the withdrawal of the same, despite the approval of the Comelec, did not bar or render nugatory the legal proceedings it had set in motion. As such, the Comelec did not commit grave abuse of discretion when it ruled on the merits of the petition despite the withdrawal of petitioner's certificate of candidacy. The Comelec correctly held that a case only becomes moot when "there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits."^[15] In the instant case, although petitioner withdrew her first certificate of candidacy, the subsequent disqualification of her husband required that she file a new certificate of candidacy as a substitute candidate. The second filing of a certificate of candidacy thus once again put her qualifications in issue. Hence, a ruling upon the same is necessary.

The fact that petitioner's certificate of candidacy as a substitute candidate was given