



Republic of the Philippines  
**Supreme Court**  
Manila

EN BANC

**SVETLANA P. JALOSJOS,**  
Petitioner,

**G.R. No. 193314**

Present:

- versus -

**COMMISSION ON ELECTIONS,  
EDWIN ELIM TUMPAG and  
RODOLFO Y. ESTRELLADA,**  
Respondents.

SERENO, *CJ*,  
CARPIO,  
VELASCO, JR.,  
LEONARDO-DE CASTRO,  
BRION,\*  
PERALTA,  
BERSAMIN,  
DEL CASTILLO,  
ABAD,  
VILLARAMA, JR.,  
PEREZ,  
MENDOZA,  
REYES,  
PERLAS-BERNABE, and  
LEONEN, *JJ*.

Promulgated:

February 26, 2013

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**DECISION**

**SERENO, *CJ*:**

Svetlana P. Jalosjos (petitioner) comes before this Court on a Petition for Review under Rule 64 with an extremely urgent application for the issuance of a *status quo* order and for the conduct of a special raffle,<sup>1</sup> assailing the 04 June 2010<sup>2</sup> and 19 August 2010<sup>3</sup> Resolutions in SPA No. 09-161 (DC) of the Commission on Elections (respondent COMELEC).

<sup>1</sup> *Rollo*, pp. 3-49

<sup>2</sup> *Id.* at 50-54.

<sup>3</sup> *Id.* at 55-66.

\* On Official leave.

These Resolutions granted the Petition to Deny Due Course to or Cancel the Certificate of Candidacy filed by Edwin Elim Tumpag and Rodolfo Y. Estrellada (private respondents) against petitioner. At the heart of this controversy is whether petitioner complied with the one-year residency requirement for local elective officials.

On 20 November 2009, petitioner filed her Certificate of Candidacy (CoC) for mayor of Baliangao, Misamis Occidental for the 10 May 2010 elections. She indicated therein her place of birth and residence as *Barangay Tugas*, Municipality of Baliangao, Misamis Occidental (*Brgy. Tugas*).

Asserting otherwise, private respondents filed against petitioner a Petition to Deny Due Course to or Cancel the Certificate of Candidacy, in which they argued that she had falsely represented her place of birth and residence, because she was in fact born in San Juan, Metro Manila, and had not totally abandoned her previous domicile, Dapitan City.<sup>4</sup> To support this claim, they presented the following as evidence:

1. Certification from the Assessor's Office of Baliangao that there was no tax declaration covering any real property in the name of petitioner located at any place in the municipality;<sup>5</sup>
2. Certification from the Civil Registrar of Baliangao that petitioner had no record of birth in the civil registry of the municipality;<sup>6</sup>
3. Joint Affidavit of three residents of Baliangao – incumbent *Barangay* Chairperson Gregorio P. Gayola (Gayola) and incumbent 3<sup>rd</sup> *Kagawad* Felicisimo T. Pastrano (Pastrano), both officials of *Barangay Tugas*, Baliangao, Misamis Occidental, and former police officer Adolfo L. Alcoran (Alcoran);<sup>7</sup>
4. Affidavit of Patricio D. Andilab (Andilab), official of *Purok 5*, *Brgy. Tugas*, Baliangao.<sup>8</sup>

On the other hand, petitioner averred that she had established her residence in the said *barangay* since December 2008 when she purchased two parcels of land there, and that she had been staying in the house of a certain Mrs. Lourdes Yap (Yap) while the former was overseeing the construction of her house. Furthermore, petitioner asserted that the error in her place of birth was committed by her secretary. Nevertheless, in a CoC, an error in the declaration of the place of birth is not a material misrepresentation that would lead to disqualification, because it is not one of

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<sup>4</sup> Id. at 50-51.

<sup>5</sup> Id. at 76.

<sup>6</sup> Id. at 77.

<sup>7</sup> Id. at 125-127.

<sup>8</sup> Id. at 129.

the qualifications provided by law.<sup>9</sup> Petitioner presented the following evidence to sustain her claims:

1. Certificate of Live Birth;<sup>10</sup>
2. Extrajudicial Partition with Simultaneous Sale executed by the heirs of Agapito Yap, Jr. (Yap, Jr.) pertaining to two parcels of land covered by Transfer Certificate of Title (TCT) Nos. 12410 and P-33289 in favor of petitioner;<sup>11</sup>
3. TCT Nos. 12410 and P-33289 in the name of Yap, Jr.;<sup>12</sup>
4. Two Declarations of Real Property in the name of Yap, Jr.;<sup>13</sup>
5. Two sketch plans of lots covered by TCT Nos. 12410 and P-33289 prepared by the Office of the Provincial Assessor for Yap, Jr.;<sup>14</sup>
6. Photographs of the alleged residence of petitioner in Baliangao, Misamis Occidental;
7. Sketches of structures petitioner constructed in the resort she developed in Baliangao, Misamis Occidental;<sup>15</sup>
8. Petitioner's Application for Voter's Registration and Voter's Certification issued by the Office of the Election Officer of Baliangao, Misamis Occidental;<sup>16</sup>
9. Petitioner's CoC;<sup>17</sup>
10. Joint Affidavit of Rodolio R. Yap III (Yap III), Roger V. Villanueva (Villanueva), Romeo A. Duhaylungsod, Jr. (Duhaylungsod) and Dennis M. Estrellada (Estrellada), who undertook the construction and development of petitioner's residential house and resort;<sup>18</sup>
11. Affidavit of incumbent *Barangay* Chairperson Marichu Michel Acas-Yap (Acas-Yap) of *Barangay* Punta Miray, Baliangao, Misamis Occidental (*Brgy.* Punta Miray);<sup>19</sup>
12. Affidavit of Nellie E. Jumawan (Jumawan), the president of the Center for Agriculture and Rural Development, Inc.;<sup>20</sup>
13. Affidavit of Dolores B. Medija (Medija), the president of Women for Children Association;<sup>21</sup>

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<sup>9</sup> Id. at 51-52.

<sup>10</sup> Id. at 187.

<sup>11</sup> Id. at 153-154.

<sup>12</sup> Id. at 155-157, 164-166.

<sup>13</sup> Id. at 158-159, 161-162.

<sup>14</sup> Id. at 160, 163.

<sup>15</sup> Id. at 194-209.

<sup>16</sup> Id. at 210-211.

<sup>17</sup> Id. at 124.

<sup>18</sup> Id. at 221-224.

<sup>19</sup> Id. at 225-226.

<sup>20</sup> Id. at 227-228.

<sup>21</sup> Id. at 229-230.

14. Joint Affidavit of Emily J. Bagundol (Bagundol) and Nelia D. Colaljo (Colaljo), presidents of the Paglaum Multi-purpose Cooperative;<sup>22</sup>
15. Joint Affidavit of Charles C. Tenorio (Tenorio) and Reynold C. Analasan (Analasan), presidents of Tamban Multi-Purpose Cooperative and Balas Diut Brotherhood Association, respectively;<sup>23</sup>
16. Affidavit of Pedro Rio G. Bation (Bation), president of the Del Pilar Lawn Tennis Club of Baliangao;<sup>24</sup>
17. Affidavit of Jessie P. Maghilum (Maghilum), a member of the Phi Omega Sigma Fraternity/Sorority of Baliangao, Misamis Occidental Chapter;<sup>25</sup> and
18. Affidavit of Ophelia P. Javier (Javier), petitioner's personal secretary.<sup>26</sup>

The Petition to Deny Due Course to or Cancel the Certificate of Candidacy remained pending as of the day of the elections, in which petitioner garnered the highest number of votes. On 10 May 2010, the Municipal Board of Canvassers of Baliangao, Misamis Occidental, proclaimed her as the duly elected municipal mayor.<sup>27</sup>

On 04 June 2010, the COMELEC Second Division rendered a Resolution, the dispositive portion of which reads:

WHEREFORE, premises considered, respondent is **DISQUALIFIED** from running for the position of mayor in the Municipality of Baliangao, Misamis Occidental for this coming May 10, 2010 elections.<sup>28</sup>

The COMELEC *En Banc* promulgated a Resolution on 19 August 2010 denying the Motion for Reconsideration of petitioner for lack of merit and affirming the Resolution of the Second Division denying due course to or cancelling her CoC.

### COMELEC Ruling

Respondent COMELEC ruled in its 04 June 2010 Resolution that misrepresentation as to one's place of birth is not a ground for the cancellation of a CoC. Petitioner merely committed an oversight when she

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<sup>22</sup> Id. at 231-232.

<sup>23</sup> Id. at 233-234.

<sup>24</sup> Id. at 235-236.

<sup>25</sup> Id. at 237-238.

<sup>26</sup> Id. at 239-240.

<sup>27</sup> Id. at 243.

<sup>28</sup> Id. at 54.

declared that she was born in Baliangao when she was actually born in San Juan. However, the COMELEC ruled that based on the evidence presented, petitioner never acquired a new domicile in Baliangao, because she failed to prove her bodily presence at that place, her intention to remain there, and her intention never to return to her domicile of origin. Hence, respondent COMELEC disqualified her from running for the position of mayor of Baliangao<sup>29</sup> pursuant to Section 78 in relation to Section 74 of the Omnibus Election Code.<sup>30</sup>

In response to this adverse ruling, petitioner elevated her case through a Motion for Reconsideration before the COMELEC *En Banc*, arguing that the evidence she presented proved that she had established her domicile in the said municipality.<sup>31</sup>

Nonetheless, in its 19 August 2010 Resolution, respondent COMELEC affirmed the earlier ruling of the Second Division. In upholding the latter's ruling, COMELEC *En Banc* said that (1) the Extrajudicial Partition with Simultaneous Sale was not sufficient proof that petitioner had purchased two parcels of land, because she was never a party to the agreement, and it was quite unusual that she never acquired a deed of sale or title to protect her interests; (2) the sketch plans were not signed by the corporate engineer who purportedly prepared them, nor was there an affidavit from the engineer to authenticate the plans; (3) the application of petitioner for voter registration only proved that she had met the minimum six-month residency requirement and nothing more; and (4) the affiants of the Sworn Statements were all partial, because they either worked for her or were members of organizations that received financial assistance from her.<sup>32</sup>

Hence, the instant Petition arguing that respondent COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in holding that petitioner was not a resident of Baliangao, Misamis Occidental and in thus justifying the cancellation of her CoC. She also asserts that the 04 June 2010 and 19 August 2010 COMELEC Resolutions are null and void, being violative of her right to due process, because there was no promulgation or prior notice as required by Sec. 6 of COMELEC Resolution No. 8696 or by the Rules on Disqualification of Cases Filed in Connection with the 10 May 2010 Automated National and Local Elections.

In a Resolution dated 07 September 2010, we issued a *Status Quo Ante* Order, which required the parties to observe the *status quo* prevailing

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<sup>29</sup> Id.

<sup>30</sup> Id. at 53.

<sup>31</sup> Id. at 58-59.

<sup>32</sup> Id. at 61-64.

before the issuance of the assailed COMELEC Resolutions.<sup>33</sup> Thereafter, the parties filed their respective pleadings.

### Issues

The issues before us can be summarized as follows:

- I. Whether COMELEC committed grave abuse of discretion when it failed to promulgate its 04 June 2010 and 19 August 2010 Resolutions in accordance with its own Rules of Procedure; and
- II. Whether COMELEC committed grave abuse of discretion in holding that petitioner had failed to prove compliance with the one-year residency requirement for local elective officials.

### Our Ruling

***COMELEC's failure to serve advance notice of the promulgation of the 04 June 2010 and 19 August 2010 Resolutions does not invalidate them.***

Petitioner assails the validity of the 04 June 2010 and 19 August 2010 Resolutions, because she was not served an advance notice that these Resolutions were going to be promulgated. This failure was allegedly a violation of COMELEC Resolution No. 8696. Hence, she argues that her right to due process was violated. In response, respondent COMELEC asserts that it suspended COMELEC Resolution No. 8696 through an *En Banc* Order dated 04 May 2010.<sup>34</sup> Furthermore, the suspension was in accordance with its power to promulgate its own rules as provided by the Constitution. Nevertheless, petitioner was afforded the opportunity to be heard and to submit evidence in support of her defense.

We agree with respondent COMELEC.

As stated by respondent COMELEC, Resolution No. 8696 was suspended through an Order dated 04 May 2010. However, assuming that this Resolution was still in effect, the failure to serve notice of the promulgation under Section 6 thereof did not make the 04 June 2010 and 19 August 2010 COMELEC Resolutions invalid. The Court held thus in *Sabili v. COMELEC*:<sup>35</sup>

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<sup>33</sup>Id. at 284-285.

<sup>34</sup>Id. at 59.

<sup>35</sup>Id.

In *Lindo v. Commission on Elections*,<sup>[49]</sup> petitioner claimed that there was no valid promulgation of a Decision in an election protest case when a copy thereof was merely furnished the parties, instead of first notifying the parties of a set date for the promulgation thereof, in accordance with Section 20 of Rule 35 of the COMELEC's own Rules of Procedure, as follows:

Sec. 20. Promulgation and Finality of Decision. — The decision of the court shall be promulgated on a date set by it of which due notice must be given the parties. It shall become final five (5) days after promulgation. No motion for reconsideration shall be entertained.

**Rejecting petitioner's argument, we held therein that the additional rule requiring notice to the parties prior to promulgation of a decision is not part of the process of promulgation. Since lack of such notice does not prejudice the rights of the parties, noncompliance with this rule is a procedural lapse that does not vitiate the validity of the decision. Thus:**

This contention is untenable. Promulgation is the process by which a decision is published, officially announced, made known to the public or delivered to the clerk of court for filing, coupled with notice to the parties or their counsel (*Neria v. Commissioner of Immigration*, L-24800, May 27, 1968, 23 SCRA 812). It is the delivery of a court decision to the clerk of court for filing and publication (*Araneta v. Dinglasan*, 84 Phil. 433). It is the filing of the signed decision with the clerk of court (*Sumbing v. Davide*, G.R. Nos. 86850-51, July 20, 1989, *En Banc* Minute Resolution). The additional requirement imposed by the COMELEC rules of notice in advance of promulgation is not part of the process of promulgation. Hence, We do not agree with petitioner's contention that there was no promulgation of the trial court's decision. The trial court did not deny that it had officially made the decision public. From the recital of facts of both parties, copies of the decision were sent to petitioner's counsel of record and petitioner's [sic] himself. Another copy was sent to private respondent.

**What was wanting and what the petitioner apparently objected to was not the promulgation of the decision but the failure of the trial court to serve notice in advance of the promulgation of its decision as required by the COMELEC rules. The failure to serve such notice in advance of the promulgation may be considered a procedural lapse on the part of the trial court which did not prejudice the rights of the parties and did not vitiate the validity of the decision of the trial court nor [sic] of the promulgation of said decision.**

Moreover, quoting *Pimping v. COMELEC*,<sup>[50]</sup> citing *Macabingkil v. Yatco*,<sup>[51]</sup> we further held in the same case that failure to receive advance notice of the promulgation of a decision is not sufficient to set aside the COMELEC's judgment, as long as the parties have been afforded an opportunity to be heard before judgment is rendered, viz:

**The fact that petitioners were not served notice in advance of the promulgation of the decision in the election protest cases, in Our view, does not constitute reversible error or a reason sufficient enough to compel and warrant the setting aside of the judgment rendered by the Comelec. Petitioners anchor their argument on an alleged denial to them [sic] due process to the deviation by the Comelec from its own**

**made rules. However, the essence of due process is that, the parties in the case were afforded an opportunity to be heard.**

In the present case, we read from the COMELEC Order that the exigencies attendant to the holding of the country's first automated national elections had necessitated that the COMELEC suspend the rule on notice prior to promulgation, and that it instead direct the delivery of all resolutions to the Clerk of the Commission for immediate promulgation. Notably, we see no prejudice to the parties caused thereby. The COMELEC's Order did not affect the right of the parties to due process. They were still furnished a copy of the COMELEC Decision and were able to reckon the period for perfecting an appeal. In fact, petitioner was able to timely lodge a Petition with this Court.

Clearly, the COMELEC validly exercised its constitutionally granted power to make its own rules of procedure when it issued the 4 May 2010 Order suspending Section 6 of COMELEC Resolution No. 8696. Consequently, the second assailed Resolution of the COMELEC cannot be set aside on the ground of COMELEC's failure to issue to petitioner a notice setting the date of the promulgation thereto. (Emphases supplied)

Thus, even if COMELEC failed to give advance notice of the promulgation of the 04 June 2010 and 19 August 2010 Resolutions, its failure to do so did not invalidate them.

***Petitioner failed to comply with the one-year residency requirement for local elective officials.***

Petitioner's uncontroverted domicile of origin is Dapitan City. The question is whether she was able to establish, through clear and positive proof, that she had acquired a domicile of choice in Baliangao, Misamis Occidental, prior to the May 2010 elections.

When it comes to the qualifications for running for public office, residence is synonymous with domicile. Accordingly, *Nuval v. Guray*<sup>36</sup> held as follows:

The term 'residence' as so used, is synonymous with 'domicile' which imports not only intention to reside in a fixed place, but also personal presence in that place, coupled with conduct indicative of such intention.<sup>37</sup>

There are three requisites for a person to acquire a new domicile by choice. *First*, residence or bodily presence in the new locality. *Second*, an intention to remain there. *Third*, an intention to abandon the old domicile.<sup>38</sup>

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<sup>36</sup> 52 Phil. 645 (1928).

<sup>37</sup> *People v. Bender*, 141 N.Y.S., 45., cited in *Nuval v. Guray*, 52 Phil. 645 (1928).

<sup>38</sup> 318 Phil. 329 (1995).



These circumstances must be established by clear and positive proof, as held in *Romualdez-Marcos v. COMELEC*<sup>39</sup> and subsequently in *Dumpit-Michelena v. Boado*.<sup>40</sup>

In the absence of clear and positive proof based on these criteria, the residence of origin should be deemed to continue. Only with evidence showing concurrence of all three requirements can the presumption of continuity or residence be rebutted, for a change of residence requires an actual and deliberate abandonment, and one cannot have two legal residences at the same time.<sup>41</sup>

Moreover, even if these requisites are established by clear and positive proof, the date of acquisition of the domicile of choice, or the **critical date**, must also be established to be within at least one year prior to the elections using the same standard of evidence.

In the instant case, we find that petitioner failed to establish by clear and positive proof that she had resided in Baliangao, Misamis Occidental, one year prior to the 10 May 2010 elections.

There were inconsistencies in the Affidavits of Acas-Yap, Yap III, Villanueva, Duhaylungsod, Estrellada, Jumawan, Medija, Bagundol, Colaljo, Tenorio, Analasan, Bation, Maghilum and Javier.

First, they stated that they personally knew petitioner to be an **actual and physical** resident of *Brgy. Tugas* since 2008. However, they declared in the same Affidavits that she stayed in *Brgy. Punta Miray* while her house was being constructed in *Brgy. Tugas*.

Second, construction workers Yap III, Villanueva, Duhaylungsod and Estrellada asserted that in December 2009, construction was still ongoing. By their assertion, they were implying that six months before the 10 May 2010 elections, petitioner had not yet moved into her house at *Brgy. Tugas*.

Third, the same construction workers admitted that petitioner only visited Baliangao occasionally when they stated that “**at times** when she (petitioner) was in Baliangao, she used to stay at the house of Lourdes Yap while her residential house was being constructed.”<sup>42</sup>

These discrepancies bolster the statement of the *Brgy. Tugas* officials that petitioner was **not and never** had been a resident of their *barangay*. At most, the Affidavits of all the witnesses only show that petitioner was building and developing a beach resort and a house in *Brgy. Tugas*, and that

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<sup>39</sup> Id.

<sup>40</sup> 511 Phil. 720 (2005).

<sup>41</sup> 20 Am Jur 71.

<sup>42</sup> *Rollo*, p. 222.

she only stayed in *Brgy. Punta Miray* whenever she wanted to oversee the construction of the resort and the house.

Assuming that the claim of property ownership of petitioner is true, *Fernandez v. COMELEC*<sup>43</sup> has established that the ownership of a house or some other property does not establish domicile. This principle is especially true in this case as petitioner has failed to establish her bodily presence in the locality and her intent to stay there at least a year before the elections, to wit:

To use ownership of property in the district as the determinative indicium of permanence of domicile or residence implies that the landed can establish compliance with the residency requirement. This Court would be, in effect, imposing a property requirement to the right to hold public office, which property requirement would be unconstitutional.

Finally, the approval of the application for registration of petitioner as a voter only shows, at most, that she had met the minimum residency requirement as a voter.<sup>44</sup> This minimum requirement is different from that for acquiring a new domicile of choice for the purpose of running for public office.

Accordingly, in the CoC of petitioner, her statement of her eligibility to run for office constitutes a material misrepresentation that warrants its cancellation.<sup>45</sup> She contends that respondent COMELEC never made a finding that she had committed material misrepresentation. Her contention, however, is belied by its factual determination in its 04 June 2010 and 19 August 2010 Resolutions that she had failed to meet the one-year residency requirement.

During the pendency of the case, we deemed it proper to issue an Order dated 07 September 2010 directing the parties to observe the *status quo* before the issuance of these COMELEC Resolutions disqualifying petitioner from the mayoralty race in Baliangao. We issued the Order, considering that petitioner, having garnered the highest number of votes in the 10 May 2010 elections, had assumed office as municipal mayor. However, with this final determination of her ineligibility to run for office, there is now a permanent vacancy in the office of the mayor of Baliangao. Hence, the vice-mayor of Baliangao shall become its mayor in accordance with Section 44 of the Local Government Code.

**WHEREFORE**, premises considered, the Petition is **DENIED**. The *Status Quo Ante* Order issued by this Court on 07 September 2010 is hereby **LIFTED**.

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<sup>43</sup> G.R. No. 187478, 21 December 2009, 608 SCRA 733.

<sup>44</sup> R.A. 8189 (1996), Sec. 9.


<sup>45</sup> B.P. 881 (1985), Sec. 78 in relation to Sec. 74; R.A. 7160 (1991), Sec. 39.

**SO ORDERED.**

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice

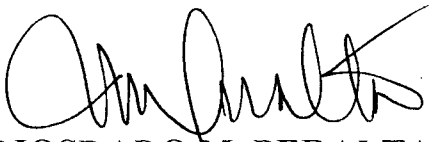
WE CONCUR:


  
**ANTONIO T. CARPIO**  
Associate Justice


  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice

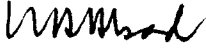
  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

\* (On official leave)  
**ARTURO D. BRION**  
Associate Justice

  
**DIOSDADO M. PERALTA**  
Associate Justice

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**MARIANO C. DEL CASTILLO**  
Associate Justice


  
**ROBERTO A. ABAD**  
Associate Justice

  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

  
**JOSE CATRAL MENDOZA**  
Associate Justice

  
**BIENVENIDO L. REYES**  
Associate Justice


  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice



**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



**MARIA LOURDES P. A. SERENO**  
Chief Justice