

EN BANC

[G.R. No. 179695, December 18, 2008]

**MIKE A. FERMIN, PETITIONER, VS. COMMISSION ON ELECTIONS
AND UMBRA RAMIL BAYAM DILANGALEN, RESPONDENTS.**

[G.R. No. 182369]

**MIKE A. FERMIN, PETITIONER, VS. COMMISSION ON ELECTIONS
AND UMBRA RAMIL BAYAM DILANGALEN, RESPONDENTS.**

DECISION

NACHURA, J.:

These consolidated petitions provide a welcome avenue for the Court to dichotomize, once and for all, two popular remedies to prevent a candidate from running for an elective position which are indiscriminately interchanged by the Bench and the Bar, adding confusion to the already difficult state of our jurisprudence on election laws.

For the Court's resolution are two petitions for *certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court: (1) G.R. No. 179695, which assails the June 29, 2007 Resolution^[1] of the Commission on Elections (COMELEC) 2nd Division in SPA No. 07-372, and the September 20, 2007 Resolution^[2] of the COMELEC *En Banc* affirming the said division resolution; and (2) G.R. No. 182369, which challenges the February 14, 2008 Resolution^[3] of the COMELEC 1st Division in SPR No. 45-2007, the March 13, 2008 Order^[4] of the COMELEC *En Banc* denying petitioner's motion for reconsideration, and the March 26, 2008 Entry of Judgment^[5] issued by the Electoral Contests and Adjudication Department (ECAD) of the Commission in the said case.

The relevant facts and proceedings follow.

After the creation of Shariff Kabunsuan,^[6] the Regional Assembly of the Autonomous Region in Muslim Mindanao (ARMM), on November 22, 2006, passed Autonomy Act No. 205^[7] creating the Municipality of Northern Kabuntalan in Shariff Kabunsuan. This new municipality was constituted by separating *Barangays* Balong, Dumatog, Gayonga, Guiawa, Indatuan, Kapinpilan, P. Labio, Libungan, Montay, Sabaken and Tumaguinting from the Municipality of Kabuntalan.^[8]

Mike A. Fermin, the petitioner in both cases, was a registered voter of *Barangay* Payan, Kabuntalan. On December 13, 2006, claiming that he had been a resident of *Barangay* Indatuan for 1 year and 6 months, petitioner applied with the COMELEC for the transfer of his registration record to the said *barangay*.^[9] In the meantime, the creation of North Kabuntalan was ratified in a plebiscite on December 30, 2006,

[10] formally making *Barangay* Indatuan a component of Northern Kabuntalan.

Thereafter, on January 8, 2007, the COMELEC approved petitioner's application for the transfer of his voting record and registration as a voter to Precinct 21A of *Barangay* Indatuan, Northern Kabuntalan.^[11] On March 29, 2007, Fermin filed his Certificate of Candidacy (CoC) for mayor of Northern Kabuntalan in the May 14, 2007 National and Local Elections.^[12]

On April 20, 2007, private respondent Umbra Ramil Bayam Dilangalen, another mayoralty candidate, filed a *Petition*^[13] *for Disqualification* [the Dilangalen petition] against Fermin, docketed as SPA (PES) No. A07-003 [re-docketed as SPA No. 07-372 before the COMELEC] with the Office of the Provincial Election Supervisor of Shariff Kabunsuan. The petition alleged that the petitioner did not possess the period of residency required for candidacy and that he perjured himself in his CoC and in his application for transfer of voting record. The pertinent portions of the petition follow:

1. THE PETITIONER is of legal age, a registered voter, resident and incumbent Municipal Mayor of the Municipality of Northern Kabuntalan, holding office at Barangay Paulino Labio in the Municipality of Northern Kabuntalan where he may be served summons and other legal processes.
2. THE PETITIONER is a candidate for election as Mayor in the same Municipality of Northern Kabuntalan, being a resident of and domiciled in the Municipality since birth. The Respondent is also a candidate for the same office, Mayor in the same Municipality of Northern Kabuntalan. He is, however, not a resident of the Municipality.
3. THE RESPONDENT perjured himself when he swore to the truth of his statement in his Certificate of Candidacy of being a resident of the Municipality for the last 38 years, when in truth and in fact he simply transferred his registration from the Municipality of Kabuntalan on 13 December 2006, wherein he stated that he has relocated to that municipality a year and six months earlier, or no earlier than June 2005.
4. THE RESPONDENT perjured himself when he swore to the truth of his statement in his Certificate of Candidacy of being a resident of the Municipality for the last 38 years, when in truth and in fact he has stayed for at least 33 years in Barangay Payan, Municipality [of] Kabuntalan.
5. THE RESPONDENT perjured himself when he swore to the truth of his statement in his Application for Transfer that he is a resident of Barangay Indatuan on 13 December 2006, wherein he stated that he has relocated to that municipality a year and six months earlier, or on or about June 2005, when in truth and in fact he has never resided much less domiciled himself in Indatuan or anywhere else in

the Municipality of Northern Kabuntalan earlier than 14 May 2006.

6. THE RESPONDENT perjured himself when he swore to the truth of his statement in his Certificate of Candidacy of being a resident of the Municipality for the last 38 years, when in truth and in fact he has never resided in the Municipality, but was simply visiting the area whenever election is [f]ast approaching.

WHEREFORE, premises considered, it is most respectfully prayed that, [in consideration] of the Respondent not possessing the residence required for candidacy, and having perjured himself in a number of times, the Commission disqualify the Respondent.^[14]

Elections were held without any decision being rendered by the COMELEC in the said case. After the counting and canvassing of votes, Dilangalen emerged as the victor with 1,849 votes over Fermin's 1,640.^[15] The latter subsequently filed an election protest (Election Case No. 2007-022) with the Regional Trial Court (RTC), Branch 13 of Cotabato City.^[16]

G.R. No. 179695

On June 29, 2007, the COMELEC 2nd Division, in SPA No. 07-372, disqualified Fermin for not being a resident of Northern Kabuntalan.^[17] It ruled that, based on his declaration that he is a resident of *Barangay* Payan as of April 27, 2006 in his oath of office before Datu Andal Ampatuan, Fermin could not have been a resident of *Barangay* Indatuan for at least one year.^[18]

The COMELEC *En Banc*, on September 20, 2007, affirmed the Division's ruling.^[19]

Thus, petitioner instituted **G.R. No. 179695** before this Court raising the following issues:

A.

WHETHER OR NOT THE PETITION TO DISQUALIFY PETITIONER FROM SEEKING THE MAYORALTY POST OF THE MUNICIPALITY OF NORTHERN KABUNTALAN SHOULD BE DISMISSED FOR HAVING BEEN FILED OUT OF TIME.

B.

WHETHER OR NOT THE ONE (1) YEAR RESIDENCY REQUIREMENT AS PROVIDED BY ART. 56, PAR. NO. 3, RULE XIII, RULES AND REGULATIONS IMPLEMENTING THE LOCAL GOVERNMENT CODE OF THE AUTONOMOUS REGION IN MUSLIM MINDANAO IS APPLICABLE TO PETITIONER, WHO TRANSFERRED HIS VOTER'S REGISTRATION RECORD DUE TO CHANGE OF RESIDENCE FROM BARANGAY PAYAN TO BARANGAY INDATUAN IN THE SAME MUNICIPALITY OF KABUNTALAN.^[20]

Petitioner contends that the Dilangalen petition is a petition to deny due course to or cancel a CoC under Section 78 of the Omnibus Election Code (OEC).^[21] Following

Republic Act (R.A.) No. 6646, the same must be filed within 5 days from the last day for the filing of CoC, which, in this case, is March 30, 2007, and considering that the said petition was filed by Dilangalen only on April 20, 2007, the same was filed out of time. The COMELEC should have then dismissed SPA No. 07-372 outright.^[22]

Petitioner further argues that he has been a resident of *Barangay* Indatuan long before the creation of Northern Kabuntalan. This change of residence prompted him to apply for the transfer of his voter's registration record from *Barangay* Payan to *Barangay* Indatuan. Moreover, the one year residency requirement under the law is not applicable to candidates for elective office in a newly created municipality, because the length of residency of all its inhabitants is reckoned from the effective date of its creation.^[23]

In his comment, private respondent counters that the petition it filed is one for disqualification under Section 68 of the OEC which may be filed at any time after the last day for filing of the CoC but not later than the candidate's proclamation should he win in the elections. As he filed the petition on April 20, 2007, long before the proclamation of the eventual winning candidate, the same was filed on time.^[24]

Private respondent likewise posits that petitioner failed to comply with the one-year residency requirement for him to be able to run for an elective office in Northern Kabuntalan. Petitioner applied for the transfer of his voting record on December 13, 2006, and this was approved only on January 8, 2007.^[25]

G.R. No. 182369

During the pendency of G.R. No. 179695 with the Court, Dilangalen filed, on September 27, 2007, with the RTC of Cotabato a motion to dismiss Election Case No. 07-022 on the ground that Fermin had no legal standing to file the said protest, the COMELEC *En Banc* having already affirmed his disqualification as a candidate; and this Court, in the abovementioned case, did not issue an order restraining the implementation of the assailed COMELEC resolutions.

The RTC, however, denied this motion on September 28, 2007. On motion for reconsideration, the trial court remained steadfast in its stand that the election protest was separate and distinct from the COMELEC proceedings, and that, unless restrained by the proper authority, it would continue hearing the protest.^[26]

Assailing the RTC's denial of his motions, Dilangalen filed a *Petition for Certiorari and Prohibition*^[27] docketed as SPR No. 45-2007 with the COMELEC. On February 14, 2008, the COMELEC 1st Division set aside the aforesaid orders of the trial court for having been issued with grave abuse of discretion, prohibited the said court from acting on and proceeding with the protest, and ordered it to dismiss the same.^[28] The COMELEC *En Banc*, on March 13, 2008, denied petitioner's motion for the reconsideration of the division's ruling on account of Fermin's failure to pay the required fees. It further directed the issuance of an entry of judgment in the said case.^[29] On March 26, 2008, the ECAD recorded the finality of the ruling in SPR No. 45-2007 in the Book of Entries of Judgments.^[30]

These developments prompted Fermin to file another *certiorari* petition before this

Court, docketed as **G.R. No. 182369**. In this petition, Fermin raises the following issues for our resolution:

A.

Whether or not public respondent has departed from the accepted and usual course of its rules of procedure, as to call for an exercise of the power of supervision by the Honorable Court.

B.

Whether or not public respondent in taking cognizance of the *certiorari* and prohibition not in aid of its appellate jurisdiction, acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or in (sic) excess [of jurisdiction].

C.

Whether or not public respondent, in ordering Judge Ibrahim to dismiss the election protest case, acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or in (sic) excess of jurisdiction.

D.

Whether or not public respondent, in not uniformly observing its process in the service of its resolution and/or order, had denied to petitioner the equal protection of the law.

E.

Whether or not the petition for *certiorari* and prohibition is dismissible in view of the pendency of another action and whereby the result of the first action is determinative of the second action in any event and regardless of which party is successful.

F.

Whether or not there is forum shopping.

G.

Whether or not the public respondent, acting not in aid of its appellate jurisdiction, has authority to issue TRO and/or Preliminary Injunction as ancillary remedy of the original action for *certiorari* and prohibition.

H.

Whether or not public respondent has jurisdiction to divest the Court of Judge Ibrahim of its jurisdiction on the election protest case.^[31]