

EN BANC

[G.R. No. 120193, March 06, 1996]

LUIS MALALUAN, PETITIONER, VS. COMMISSION ON ELECTIONS AND JOSEPH EVANGELISTA, RESPONDENTS.

D E C I S I O N

HERMOSISIMA, JR., J.:

Novel is the situation created by the decision of the Commission on Elections which declared the winner in an election contest and awarded damages, consisting of attorney's fees, actual expenses for xerox copies, unearned salary and other emoluments for the period, from March, 1994 to April, 1995, en masse denominated as actual damages, notwithstanding the fact that the electoral controversy had become moot and academic on account of the expiration of the term of office of the Municipal Mayor of Kidapawan, North Cotabato.

Before us is a petition for certiorari and prohibition, with a prayer for the issuance of a temporary restraining order and writ of preliminary injunction, seeking the review of the decision en banc^[1] of the Commission on Elections (COMELEC) denying the motion for reconsideration of the decision^[2] of its First Division,^[3] which reversed the decision^[4] of the Regional Trial Court^[5] in the election case^[6] involving the herein parties. While the Regional Trial Court had found petitioner Luis Malaluan to be the winner of the elections for the position of Municipal Mayor of Kidapawan, North Cotabato, the **COMELEC**, on the contrary, found private respondent Joseph Evangelista to be the rightful winner in said elections.

Petitioner Luis Malaluan and private respondent Joseph Evangelista were both mayoralty candidates in the Municipality of Kidapawan, North Cotabato, in the Synchronized National and Local Elections held on May 11, 1992. Private respondent Joseph Evangelista was proclaimed by the Municipal Board of Canvassers as the duly elected Mayor for having garnered 10,498 votes as against petitioner's 9,792 votes. Evangelista was, thus, said to have a winning margin of 706 votes. But, on May 22, 1992, petitioner filed an election protest with the Regional Trial Court contesting 64 out of the total 181 precincts of the said municipality. The trial court declared petitioner as the duly elected municipal mayor of Kidapawan, North Cotabato with a plurality of 154 votes. Acting without precedent, the court found private respondent liable not only for Malaluan's protest expenses but also for moral and exemplary damages and attorney's fees. On February 3, 1994, private respondent appealed the trial court decision to the COMELEC.

Just a day thereafter that is, on February 4, 1994, petitioner filed a motion for execution pending appeal. The motion was granted by the trial court, in an order, dated March 8, 1994, after petitioner posted a bond in the amount of P500,000.00. By virtue of said order, petitioner assumed the office of MunicipaJ Mayor of

Kidapawan, North Cotabato, and exercised the powers and functions of said office. Such exercise was not for long, though. In the herein assailed decision adverse to Malaluan's continued governance of the Municipality of Kidapawan, North Cotabato, the First Division of the Commission on Elections (COMELEC) ordered Malaluan to vacate the office, said division having found and so declared private respondent to be the duly elected Municipal Mayor of said municipality. The COMELEC en banc affirmed said decision.

Malaluan filed this petition before us on May 31, 1995 as a consequence.

It is significant to note that the term of office of the local officials elected in the May, 1992 elections expired on June 30, 1995. This petition, thus, has become moot and academic insofar as it concerns petitioner's right to the mayoralty seat in his municipality^[7] because expiration of the term of office contested in the election protest has the effect of rendering the same moot and academic.^[8]

When the appeal from a decision in an election case has already become moot, the case being an election protest involving the office of mayor the term of which had expired, the appeal is dismissible on that ground, unless the rendering of a decision on the merits would be of practical value.^[9] This rule we established in the case of *Yorac vs. Magalona*^[10] which we dismissed because it had been mooted by the expiration of the term of office of the Municipal Mayor of Saravia, Negros Occidental. This was the object of contention between the parties therein. The recent case of *Atienza vs. Commission on Elections*,^[11] however, squarely presented the situation that is the exception to that rule.

Comparing the scenarios in those two cases, we explained:

"Second, petitioner's citation of *Yorac vs. Magalona* as authority for his main proposition is grossly inappropriate and misses the point in issue. The sole question in that case centered on an election protest involving the mayoralty post in Saravia, Negros Occidental in the general elections of 1955, which was rendered moot and academic by the expiration of the term of office in December, 1959. It did not involve a monetary award for damages and other expenses incurred as a result of the election protest. In response to the petitioner's contention that the issues presented before the court were novel and important and that the appeal should not be dismissed, the Court held - citing the same provision of the Rules of Court upon which petitioner staunchly places reliance - that a decision on the merits in the case would have no practical value at all, and forthwith dismissed the case for being moot. That is not the case here. In contradistinction to *Yorac*, a decision on the merits in the case at bench would clearly have the practical value of either sustaining the monetary award for damages or relieving the private respondent from having to pay the amount thus awarded."^[12]

Indeed, this petition appears now to be moot and academic because the herein parties are contesting an elective post to which their right to the office no longer exists. However, the question as to damages remains ripe for adjudication. The **COMELEC** found petitioner liable for attorney's fees, actual expenses for xerox copies, and unearned salary and other emoluments from March, 1994 to April,

1995, en mUsse denominated as actual damages, default in payment by petitioner of which shall result in the collection of said amount from the bond posted by petitioner on the occasion of the grant of his motion for execution pending appeal in the trial court. Petitioner naturally contests the propriety and legality of this award upon private respondent on the ground that said damages have not been alleged and proved during trial.

What looms large as the issue in this case is whether or not the **COMELEC** gravely abused its discretion in awarding the aforecited damages in favor of private respondent.

The Omnibus Election Code provides that "actual or compensatory damages may be granted in all election contests or in quo warranto proceedings in accordance with law."^[13] COMELEC Rules of Procedure provide that "in all election contests the Court may adjudicate damages and attorney's fees as it may deem just and as established by the evidence if the aggrieved party has included such claims in his pleadings."^[14] This appears to require only that the judicial award of damages be just and that the same be borne out by the pleadings and evidence. The overriding requirement for a valid and proper award of damages, it must be remembered, is that the same is in accordance with law, specifically, the provisions of the Civil Code pertinent to damages.

Article 2199 of the Civil Code mandates that "except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages." The Civil Code further prescribes the proper setting for allowance of actual or compensatory damages in the following provisions:

"ART. 2201. In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.

In case of fraud, bad faith, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation.

ART. 2202. In crimes and quasi-delicts, the defendant shall be liable for all damages which are the natural and probable consequences of the act or omission complained of. It is not necessary that such damages have been foreseen or could have reasonably been foreseen by the defendant."

Considering that actual or compensatory damages are appropriate only in breaches of obligations in cases of contracts and quasi-contracts and on the - occasion of crimes and quasi-delicts where the defendant may be held liable for all damages the proximate cause of which is the act or omission complained of, the monetary claim of a party in an election case must necessarily be hinged on either a contract or a quasi-contract or a tortious act or omission or a crime, in order to effectively recover actual or compensatory damages.^[15] In the absence of any or all of these, "the claimant must be able to point out a specific provision of law authorizing a money

claim for election protest expenses against the losing party."^[16] For instance, the claimant may cite any of the following provisions of the Civil Code under the chapter on human relations, which provisions create obligations not by contract, crime or negligence, but directly by law:

"ART. 19. Every person must in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

ART. 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

xxx xxx xxx

ART. 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

xxx xxx xxx

(5) Freedom of suffrage;

xxx xxx xxx

In any of the cases referred to in this article, whether or not the defendant's act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. x x x"^[17]

Claimed as part of the damages to which private respondent is allegedly entitled to, is P169,456.00 constituting salary and other emoluments from March, 1994 to April, 1995 that would have accrued to him had there not been an execution of the trial court's decision pending appeal therefrom in the **COMELEC**.

The long-standing rule in this jurisdiction is that notwithstanding his subsequent ouster as a result of an election protest, an elective official who has been proclaimed by the **COMELEC** as winner in an electoral contest and who assumed office and entered into the performance of the duties of that office, is entitled to the compensation, emoluments and allowances legally provided for the position.^[18] We ratiocinated in the case of Rodriguez vs. Tan that:

"This is as it should be. This is in keeping with the ordinary course of events. This is simple justice. The emolument must go to the person who rendered the service unless the contrary is provided. There is no averment in the complaint that he is linked with any irregularity vitiating his election. This is the policy and the rule that has been followed consistently in this jurisdiction in connection with positions held by persons who had been elected thereto but were later ousted as a result of an election protest. The right of the persons elected to compensation during their incumbency has always been recognized. We cannot recall of any precedent wherein the contrary rule has been upheld."^[19]

In his concurring opinion in the same case, however, Justice Padilla equally stressed that, while the general rule is that the ousted elective official is not obliged to reimburse the emoluments of office that he had received before his ouster, he would be liable for damages in case he would be found responsible for any unlawful or tortious acts in relation to his proclamation. We quote the pertinent portion of that opinion for emphasis:

"Nevertheless, if the defendant, directly or indirectly, had committed unlawful or tortious acts which led to and resulted in his proclamation as senator-elect, when in truth and in fact he was not so elected, he would be answerable for damages. In that event the salary, fees and emoluments received by or paid to him during his illegal incumbency would be a proper item of recoverable damage."^[20]

The criterion for a justifiable award of election protest expenses and salaries and emoluments, thus, remains to be the existence of a pertinent breach of obligations arising from contracts or quasi-contracts, tortious acts, crimes or a specific legal provision authorizing the money claim in the context of election cases. Absent any of these, we could not even begin to contemplate liability for damages in election cases, except insofar as attorney's fees are concerned, since the Civil Code enumerates the specific instances when the same may be awarded by the court.

"ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered."^[21]