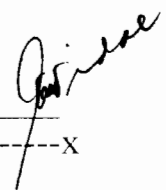


EN BANC

G.R. No. 195649: Casan Macode Maquiling, *Petitioner*, v. Commission on Elections, Rommel Arnado y Cagoco, and Linog G. Balua, *Respondents*.

Promulgated:
APRIL 16, 2013



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CONCURRING OPINION

CARPIO, J.:

I concur in the *ponencia*. Respondent Rommel Arnado (Arnado) is disqualified from running for any local elective position. The Commission on Elections (COMELEC) should be directed to proclaim Petitioner Casan Macode Maquiling (Maquiling) as the duly elected Mayor of Kauswagan, Lanao del Norte in the May 2010 elections.

Arnado received the highest number of votes in the May 2010 elections and was proclaimed Mayor of Kauswagan, Lanao del Norte. Respondent Linog G. Balua (Balua), one of Arnado's opponents, filed a petition before the COMELEC against Arnado. Balua's petition to disqualify Arnado and/or to cancel his certificate of candidacy rests on the allegation that Arnado lacks the residency and citizenship requirements. Balua presented evidence to show that Arnado used his American passport to enter and depart the Philippines. Maquiling, on the other hand, was also one of Arnado's opponents. Maquiling received the second highest number of votes next to Arnado. Maquiling filed motions for intervention and for reconsideration before the COMELEC En Banc. Maquiling asserted that he should have been proclaimed as Mayor for being the legitimate candidate with the highest number of votes.

Arnado is a natural-born Filipino citizen who lost his Filipino citizenship upon his naturalization as an American citizen. Arnado applied for repatriation, and subsequently took two Oaths of Allegiance to the Republic of the Philippines, then renounced his American citizenship. The relevant timeline is as follows:



10 July 2008 - Arnado pledged his Oath of Allegiance to the Republic of the Philippines.

3 April 2009 - Arnado again pledged his Oath of Allegiance to the Republic of the Philippines and executed an Affidavit of Renunciation of his American citizenship.

14 April to 25 June 2009 - Arnado used his United States of America (USA) Passport No. 057782700 to depart and enter the Philippines.

29 July to 24 November 2009 - Arnado again used his USA Passport No. 057782700 to depart and enter the Philippines.

30 November 2009 - Arnado filed his Certificate of Candidacy for Mayor of Kauswagan, Lanao del Norte.

A certification from the Bureau of Immigration showed that Arnado arrived in the Philippines on 12 January 2010, as well as on 23 March 2010. Both arrival dates show that Arnado used the same USA passport he used in 2009.

Despite Balua's petition before the COMELEC, the elections proceeded without any ruling on Arnado's qualification. Arnado received the highest number of votes in the May 2010 elections and was proclaimed Mayor of Kauswagan, Lanao del Norte.

The COMELEC First Division issued its ruling on Arnado's qualification after his proclamation. The COMELEC First Division treated Balua's petition to disqualify Arnado and/or to cancel his certificate of candidacy as a petition for disqualification. The COMELEC First Division granted Balua's petition and annulled Arnado's proclamation. The COMELEC First Division stated that "Arnado's continued use of his US passport is a strong indication that Arnado had no real intention to renounce his US citizenship and that he only executed an Affidavit of Renunciation to enable him to run for office." The COMELEC First Division decreed that the order of succession under Section 44 of the Local Government Code of 1991¹ should take effect.

¹

Section 44. *Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor.* - If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. x x x.

Arnado filed a motion for reconsideration before the COMELEC En Banc. Maquiling intervened, and asserted that although the COMELEC First Division correctly disqualified Arnado, the law on succession should not apply. Instead, Maquiling should have been proclaimed as Mayor for being the legitimate candidate with the highest number of votes.

The COMELEC En Banc reversed and set aside the ruling of the COMELEC First Division. In granting Arnado's motion for reconsideration, the COMELEC En Banc stated that Arnado's use of his USA passport "does not operate to revert back [sic] his status as a dual citizen prior to his renunciation as there is no law saying such." COMELEC Chair Sixto Brillantes concurred, and stated that Arnado "after reacquiring his Philippine citizenship should be presumed to have remained a Filipino despite his use of his American passport in the absence of clear, unequivocal and competent proof of expatriation." Commissioner Rene Sarmiento dissented, and declared that Arnado failed to prove that he abandoned his allegiance to the USA and that his loss of the continuing requirement of citizenship disqualifies him to serve as an elected official. Moreover, having received the highest number of votes does not validate Arnado's election.

The *ponencia* granted Maquiling's petition before this Court, and annulled and set aside the ruling of the COMELEC En Banc. The *ponencia* declared that Arnado's use of his USA passport did not divest him of his Filipino citizenship but vested back in him the American citizenship he earlier renounced. The *ponencia* also directed the COMELEC to proclaim Maquiling as the duly elected Mayor of Kauswagan, Lanao del Norte in the May 2010 elections for being the qualified candidate who received the highest number of votes.

On Arnado's Use of a Non-Philippine Passport

Philippine courts have no power to declare whether a person possesses citizenship other than that of the Philippines. In *Mercado v. Manzano*,² Constitutional Commissioner Joaquin G. Bernas was quoted as saying, "[D]ual citizenship is just a reality imposed on us because we have no control of the laws on citizenship of other countries. We recognize a child of a Filipino mother. But whether or not she is considered a citizen of another country is something completely beyond our control."³ In the present case, we have no authority to declare that Arnado is an American citizen. Only the courts of the USA, using American law, have the conclusive authority to make an assertion regarding Arnado's American citizenship.

² 367 Phil. 132 (1999) citing 1 RECORD OF THE CONSTITUTIONAL COMMISSION 203 (23 June 1986).

³ Id. at 147.

Arnado, as a naturalized American citizen and a repatriated Filipino, is required by law to swear to an Oath of Allegiance to the Republic of the Philippines and execute a Renunciation of Foreign Citizenship before he may seek elective Philippine public office. The pertinent sections of R.A. No. 9225 read:

Section 3. *Retention of Philippine Citizenship.* — Any provision of law to the contrary notwithstanding, natural-born citizenship by reason of their naturalization as citizens of a foreign country are hereby deemed to have re-acquired Philippine citizenship upon taking the following oath of allegiance to the Republic:

“I _____, solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I imposed this obligation upon myself voluntarily without mental reservation or purpose of evasion.”

Natural born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath.

Section 5. *Civil and Political Rights and Liabilities.* — Those who retain or re-acquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:

x x x x

(2) Those seeking elective public office in the Philippines shall meet the qualification for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath;

x x x x.

Arnado’s use of his American passport after his execution of an Affidavit of Renunciation of his American Citizenship is a **retraction** of his renunciation. When Arnado filed his Certificate of Candidacy on 30 November 2009, there was no longer an effective renunciation of his American citizenship. It is as if he never renounced his American citizenship at all. Arnado, therefore, failed to comply with the twin requirements of swearing to an Oath of Allegiance and executing a Renunciation of Foreign Citizenship as found in Republic Act No. 9225. We previously discussed the distinction between dual citizenship and dual allegiance, as well as the different acts required of dual citizens, who may

either have involuntary dual citizenship or voluntary dual allegiance, who desire to be elected to Philippine public office in *Cordora v. COMELEC*:⁴

We have to consider the present case in consonance with our rulings in *Mercado v. Manzano*, *Valles v. COMELEC*, and *AASJS v. Datumanong*. *Mercado* and *Valles* involve similar operative facts as the present case. *Manzano* and *Valles*, like *Tambunting*, possessed dual citizenship by the circumstances of their birth. *Manzano* was born to Filipino parents in the United States which follows the doctrine of *jus soli*. *Valles* was born to an Australian mother and a Filipino father in Australia. Our rulings in *Manzano* and *Valles* stated that dual citizenship is different from dual allegiance both by cause and, for those desiring to run for public office, by effect. Dual citizenship is involuntary and arises when, as a result of the concurrent application of the different laws of two or more states, a person is simultaneously considered a national by the said states. Thus, like any other natural-born Filipino, it is enough for a person with dual citizenship who seeks public office to file his certificate of candidacy and swear to the oath of allegiance contained therein. Dual allegiance, on the other hand, is brought about by the individual's active participation in the naturalization process. *AASJS* states that, under R.A. No. 9225, a Filipino who becomes a naturalized citizen of another country is allowed to retain his Filipino citizenship by swearing to the supreme authority of the Republic of the Philippines. The act of taking an oath of allegiance is an implicit renunciation of a naturalized citizen's foreign citizenship.

R.A. No. 9225, or the Citizenship Retention and Reacquisition Act of 2003, was enacted years after the promulgation of *Manzano* and *Valles*. The oath found in Section 3 of R.A. No. 9225 reads as follows:

I _____, solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion.

In Sections 2 and 3 of R.A. No. 9225, the framers were not concerned with dual citizenship per se, but with the status of naturalized citizens who maintain their allegiance to their countries of origin even after their naturalization. Section 5(2) of R.A. No. 9225 states that naturalized citizens who reacquire Filipino citizenship and desire to run for elective public office in the Philippines shall "meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of filing the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath" aside from the oath of allegiance prescribed in Section 3 of R.A. No. 9225. The twin requirements of swearing to an Oath of Allegiance and executing a Renunciation of Foreign Citizenship served as the bases for our recent rulings in *Jacot v. Dal* and *COMELEC*, *Velasco v. COMELEC*, and *Japzon v. COMELEC*, all

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G.R. No. 176947, 19 February 2009, 580 SCRA 12. Citations omitted.

of which involve natural-born Filipinos who later became naturalized citizens of another country and thereafter ran for elective office in the Philippines. In the present case, Tambunting, a natural-born Filipino, did not subsequently become a naturalized citizen of another country. Hence, the twin requirements in R.A. No. 9225 do not apply to him.⁵

Hence, Arnado's failure to comply with the twin requirements of R.A. No. 9225 is clearly a failure to qualify as a candidate for Philippine elective public office. He is still deemed, under Philippine law, holding allegiance to a foreign country, which disqualifies him from running for an elective public office. Such failure to comply with the twin requirements of R.A. No. 9225 is included among the grounds for disqualification in Section 68 of the Omnibus Election Code: "*Disqualifications.* – x x x. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as a permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in election laws."

On the Selection of the Lawful Mayor of Kauswagan, Lanao del Sur

Arnado used his USA passport **after** his Renunciation of American Citizenship and **before** he filed his Certificate of Candidacy. This positive act of retraction of his renunciation before the filing of the Certificate of Candidacy renders Arnado's Certificate of Candidacy **void** *ab initio*. Therefore, Arnado was **never** a candidate at any time, and all the votes for him are **stray votes**. We reiterate our ruling in *Jalosjos v. COMELEC*⁶ on this matter:

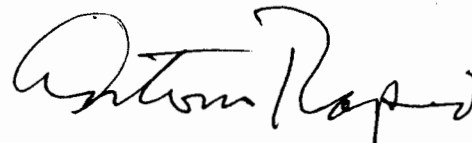
Decisions of this Court holding that the second-placer cannot be proclaimed winner if the first-placer is disqualified or declared ineligible should be limited to situations where the certificate of candidacy of the first-placer was valid at the time of filing but subsequently had to be cancelled because of a violation of law that took place, or a legal impediment that took effect, after the filing of the certificate of candidacy. If the certificate of candidacy is void *ab initio*, then legally the person who filed such void certificate of candidacy was never a candidate in the elections at any time. All votes for such non-candidate are stray votes and should not be counted. Thus, such non-candidate can never be a first-placer in the elections. If a certificate of candidacy void *ab initio* is cancelled on the day, or before the day, of the election, prevailing jurisprudence holds that all votes for that candidate are stray votes. If a certificate of candidacy void *ab initio* is cancelled one day or more after the elections, all votes for such candidate should also be stray votes because the certificate of candidacy is void from the very beginning. This is the more equitable and logical approach on the effect

⁵ Id. at 23-25.

⁶ G.R. Nos. 193237 and 193536, 9 October 2012. Citations omitted. See also *Cayat v. COMELEC*, G.R. Nos. 163776 and 165736, 24 April 2007, 522 SCRA 23; and *Aratea v. COMELEC*, G.R. No. 195229, 9 October 2012.

of the cancellation of a certificate of candidacy that is void *ab initio*. Otherwise, a certificate of candidacy void *ab initio* can operate to defeat one or more valid certificates of candidacy for the same position.⁷

It is undisputed that Arnado had to comply with the twin requirements of allegiance and renunciation. However, Arnado's use of his USA passport after the execution of his Affidavit of Renunciation constituted a retraction of his renunciation, and led to his failure to comply with the requirement of renunciation at the time he filed his certificate of candidacy. His certificate of candidacy was thus void *ab initio*. Garnering the highest number of votes for an elective position does not cure this defect. Maquiling, the alleged "second placer," should be proclaimed Mayor because Arnado's certificate of candidacy was void *ab initio*. Maquiling is the qualified candidate who actually garnered the highest number of votes for the position of Mayor.



ANTONIO T. CARPIO

Associate Justice