Supreme Court E-Library

has been shown that it becomes necessary to determine whether it has been carried to an "unfair," that is, illegal, extent.[40] Consequently, there is no reason to address the issue of whether ROBLES abused a writer's right to fair use with the ascertainment that DEP was not a copy or a substantial copy of CET.

WHEREFORE, I vote to DENY the petition and to AFFIRM the challenged decision of 27 June 1997 of the Court of Appeals.

EN BANC

[G.R. No. 134015. July 19, 1999]

JUAN DOMINO, *petitioner, vs.* **COMMISSION ON ELECTIONS, NARCISO Ra. GRAFILO, JR., EDDY B. JAVA, JUAN P. BAYONITO, JR., ROSARIO SAMSON and DIONISIO P. LIM, SR.,** *respondents.*

LUCILLE CHIONGBIAN-SOLON, *intervenor.*

SYNOPSIS

Petitioner Domino filed his certificate of candidacy for the position of Representative of the Lone District of the Province of Sarangani. Private respondents, however, filed with the Comelec a petition to deny due course to or cancel the certificate of candidacy of Domino because he is neither a resident nor a registered voter of the province of Sarangani. The petition was assigned to the Comelec Second Division, which rendered a resolution declaring Domino disqualified as candidate for the position and ordered the cancellation of his certificate of candidacy. On the day of the election, the Comelec ordered

---

[40] 18 C.J.S. §94-94b.

Supreme Court E-Library

that the votes cast for Domino be counted but suspended the proclamation if he wins. The result of the election showed that Domino garnered the highest number of votes over his opponents. He filed a motion for reconsideration of the resolution of the Comelec, which was denied by the Comelec *en banc*. Hence, the present petition for *certiorari* with preliminary mandatory injunction alleging that Comelec committed grave abuse of discretion amounting to excess or lack of jurisdiction when it ruled that he did not meet the one-year residence requirement. The Court allowed the candidate who received the second highest number of votes in the election to intervene.

According to the Supreme Court, in showing compliance with the residency requirement, both intent and actual presence in the district one intends to represent must satisfy the length of time prescribed by the fundamental law. Domino's failure to do so rendered him ineligible and his election to office null and void. The intervenor's plea that the votes cast in favor of Domino be considered stray votes cannot be sustained. Thus, the votes cast for Domino were presumed to have been cast in the sincere belief that he was a qualified candidate, without any intention to misapply their franchise. Thus, said votes cannot be treated as stray, void, or meaningless. The Court dismissed the petition.

SYLLABUS

1. **POLITICAL LAW; ELECTIONS; OMNIBUS ELECTION CODE; JURISDICTION OF THE COMMISSION ON ELECTIONS OVER PETITIONS TO DENY DUE COURSE TO OR CANCEL CERTIFICATE OF CANDIDACY; CASE AT BAR.** — The COMELEC has jurisdiction as provided in Sec. 78, Art. IX of the Omnibus Election Code, over a petition to deny due course to or cancel certificate of candidacy. In the exercise of the said jurisdiction, it is within the competence of the COMELEC to determine whether false representation as to material facts was made in the certificate of candidacy, that will include, among others, the residence of the candidate. xxx Such jurisdiction continues even after election, if for any reason no final judgment of disqualification is rendered before the election, and the candidate facing disqualification is voted for and receives the highest number of votes and provided further that the winning

Supreme Court E-Library

candidate has not been proclaimed or has taken his oath of office.

2. **ID.; ID.; ID.; INCLUSION OR EXCLUSION PROCEEDING; DECISION IN SUCH PROCEEDING, NOT CONCLUSIVE ON THE VOTER'S POLITICAL STATUS.** — The determination of the Metropolitan Trial Court of Quezon City in the exclusion proceedings as to the right of DOMINO to be included or excluded from the list of voters in the precinct within its territorial jurisdiction, does not preclude the COMELEC, in the determination of DOMINO's qualification as a candidate, to pass upon the issue of compliance with the residency requirement. The proceedings for the exclusion or inclusion of voters in the list of voters are summary in character. Thus, the factual findings of the trial court and its resultant conclusions in the exclusion proceedings on matters other than the right to vote in the precinct within its territorial jurisdiction are not conclusive upon the COMELEC. Although the court in inclusion or exclusion proceedings may pass upon any question necessary to decide the issue raised including the questions of citizenship and residence of the challenged voter, the authority to order the inclusion in or exclusion from the list of voters necessarily carries with it the power to inquire into and settle all matters essential to the exercise of said authority. However, except for the right to remain in the list of voters or for being excluded therefrom for the particular election in relation to which the proceedings had been held, a decision in an exclusion or inclusion proceeding, even if final and unappealable, does not acquire the nature of *res judicata*. In this sense, it does not operate as a bar to any future action that a party may take concerning the subject passed upon in the proceeding. Thus, a decision in an exclusion proceeding would neither be conclusive on the voter's political status, nor bar subsequent proceedings on his right to be registered as a voter in any other election.

3. **ID.; ID.; ID.; ID.; TRIAL COURT; JURISDICTION OVER EXCLUSION CASES LIMITED TO DETERMINING THE RIGHT OF VOTER TO REMAIN IN LIST OF VOTERS.** — The jurisdiction of the lower court over exclusion cases is limited only to determining the right of voter to remain in the list of voters or to declare that the challenged voter is not qualified to vote in the precinct in which he is registered, specifying

Supreme Court E-Library

the ground of the voter's disqualification. The trial court has no power to order the change or transfer of registration from one place of residence to another for it is the function of the Election Registration Board as provided under Section 12 of R.A. No. 8189. The only effect of the decision of the lower court excluding the challenged voter from the list of voters, is for the Election Registration Board, upon receipt of the final decision, to remove the voter's registration record from the corresponding book of voters, enter the order of exclusion therein, and thereafter place the record in the inactive file.

4. **ID.; ID.; QUALIFICATIONS FOR SUFFRAGE AND FOR ELECTIVE OFFICE; RESIDENCE AND DOMICILE, CONSTRUED.** — It is doctrinally settled that the term "residence," as used in the law prescribing the qualifications for suffrage and for elective office, means the same thing as "domicile," which imports not only an intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention. "Domicile" denotes a fixed permanent residence to which, whenever absent for business, pleasure, or some other reasons, one intends to return. "Domicile" is a question of intention and circumstances. In the consideration of circumstances, three rules must be borne in mind, namely: (1) that a man must have a residence or domicile somewhere; (2) when once established it remains until a new one is acquired; and (3) a man can have but one residence or domicile at a time. A person's "domicile" once established is considered to continue and will not be deemed lost until a new one is established. To successfully effect a change of domicile one must demonstrate an actual removal or an actual change of domicile; a *bona fide* intention of abandoning the former place of residence and establishing a new one and definite acts which correspond with the purpose. In other words, there must basically be *animus manendi* coupled with *animus non revertendi.* The purpose to remain in or at the domicile of choice must be for an indefinite period of time; the change of residence must be voluntary; and the residence at the place chosen for the new domicile must be actual. As a general rule, the principal elements of domicile, physical presence in the locality involved and intention to adopt it as a domicile, must concur in order to establish a new domicile. No change of domicile will result if either of these elements is absent. Intention to acquire a domicile without actual residence in the locality does not result

Supreme Court E-Library

in acquisition of domicile, nor does the fact of physical presence without intention. Exercising the right of election franchise is a deliberate public assertion of the fact of residence, and is said to have decided preponderance in a doubtful case upon the place the elector claims as, or believes to be, his residence. The fact that a party continuously voted in a particular locality is a strong factor in assisting to determine the status of his domicile.

5. ID.; ID.; CANDIDATE WHO OBTAINS THE SECOND HIGHEST NUMBER OF VOTES MAY NOT BE PROCLAIMED WINNER IN CASE THE WINNING CANDIDATE IS DISQUALIFIED. — It is now settled doctrine that the candidate who obtains the second highest number of votes may not be proclaimed winner in case the winning candidate is disqualified. In every election, the people's choice is the paramount consideration and their expressed will must, at all times, be given effect. When the majority speaks and elects into office a candidate by giving the highest number of votes cast in the election for that office, no one can be declared elected in his place.

6. ID.; ID.; ID.; RATIONALE. — It would be extremely repugnant to the basic concept of the constitutionally guaranteed right to suffrage if a candidate who has not acquired the majority or plurality of votes is proclaimed a winner and imposed as the representative of a constituency, the majority of which have positively declared through their ballots that they do not choose him. To simplistically assume that the second placer would have received the other votes would be to substitute our judgment for the mind of the voters. He could not be considered the first among qualified candidates because in a field which excludes the qualified candidate, the conditions would have substantially changed. Sound policy dictates that public elective offices are filled by those who have received the highest number of votes cast in the election for that office, and it is fundamental idea in all republican forms of government that no one can be declared elected and no measure can be declared carried unless he or it receives a majority or plurality of the legal votes cast in the election. The effect of a decision declaring a person ineligible to hold an office is only that the election fails entirely, that the wreath of victory cannot be transferred from the disqualified winner to the repudiated loser because the law then as now only authorizes a declaration of election in favor of the person

Supreme Court E-Library

who has obtained a plurality of votes and does not entitle the candidate receiving the next highest number of votes to be declared elected. In such case, the electors have failed to make a choice and the election is a nullity. To allow the defeated and repudiated candidate to take over the elective position despite his rejection by the electorate is to disenfranchise the electorate without any fault on their part and to undermine the importance and meaning of democracy and the people's right to elect officials of their choice.

7. ID.; ID.; JURISDICTION OF THE HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL; BEGINS ONLY AFTER A CANDIDATE HAS BECOME A MEMBER OF THE HOUSE OF REPRESENTATIVES. — It has been repeatedly held in a number of cases, that the House of Representatives Electoral Tribunal's sole and exclusive jurisdiction over all contests relating to the election, returns and qualifications of members of Congress as provided under Section 17 of Article VI of the Constitution begins only after a candidate has become a member of the House of Representatives. The fact of obtaining the highest number of votes in an election does not automatically vest the position in the winning candidate. A candidate must be proclaimed and must have taken his oath of office before he can be considered a member of the House of Representatives.

8. REMEDIAL LAW; JUDGMENT; DISMISSAL OF ACTION; *RES JUDICATA*; REQUISITES; UNAVAILING IN CASE AT BAR. — The application of the rule on *res judicata* is unavailing. Identity of parties, subject matter and cause of action are indispensable requirements for the application of said doctrine. Neither herein Private Respondents nor INTERVENOR, is a party in the exclusion proceedings. The *Petition for Exclusion* was filed by DOMINO himself and his wife, praying that he and his wife be excluded from the Voter's List on the ground of erroneous registration while the *Petition to Deny Due Course to or Cancel Certificate of Candidacy* was filed by private respondents against DOMINO for alleged false representation in his certificate of candidacy. For the decision to be a basis for the dismissal by reason of *res judicata*, it is essential that there must be between the first and the second action identity of parties, identity of subject matter and identity of causes of action. In the present case, the aforesaid essential requisites are not present.

Supreme Court E-Library

PANGANIBAN, *J.*: *separate opinion:*

1. POLITICAL LAW; ELECTIONS; QUALIFICATION OF VOTERS; RESIDENCE REQUIREMENT; SHOULD BE CONSTRUED TO MEAN ACTUAL, PHYSICAL AND PERSONAL PRESENCE; RATIONALE. — A member of the House of Representatives must be a resident of the district which he or she seeks to represent "for a period of not less than one year immediately preceding the day of the election" is a constitutional requirement that should be interpreted in the sense in which ordinary lay persons understand it. The common people who ratified the Constitution and were thereafter expected to abide by it would not normally refer to the journals of the Constitutional Commission in order to understand the words and phrases contained therein. Rather, they would usually refer to the common source being used when they look up for the meaning of words — the dictionary. In this sense, Webster's definition of *residence* should be controlling. If the framers of our basic law intended our people to understand *residence* as legal domicile, they should have said so. Then our people would have looked up the meaning of *domicile* and would have understood the constitutional provision in that context. However, the framers of our Constitution did not. Justice Panganiban therefore submits that *residence* must be understood in its common dictionary meaning as understood by ordinary lay persons.

2. ID.; ID.; ID.; ID.; NEGATED SHOULD THE CONCEPT OF DOMICILE BE APPLIED; BASIS THEREOF. — Applying the concept of *domicile* in determining *residence* as a qualification for an elective office would negate the objective behind the residence requirement of one year (or six months, in the case of local positions). This required period of residence preceding the day of the election, is rooted in the desire that officials of districts or localities be acquainted not only with the metes and bounds of their constituencies but, more important, with the constituents themselves — their needs, difficulties, potentials for growth and development and all matters vital to their common welfare. Such requisite period would precisely give candidates the opportunity to be familiar with their desired constituencies, and likewise for the electorate to evaluate their fitness for the offices they seek. If all that is required of elective officials is legal domicile, then they would qualify even if, for

Supreme Court E-Library

several years prior to the election, they have never set foot in their districts (or in the country, for that matter), since it is possible to maintain legal domicile even without actual presence, provided one retains the *animus revertendi* or the intention to return.

3. ID.; CONSTITUTION, AS THE BASIC LAW OF THE LAND; SHOULD BE INTERPRETED IN THE SENSE UNDERSTOOD BY ORDINARY MAN. — The Constitution is the most basic law of the land. It enshrines the most cherished aspirations and ideals of the population at large. It is not a document reserved only for scholarly disquisition by the most eminent legal minds of the land. In ascertaining its import, lawyers are not meant to quibble over it, to define its legal niceties, or to articulate its nuances. Its contents and words should be interpreted in the sense understood by the ordinary men and women who place their lives on the line in its defense and who pin their hopes for a better life on its fulfillment. The call for simplicity in understanding and interpreting our Constitution has been made a number of times. About three decades ago, this Court declared: "It is to be assumed that the words in which constitutional provisions are couched express the objective sought to be attained. They are to be given their ordinary meaning except where technical terms are employed in which case the significance thus attached to them prevails. As the Constitution is not primarily a lawyer's document, it being essential for the rule of law to obtain that it should ever be present in the people's consciousness, its language as much as possible should be understood in the sense they have in common use. What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say. Thus there are cases where the need for construction is reduced to a minimum."

APPEARANCES OF COUNSEL

Brillantes Navarro Jumamil Arcilla Escolin & Martinez Law Offices for petitioner.

Bacungan Opinion & Rivilla for private respondents

Fornier & Fornier Law Firm for Intervenor.

Supreme Court E-Library

DECISION

DAVIDE, JR., *C.J.*:

Challenged in this case for *certiorari* with a prayer for preliminary injunction are the Resolution of 6 May 1998[1] of the Second Division of the Commission on Elections (hereafter COMELEC), declaring petitioner Juan Domino (hereafter DOMINO) disqualified as candidate for representative of the Lone Legislative District of the Province of Sarangani in the 11 May 1998 elections, and the Decision of 29 May 1998[2] of the COMELEC *en banc* denying DOMINO's motion for reconsideration.

The antecedents are not disputed.

On 25 March 1998, DOMINO filed his certificate of candidacy for the position of Representative of the Lone Legislative District of the Province of Sarangani indicating in item nine (9) of his certificate that he had resided in the constituency where he seeks to be elected for one (1) year and two (2) months immediately preceding the election.[3]

On 30 March 1998, private respondents Narciso Ra. Grafilo, Jr., Eddy B. Java, Juan P. Bayonito, Jr., Rosario Samson and Dionisio P. Lim, Sr., filed with the COMELEC a *Petition to Deny Due Course to or Cancel Certificate of Candidacy*, which was docketed as SPA No. 98-022 and assigned to the Second Division of the COMELEC. Private respondents alleged that DOMINO, contrary to his declaration in the certificate of candidacy, is not a resident, much less a registered voter, of the province of Sarangani where he seeks election. To substantiate their allegations, private respondents presented the following evidence:

---

[1] Annex "A" of Petition, *Rollo* 41-50. Per Desamito, *J.*, *Comm.*, with Guiani, *J.* and Calderon, A., *Comms.*, concurring.

[2] *Rollo,* 51-54.

[3] Annex "1" of Comment in Intervention, *Rollo*, 304.

Supreme Court E-Library

1. Annex "A" — the Certificate of Candidacy of respondent for the position of Congressman of the Lone District of the Province of Sarangani filed with the Office of the Provincial Election Supervisor of Sarangani on March 25, 1998, where in item 4 thereof he wrote his date of birth as December 5, 1953; in item 9, he claims he have resided in the constituency where he seeks election for one (1) year and two (2) months; and, in item 10, that he is registered voter of Precinct No. 14A-1, Barangay Poblacion, Alabel, Sarangani;

2. Annex "B"— Voter's Registration Record with SN 31326504 dated June 22, 1997 indicating respondent's registration at Precinct No. 4400-A, Old Balara, Quezon City;

3. Annex "C" — Respondent's Community Tax Certificate No. 11132214C dated January 15, 1997;

4. Annex "D" — Certified true copy of the letter of Herson D. Dema-ala, Deputy Provincial & Municipal Treasurer of Alabel, Sarangani, dated February 26, 1998, addressed to Mr. Conrado G. Butil, which reads:

"In connection with your letter of even date, we are furnishing you herewith certified xerox copy of the triplicate copy of COMMUNITY TAX CERTIFICATE NO. 11132214C in the name of Juan Domino.

Furthermore, Community Tax Certificate No. 11132212C of the same stub was issued to Carlito Engcong on September 5, 1997, while Certificate No. 11132213C was also issued to Mr. Juan Domino but was cancelled and serial no. 11132215C was issued in the name of Marianita Letigio on September 8, 1997."

5. Annex "E" — The triplicate copy of the Community Tax Certificate No. 11132214C in the name of Juan Domino dated September 5, 1997;

6. Annex "F" — Copy of the letter of Provincial Treasurer Lourdes P. Riego dated March 2, 1998 addressed to Mr. Herson D. Dema-ala, Deputy Provincial Treasurer and Municipal Treasurer of Alabel, Sarangani, which states:

"For easy reference, kindly turn-over to the undersigned for safekeeping, the stub of Community Tax Certificate containing Nos. 11132201C-11132250C issued to you on June 13, 1997 and paid under Official Receipt No. 7854744.

Supreme Court E-Library

Upon request of Congressman James L. Chiongbian."

7. Annex "G" — Certificate of Candidacy of respondent for the position of Congressman in the 3rd District of Quezon City for the 1995 elections filed with the Office of the Regional Election Director, National Capital Region, on March 17, 1995, where, in item 4 thereof, he wrote his birth date as December 22, 1953; in item 8 thereof his "*residence in the constituency where I seek to be elected immediately preceding the election*" as 3 years and 5 months; and, in item 9, that he is a registered voter of Precinct No. 182, Barangay Balara, Quezon City;

8. Annex "H" — a copy of the APPLICATION FOR TRANSFER OF REGISTRATION RECORDS DUE TO CHANGE OF RESIDENCE of respondent dated August 30, 1997 addressed to and received by Election Officer Mantil Alim, Alabel, Sarangani, on September 22, 1997, stating among others, that "[T]he undersigned's previous residence is at 24 Bonifacio Street, Ayala Heights, Quezon City, III District, Quezon City; wherein he is a registered voter" and "that for business and residence purposes, the undersigned has transferred and conducts his business and reside at Barangay Poblacion, Alabel, Province of Sarangani prior to this application;"

9. Annex "I" — Copy of the SWORN APPLICATION FOR CANCELLATION OF VOTER'S [TRANSFER OF] PREVIOUS REGISTRATION of respondent subscribed and sworn to on 22 October 1997 before Election Officer Mantil Allim at Alabel, Sarangani.[4]

For his defense, DOMINO maintains that he had complied with the one-year residence requirement and that he has been residing in Sarangani since January 1997. In support of the said contention, DOMINO presented before the COMELEC the following exhibits, to wit:

1. Annex "1" — Copy of the Contract of Lease between Nora Dacaldacal as Lessor and Administrator of the properties of deceased spouses Maximo and Remedios Dacaldacal and respondent as Lessee executed on January 15, 1997,

[4] *Supra* note 1, at 42-44.

Supreme Court E-Library

subscribed and sworn to before Notary Public Johnny P. Landero;

2. Annex "2" — Copy of the Extra-Judicial Settlement of Estate with Absolute Deed of sale executed by and between the heirs of deceased spouses Maximo and Remedios Dacaldacal, namely: Maria Lourdes, Jupiter and Beberlie and the respondent on November 4, 1997, subscribed and sworn to before Notary Public Jose A. Alegario;

3. Annex "3" — True Carbon Xerox copy of the Decision dated January 19, 1998, of the Metropolitan Trial Court of Metro Manila, Branch 35, Quezon City, in Election Case NO. 725 captioned as "*In the Matter of the Petition for the Exclusion from the List of voters of Precinct No. 4400-A Brgy. Old Balara, Quezon City, Spouses Juan and Zorayda Domino, Petitioners, -versus- Elmer M. Kayanan, Election Officer, Quezon City, District III, and the Board of Election Inspectors of Precinct No. 4400-A, Old Balara, Quezon City, Respondents.*" The dispositive portion of which reads:

   1. Declaring the registration of petitioners as voters of Precinct No. 4400-A, Barangay Old Balara, in District III Quezon City as completely erroneous as petitioners were no longer residents of Quezon City but of Alabel, Sarangani where they have been residing since December 1996;

   2. Declaring this erroneous registration of petitioners in Quezon City as done in good faith due to an honest mistake caused by circumstances beyond their control and without any fault of petitioners;

   3. Approving the transfer of registration of voters of petitioners from Precinct No. 4400-A of Barangay Old Balara, Quezon City to Precinct No. 14A1 of Barangay Poblacion of Alabel, Sarangani; and

   4. Ordering the respondents to immediately transfer and forward all the election/voter's registration records of the petitioners in Quezon City to the Election Officer, the Election Registration Board and other Comelec Offices of Alabel, Sarangani where the petitioners are obviously qualified to exercise their respective rights of suffrage.

Supreme Court E-Library

4. Annex "4" — Copy of the *Application for Transfer of Registration Records due to Change of Residence* addressed to Mantil Alim, COMELEC Registrar, Alabel, Sarangani, dated August 30, 1997.

5. Annex "5" — Certified True Copy of the Notice of Approval of Application, the roster of applications for registration approved by the Election Registration Board on October 20, 1997, showing the spouses Juan and Zorayda Bailon Domino listed as numbers 111 and 112 both under Precinct No. 14A1, the last two names in the slate indicated as transferees without VRR numbers and their application dated August 30, 1997 and September 30, 1997, respectively.

6. Annex "6" — same as Annex "5"

7. Annex "6-a" — Copy of the *Sworn Application for Cancellation of Voter's Previous Registration* (Annex "I", Petition);

8. Annex "7" — Copy of claim card in the name of respondent showing his VRR No. 31326504 dated October 20, 1997 as a registered voter of Precinct No. 14A1, Barangay Poblacion, Alabel, Sarangani;

9. Annex "7-a" — Certification dated April 16, 1998, issued by Atty. Elmer M. Kayanan, Election Officer IV, District III, Quezon City, which reads:

"This is to certify that the spouses JUAN and ZORAYDA DOMINO are no longer registered voters of District III, Quezon City. Their registration records (VRR) were transferred and are now in the possession of the Election Officer of Alabel, Sarangani.

This certification is being issued upon the request of Mr. JUAN DOMINO.

10. Annex "8" — Affidavit of Nora Dacaldacal and Maria Lourdes Dacaldacal stating the circumstances and incidents detailing their alleged acquaintance with respondent.

11. Annexes "8-a", "8-b", "8-c" and "8-d" — Copies of the uniform affidavits of witness Myrna Dalaguit, Hilario Fuentes, Coraminda Lomibao and Elena V. Piodos subscribed and sworn to before Notary Public Bonifacio F. Doria, Jr., on April

Supreme Court E-Library

18, 1998, embodying their alleged personal knowledge of respondent's residency in Alabel, Sarangani;

12. Annex "8-e" — A certification dated April 20, 1998, subscribed and sworn to before Notary Public Bonifacio, containing a listing of the names of fifty-five (55) residents of Alabel, Sarangani, declaring and certifying under oath that they personally know the respondent as a permanent resident of Alabel, Sarangani since January 1997 up to present;

13. Annexes "9", "9-a" and "9-b"— Copies of Individual Income Tax Return for the year 1997, BIR form 2316 and W-2, respectively, of respondent; and,

14. Annex "10" — The affidavit of respondent reciting the chronology of events and circumstances leading to his relocation to the Municipality of Alabel, Sarangani, appending Annexes "A", "B", "C", "D", "D-1", "E", "F", "G" with sub-markings "G-1" and "G-2" and "H" his CTC No. 111`32214C dated September 5, 1997, which are the same as Annexes "1", "2", "4", "5", "6-a", "3", "7", "9" with sub-markings "9-a" and "9-b" except Annex "H."[5]

On 6 May 1998, the COMELEC 2nd Division promulgated a resolution declaring DOMINO disqualified as candidate for the position of representative of the lone district of Sarangani for lack of the one-year residence requirement and likewise ordered the cancellation of his certificate of candidacy, on the basis of the following findings:

What militates against respondent's claim that he has met the residency requirement for the position sought is his own Voter's Registration Record No. 31326504 dated *June 22, 1997* [Annex "B", Petition] and his address indicated as *24 Bonifacio St., Ayala Heights, Old Balara, Quezon City*. This evidence, standing alone, negates all his protestations that he established residence at Barangay Poblacion, Alabel, Sarangani, as early as January 1997. It is highly improbable, nay incredible, for respondent who previously ran for the same position in the 3rd Legislative District of Quezon City during the elections of 1995 to unwittingly forget the residency requirement for the office sought.

---

[5] *Rollo*, 45-48.

Supreme Court E-Library

Counting, therefore, from the day after *June 22, 1997* when respondent registered at Precinct No. 4400-A, up to and until the day of the elections on May 11, 1998, respondent clearly lacks the one (1) year residency requirement provided for candidates for Member of the House of Representatives under Section 6, Article VI of the Constitution.

All told, petitioner's evidence conspire to attest to respondent's lack of residence in the constituency where he seeks election and while it may be conceded that he is a registered voter as contemplated under Section 12 of R.A. 8189, he lacks the qualification to run for the position of Congressman for the Lone District of the Province of Sarangani.[6]

On 11 May 1998, the day of the election, the COMELEC issued Supplemental Omnibus Resolution No. 3046, ordering that the votes cast for DOMINO be counted but to suspend the proclamation if winning, considering that the Resolution disqualifying him as candidate had not yet become final and executory.[7]

The result of the election, per Statement of Votes certified by the Chairman of the Provincial Board of Canvassers,[8] shows that DOMINO garnered the highest number of votes over his opponents for the position of Congressman of the Province of Sarangani.

On 15 May 1998, DOMINO filed a motion for reconsideration of the Resolution dated 6 May 1998, which was denied by the COMELEC *en banc* in its decision dated 29 May 1998. Hence, the present Petition for *Certiorari* with prayer for Preliminary Mandatory Injunction alleging, in the main, that the COMELEC committed grave abuse of discretion amounting to excess or lack of jurisdiction when it ruled that he did not meet the one-year residence requirement.

---

[6] *Rollo*, 48-49.

[7] Annex "6" of Petition, *id.*, 167-168.

[8] Annex "H", *id.*, 169.

Supreme Court E-Library

On 14 July 1998, acting on DOMINO's *Motion for Issuance of Temporary Restraining Order,* the Court directed the parties to maintain the *status quo* prevailing at the time of the filing of the instant petition.[9]

On 15 September 1998, Lucille L. Chiongbian-Solon, (hereafter INTERVENOR), the candidate receiving the second highest number of votes, was allowed by the Court to Intervene.[10] INTERVENOR in her *Motion for Leave to Intervene* and in her *Comment in Intervention*[11] is asking the Court to uphold the disqualification of petitioner Juan Domino and to proclaim her as the duly elected representative of Sarangani in the 11 May 1998 elections.

Before us DOMINO raised the following issues for resolution, to wit:

a. Whether or not the judgment of the Metropolitan Trial Court of Quezon City declaring petitioner as resident of Sarangani and not of Quezon City is final, conclusive and binding upon the whole world, including the Commission on Elections.

b. Whether or not petitioner herein has resided in the subject congressional district for at least one (1) year immediately preceding the May 11, 1998 elections; and

c. Whether or not respondent COMELEC has jurisdiction over the petition *a quo* for the disqualification of petitioner.[12]

The first issue.

The contention of DOMINO that the decision of the Metropolitan Trial Court of Quezon City in the exclusion proceedings declaring him a resident of the Province of Sarangani and not of Quezon City is final and conclusive upon the COMELEC cannot be sustained.

---

[9] *Rollo*, 352.

[10] *Id.*, 1535.

[11] *Id.*, 241-303.

[12] Petition, 15, *Rollo*, 17.

Supreme Court E-Library

The COMELEC has jurisdiction as provided in Sec. 78, Art. IX of the Omnibus Election Code, over a petition to deny due course to or cancel certificate of candidacy. In the exercise of the said jurisdiction, it is within the competence of the COMELEC to determine whether false representation as to material facts was made in the certificate of candidacy, that will include, among others, the residence of the candidate.

The determination of the Metropolitan Trial Court of Quezon City in the exclusion proceedings as to the right of DOMINO to be included or excluded from the list of voters in the precinct within its territorial jurisdiction, does not preclude the COMELEC, in the determination of DOMINO's qualification as a candidate, to pass upon the issue of compliance with the residency requirement.

The proceedings for the exclusion or inclusion of voters in the list of voters are summary in character. Thus, the factual findings of the trial court and its resultant conclusions in the exclusion proceedings on matters other than the right to vote in the precinct within its territorial jurisdiction are not conclusive upon the COMELEC. Although the court in inclusion or exclusion proceedings may pass upon any question necessary to decide the issue raised including the questions of citizenship and residence of the challenged voter, the authority to order the inclusion in or exclusion from the list of voters necessarily carries with it the power to inquire into and settle all matters essential to the exercise of said authority. However, except for the right to remain in the list of voters or for being excluded therefrom for the particular election in relation to which the proceedings had been held, a decision in an exclusion or inclusion proceeding, even if final and unappealable, does not acquire the nature of *res judicata*.[13] In this sense, it does not operate as a bar to any future action that a party may take concerning the subject passed upon in the proceeding.[14] Thus, a decision in an exclusion

---

[13] *See Ozamis v. Zosa*, 34 SCRA 425 [1970].

[14] *Mayor v. Villacete, et al.*, 2 SCRA 542, 544 [1961]; *Tan Cohon v. Election Registrar*, 29 SCRA 244 [1969].

Supreme Court E-Library

proceeding would neither be conclusive on the voter's political status, nor bar subsequent proceedings on his right to be registered as a voter in any other election.[15]

Thus, in *Tan Cohon v. Election Registrar*[16] we ruled that:

xxx It is made clear that even as it is here held that the order of the City Court in question has become final, the same does not constitute *res adjudicata* as to any of the matters therein contained. It is ridiculous to suppose that such an important and intricate matter of citizenship may be passed upon and determined with finality in such a summary and peremptory proceeding as that of inclusion and exclusion of persons in the registry list of voters. Even if the City Court had granted appellant's petition for inclusion in the permanent list of voters on the allegation that she is a Filipino citizen qualified to vote, her alleged Filipino citizenship would still have been left open to question.

Moreover, the Metropolitan Trial Court of Quezon City in its 18 January decision exceeded its jurisdiction when it declared DOMINO a resident of the Province of Sarangani, approved and ordered the transfer of his voter's registration from Precinct No. 4400-A of Barangay Old Balara, Quezon City to precinct 14A1 of Barangay Poblacion, Alabel, Sarangani. It is not within the competence of the trial court, in an exclusion proceedings, to declare the challenged voter a resident of another municipality. The jurisdiction of the lower court over exclusion cases is limited only to determining the right of voter to remain in the list of voters or to declare that the challenged voter is not qualified to vote in the precinct in which he is registered, specifying the ground of the voter's disqualification. The trial court has no power to order the change or transfer of registration from one place of residence to another for it is the function of the election Registration Board as provided under Section 12 of R.A. No. 8189.[17] The only effect of the decision of the lower court excluding

---

[15] *Supra* note 13, at 427-428.

[16] Supra note 14, at 250.

[17] Sec. 12. *Change of Residence to Another City or Municipality.*— Any registered voter who has transferred residence to another city or

Supreme Court E-Library

the challenged voter from the list of voters, is for the Election Registration Board, upon receipt of the final decision, to remove the voter's registration record from the corresponding book of voters, enter the order of exclusion therein, and thereafter place the record in the inactive file.[18]

Finally, the application of the rule on *res judicata* is unavailing. Identity of parties, subject matter and cause of action are indispensable requirements for the application of said doctrine. Neither herein Private Respondents nor INTERVENOR, is a party in the exclusion proceedings. The *Petition for Exclusion* was filed by DOMINO himself and his wife, praying that he and his wife be excluded from the Voter's List on the ground of erroneous registration while the *Petition to Deny Due Course to or Cancel Certificate of Candidacy* was filed by private respondents against DOMINO for alleged false representation in his certificate of candidacy. For the decision to be a basis for the dismissal by reason of *res judicata*, it is essential that there must be between the first and the second action identity of parties, identity of subject matter and identity of causes of action.[19] In the present case, the aforesaid essential requisites are not present. In the case of *Nuval v. Guray, et al.*,[20] the Supreme Court in resolving a similar issue ruled that:

The question to be solved under the first assignment of error is whether or not the judgment rendered in the case of the petition for the exclusion of Norberto Guray's name from the election list of Luna,

---

municipality may apply with the Election Officer of his new residence for the transfer of his registration records.

The application for transfer of registration shall be subject to the requirements of notice and hearing and the approval of the Election Registration Board, in accordance with this Act. Upon approval of the application for transfer, and after notice of such approval to the Election Officer of the former residence of the voter, said Election Officer shall transmit by registered mail the voter's registration record to the Election Officer of the voter's new residence.

[18] 2nd par. of Sec. 142, Art. XII of the Omnibus Election Code.

[19] *See Mendiola v. Court of Appeals*, 258 SCRA 492 [1996].

[20] 52 Phil. 645, 647-648 [1928].

Supreme Court E-Library

is *res judicata*, so as to prevent the institution and prosecution of an action in *quo warranto*, which is now before us.

The procedure prescribed by Section 437 of the Administrative Code, as amended by Act No. 3387, is of a summary character and the judgment rendered therein is not appealable except when the petition is tried before the justice of the peace of the capital or the circuit judge, in which case it may be appealed to the judge of first instance, with whom said two lower judges have concurrent jurisdiction.

The petition for exclusion was presented by Gregorio Nuval in his dual capacity as qualified voter of the municipality of Luna, and as a duly registered candidate for the office of president of said municipality, against Norberto Guray as a registered voter in the election list of said municipality. The present proceeding of *quo warranto* was interposed by Gregorio Nuval in his capacity as a registered candidate voted for the office of municipal president of Luna, against Norberto Guray, as an elected candidate for the same office. Therefore, there is no identity of parties in the two cases, since it is not enough that there be an identity of persons, but there must be an identity of capacities in which said persons litigate. (Art. 1259 of the Civil Code; *Bowler vs. Estate of Alvarez*, 23 Phil., 561; 34 Corpus Juris, p. 756, par. 1165)

In said case of the petition for the exclusion, the object of the litigation, or the litigious matter was the exclusion of Norberto Guray as a voter from the election list of the municipality of Luna, while in the present *quo warranto* proceeding, the object of the litigation, or the litigious matter is his exclusion or expulsion from the office to which he has been elected. Neither does there exist, then, any identity in the object of the litigation, or the litigious matter.

In said case of the petition for exclusion, the cause of action was that Norberto Guray had not the six months' legal residence in the municipality of Luna to be a qualified voter thereof, while in the present proceeding of *quo warranto*, the cause of action is that Norberto Guray has not the one year's legal residence required for eligibility to the office of municipal president of Luna. Neither does there exist therefore, identity of causes of action.

In order that *res judicata* may exist the following are necessary: (a) identity of parties; (b) identity of things; and (c) identity of issues (*Aquino vs. Director of Lands*, 39 Phil. 850). And as in the case of

Supreme Court E-Library

the petition for exclusion and in the present *quo warranto* proceeding, as there is no identity of parties, or of things or litigious matter, or of issues or causes of action, there is no *res judicata*.

The Second Issue.

Was DOMINO a resident of the Province of Sarangani for at least one year immediately preceding the 11 May 1998 election as stated in his certificate of candidacy?

We hold in the negative.

It is doctrinally settled that the term "residence," as used in the law prescribing the qualifications for suffrage and for elective office, means the same thing as "domicile," which imports not only an intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention.[21] "Domicile" denotes a fixed permanent residence to which, whenever absent for business, pleasure, or some other reasons, one intends to return.[22] "Domicile" is a question of intention and circumstances. In the consideration of circumstances, three rules must be borne in mind, namely: (1) that a man must have a residence or domicile somewhere; (2) when once established it remains until a new one is acquired; and (3) a man can have but one residence or domicile at a time.[23]

Records show that petitioner's domicile of origin was Candon, Ilocos Sur[24] and that sometime in 1991, he acquired a new domicile of choice at 24 Bonifacio St. Ayala Heights, Old Balara, Quezon City, as shown by his certificate of candidacy for the position of representative of the 3rd District of Quezon City in the May 1995 election. Petitioner is now claiming that he had effectively abandoned his "residence" in Quezon City and has

---

[21] *Romualdez v. RTC, Br. 7, Tacloban City*, 226 SCRA 408, 415 [1993], citing *Nuval v. Guray, supra* note 17.

[22] *Id., citing Ong Huan Tin v. Republic*, 19 SCRA 966 [1967].

[23] *Alcantara v. Secretary of Interior*, 61 Phil. 459, 465 [1935].

[24] Annex "2", *supra* note 3, at 305.

Supreme Court E-Library

established a new "domicile" of choice at the Province of Sarangani.

A person's "domicile" once established is considered to continue and will not be deemed lost until a new one is established.[25] To successfully effect a change of domicile one must demonstrate an actual removal or an actual change of domicile; a *bona fide* intention of abandoning the former place of residence and establishing a new one and definite acts which correspond with the purpose.[26] In other words, there must basically be *animus manendi* coupled with *animus non revertendi*. The purpose to remain in or at the domicile of choice must be for an indefinite period of time; the change of residence must be voluntary; and the residence at the place chosen for the new domicile must be actual.[27]

It is the contention of petitioner that his actual physical presence in Alabel, Sarangani since December 1996 was sufficiently established by the lease of a house and lot located therein in January 1997 and by the affidavits and certifications under oath of the residents of that place that they have seen petitioner and his family residing in their locality.

While this may be so, actual and physical is not in itself sufficient to show that from said date he had transferred his residence in that place. To establish a new domicile of choice, personal presence in the place must be coupled with conduct indicative of that intention. While "residence" simply requires bodily presence in a given place, "domicile" requires not only such bodily presence in that place but also a declared and probable intent to make it one's fixed and permanent place of abode, one's home.[28]

---

[25] *Co v. Electoral Tribunal of the House of Representatives*, 199 SCRA 692, 711 [1991].

[26] *Aquino v. COMELEC*, 248 SCRA 400, 423, [1995], citing 18 Am Jur, 211-220.

[27] *Supra* note 18, at 415, *citing* 17 Am. Jur., Sec. 16, pp. 599-601; *Romualdez v. RTC, Br. 7, Tacloban City*, 226 SCRA 408, 415 [1993]

[28] *Velilla v. Posadas*, 62 Phil. 624, 631-632 [1935].

Supreme Court E-Library

As a general rule, the principal elements of domicile, physical presence in the locality involved and intention to adopt it as a domicile, must concur in order to establish a new domicile. No change of domicile will result if either of these elements is absent. Intention to acquire a domicile without actual residence in the locality does not result in acquisition of domicile, nor does the fact of physical presence without intention.[29]

The lease contract entered into sometime in January 1997, does not adequately support a change of domicile. The lease contract may be indicative of DOMINO's intention to reside in Sarangani but it does not engender the kind of permanency required to prove abandonment of one's original domicile. The mere absence of individual from his permanent residence, no matter how long, without the intention to abandon it does not result in loss or change of domicile.[30] Thus the date of the contract of lease of a house and lot located in the province of Sarangani, *i.e.*, 15 January 1997, cannot be used, in the absence of other circumstances, as the reckoning period of the one-year residence requirement.

Further, Domino's lack of intention to abandon his residence in Quezon City is further strengthened by his act of registering as voter in one of the precincts in Quezon City. While voting is not conclusive of residence, it does give rise to a strong presumption of residence especially in this case where DOMINO registered in his former *barangay*. Exercising the right of election franchise is a deliberate public assertion of the fact of residence, and is said to have decided preponderance in a doubtful case upon the place the elector claims as, or believes to be, his residence.[31] The fact that a party continuously voted in a particular locality is a strong factor in assisting to determine the status of his domicile.[32]

---

[29] 25 Am Jur 2d, Domicil, 14.

[30] *Supra* note 24, at 715.

[31] *Ex Parte Weissinger*, 247 Ala 113, 22 So 2d 510.

[32] *Re Meyers' Estate*, 137 Neb 60, 288 NW 35.

Supreme Court E-Library

His claim that his registration in Quezon City was erroneous and was caused by events over which he had no control cannot be sustained. The general registration of voters for purposes of the May 1998 elections was scheduled for two (2) consecutive weekends, *viz.*: June 14, 15, 21, and 22.[33]

While, Domino's intention to establish residence in Sarangani can be gleaned from the fact that he bought the house he was renting on November 4, 1997, that he sought cancellation of his previous registration in Quezon City on 22 October 1997,[34] and that he applied for transfer of registration from Quezon City to Sarangani by reason of change of residence on 30 August 1997,[35] DOMINO still falls short of the one year residency requirement under the Constitution.

In showing compliance with the residency requirement, both intent and actual presence in the district one intends to represent must satisfy the length of time prescribed by the fundamental law.[36] Domino's failure to do so rendered him ineligible and his election to office null and void.[37]

The Third Issue.

DOMINO's contention that the COMELEC has no jurisdiction in the present petition is bereft of merit.

As previously mentioned, the COMELEC, under Sec. 78, Art. IX of the Omnibus Election Code, has jurisdiction over a petition to deny due course to or cancel certificate of candidacy. Such jurisdiction continues even after election, if for any reason no final judgment of disqualification is rendered before the election, and the candidate facing disqualification is voted for and receives

---

[33] Section 7, R.A. No. 8189.

[34] Annex "E-2", *supra* note 3, at 100-101.

[35] Annex "E-4", *Rollo*, 105.

[36] *Romualdez-Marcos v. COMELEC*, 248 SCRA 300 [1995].

[37] *Gaerlan v. Catubig*, 17 SCRA 376 [1966]; *Sanchez v. Del Rosario*, 1 SCRA 1102 [1961].

Supreme Court E-Library

the highest number of votes[38] and provided further that the winning candidate has not been proclaimed or has taken his oath of office.[39]

It has been repeatedly held in a number of cases, that the House of Representatives Electoral Tribunal's sole and exclusive jurisdiction over all contests relating to the election, returns and qualifications of members of Congress as provided under Section 17 of Article VI of the Constitution begins only after a candidate has become a member of the House of Representatives.[40]

The fact of obtaining the highest number of votes in an election does not automatically vest the position in the winning candidate.[41] A candidate must be proclaimed and must have taken his oath of office before he can be considered a member of the House of Representatives.

In the instant case, DOMINO was not proclaimed as Congressman-elect of the Lone Congressional District of the Province of Sarangani by reason of a Supplemental Omnibus Resolution issued by the COMELEC on the day of the election ordering the suspension of DOMINO's proclamation should

---

[38] SEC. 6. *Effect of Disqualification Case.* — Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong.

SEC. 7. *Petition to Deny Due Course or to Cancel a Certificate of Candidacy.* — The procedure hereinabove provided shall apply to petitions to deny due course to or cancel a certificate of candidacy as provided in Section 78 of Batas Pambansa Blg. 881.

[39] *Lazatin v. COMELEC*, 157 SCRA 337 [1998]; *Ututalum v. COMELEC*, 181 SCRA 335 [1990].

[40] *Aquino v. COMELEC, et al.*, 248 SCRA 400, [1995].

[41] *Id.*, at 417; *supra* note 33, at 340-341.

Supreme Court E-Library

he obtain the winning number of votes. This resolution was issued by the COMELEC in view of the non-finality of its 6 May 1998 resolution disqualifying DOMINO as candidate for the position.

Considering that DOMINO has not been proclaimed as Congressman-elect in the Lone Congressional District of the Province of Sarangani he cannot be deemed a member of the House of Representatives. Hence, it is the COMELEC and not the Electoral Tribunal which has jurisdiction over the issue of his ineligibility as a candidate.[42]

Issue raised by INTERVENOR.

After finding that DOMINO is disqualified as candidate for the position of representative of the province of Sarangani, may INTERVENOR, as the candidate who received the next highest number of votes, be proclaimed as the winning candidate?

It is now settled doctrine that the candidate who obtains the second highest number of votes may not be proclaimed winner in case the winning candidate is disqualified.[43] In every election, the people's choice is the paramount consideration and their expressed will must, at all times, be given effect. When the majority speaks and elects into office a candidate by giving the highest number of votes cast in the election for that office, no one can be declared elected in his place.[44]

It would be extremely repugnant to the basic concept of the constitutionally guaranteed right to suffrage if a candidate who has not acquired the majority or plurality of votes is proclaimed a winner and imposed as the representative of a constituency, the majority of which have positively declared through their ballots that they do not choose him.[45] To simplistically assume that the second placer would have received the other votes

[42] *Fernandez v. COMELEC, et al.*, G.R. No. 135354, October 20, 1998.

[43] *Labo v. COMELEC*, 176 SCRA 1 [1989]; *Abella v. COMELEC,* 201 SCRA 253 [1991]; *supra* note 33.

[44] *Benito v. COMELEC*, 235 SCRA, 436, 441 [1994].

[45] *Geronimo v. Ramos*, 136 SCRA 435, 446 [1985].

Supreme Court E-Library

would be to substitute our judgment for the mind of the voters. He could not be considered the first among qualified candidates because in a field which excludes the qualified candidate, the conditions would have substantially changed.[46]

Sound policy dictates that public elective offices are filled by those who have received the highest number of votes cast in the election for that office, and it is fundamental idea in all republican forms of government that no one can be declared elected and no measure can be declared carried unless he or it receives a majority or plurality of the legal votes cast in the election.[47]

The effect of a decision declaring a person ineligible to hold an office is only that the election fails entirely, that the wreath of victory cannot be transferred[48] from the disqualified winner to the repudiated loser because the law then as now only authorizes a declaration of election in favor of the person who have obtained a plurality of votes[49] and does not entitle the candidate receiving the next highest number of votes to be declared elected. In such case, the electors have failed to make a choice and the election is a nullity.[50] To allow the defeated and repudiated candidate to take over the elective position despite his rejection by the electorate is to disenfranchise the electorate without any fault on their part and to undermine the importance and meaning of democracy and the people's right to elect officials of their choice.[51]

INTERVENOR's plea that the votes cast in favor of DOMINO be considered stray votes cannot be sustained. INTERVENOR's reliance on the opinion made in the *Labo, Jr.*

---

[46] *Supra* note 37, at 424.

[47] *Supra* note 41, at 446-447, *citing* 20 *Corpus Juris* 2nd, S 243, p. 676.

[48] *Supra* note 41, at 452, *citing Luison v. Garcia,* 103 Phil. 457 [1958].

[49] *Id., citing Villar v. Paraiso,* 96 Phil. 664 [1955].

[50] *Id., citing Llamaso v. Ferrer,* 84 Phil. 490 [1949].

[51] *Supra* note 41, at 441-442, citing *Badelles v. Cabile,* 27 SCRA 113, 121 [1969].

Supreme Court E-Library

case[52] to wit: if the electorate, fully aware in fact and in law of a candidate's disqualification so as to bring such awareness within the realm of notoriety, would nevertheless cast their votes in favor of the ineligible candidate, the electorate may be said to have waived the validity and efficacy of their votes by notoriously misapplying their franchise or throwing away their votes, in which case, the eligible candidate obtaining the next higher number of votes may be deemed elected, is misplaced.

Contrary to the claim of INTERVENOR, petitioner was not notoriously known by the public as an ineligible candidate. Although the resolution declaring him ineligible as candidate was rendered before the election, however, the same is not yet final and executory. In fact, it was no less than the COMELEC in its Supplemental Omnibus Resolution No. 3046 that allowed DOMINO to be voted for the office and ordered that the votes cast for him be counted as the Resolution declaring him ineligible has not yet attained finality. Thus the votes cast for DOMINO are presumed to have been cast in the sincere belief that he was a qualified candidate, without any intention to misapply their franchise. Thus, said votes can not be treated as stray, void, or meaningless.[53]

WHEREFORE, the instant petition is *DISMISSED*. The resolution dated 6 May 1998 of the COMELEC 2nd Division and the decision dated 29 May 1998 of the COMELEC *En Banc*, are hereby *AFFIRMED*.

SO ORDERED.

Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Buena, Gonzaga-Reyes, and *Ynares-Santiago, JJ.,* concur.

Panganiban, J., in the result; please see separate opinion.

Quisumbing, J., in the result; only insofar as petitioner Domino is adjudged disqualified.

Purisima, and *Pardo, JJ.,* took no part.

---

[52] 211 SCRA 297, 312 [1992].

[53] *Reyes v. COMELEC*, 254 SCRA 514, 529 [1996].

Supreme Court E-Library

PANGANIBAN, *J.*, *separate opinion:*

I concur "in the result": the petitioner failed to fulfill the one-year residence requirement in order to qualify as a candidate for congressman of the lone district of Sarangani. With all due respect, I disagree however with the majority view that *residence* as a qualification for candidacy for an elective public office imports the same meaning as *domicile*.

That a member of the House of Representatives must be a resident of the district which he or she seeks to represent "for a period of not less than one year immediately preceding the day of the election"[1] is a constitutional requirement that should be interpreted in the sense in which ordinary lay persons understand it. The common people who ratified the Constitution and were thereafter expected to abide by it would not normally refer to the journals of the Constitutional Commission in order to understand the words and phrases contained therein. Rather, they would usually refer to the common source being used when they look up for the meaning of words — the dictionary.[2] In this sense, Webster's definition of *residence*[3] should be controlling.

When the Constitution speaks of residence, the word should be understood, consistent with Webster, to mean *actual, physical and personal presence* in the district that a candidate seeks to represent. In other words, the candidate's presence should be substantial enough to show by overt acts *his intention to fulfill the duties of the position he seeks.*

If the framers of our basic law intended our people to understand *residence* as legal domicile, they should have said

---

[1] § 6, Art. 6 of the 1987 Constitution.

[2] See Dissenting Opinion in *Marcos v. Comelec*, 255 SCRA xi, October 25, 1995.

[3] Webster's New Collegiate Dictionary, G. & C. Merriam Co., 1979 ed.: "xxx the act or fact of dwelling in a place for some time xxx; the act or fact of living or regularly staying at or in some place for the discharge of a duty or the enjoyment of a benefit xxx; the place where one actually lives as distinguished from his domicile or a place of temporary sojourn xxx."

Supreme Court E-Library

so. Then our people would have looked up the meaning of *domicile* and would have understood the constitutional provision in that context. However, the framers of our Constitution did not. I therefore submit that *residence* must be understood in its common dictionary meaning as understood by ordinary lay persons.

At any rate, the original concept of *domicile*, which arose from American jurisprudence, was not intended to govern political rights. Rather, it was designed to resolve the conflict of laws between or among states where a decedent may have lived for various reasons, for the purpose of determining which law was applicable as regards his estate. Allow me to quote this short disquisition:[4]

"xxx This question first came before the courts at an early day, long before our present easy and extensive means of transportation, and at a time before the present ready movement from one country to another. At that time, men left for Europe for the Western Continent or elsewhere largely for purposes of adventure or in search of an opportunity for the promotion of commerce. It was at a time before the invention of the steamboat and before the era of the oceanic cable. Men left their native land knowing that they would be gone for long periods of time, and that means of communication with their home land were infrequent, difficult, and slow. The traditions of their native country were strong with these men. In the event of death, while absent, they desired that their property should descend in accordance with the laws of the land of their birth. Many such men were adventurers who had the purpose and intent to eventually return to the land of their nativity. There was a large degree of sentiment connected with the first announcement of the rules of law in the matter of the estates of such men. xxx

xxx xxx xxx

These reasons, which were, to an extent at least, historical and patriotic, found early expression in the decisions of the courts on the question of domicile. xxx"

---

[4] *In Re Jones' Estate*, 182 NW 227, 229-230 (1921); 16 ALR 1286.

Supreme Court E-Library

Subsequently, domicile was used in other "conflicts" cases involving taxation, divorce and other civil matters. To use it to determine qualifications for political office is to enlarge its meaning beyond what was intended, resulting in strained and contortive interpretations of the Constitution.

Specifically, I submit that applying the concept of *domicile* in determining *residence* as a qualification for an elective office would negate the objective behind the residence requirement of one year (or six months, in the case of local positions). This required period of residence preceding the day of the election, I believe, is rooted in the desire that officials of districts or localities be acquainted not only with the metes and bounds of their constituencies but, more important, with the constituents themselves — their needs, difficulties, potentials for growth and development and all matters vital to their common welfare. Such requisite period would precisely give candidates the opportunity to be familiar with their desired constituencies, and likewise for the electorate to evaluate their fitness for the offices they seek.

If all that is required of elective officials is legal domicile, then they would qualify even if, for several years prior to the election, they have never set foot in their districts (or in the country, for that matter), since it is possible to maintain legal domicile even without actual presence, provided one retains the *animus revertendi* or the intention to return.

The Constitution is the most basic law of the land. It enshrines the most cherished aspirations and ideals of the population at large. It is not a document reserved only for scholarly disquisition by the most eminent legal minds of the land. In ascertaining its import, lawyers are not meant to quibble over it, to define its legal niceties, or to articulate its nuances. Its contents and words should be interpreted in the sense understood by the ordinary men and women who place their lives on the line in its defense and who pin their hopes for a better life on its fulfillment.

Supreme Court E-Library

The call for simplicity in understanding and interpreting our Constitution has been made a number of times. About three decades ago, this Court declared:[5]

"It is to be assumed that the words in which constitutional provisions are couched express the objective sought to be attained. They are to be given their ordinary meaning except where technical terms are employed in which case the significance thus attached to them prevails. As the Constitution is not primarily a lawyer's document, it being essential for the rule of law to obtain that it should ever be present in the people's consciousness, its language as much as possible should be understood in the sense they have in common use. What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say. Thus there are cases where the need for construction is reduced to a minimum."

Having said this, I still believe that Petitioner Juan Domino failed to adduce sufficient convincing evidence to prove his actual, physical and personal presence in the district of Sarangani for at least one year prior to the 1998 elections.

WHEREFORE, I vote to *DISMISS* the Petition at bar.

THIRD DIVISION

[G.R. No. 134998. July 19, 1999]

SILVESTRE TIU, *petitioner, vs.* **DANIEL MIDDLETON and REMEDIOS P. MIDDLETON,** *respondents.*

---

[5] *JM Tuason & Co., Inc. v. Land Tenure Administration*, 31 SCRA 413, 422-423, February 18, 1970; per Fernando, *J.* (later *CJ*).