

EN BANC

G.R. No. 209835 – ROGELIO BATIN CABALLERO, Petitioner, v. COMMISSION ON ELECTIONS and JONATHAN ENRIQUE V. NANUD, JR., Respondents.

Promulgated:

September 22, 2015

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*Ynares-Santiago*

CONCURRING OPINION

LEONEN, J.:

I concur in the result and join Justice Arturo D. Brion's Separate Concurring Opinion in that "citizenship and residency are separate and distinct requirements for qualification for local elective office."<sup>1</sup>

Domicile is distinct from citizenship. They are separate matters. Domicile is not a mere incident or consequence of citizenship and is not dictated by it. The case of petitioner Rogelio Batin Caballero who, as it is not disputed, has Uyugan, Batanes as his domicile of origin must be resolved with this fundamental premise in mind.

It is settled that for purposes of election law, "residence" is synonymous with "domicile."<sup>2</sup> "Domicile" denotes a fixed permanent residence to which, when absent for business, pleasure, or like reasons, one intends to return.<sup>3</sup> Jurisprudence has established three fundamental principles governing domicile: "first, that [one] must have a residence or domicile somewhere; second, that where once established it remains until a new one is acquired; and third, [one] can have but one domicile at a time."<sup>4</sup> In this jurisdiction, it is settled that, for election purposes, the term "residence" contemplates "domicile."<sup>5</sup>

For the same purpose of election law, the question of residence is *mainly one of intention*.<sup>6</sup> As explained in *Gallego v. Verra*:<sup>7</sup>

<sup>1</sup> Justice Brion's Separate Concurring Opinion, p. 3.

<sup>2</sup> *Gallego v. Verra*, 73 Phil. 453, 455-456 (1941) [Per J. Ozaeta, En Banc].

<sup>3</sup> *Romualdez v. Regional Trial Court, Branch 7, Tacloban City*, G.R. No. 104960, 226 SCRA 408 (1993) [Per J. Abad, Second Division].

<sup>4</sup> *Limbona v. COMELEC*, 578 Phil. 364, 374 (2008) [Per J. Ynares-Santiago, En Banc].

<sup>5</sup> *Romualdez-Marcos v. COMELEC*, 318 Phil. 329 (1995) [Per J. Kapunan, En Banc]; *Co v. Electoral Tribunal of the House of Representatives*, 276 Phil. 758 (1991) [Per J. Gutierrez, Jr., En Banc].

<sup>6</sup> *Limbona v. COMELEC*, 578 Phil. 364, 374 (2008) [Per J. Ynares-Santiago, En Banc].

<sup>7</sup> 73 Phil. 453 (1941) [Per J. Ozaeta, En Banc].

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The term “residence” as used in the election law 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. In order to acquire a domicile by choice, there must concur (1) residence or bodily presence in the new locality, (2) an intention to remain there, and (3) an intention to abandon the old domicile. In other words, there must be an *animus non revertendi* and an *animus manendi*. The purpose to remain in or at the domicile of choice must be for an indefinite period of time. The acts of the person must conform with his purpose. The change of residence must be voluntary; the residence at the place chosen for the domicile must be actual; and to the fact of residence there must be added the *animus manendi*.<sup>8</sup>

Section 39(a)<sup>9</sup> of the Local Government Code provides that in order to be eligible for local elective public office, a candidate must possess the following qualifications: (a) a citizen of the Philippines; (b) a registered voter in the barangay, municipality, city, province, or in the case of a member of the Sangguniang Panlalawigan, Sangguniang Panlungsod, or Sangguniang Bayan, the district where he or she intends to be elected; (c) *a resident therein for at least one (1) year immediately preceding the day of the election*; and (d) able to read and write Filipino or any other local language or dialect.

A position equating citizenship with residency is unwarranted. Citizenship and domicile are two distinct concepts.<sup>10</sup> One is not a function of the other; the latter is not contingent on the former. Thus, the loss of one does not necessarily result in the loss of the other. Loss of domicile as a result of acquiring citizenship elsewhere is neither inevitable nor inexorable. This is the clear import of *Japzon v. COMELEC*,<sup>11</sup> where this court dissociated domicile from citizenship by disproving the obverse, i.e., explaining that the reacquisition of one does not ipso facto result in the reacquisition of the other:

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<sup>8</sup> Id. at 456, *citing Nuval v. Guray*, 52 Phil. 645 (1928) [Per J. Villareal, En Banc] and 17 Am. Jur., section 16, pages 599601.

<sup>9</sup> SECTION 39. Qualifications. – (a) An elective local official must be a citizen of the Philippines; a registered voter in the barangay, municipality, city, or province or, in the case of a member of the sangguniang panlalawigan, sangguniang panlungsod, or sangguniang bayan, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect.

(b) Candidates for the position of governor, vice-governor, or member of the sangguniang panlalawigan, or mayor, vice-mayor or member of the sangguniang panlungsod of highly urbanized cities must be at least twenty-three (23) years of age on election day.

(c) Candidates for the position of mayor or vice-mayor of independent component cities, component cities, or municipalities must be at least twenty-one (21) years of age on election day.

(d) Candidates for the position of member of the sangguniang panlungsod or sangguniang bayan must be at least eighteen (18) years of age on election day.

(e) Candidates for the position of punong barangay or member of the sangguniang barangay must be at least eighteen (18) years of age on election day.

(f) Candidates for the sangguniang kabataan must be at least fifteen (15) years of age but not more than twenty-one (21) years of age on election day.

<sup>10</sup> *Japzon v. COMELEC*, 596 Phil. 354 (2009) [Per J. Chico-Nazario, En Banc].

<sup>11</sup> 596 Phil. 354 (2009) [Per J. Chico-Nazario, En Banc].

As has already been previously discussed by this Court herein, Ty's reacquisition of his Philippine citizenship under Republic Act No. 9225 had no automatic impact or effect on his residence/domicile. He could still retain his domicile in the USA, and he *did not necessarily regain his domicile* in the Municipality of General Macarthur, Eastern Samar, Philippines. *Ty merely had the option* to again establish his domicile in the Municipality of General Macarthur, Eastern Samar, Philippines, said place becoming his new domicile of choice. The length of his residence therein shall be determined from the time he made it his domicile of choice, and it shall not retroact to the time of his birth.<sup>12</sup> (Emphasis supplied)

There is no shortcut to determining one's domicile. Reference to formalities may be helpful—they may serve as guideposts—but these are not conclusive. *It remains that domicile is a matter of intention.* For domicile to be lost and replaced, there must be an intention to abandon the domicile of origin before a domicile of choice can be had. Consequently, if one does not manifestly establish his or her (new) domicile of choice, his or her (old) domicile of origin remains. To hearken to *Japzon*, one who changes his or her citizenship merely acquires an option to establish his or her new domicile of choice. Accordingly, naturalization—a process relating to citizenship—has no automatic effect on domicile.

The primacy of intention is settled. In *Limbona v. COMELEC*,<sup>13</sup> this court stated, in no uncertain terms, that “for purposes of election law, the question of residence is *mainly one of intention.*”<sup>14</sup>

This primacy is equally evident in the requisites for acquisition of domicile by choice (and concurrent loss of one's old domicile): “In order to acquire a domicile by choice, these must concur: (1) residence or bodily presence in the new locality, (2) an intention to remain there, and (3) an intention to abandon the old domicile.”<sup>15</sup>

These requisites were refined in *Romualdez-Marcos v. COMELEC*:<sup>16</sup>

[D]omicile of origin is not easily lost. To successfully effect a change of domicile, one must demonstrate:

1. An actual removal or an actual change of domicile;
2. A bona fide intention of abandoning the former place of residence and establishing a new one; and
3. Acts which correspond with the purpose.<sup>17</sup>

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<sup>12</sup> Id. at 369–370.

<sup>13</sup> 578 Phil. 364 (2008) [Per J. Ynares-Santiago, En Banc].

<sup>14</sup> Id. at 374.

<sup>15</sup> *Gallego v. Verra*, 73 Phil. 453, 456 (1941) [Per J. Ozaeta, En Banc].

<sup>16</sup> 318 Phil. 329 (1995) [Per J. Kapunan, En Banc].

<sup>17</sup> Id. at 386.

Intention, however, is a state of mind. It can only be ascertained through overt acts. Ascertaining the second requirement—a bona fide intention to abandon and replace one’s domicile with another—further requires an evaluation of the person’s “acts, activities[,] and utterances.”<sup>18</sup> *Romualdez-Marcos*’ inclusion of the third requirement evinces this. Bona fide intention cannot stand alone; it must be accompanied by and attested to by “[a]cts which correspond with the purpose.”<sup>19</sup>

Examining a person’s “acts, activities[,] and utterances”<sup>20</sup> requires a nuanced approach. It demands a consideration of context. This court has made it eminently clear that there is no expedient solution as to how this is determined: “*There is no hard and fast rule by which to determine where a person actually resides.*”<sup>21</sup> Domicile is ultimately a factual matter and is not so easily resolved by mere reference to formalities that may have occurred and that pertain to the entirely different matter of citizenship.

I nevertheless manifest my reservation about the reference to and application of the Canadian Citizenship Law.

The standards and requisites for applying foreign law in Philippine tribunals are settled. As aptly explained in *Zalamea v. Court of Appeals*:<sup>22</sup>

Foreign laws do not prove themselves nor can the courts take judicial notice of them. Like any other fact, they must be alleged and proved. Written law may be evidenced by an official publication thereof or by a copy attested by the officers having the legal custody of the record, or by his deputy, and accompanied with a certificate that such officer has custody. The certificate may be made by a secretary of an embassy or legation, consul general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.<sup>23</sup>

Respondent Jonathan Enrique Nanud, Jr.’s Comment<sup>24</sup> on the present Petition<sup>25</sup> never referred to, alleged the existence of, or otherwise averred that the Canadian Citizenship Law supported his cause. Neither did this statute find its way in any of the assailed Commission on Elections Resolutions in support of the position that petitioner’s naturalization resulted in the loss of his domicile.

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<sup>18</sup> *Faypon v. Quirino*, 96 Phil. 294, 298 (1956) [Per J. Padilla, Second Division].

<sup>19</sup> *Romualdez-Marcos v. COMELEC*, 318 Phil. 329 (1995) [Per J. Kapunan, En Banc].

<sup>20</sup> *Faypon v. Quirino*, 96 Phil. 294, 298 (1956) [Per J. Padilla, Second Division].

<sup>21</sup> *Limbona v. COMELEC*, 578 Phil. 364, 374 (2008) [Per J. Ynares-Santiago, En Banc].

<sup>22</sup> G.R. No. 104235, November 18, 1993, 228 SCRA 23 [Per J. Nocon, Second Division].

<sup>23</sup> *Id.* at 30, citing *Collector of Internal Revenue v. Fisher and Court of Tax Appeals*, 110 Phil. 686, 700 (1961) [Per J. Barrera, En Banc] and JOVITO SALONGA, PRIVATE INTERNATIONAL LAW 82–83 (1979).

<sup>24</sup> *Rollo*, pp. 96–111.

<sup>25</sup> *Id.* at 3–19.

It is not for a court to, out of its own initiative, address the lacunae and fill the deficiencies in the arguments of a party or the reasoning of the tribunal whose ruling it is reviewing. The task of alleging and proving the existence and the accuracy of supposed statements of any foreign law that could have helped his cause was respondent's alone. Failing in this, he should not find solace before the court adjudicating his claims so it can do his work for him, buttress his arguments where their weakness were apparent, and ultimately, obtain his desired conclusion.

**ACCORDINGLY**, I vote to **DISMISS** the Petition. The assailed Resolutions dated May 3, 2013 of the First Division of public respondent Commission on Elections and November 6, 2013 of public respondent sitting En Banc must be **AFFIRMED**.



**MARVIC M.V.F. LEONEN**  
Associate Justice