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Carag of the COMELEC, upon the expiration of the latter's term in 1959.

Premises considered, it is my considered view that the promotion of Villar was legal but he could serve up to February 15, 2011 only because his tenure should not exceed seven (7) years.

Respectfully submitted.

EN BANC

[G.R. No. 193261. April 24, 2012]

MEYNARDO SABILI, *petitioner, vs.* **COMMISSION ON ELECTIONS and FLORENCIO LIBREA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS (COMELEC); COMELEC'S RULES OF PROCEDURE; PROMULGATION AND FINALITY OF DECISION; SUSPENSION OF THE RULE ON NOTICE PRIOR TO PROMULGATION OF A DECISION DOES NOT AFFECT THE RIGHT OF THE PARTIES TO DUE PROCESS.— [W]e held x x x [in *Lindo v. Commission on Elections*] 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. x x x Moreover, quoting *Pimping v. COMELEC*, citing *Macabingkil v. Yatco*, 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,

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as long as the parties have been afforded an opportunity to be heard before judgment is rendered x x x. 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.

2. ID.; ID.; ID.; THE SUPREME COURT DOES NOT ORDINARILY REVIEW THE COMELEC'S APPRECIATION AND EVALUATION OF EVIDENCE; EXCEPTION.— As a general rule, the Court does not ordinarily review the COMELEC's appreciation and evaluation of evidence. However, exceptions thereto have been established, including when the COMELEC's appreciation and evaluation of evidence become so grossly unreasonable as to turn into an error of jurisdiction. In these instances, the Court is compelled by its bounden constitutional duty to intervene and correct the COMELEC's error. In *Mitra v. Commission on Elections*, (G.R. No. 191938, 2 July 2010), we explained that the COMELEC's use of wrong or irrelevant considerations in deciding an issue is sufficient to taint its action with grave abuse of discretion x x x.

3. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; SUBSTANTIAL EVIDENCE; THE QUANTUM OF PROOF NECESSARY IN ELECTION CASES.— To establish a new domicile of choice, personal presence in the place must be coupled with conduct indicative of the intention to make it one's fixed and permanent place of abode. As in all administrative cases, the quantum of proof necessary in election cases is substantial evidence, or such relevant evidence as a reasonable mind will accept as adequate to support a conclusion.

4. POLITICAL LAW; ELECTION LAWS; QUALIFICATIONS OF CANDIDATES FOR LOCAL ELECTION; RESIDENCY REQUIREMENT; A CANDIDATE'S RESIDENCE IN A LOCALITY THROUGH ACTUAL RESIDENCE IN WHATEVER CAPACITY IS REQUIRED.— It is true that property ownership is not among the qualifications required of candidates for local election. Rather, it is a candidate's residence in a locality through actual residence in whatever capacity. Indeed, we sustained the COMELEC when it considered as evidence tending to establish a candidate's domicile of choice the mere lease (rather than ownership) of an apartment by a candidate in the same province where he ran for the position of governor. In the more recent case of *Mitra v. Commission on Elections*, we reversed the COMELEC ruling that a candidate's sparsely furnished, leased room on the mezzanine of a feedmill could not be considered as his residence for the purpose of complying with the residency requirement of Section 78 of the Omnibus Election Code. x x x We have long held that it is not required that a candidate should have his own house in order to establish his residence or domicile in a place. It is enough that he should live in the locality, even in a rented house or that of a friend or relative. What is of central concern then is that petitioner identified and established a place in Lipa City where he intended to live in and return to for an indefinite period of time.

5. ID.; ID.; ID.; ID.; ABSENCE FROM RESIDENCE TO PURSUE FURTHER STUDIES OR PRACTICE A PROFESSION OR REGISTRATION AS A VOTER OTHER THAN IN THE PLACE WHERE ONE IS ELECTED, DOES NOT CONSTITUTE LOSS OF RESIDENCE.— [I]t must be stressed that the children, like the wife, do not dictate the family domicile. Even in the context of marriage, the family domicile is jointly decided by both husband and wife. In addition, we note that the transfer to Lipa City occurred in 2007, when petitioner's children were already well into college and could very well have chosen to study elsewhere than in Lipa City. Also, it is petitioner's domicile which is at issue, and not that of his children. But even assuming that it was petitioner himself (rather than his children) who attended educational institutions or who registered as a voter in a place other than Lipa City, we have held that "absence from residence to pursue studies or practice a profession or registration as a voter other than

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in the place where one is elected, does not constitute loss of residence." In fact, Section 117 of the Omnibus Election Code provides that transfer of residence to any other place by reason of one's "occupation; profession; employment in private and public service; educational activities; work in military or naval reservations; service in the army, navy or air force, the constabulary or national police force; or confinement or detention in government institutions in accordance with law" is not deemed as loss of residence.

6. ID.; ID.; ID.; ID.; PROPERTY OWNERSHIP OR BUSINESS INTEREST IN THE LOCALITY WHERE ONE INTENDS TO RUN FOR LOCAL ELECTIVE POST OR A PERSON'S PRESENCE IN HIS HOME TWENTY-FOUR HOURS A DAY, SEVEN DAYS A WEEK IS NOT REQUIRED.— [I]t is well-established that property ownership (and similarly, business interest) in the locality where one intends to run for local elective post is not a requirement of the Constitution. x x x The law does not require a person to be in his home twenty-four (24) hours a day, seven (7) days a week, to fulfill the residency requirement.

7. ID.; ID.; ID.; ID.; CHANGE OF RESIDENCE IS ALLOWED PROVIDED IT CAN BE PROVEN WITH CERTAINTY THAT IT HAS BEEN EFFECTED FOR ELECTION LAW PURPOSES FOR THE PERIOD REQUIRED BY LAW. — [W]e have gone so far as to rule that there is nothing "wrong in an individual changing residences so he could run for an elective post, for as long as he is able to prove with reasonable certainty that he has effected a change of residence for election law purposes for the period required by law."

8. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; TESTIMONIAL EVIDENCE; EXCEPTIONS TO THE HEARSAY RULE; ENTRIES IN OFFICIAL RECORDS; REQUISITES.— In *Country Bankers Insurance Corporation v. Lianga Bay and Community Multi-purpose Cooperative, Inc.*, we explained that the following three (3) requisites must concur for entries in official records to be admissible in evidence: (a) The entry was made by a public officer, or by another person specially enjoined by law to do so; (b) It was made by the public officer in the performance of his duties, or by such other person in the performance of a duty specially enjoined by law; and (c) The public officer or other person had sufficient

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knowledge of the facts stated by him, which facts must have been acquired by him personally or through official information. As to the first requisite, the *Barangay* Secretary is required by the Local Government Code to "keep an updated record of all inhabitants of the *barangay*." Regarding the second requisite, we have explicitly recognized in *Mitra v. Commission on Elections*, that "it is the business of a *punong barangay* to know who the residents are in his own *barangay*." Anent the third requisite, the *Barangay* Captain's exercise of powers and duties concomitant to his position requires him to be privy to these records kept by the *Barangay* Secretary.

9. ID.; ID.; ID.; ID.; ID.; DECLARATION AGAINST INTEREST; PERTAINS ONLY TO THE ADMISSIBILITY OF, NOT THE WEIGHT ACCORDED TO, TESTIMONIAL EVIDENCE.— A declaration against interest, under the Rules of Evidence, refers to a "declaration made by a person deceased, or unable to testify against the interest of a declarant, if the fact asserted in the declaration was at the time it was made so far contrary to declarant's own interest, that a reasonable man in his position would not have made the declaration unless he believed it to be true." A declaration against interest is an exception to the hearsay rule. As such, it pertains only to the admissibility of, not the weight accorded to, testimonial evidence.

VELASCO, JR., *J.*, *dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS (COMELEC); COMELEC'S RULES OF PROCEDURE; PROMULGATION AND FINALITY OF DECISION; SUSPENSION OF THE RULE ON NOTICE PRIOR TO PROMULGATION OF A DECISION DOES NOT AFFECT THE RIGHT OF THE PARTIES TO DUE PROCESS OR VITIATE THE VALIDITY OF THE COMELEC'S RESOLUTION.— The suspension of Sec. 6, COMELEC Resolution No. 8696 and the consequential lack of advance notice regarding the date of promulgation of the COMELEC *En Banc*'s August 17, 2010 Resolution is in accordance with the COMELEC's constitutionally granted power to make its own rules of procedure. The suspension action, without more, did not violate the petitioner's right to due process or vitiate the validity of

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the COMELEC's resolution. After all, as pointed out by Justice Sereno, the advance notice of the date of promulgation is not part of the process of promulgation. More than that, the COMELEC *En Banc*'s Resolution was sufficiently made known to petitioner who was able to timely file the present petition to assail and question the same Resolution. Clearly, the suspension of Sec. 6, COMELEC Resolution No. 8696 and the non-service of an advance notice to petitioner are of no consequence to the validity of the Resolution and the findings of the COMELEC, or to the opportunity granted to petitioner to assail the Resolution.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A LIMITED REMEDY TO CORRECT ONLY ERRORS OF JURISDICTION, NOT OF JUDGMENT.— Time and again, this Court has emphasized that a Rule 65 petition for *certiorari* is a limited remedy to correct only errors of jurisdiction, not of judgment. Its only function is to keep a lower tribunal within its jurisdiction and not to authorize the court exercising *certiorari* powers to review, reconsider, re-evaluate, and re-calibrate the evidence previously presented before and considered by the lower tribunal. x x x This rule holds greater force in an application for *certiorari* against the COMELEC as it is the institution created by the Constitution precisely to handle election matters and so presumed to be most competent in matters falling within its domain. Hence, the factual findings of the COMELEC *En Banc* are binding on this Court absent any showing of a grave abuse of its discretion.

3. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; WHEN PRESENT.— [N]ot every claim of an existence of a grave abuse of discretion deserves consideration; otherwise, every erroneous judgment will be void, appellate courts will be overburdened and the administration of justice will not survive. Mere abuse of discretion is not enough. "Grave abuse of discretion" exists only when there is a "capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law." An unfavorable

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evaluation of the sufficiency of the evidence presented by a party will not be inquired into unless it is shown that the evaluation was done in an "arbitrary manner by reason of passion, prejudice, or personal hostility."

4. POLITICAL LAW; ELECTION LAWS; QUALIFICATIONS OF CANDIDATES FOR LOCAL ELECTION; RESIDENCY REQUIREMENT; THE QUESTION OF DOMICILE IS MAINLY ONE OF INTENTION AND CIRCUMSTANCES. — This Court has previously ruled that "domicile" and "residence" are synonymous in election law. A domicile is "the place where a party actually or constructively has his permanent home, where he, no matter where he may be found, at any given time, eventually **intends** to return and remain." Thus, the question of domicile is mainly one of intention and circumstances.

5. ID.; ID.; ID.; ID.; THERE IS A PRESUMPTION IN FAVOR OF A CONTINUANCE OF AN EXISTING DOMICILE. — In the consideration of circumstances, three rules must be borne in mind: (1) a man must have residence or domicile somewhere; (2) a residence once established remains until a new one is acquired; and (3) a man can only have one residence or domicile at a time. Clearly, therefore, **there is a presumption in favor of a continuance of an existing domicile**. When the evidence presented by the contending parties are in equipoise that it is impossible for the court to determine with certainty the real intent of the person whose domicile is in question, **the presumption requires the Court to decide against a change of domicile and the retention of a domicile in question. Hence, the burden of proving a change of domicile lies on the person who claims that a change has occurred**.

6. ID.; ID.; ID.; ID.; TO ESTABLISH A NEW DOMICILE OF CHOICE, PERSONAL PRESENCE IN THE PLACE MUST BE COUPLED WITH CONDUCT INDICATIVE OF THAT INTENTION. — For the petitioner to overcome the presumption of the continuity of his domicile of origin, he must show by clear and convincing evidence of (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) definite acts which correspond with the purpose. Thus, to **establish a new domicile of choice, personal presence in the place must be coupled with conduct indicative of that**

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intention. **Bodily presence in the new locality is not the only requirement; there must be a declared and probable intent to make it one's fixed and permanent place of abode**. Indeed, the most important requirements for the establishment of a new domicile is (1) an actual and physical presence in the new locality; and (2) a clear and declared intent to abandon the old domicile (*animus non revertendi*) and remain in the new place of residence (*animus manendi*).

7. ID.; ID.; ID.; ID.; REAL AND SUBSTANTIAL REASONS MUST BE CONSIDERED IN CASES OF CHANGE OF DOMICILE.— In the case of *Fernandez v. House of Representatives Electoral Tribunal*, this Court considered the existence of "real and substantial reason" to indicate *animus manendi* in the purported new domicile of choice x x x. Unlike in *Fernandez* where We sustained petitioner's change of domicile and qualification for his office, Sabili has no "real and substantial reason" to establish his domicile in Lipa City and abandon his domicile of origin in San Juan, Batangas. With no children or wife actually residing in Lipa City, or business interests therein, it is not "grossly unreasonable" for the COMELEC to conclude that petitioner had no "declared and probative intent" to adopt Lipa City as his domicile of choice in the absence of a real and substantial reason to do so.

APPEARANCES OF COUNSEL

Romulo B. Macalintal & Edgardo Carlo L. Vistan II for petitioner.

The Solicitor General for public respondent.

Manalo Jocson & Enriquez Law Offices for private respondent.

D E C I S I O N

SERENO, *J.*:

Before us is a Petition for *Certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court, seeking to annul the Resolutions in SPA No. 09-047 (DC) dated 26 January 2010 and 17 August 2010 of the Commission on Elections (COMELEC), which denied due course to and canceled the Certificate of Candidacy (COC)

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of petitioner Meynardo Sabili (petitioner) for the position of Mayor of Lipa City for the May 2010 elections. At the heart of the controversy is whether petitioner Sabili had complied with the one-year residency requirement for local elective officials.

When petitioner filed his COC[1] for mayor of Lipa City for the 2010 elections, he stated therein that he had been a resident of the city for two (2) years and eight (8) months. Prior to the 2010 elections, he had been twice elected (in 1995 and in 1998) as Provincial Board Member representing the 4th District of Batangas. During the 2007 elections, petitioner ran for the position of Representative of the 4th District of Batangas, but lost. The 4th District of Batangas includes Lipa City.[2] However, it is undisputed that when petitioner filed his COC during the 2007 elections, he and his family were then staying at his ancestral home in *Barangay* (Brgy.) Sico, San Juan, Batangas.

Private respondent Florencio Librea (private respondent) filed a "Petition to Deny Due Course and to Cancel Certificate of Candidacy and to Disqualify a Candidate for Possessing Some Grounds for Disqualification"[3] against him before the COMELEC, docketed as SPA No. 09-047 (DC). Citing Section 78 in relation to Section 74 of the Omnibus Election Code,[4]

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[1] *Rollo*, p. 79.

[2] The 4th district of Batangas is composed of the municipalities of Ibaan, Padre Garcia, Rosario, San Jose, San Juan and Taysan, and the City of Lipa. http://www.batangas.gov.ph/index.php?p=15 (last accessed on 30 January 2012).

[3] *Rollo*, p. 70-76.

[4] Section 78. *Petition to deny due course to or cancel a certificate of candidacy*. — **A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed** by any person **exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false.** The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

. . . . . .

Section 74. *Contents of certificate of candidacy*. — **The certificate of candidacy shall state that the person filing it is announcing his candidacy**

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private respondent alleged that petitioner made material misrepresentations of fact in the latter's COC and likewise failed to comply with the one-year residency requirement under Section 39 of the Local Government Code.[5] Allegedly, petitioner falsely declared under oath in his COC that he had already been a resident of Lipa City for two years and eight months prior to the scheduled 10 May 2010 local elections.

In support of his allegation, private respondent presented the following:

1. Petitioner's COC for the 2010 elections filed on 1 December 2009[6]
2. 2009 Tax Declarations for a house and lot (TCT Nos. 173355, 173356 and buildings thereon) in Pinagtong-ulan, Lipa City registered under the name of Bernadette Palomares, petitioner's common-law wife[7]

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for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, **the province, including its component cities, highly urbanized city of district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation**; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; **and that the facts stated in the certificate of candidacy are true to the best of his knowledge**. (Emphasis supplied.)

[5] 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. (Underscoring supplied.)

[6] *Id.* at 137.

[7] *Id.* at 138, 152-155.

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3. Lipa City Assessor Certification of Property Holdings of properties under the name of Bernadette Palomares[8]
4. Affidavit executed by private respondent Florencio Librea[9]
5. *Sinumpaang Salaysay* executed by Eladio de Torres[10]
6. Voter Certification on petitioner issued by COMELEC Election Officer Juan D. Aguila, Jr.[11]
7. 1997 Voter Registration Record of petitioner[12]
8. National Statistics Office (NSO) Advisory on Marriages regarding petitioner[13]
9. Lipa City Assessor Certificate of No Improvement on Block 2, Lot 3, Brgy. Lood, Lipa City registered in the name of petitioner[14]
10. NSO Certificate of No Marriage of Bernadette Palomares[15]
11. Lipa City Assessor Certificate of No Improvement on Block 2, Lot 5, Brgy. Lood, Lipa City registered in the name of petitioner[16]
12. Lipa City Permits and Licensing Office Certification that petitioner has no business therein[17]

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[8] *Id.* at 139.

[9] *Id.* at 140-141.

[10] *Id.* at 142-143.

[11] *Id.* at 144.

[12] *Id.* at 145-146.

[13] *Id.* at 147.

[14] *Id.* at 148.

[15] *Id.* at 149.

[16] *Id.* at 150.

[17] *Id.* at 156.

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13. Apparent printout of a Facebook webpage of petitioner's daughter, Mey Bernadette Sabili[18]
14. Department of Education (DepEd) Lipa City Division Certification that the names Bernadette Palomares, Mey Bernadette Sabili and Francis Meynard Sabili (petitioner's son) do not appear on its list of graduates[19]
15. Certification from the Office of the Election Officer of Lipa City that Bernadette Palomares, Mey Bernadette Sabili and Francis Meynard Sabili do not appear in its list of voters[20]
16. Affidavit executed by Violeta Fernandez[21]
17. Affidavit executed by Rodrigo Macasaet[22]
18. Affidavit Executed by Pablo Lorzano[23]
19. Petitioner's 2007 COC for Member of House of Representative[24]

For ease of later discussion, private respondent's evidence shall be grouped as follows: (1) Certificates regarding ownership of real property; (2) petitioner's Voter Registration and Certification (common exhibits of the parties); (3) petitioner's COCs in previous elections; (3) Certifications regarding petitioner's family members; and (4) Affidavits of Lipa City residents.

On the other hand, petitioner presented the following evidence to establish the fact of his residence in Lipa City:

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[18] *Id.* at 157-158.

[19] *Id.* at 159.

[20] *Id.* at 160.

[21] *Id.* at 161.

[22] *Id.* at 162.

[23] *Id.* at 163.

[24] *Id.* at 164.

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1. Affidavit executed by Bernadette Palomares[25]
2. Birth Certificate of Francis Meynard Sabili[26]
3. Affidavit of Leonila Suarez (Suarez)[27]
4. Certification of Residency issued by Pinagtong-ulan Barangay Captain, Dominador Honrade[28]
5. Affidavit executed by Rosalinda Macasaet[29]
6. Certificate of Appreciation issued to petitioner by the parish of Sto. Nino of Pinagtong-ulan[30]
7. Designation of petitioner in the Advisory Body (AB) of Pinagtong-ulan, San Jose/Lipa City Chapter of Guardians Brotherhood, Inc.[31]
8. COMELEC Voter Certification on petitioner issued by Election Officer Juan Aguila, Jr.[32]
9. COMELEC Application for Transfer/Transfer with Reactivation dated 6 June 2009 signed by Election Officer Juan Aguila, Jr.[33]
10. Petitioner's Income Tax Return for 2007[34]
11. Official Receipt for petitioner's income tax payment for 2007[35]

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[25] *Id.* at 102.

[26] *Id.* at 103.

[27] *Id.* at 104.

[28] *Id.* at 105.

[29] *Id.* at 106.

[30] *Id.* at 107.

[31] *Id.* at 108.

[32] *Id.* at 109.

[33] *Id.* at 110.

[34] *Id.* at 111.

[35] *Id.* at 112.

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12. Petitioner's Income Tax Return for 2008[36]
13. Official Receipt for petitioner's income tax payment for 2008[37]
14. Birth Certificate of Mey Bernadette Sabili[38]
15. Affidavit executed by Jacinto Cornejo, Sr.[39]
16. Joint Affidavit of twenty-one (21) Pinagtong-ulan residents, including past and incumbent Pinagtong-ulan officials.[40]

For ease of later discussion, petitioner's evidence shall be grouped as follows: (1) his Income Tax Returns and corresponding Official Receipts for the years 2007 and 2008; (2) Certification from the *barangay* captain of Pinagtong-ulan; (3) Affidavit of his common-law wife, Bernadette Palomares; and (4) Affidavits from a previous property owner, neighbors, Certificate of Appreciation from the *barangay* parish and Memorandum from the local chapter of Guardians Brotherhood, Inc.

The COMELEC Ruling

In its Resolution dated 26 January 2010,[41] the COMELEC Second Division granted the Petition of private respondent, declared petitioner as disqualified from seeking the mayoralty post in Lipa City, and canceled his Certificate of Candidacy for his not being a resident of Lipa City and for his failure to meet the statutory one-year residency requirement under the law.

Petitioner moved for reconsideration of the 26 January 2010 Resolution of the COMELEC, during the pendency of which

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[36] *Id.* at 113.

[37] *Id.* at 114.

[38] *Id.* at 187.

[39] *Id.* at 190.

[40] *Id.* at 211-212.

[41] *Id.* at 48-62.

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the 10 May 2010 local elections were held. The next day, he was proclaimed the duly elected mayor of Lipa City after garnering the highest number of votes cast for the said position. He accordingly filed a Manifestation[42] with the COMELEC *en banc* to reflect this fact.

In its Resolution dated 17 August 2010,[43] the COMELEC *en banc* denied the Motion for Reconsideration of petitioner. Although he was able to receive his copy of the Resolution, no prior notice setting the date of promulgation of the said Resolution was received by him. Meanwhile, Section 6 of COMELEC Resolution No. 8696 (Rules on Disqualification Cases Filed in Connection with the May 10, 2012 Automated National and Local Elections) requires the parties to be notified in advance of the date of the promulgation of the Resolution.

> SEC. 6. Promulgation. — The promulgation of a Decision or Resolution of the Commission or a Division shall be made on a date previously fixed, notice of which shall be served in advance upon the parties or their attorneys personally, or by registered mail, telegram, fax, or thru the fastest means of communication.

Hence, petitioner filed with this Court a Petition (Petition for *Certiorari* with Extremely Urgent Application for the Issuance of a Status Quo Order and for the Conduct of a Special Raffle of this Case) under Rule 64 in relation to Rule 65 of the Rules of Court, seeking the annulment of the 26 January 2010 and 17 August 2010 Resolutions of the COMELEC. Petitioner attached to his Petition a Certificate of Canvass of Votes and proclamation of Winning Candidates for Lipa City Mayor and Vice-Mayor issued by the City/Municipal Board of Canvassers,[44] as well as a copy of his Oath of Office.[45] He also attached to his Petition another Certification of Residency[46] issued by Pinagtong-ulan

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[42] *Id.* at 296-299.

[43] *Id.* at 63-69.

[44] *Id.* at 294.

[45] *Id.* at 295.

[46] *Id.* at 300.

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Barangay Captain Dominador Honrade and sworn to before a notary public.

On 7 September 2010, this Court issued a Status Quo Ante Order[47] requiring the parties to observe the status quo prevailing before the issuance of the assailed COMELEC Resolutions. Thereafter, the parties filed their responsive pleadings.

Issues

The following are the issues for resolution:

1. Whether the COMELEC acted with grave abuse of discretion when it failed to promulgate its Resolution dated 17 August 2010 in accordance with its own Rules of Procedure; and
2. Whether the COMELEC committed grave abuse of discretion in holding that Sabili failed to prove compliance with the one-year residency requirement for local elective officials.

The Court's Ruling

1. On whether the COMELEC acted with grave abuse of discretion when it failed to promulgate its Resolution dated 17 August 2010 in accordance with its own Rules of Procedure

Petitioner argues that the assailed 17 August 2010 COMELEC Resolution, which denied petitioner's Motion for Reconsideration, is null and void. The Resolution was allegedly not promulgated in accordance with the COMELEC's own Rules of Procedure and, hence, violated petitioner's right to due process of law.

The rules governing the Petition for Cancellation of COC in this case is COMELEC Resolution No. 8696 (Rules on Disqualification of Cases Filed in Connection with the May 10, 2010 Automated National and Local Elections), which was

[47] *Id.* at 314-315.

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promulgated on 11 November 2009. Sections 6 and 7 thereof provide as follows:

SEC. 6. Promulgation. — The promulgation of a Decision or Resolution of the Commission or a Division shall be made on a date previously fixed, notice of which shall be served in advance upon the parties or their attorneys personally, or by registered mail, telegram, fax or thru the fastest means of communication.

SEC. 7. Motion for Reconsideration. — A motion to reconsider a Decision, Resolution, Order or Ruling of a Division shall be filed within three (3) days from the promulgation thereof. Such motion, if not pro-forma, suspends the execution for implementation of the Decision, Resolution, Order or Ruling.

Within twenty-four (24) hours from the filing thereof, the Clerk of the Commission shall notify the Presiding Commissioner. The latter shall within two (2) days thereafter certify the case to the Commission *en banc*.

The Clerk of the Commission shall calendar the Motion for Reconsideration for the resolution of the Commission *en banc* within three (3) days from the certification thereof.

However, the COMELEC Order dated 4 May 2010[48] suspended Section 6 of COMELEC Resolution No. 8696 by ordering that "all resolutions be delivered to the Clerk of the Commission for immediate promulgation" in view of "the proximity of the Automated National and Local Elections and lack of material time." The Order states:

ORDER

Considering the proximity of the Automated National and Local Elections and lack of material time, the Commission hereby suspends Sec. 6 of Resolution No. 8696 promulgated on November 11, 2009, which reads:

> Sec. 6. Promulgation. — The promulgation of a Decision or Resolution of the Commission or a Division shall be made on a date previously fixed, notice of which shall be served

[48] *Id.* at 739.

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upon the parties or their attorneys personally, or by registered mail, telegram, fax or thru the fastest means of communication."

Let all resolutions be delivered to the Clerk of the Commission for immediate promulgation.

SO ORDERED.

Petitioner claims that he did not receive notice of the said suspension of Section 6 of COMELEC Resolution No. 8696. Thus, his right to due process was still violated. On the other hand, the COMELEC claims that it has the power to suspend its own rules of procedure and invokes Section 6, Article IX-A of the Constitution, which gives it the power "to promulgate its own rules concerning pleadings and practice before it or before any of its offices."

We agree with the COMELEC on this issue.

In *Lindo v. Commission on Elections*,[49] 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

[49] 271 Phil. 844 (1991).

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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*,[50] citing *Macabingkil v. Yatco*,[51] 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.

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[50] 224 Phil. 326, 359 (1985).

[51] 128 Phil. 165 (1967).

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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 thereof.

2. On whether the COMELEC committed grave abuse of discretion in holding that Sabili failed to prove compliance with the one-year residency requirement for local elective officials

As a general rule, the Court does not ordinarily review the COMELEC's appreciation and evaluation of evidence. However, exceptions thereto have been established, including when the COMELEC's appreciation and evaluation of evidence become so grossly unreasonable as to turn into an error of jurisdiction. In these instances, the Court is compelled by its bounden constitutional duty to intervene and correct the COMELEC's error.[52]

In *Mitra v. Commission on Elections*, (G.R. No. 191938, 2 July 2010), we explained that the COMELEC's use of wrong

[52] *Mitra v. Commission on Elections*, G.R. No. 191938, 19 October 2010, 633 SCRA 580.

or irrelevant considerations in deciding an issue is sufficient to taint its action with grave abuse of discretion —

As a concept, "grave abuse of discretion" defies exact definition; generally, it refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction"; the abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. Mere abuse of discretion is not enough; it must be grave. We have held, too, that the use of wrong or irrelevant considerations in deciding an issue is sufficient to taint a decision-maker's action with grave abuse of discretion.

Closely related with the limited focus of the present petition is the condition, under Section 5, Rule 64 of the Rules of Court, that findings of fact of the COMELEC, supported by substantial evidence, shall be final and non-reviewable. Substantial evidence is that degree of evidence that a reasonable mind might accept to support a conclusion.

In light of our limited authority to review findings of fact, we do not ordinarily review in a *certiorari* case the COMELEC's appreciation and evaluation of evidence. Any misstep by the COMELEC in this regard generally involves an error of judgment, not of jurisdiction.

In exceptional cases, however, when the COMELEC's action on the appreciation and evaluation of evidence oversteps the limits of its discretion to the point of being grossly unreasonable, the Court is not only obliged, but has the constitutional duty to intervene. When grave abuse of discretion is present, resulting errors arising from the grave abuse mutate from error of judgment to one of jurisdiction.

Before us, petitioner has alleged and shown the COMELEC's use of wrong or irrelevant considerations in deciding the issue of whether petitioner made a material misrepresentation of his residency qualification in his COC as to order its cancellation. Among others, petitioner pointed to the COMELEC's inordinate emphasis on the issue of property ownership of petitioner's declared residence in Lipa City, its inconsistent stance regarding Palomares's relationship to the Pinagtong-ulan property, and

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its failure to consider in the first instance the certification of residence issued by the *barangay* captain of Pinagtong-ulan. Petitioner bewails that the COMELEC required "more" evidence to show the change in his residence, notwithstanding the various pieces of evidence he presented and the fact that under the law, the quantum of evidence required in these cases is merely substantial evidence and not clear and convincing evidence. Petitioner further ascribes grave abuse of discretion in the COMELEC's brushing aside of the fact that he has been filing his ITR in Lipa City (where he indicates that he is a resident of Pinagtong-ulan) on the mere expedient that the law allows the filing of the ITR not only in the place of legal residence but, alternately, in his place of business. Petitioner notes that private respondent's own evidence shows that petitioner has no business in Lipa City, leaving only his residence therein as basis for filing his ITR therein.

Hence, in resolving the issue of whether the COMELEC gravely abused its discretion in ruling that petitioner had not sufficiently shown that he had resided in Lipa City for at least one year prior to the May 2010 elections, we examine the evidence adduced by the parties and the COMELEC's appreciation thereof.

In the present case, the parties are in agreement that the domicile of origin of Sabili was Brgy. Sico, San Juan, Batangas. He claims that he abandoned his domicile of origin and established his domicile of choice in Brgy. Pinagtong-ulan, Lipa City, thereby making him qualified to run for Lipa City mayor. On the other hand, respondent COMELEC held that no such change in domicile or residence took place and, hence, the entry in his Certificate of Candidacy showing that he was a resident of Brgy. Pinagtong-ulan, Lipa City constituted a misrepresentation that disqualified him from running for Lipa City mayor.

To establish a new domicile of choice, personal presence in the place must be coupled with conduct indicative of the intention to make it one's fixed and permanent place of abode.[53] As in all administrative cases, the quantum of proof necessary in election

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[53] *Domino v. Commission on Elections*, 369 Phil. 798 (1999).

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cases is substantial evidence, or such relevant evidence as a reasonable mind will accept as adequate to support a conclusion.[54]

The ruling on private respondent's evidence

We begin with an evaluation of the COMELEC's appreciation of private respondent's evidence.

a) Petitioner's Voter Certification, Registration and COCs in previous elections

Petitioner's Voter Certification is a common exhibit of the parties. It states, among others, that petitioner is a resident of Pinagtong-ulan, Lipa City, Batangas; that he had been a resident of Lipa City for two (2) years and three (3) months; and that he was so registered on 31 October 2009. The information therein was "certified correct" by COMELEC Election Officer Juan B. Aguila, Jr.

Private respondent presented this document as proof that petitioner misrepresented that he is a resident of Lipa City. On the other hand, the latter presented this document as proof of his residency.

The COMELEC correctly ruled that the Voter Certification issued by the COMELEC Election Officer, Atty. Juan B. Aguila, Jr., was not conclusive proof that petitioner had been a resident of Lipa City since April 2007. It noted that Aguila is not the competent public officer to certify the veracity of this claim, particularly because petitioner's COMELEC registration was approved only in October 2009.

The Voter Registration Record of petitioner accomplished on 21 June 1997 showing that he was a resident of Sico, San Juan, Batangas, as well as his various COCs dated 21 June 1997 and March 2007 indicating the same thing, were no longer discussed by the COMELEC — and rightly so. These pieces of evidence showing that he was a resident of Sico, San Juan,

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[54] *Enojas, Jr. v. Commission on Elections*, 347 Phil. 510 (1997).

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Batangas on the said dates are irrelevant as, prior to April 2007, petitioner was admittedly a resident of Sico, San Juan Batangas. Rather, the relevant time period for consideration is that from April 2007 onwards, after petitioner's alleged change of domicile.

b) Certificates regarding ownership of real property

The various certificates and tax declarations adduced by private respondent showed that the Lipa property was solely registered in the name of petitioner's common-law wife, Bernadette Palomares. In discussing the import of this document, the COMELEC reasoned that, being a "seasoned politician," he should have registered the Lipa property (which he claimed to have purchased with his personal funds) in his own name. Such action "would have offered positive proof of intent to change actual residence" from San Juan, Batangas to Lipa City, considering that he had previously declared his ancestral home in San Juan, Batangas as his domicile. Since Palomares and petitioner are common-law spouses not capacitated to marry each other, the property relation between them is governed by Article 148 of the Family Code,[55] where only the parties' actual contributions are recognized. Hence, petitioner cannot prove ownership of a property and residence in Lipa City through the registered ownership of the common-law wife of the property in Lipa City.

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[55] Art. 148. In cases of cohabitation not falling under the preceding Article, only the properties acquired by both of the parties through their actual joint contribution of money, property or industry shall be owned by them in common in proportion to their respective contributions. In the absence of proof to the contrary, their contributions and corresponding shares are presumed to be equal. The same rule and presumption shall apply to joint deposits of money and evidences of credit.

If one of the parties is validly married to another, his or her share in the co-ownership shall accrue to the absolute community or conjugal partnership existing in such valid marriage. If the party who acted in bad faith is not validly married to another, his or her share shall be forfeited in the manner provided in the last paragraph of the preceding Article. The foregoing rules on forfeiture shall likewise apply even if both parties are in bad faith.

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On the other hand, petitioner bewails the inordinate emphasis that the COMELEC bestowed upon the question of whether the Lipa property could be considered as his residence, for the reason that it was not registered in his name. He stresses that the issue should be residence, not property ownership.

It is true that property ownership is not among the qualifications required of candidates for local election.[56] Rather, it is a candidate's residence in a locality through actual residence in whatever capacity. Indeed, we sustained the COMELEC when it considered as evidence tending to establish a candidate's domicile of choice the mere lease (rather than ownership) of an apartment by a candidate in the same province where he ran for the position of governor.[57] In the more recent case of *Mitra v. Commission on Elections*,[58] we reversed the COMELEC ruling that a candidate's sparsely furnished, leased room on the mezzanine of a feedmill could not be considered as his residence for the purpose of complying with the residency requirement of Section 78 of the Omnibus Election Code.[59]

The Dissent claims that the registration of the property in Palomares' name does not prove petitioner's residence as it merely showed "donative intent" without the necessary formalities or payment of taxes.

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[56] *Fernandez v. House of Representatives Electoral Tribunal*, G.R. No. 187478, 21 December 2009, 608 SCRA 733.

[57] *Perez v. Commission on Elections*, 375 Phil. 1106 (1999). The other pieces of evidence considered by the COMELEC in the *Perez* case were the candidate's marriage certificate, the birth certificate of his daughter, and various letters bearing the address, all showing that he was a resident of the province for at least one (1) year before the elections.

[58] G.R. No. 191938, 2 July 2010, 622 SCRA 744.

[59] As further proof of his change in residence, Mitra had adduced affidavits from the seller of the lot he purchased, the owner of Maligaya Feedmill, the *barangay* captain and *sangguniang barangay* members of Isaub, Aborlan, as well as an Aborlan councilor. He also presented photographs of the residential portion of Maligaya Feedmill where he resides, and of his experimental pineapple plantation and cock farm. He further submitted the community tax certificate he himself secured, and a House of Representatives Identification Card, both indicating that he resides in Aborlan.

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However, whatever the nature of the transaction might be, this point is immaterial for the purpose of ascertaining petitioner's residence. We have long held that it is not required that a candidate should have his own house in order to establish his residence or domicile in a place. It is enough that he should live in the locality, even in a rented house or that of a friend or relative.[60] What is of central concern then is that petitioner identified and established a place in Lipa City where he intended to live in and return to for an indefinite period of time.

Hence, while the COMELEC correctly ruled that, of itself, Palomares' ownership of the Lipa property does not prove that she or — and in view of their common-law relations, petitioner — resides in Lipa City, nevertheless, the existence of a house and lot apparently owned by petitioner's common-law wife, with whom he has been living for over two decades, makes plausible petitioner's allegation of bodily presence and intent to reside in the area.

c) Certifications regarding the family members of petitioner

Private respondent presented a Certification from the DepEd, Lipa City Division, indicating that the names Bernadette Palomares, Mey Bernadette Sabili (petitioner's daughter) and Francis Meynard Sabili (petitioner's son) do not appear on the list of graduates of Lipa City. Private respondent also presented a Certification from the Office of the Election Officer of Lipa City that the names of these family members of petitioner do not appear in its list of voters.

As the issue at hand is petitioner's residence, and not the educational or voting record of his family, the COMELEC properly did not consider these pieces of evidence in arriving at its Resolution.

The Dissent nevertheless asserts that because his children do not attend educational institutions in Lipa and are not registered voters therein, and because petitioner does not maintain a business

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[60] *De los Reyes v. Solidum*, 61 Phil. 893 (1935).

therein nor has property in his name, petitioner is unable to show the existence of real and substantial reason for his stay in Lipa City.

As to the Dissent's first assertion, it must be stressed that the children, like the wife, do not dictate the family domicile. Even in the context of marriage, the family domicile is jointly decided by both husband and wife.[61] In addition, we note that the transfer to Lipa City occurred in 2007, when petitioner's children were already well into college and could very well have chosen to study elsewhere than in Lipa City.

Also, it is petitioner's domicile which is at issue, and not that of his children. But even assuming that it was petitioner himself (rather than his children) who attended educational institutions or who registered as a voter in a place other than Lipa City, we have held that "absence from residence to pursue studies or practice a profession or registration as a voter other than in the place where one is elected, does not constitute loss of residence."[62] In fact, Section 117 of the Omnibus Election Code provides that transfer of residence to any other place by reason of one's "occupation; profession; employment in private and public service; educational activities; work in military or naval reservations; service in the army, navy or air force, the constabulary or national police force; or confinement or detention in government institutions in accordance with law" is not deemed as loss of residence.

As to the Dissent's second assertion, petitioner apparently does not maintain a business in Lipa City. However, apart from the Pinagtong-ulan property which both Suarez (the previous property owner) and Palomares swear was purchased with petitioner's own funds, the records also indicate that there are two other lots in Lipa City, particularly in Barangay Lodlod, Lipa City[63] which are registered jointly in the name of petitioner

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[61] Family Code, Article 69.

[62] *Faypon v. Quirino*, 96 Phil. 294 (1954).

[63] *Rollo*, pp. 148 and 150, Office of the City Assessor of Lipa Certification dated 14 December 2009.

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and Palomares. In fact, it was private respondent who presented the Lipa City Assessor's Certificate to this effect. Even assuming that this Court were to disregard the two Lodlod lots, it is well-established that property ownership (and similarly, business interest) in the locality where one intends to run for local elective post is not a requirement of the Constitution.[64]

More importantly, we have gone so far as to rule that there is nothing "wrong in an individual changing residences so he could run for an elective post, for as long as he is able to prove with reasonable certainty that he has effected a change of residence for election law purposes for the period required by law."[65]

d) Affidavits of Lipa City residents

Private respondent also presented the affidavits of Violeta Fernandez[66] and Rodrigo Macasaet,[67] who were also residents of Pinagtong-ulan. Both stated that petitioner did not reside in Pinagtong-ulan, as they had "rarely seen" him in the area. Meanwhile, Pablo Lorzano,[68] in his Affidavit, attested that although the Lipa property was sometimes used for gatherings, he did "not recall having seen" petitioner in their *barangay*. On the other hand, private respondent[69] and Eladio de Torres,[70] both residents of Brgy. Calamias, reasoned that petitioner was not a resident of Lipa City because he has no work or family there.

The COMELEC did not discuss these Affidavits in its assailed Resolution. It was correct in doing so, particularly considering that these Affidavits were duly controverted by those presented by petitioner.

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[64] *Maquerra v. Borra*, 122 Phil. 412 (1965).

[65] *Japzon v. Commission on Elections*, G.R. No. 180088, 19 January 2009, citing *Aquino v. Commission on Elections*, 318 Phil. 467 (1995).

[66] *Supra* note 21.

[67] *Supra* note 22.

[68] *Supra* note 23.

[69] *Rollo*, pp. 82-83.

[70] *Id.* at 84-85.

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Moreover, even assuming the truth of the allegation in the Affidavits that petitioner was "rarely seen" in the area, this does not preclude the possibility of his residence therein. In *Fernandez v. House of Representatives Electoral Tribunal*,[71] we held that the averments of certain *barangay* health workers — that they failed to see a particular candidate whenever they made rounds of the locality of which he was supposed to be a resident — is of no moment. It is possible that the candidate was out of the house to attend to his own business at the time. The law does not require a person to be in his home twenty-four (24) hours a day, seven (7) days a week, to fulfill the residency requirement.

The ruling on petitioner's evidence

We now evaluate how the COMELEC appreciated petitioner's evidence:

a) Petitioner's Income Tax Returns for 2007 and 2008

The Income Tax Returns of petitioner presented below showed that petitioner had been paying his Income Tax (2007 and 2008) to the Revenue District Office of Lipa City. In waving aside his Income Tax Returns, the COMELEC held that these were not indications of residence since Section 51(B) of the National Internal Revenue Code does not only state that it shall be filed in a person's legal residence, but that it may alternatively be filed in a person's principal place of business.

In particular, Section 51(B) of the National Internal Revenue Code[72] provides that the Income Tax Return shall be filed either

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[71] G.R. No. 187478, 21 December 2009, 608 SCRA 733.

[72] **SEC. 51. Individual Return. —**

(A) Requirements. — ... ...

(B) Where to File. — Except in cases where the Commissioner otherwise permits, the return shall be filed with an authorized agent bank, Revenue District Officer, Collection Agent or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business in the Philippines, or if there be no legal residence or place of business in the Philippines, with the Office of the Commissioner. x x x

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in the place where a person resides or where his principal place of business is located. However, private respondent's own evidence — a Certification from the City Permits and Licensing Office of Lipa City — showed that there was no business registered in the City under petitioner's name.

Thus, COMELEC failed to appreciate that precisely because an individual income tax return may only be filed either in the legal residence OR the principal place of business, as prescribed under the law, the fact that Sabili was filing his Income Tax Returns in Lipa City notwithstanding that he had no business therein showed that he had actively elected to establish his residence in that city.

The Dissent claims that since the jurisdiction of RDO Lipa City includes both San Juan and Lipa City, petitioner's filing of his ITR therein can also support an intent to remain in San Juan, Batangas — petitioner's domicile of origin.

However, a simple perusal of the Income Tax Returns and Revenue Official Receipts for 2007 and 2008 shows that petitioner invariably declares his residence to be Pinagtong-ulan, Lipa City, rather than San Juan, Batangas.[73] Hence, while petitioner may be submitting his income tax return in the same RDO, the declaration therein is unmistakable. Petitioner considers Lipa City to be his domicile.

b) Certification from the Barangay Captain of Pinagtong-ulan

The COMELEC did not consider in the first instance the Certification issued by Pinagtong-ulan *Barangay* Captain Dominador Honrade[74] (Honrade) that petitioner had been residing in Brgy Pinagtong-ulan since 2007. When this oversight was raised as an issue in petitioner's Motion for Reconsideration, the COMELEC brushed it aside on the ground that the said Certification was not sworn to before a notary public and, hence, "cannot be relied on." Subsequently, petitioner presented another,

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[73] *Rollo*, pp. 112-114.

[74] *Rollo*, p. 105.

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substantially identical, Certification from the said Pinagtong-ulan *Barangay* Captain, save for the fact that it had now been sworn to before a notary public.

We disagree with the COMELEC's treatment of the *Barangay* Captain's Certification and find the same tainted with grave abuse of discretion.

Even without being sworn to before a notary public, Honrade's Certification would not only be admissible in evidence, but would also be entitled to due consideration.

Rule 130, Section 44 of the Rules of Court provides:

> SEC. 44. *Entries in official records.* — Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated.

In *Country Bankers Insurance Corporation v. Lianga Bay and Community Multi-purpose Cooperative, Inc.*,[75] we explained that the following three (3) requisites must concur for entries in official records to be admissible in evidence:

(a) The entry was made by a public officer, or by another person specially enjoined by law to do so;

(b) It was made by the public officer in the performance of his duties, or by such other person in the performance of a duty specially enjoined by law; and

(c) The public officer or other person had sufficient knowledge of the facts stated by him, which facts must have been acquired by him personally or through official information.

As to the first requisite, the *Barangay* Secretary is required by the Local Government Code to "keep an updated record of all inhabitants of the *barangay*."[76] Regarding the second requisite,

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[75] 425 Phil. 511 (2002).

[76] SEC. 394. *Barangay Secretary: Appointment, Qualifications, Powers and Duties.* — (a) The *barangay* secretary shall be appointed by the *punong*

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we have explicitly recognized in *Mitra v. Commission on Elections*,[77] that "it is the business of a *punong barangay* to know who the residents are in his own *barangay*." Anent the third requisite, the *Barangay* Captain's exercise of powers and duties[78] concomitant to his position requires him to be privy to these records kept by the *Barangay* Secretary.

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barangay with the concurrence of the majority of all the *sangguniang barangay* members. The appointment of the *barangay* secretary shall not be subject to attestation by the Civil Service Commission.

(b) The *barangay* secretary shall be of legal age, a qualified voter and an actual resident of the *barangay* concerned.

(c) No person shall be appointed *barangay* secretary if he is a *sangguniang barangay* member, a government employee, or a relative of the *punong barangay* within the fourth civil degree of consanguinity or affinity.

(d) The barangay secretary shall:

(1) Keep custody of all records of the *sangguniang barangay* and the *barangay* assembly meetings;

(2) Prepare and keep the minutes of all meetings of the *sangguniang barangay* and the *barangay* assembly;

(3) Prepare a list of members of the *barangay* assembly, and have the same posted in conspicuous places within the *barangay*;

(4) Assist in the preparation of all necessary forms for the conduct of *barangay* elections, initiatives, referenda or plebiscites, in coordination with the Comelec;

(5) Assist the municipal civil registrar in the registration of births, deaths, and marriages;

(6) Keep an updated record of all inhabitants of the *barangay* containing the following items of information: name, address, place and date of birth, sex, civil status, citizenship, occupation, and such other items of information as may be prescribed by law or ordinances;

(7) Submit a report on the actual number of *barangay* residents as often as may be required by the *sangguniang barangay*; and

(8) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.

[77] *Supra* note 56.

[78] SEC. 389. *Chief Executive: Powers, Duties, and Functions.* — (a) The *punong barangay*, as the chief executive of the *barangay* government, shall exercise such powers and perform such duties and functions, as provided by this Code and other laws.

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Accordingly, there is basis in faulting the COMELEC for its failure to consider Honrade's Certification on the sole ground that it was initially not notarized.

Meanwhile, the Dissent opines that the sworn affidavit of the *barangay* chair of Pinagtong-ulan that petitioner is a resident

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(b) For efficient, effective and economical governance, the purpose of which is the general welfare of the *barangay* and its inhabitants pursuant to Section 16 of this Code, the *punong barangay* shall:

(1) Enforce all laws and ordinances which are applicable within the *barangay*;

(2) Negotiate, enter into, and sign contracts for and in behalf of the *barangay*, upon authorization of the *sangguniang barangay*;

(3) Maintain public order in the *barangay* and, in pursuance thereof, assist the city or municipal mayor and the *sanggunian* members in the performance of their duties and functions;

(4) Call and preside over the sessions of the *sangguniang barangay* and the barangay assembly, and vote only to break a tie;

(5) Upon approval by a majority of all the members of the *sangguniang barangay*, appoint or replace the *barangay* treasurer, the *barangay* secretary, and other appointive *barangay* officials;

(6) Organize and lead an emergency group whenever the same may be necessary for the maintenance of peace and order or on occasions of emergency or calamity within the *barangay*;

(7) In coordination with the *barangay* development council, prepare the annual executive and supplemental budgets of the *barangay*;

(8) Approve vouchers relating to the disbursement of *barangay* funds;

(9) Enforce laws and regulations relating to pollution control and protection of the environment;

(10) Administer the operation of the Katarungang Pambarangay in accordance with the provisions of this Code;

(11) Exercise general supervision over the activities of the *sangguniang kabataan*;

(12) Ensure the delivery of basic services as mandated under Section 17 of this Code;

(13) Conduct an annual *palarong barangay* which shall feature traditional sports and disciplines included in national and international games, in coordination with the Department of Education, Culture and Sports;

(14) Promote the general welfare of the *barangay*; and

(15) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.

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of Lipa City does not help petitioner's case because it was not shown that the term "resident" as used therein carries the same meaning as domicile, that is, not merely bodily presence but also, *animus manendi* or intent to return. This Court has ruled otherwise.

In *Mitra v. Commission on Elections*,[79] the declaration of Aborlan's *punong barangay* that petitioner resides in his *barangay* was taken to have the same meaning as domicile, inasmuch as the said declaration was made in the face of the Court's recognition that Mitra "might not have stayed in Aborlan nor in Palawan for most of 2008 and 2009 because his office and activities as a Representative were in Manila."

Assuming that the *barangay* captain's certification only pertains to petitioner's bodily presence in Pinagtong-ulan, still, the COMELEC cannot deny the strength of this evidence in establishing petitioner's bodily presence in Pinagtong-ulan since 2007.

c) Affidavit of petitioner's common law wife

To substantiate his claim of change of domicile, petitioner also presented the affidavit of Palomares, wherein the latter swore that she and petitioner began residing in Lipa City in 2007, and that the funds used to purchase the Lipa property were petitioner's personal funds. The COMELEC ruled that the Affidavit was self-serving for having been executed by petitioner's common-law wife. Also, despite the presentation by petitioner of other Affidavits stating that he and Palomares had lived in Brgy. Pinagtong-ulan since 2007, the latter's Affidavit was rejected by the COMELEC for having no independent collaboration.

Petitioner faults the COMELEC's stand, which it claims to be inconsistent. He argues that since the property regime between him and Palomares is governed by Article 148 of the Family Code (based on the parties' actual contribution) as the COMELEC stressed, then Palomares' Affidavit expressly stating that

[79] G.R. No. 191938, 2 July 2010.

petitioner's money alone had been used to purchase the Lipa property (notwithstanding that it was registered in her name) was not self-serving, but was in fact, a declaration against interest.

Petitioner's argument that Palomares' affidavit was a "declaration against interest" is, strictly speaking, inaccurate and irrelevant. A declaration against interest, under the Rules of Evidence, refers to a "declaration made by a person deceased, or unable to testify against the interest of a declarant, if the fact asserted in the declaration was at the time it was made so far contrary to declarant's own interest, that a reasonable man in his position would not have made the declaration unless he believed it to be true."[80] A declaration against interest is an exception to the hearsay rule.[81] As such, it pertains only to the admissibility of, not the weight accorded to, testimonial evidence.[82]

Nevertheless, we see the logic in petitioner's claim that the COMELEC had committed grave abuse of discretion in being inconsistent in its stand regarding Palomares, particularly regarding her assertion that the Lipa property had been purchased solely with petitioner's money. If the COMELEC accepts the registration of the Lipa property in her name to be accurate, her affidavit disavowing ownership thereof in favor of petitioner was far from self-serving as it ran counter to her (and her children's) property interest.

The Dissent states that it was not unreasonable for the COMELEC to believe that Palomares may have committed misrepresentations in her affidavit considering that she had perjured herself as an informant on the birth certificates of her children with respect to the supposed date and place of her marriage to petitioner. However, this was not the reason propounded by the COMELEC when it rejected Palomares' affidavit.

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[80] RULES OF COURT, Rule 130C (6), Sec. 38.

[81] *Unchuan v. Lozada*, G.R. No. 172671, 16 April 2009, 585 SCRA 421.

[82] *People v. Catalino*, 131 Phil. 194 (1968).

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Moreover, it is notable that Palomares' assertion in her affidavit that she and petitioner have been living in the Pinagtong-ulan property since April 2007 is corroborated by other evidence, including the affidavits of Pinagtong-ulan *barangay* officials and neighbors.

d) Affidavits from a previous property owner, neighbors, certificate from parish and designation from socio-civic organization

The Affidavit issued by Leonila Suarez[83] (erstwhile owner of the Lipa house and lot) states that in April 2007, after she received the down payment for the Lipa property and signed an agreement that petitioner would settle her bank obligations in connection with the said transaction, he and Palomares actually started residing at Pinagtong-ulan. The COMELEC brushed this Affidavit aside as one that "merely narrates the circumstances surrounding the sale of the property and mentions in passing that Sabili and Palomares lived in Pinagtong-ulan since April 2007 up to the present."[84]

We disagree with the COMELEC's appreciation of the Suarez Affidavit. Since she was its owner, transactions for the purchase of the Lipa property was within her personal knowledge. Ordinarily, this includes the arrangement regarding who shall pay for the property and when, if ever, it shall be occupied by the buyers. We thus consider that her statements impact positively on petitioner's claim of residence.

The Dissent on the other hand argues that the claim that petitioner started living in the Lipa house and lot in April 2007 is made dubious by the fact that (1) there might not be enough time to effect an actual and physical change in residence a month before the May 2007 elections when petitioner ran for representative of the 4th District of Batangas; and (2) the Deed

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[83] *Rollo*, p. 104.

[84] *Id.* at 66.

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of Absolute Sale was notarized, and the subsequent transfer of ownership in the tax declaration was made, only in August 2008.

Before further discussing this, it is pertinent to point out that these were not the reasons adduced by the COMELEC in the assailed Resolutions. Assuming that the above reasons were the unuttered considerations of the COMELEC in coming up with its conclusions, such reasoning still exhibits grave abuse of discretion.

As to the Dissent's first argument, it must be remembered that a transfer of domicile/residence need not be completed in one single instance. Thus, in *Mitra v. Commission on Elections*,[85] where the evidence showed that in 2008, petitioner Mitra had leased a small room at Maligaya Feedmills located in Aborlan and, in 2009 purchased in the same locality a lot where he began constructing his house, we recognized that petitioner "transferred by incremental process to Aborlan beginning 2008 and concluded his transfer in early 2009" and thus, he transferred his residence from Puerto Princesa City to Aborlan within the period required by law. We cannot treat the transfer to the Pinagtong-ulan house any less than we did Mitra's transfer to the Maligaya Feedmills room.

Moreover, the Joint Affidavit of twenty-one (21) Pinagtong-ulan residents, including former and incumbent barangay officials, attests that petitioner had begun living in the Pinagtong-ulan house and lot before the May 2007 elections such that it was where his coordinators for the May 2007 elections went to meet him.[86]

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[85] G.R. No. 191938, 19 October 2010.

[86] *Rollo*, pp. 211-212, *Pinagsama-Samang Salaysay* executed by 21 Barangay Pinagtong-ulan residents, namely Esmeraldo P. Macasaet (former *barangay* captain of Pinagtong-Ulan), Eduardo R. Lorzano (former *barangay* captain of Pinagtong-ulan), Patricia L. Alvarez (incumbent councilor of Pinagtong-ulan), Pedro Y. Montalba (former councilor of Pinagtong-ulan), Loida M. Macasaet, Mario P. Lingao, Sancho M. Garcia, Jr., Atilano H. Macasaet, Baby Jean A. Mercado, Ligaya C. Mercado, Rosalinda M. Macasaet, Olga M. Reyes, Jennifer D. Garcia, Sancho C. Garcia, Sr., Marissa G. Mercado, Wilma C. Mercado, Aireen M. Macasaet, Eden R. Suarez, Noemi R. Ubalde, Arthur A. del Rosario, and Norberto M. Layog.

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Jacinto Cornejo Sr., the contractor who renovated the Pinagtong-ulan house when it was bought by petitioner, also swore that petitioner and his family began living therein even while it was being renovated.[87] Another Affidavit petitioner adduced was that of Rosalinda Macasaet, a resident of Brgy. Pinagtong-ulan,[88] who stated that she also sold a lot she owned in favor of petitioner and Palomares. The latter bought her lot since it was adjacent to the Lipa house and lot they had earlier acquired. Macasaet also swore that the couple had actually resided in the house located in Pinagtong-ulan since April 2007, and that she knew this because her own house was very near the couple's own. Macasaet's Affidavit is a positive assertion of petitioner's actual physical presence in Brgy. Pinagtong-ulan, Lipa City.

While private respondent had adduced affidavits of two Pinagtong-ulan residents (that of Violeta Fernandez[89] and Rodrigo Macasaet)[90] attesting that petitioner could not be a resident of Pinagtong-ulan as he was "rarely seen" in the area, these affidavits were controverted by the Joint affidavit of twenty-one (21) Pinagtong-ulan residents who plainly accused the two of lying. Meanwhile, the affidavits of private respondent[91] and Eladio de Torres[92] stating that petitioner is not a resident of Lipa City because he has no work or family there is hardly worthy of credence since both are residents of Barangay Calamias, which is, and private respondent does not contest this, about 15 kilometers from Pinagtong-ulan.

As to the Dissent's second argument, the fact that the notarization of the deed of absolute sale of the property was made months after April 2007 does not negate petitioner's claim that he started residing therein in April 2007. It is clear from

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[87] *Rollo*, p. 190.

[88] *Id.* at 106.

[89] *Rollo*, p. 161.

[90] *Rollo*, p. 162.

[91] *Rollo*, pp. 82-83.

[92] *Rollo*, pp. 84-85.

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the Affidavit of the property's seller, Leonila Suarez, that it was not yet fully paid in April 2007, so it was understandable that a deed of absolute sale was not executed at the time. Thus:

> That initially, the contract to sell was entered into by and between Mr. & Mrs. Meynardo Asa Sabili and Bernadette Palomares and myself, but eventually the spouses changed their mind, and after the couple settled all my loan obligations to the bank, they requested me to put the name of Ms. Bernadette P. Palomares instead of Mr. & Mrs. Meynardo Asa Sabili and Bernadette Palomares in the absolute deed of sale;
>
> That it was Mr. Meynardo Asa Sabili who came to my former residence at Barangay Pinagtong-ulan sometime in the month of April 2007. At that time, Mr. Meynardo Asa Sabili was still running for Representative (Congressman) in the 4th District of Batangas;
>
> That after payment of the down payment and signing of an agreement that Mr. Meynardo Asa Sabili will be the one to settle my bank obligations, Mr. & Mrs. Meynardo A. Sabili and Bernadette Palomares had an actual transfer of their residence at Barangay Pinagtong-ulan, Lipa City;
>
> That they started living and residing in Pinagtong-ulan in the month of April, 2007 up to this point in time; x x x[93]

As to the rest of the documents presented by petitioner, the COMELEC held that the Memorandum issued by the Guardians Brotherhood Inc. San Jose/Lipa City Chapter merely declares the designation of petitioner in the organization, without any showing that residence in the locality was a requirement for that designation. Meanwhile, the Certificate of Appreciation was nothing more than an acknowledgment of petitioner's material and financial support, and not an indication of residence.

We agree that considered separately, the Guardians Brotherhood Memorandum and the Pinagtong-ulan Parish Certificate of Appreciation do not establish petitioner's residence in Pinagtong-ulan, Lipa City. Nevertheless, coupled with the fact that petitioner had twice been elected as Provincial Board

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[93] *Rollo*, p. 188.

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Member representing the Fourth District of Batangas, which encompasses Lipa City, petitioner's involvement in the religious life of the community, as attested to by the certificate of appreciation issued to him by the Pinagtong-ulan parish for his "material and financial support" as President of the Barangay Fiesta Committee in 2009, as well as his assumption of a leadership role in the socio-civic sphere of the locality as a member of the advisory body of the Pinagtong-ulan, San Jose/ Lipa City Chapter of the Guardians Brotherhood Inc., manifests a significant level of knowledge of and sensitivity to the needs of the said community. Such, after all, is the rationale for the residency requirement in our elections laws, to wit:

> The Constitution and the law requires residence as a qualification for seeking and holding elective public office, in order to give candidates the opportunity to be familiar with the needs, difficulties, aspirations, potentials for growth and all matters vital to the welfare of their constituencies; likewise, it enables the electorate to evaluate the office seekers' qualifications and fitness for the job they aspire for x x x.[94]

Considering all of the foregoing discussion, it is clear that while separately, each evidence presented by petitioner might fail to convincingly show the fact of his residence at Pinagtong-ulan since 2007, collectively, these pieces of evidence tend to sufficiently establish the said fact.

Petitioner's actual physical presence in Lipa City is established not only by the presence of a place (Pinagtong-ulan house and lot) he can actually live in, but also the affidavits of various persons in Pinagtong-ulan, and the Certification of its *barangay* captain. Petitioner's substantial and real interest in establishing his domicile of choice in Lipa City is also sufficiently shown not only by the acquisition of additional property in the area and the transfer of his voter registration, but also his participation in the community's socio-civic and religious life, as well as his declaration in his ITR that he is a resident thereof.

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[94] *Torayno v. Commission on Elections*, 392 Phil. 343 (2000).

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We therefore rule that petitioner has been able to adduce substantial evidence to demonstrate compliance with the one-year residency requirement for local elective officials under the law.

In view of this Court's finding that petitioner has not misrepresented his residence at Pinagtong-ulan and the duration thereof, there is no need to further discuss whether there was material and deliberate misrepresentation of the residency qualification in his COC.

As a final note, we do not lose sight of the fact that Lipa City voters manifested their own judgment regarding the qualifications of petitioner when they voted for him, notwithstanding that the issue of his residency qualification had been raised prior to the elections. Petitioner has garnered the highest number of votes (55,268 votes as opposed to the 48,825 votes in favor of his opponent, Oscar Gozos)[95] legally cast for the position of Mayor of Lipa City and has consequently been proclaimed duly elected municipal Mayor of Lipa City during the last May 2010 elections.[96]

In this regard, we reiterate our ruling in *Frivaldo v. Commission on Elections*[97] that "(t)o successfully challenge a winning candidate's qualifications, the petitioner must clearly demonstrate that the ineligibility is so patently antagonistic to constitutional and legal principles that overriding such ineligibility and thereby giving effect to the apparent will of the people, would ultimately create greater prejudice to the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote."

Similarly, in *Japzon v. Commission on Elections*,[98] we concluded that "when the evidence of the alleged lack of residence

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[95] http://www.comelec.gov.ph/results/2010_natl_local/res_reg1014000.html (last accessed on 3 April 2012).

[96] *Rollo*, p. 294.

[97] G.R. No. 137329, 9 August 2000, 337 SCRA 574.

[98] G.R. No. 180088, 19 January 2009, 576 SCRA 331.

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qualification of a candidate for an elective position is weak or inconclusive and it clearly appears that the purpose of the law would not be thwarted by upholding the victor's right to the office, the will of the electorate should be respected. For the purpose of election laws is to give effect to, rather than frustrate, the will of the voters."

In sum, we grant the Petition not only because petitioner sufficiently established his compliance with the one-year residency requirement for local elective officials under the law. We also recognize that "(a)bove and beyond all, the determination of the true will of the electorate should be paramount. It is their voice, not ours or of anyone else, that must prevail. This, in essence, is the democracy we continue to hold sacred."[99]

WHEREFORE, premises considered, the Petition is **GRANTED.** The assailed COMELEC Resolutions dated 26 January 2010 and 17 August 2010 in *Florencio Librea v. Meynardo A. Sabili* [SPA No. 09-047(DC)] are **ANNULLED.** Private respondent's Petition to cancel the Certificate of Candidacy of Meynardo A. Sabili is **DENIED.** The Status Quo Ante Order issued by this Court on 7 September 2010 is **MADE PERMANENT.**

SO ORDERED.

Carpio, Brion, Peralta, Bersamin, Villarama, Jr., Perez, Reyes, and *Perlas-Bernabe, JJ.*, concur.

Corona, C.J., Leonardo-de Castro, and *Abad, JJ.*, join the dissent of Hon. Justice Velasco, Jr.

Velasco, Jr., J., see dissenting opinion.

Del Castillo and *Mendoza, JJ.*, no part.

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[99] *Sinaca v. Mula*, 373 Phil. 896 (1999) .

DISSENTING OPINION

VELASCO, JR., *J.*:

Before Us is a Petition for *Certiorari*[1] assailing and seeking to set aside the Resolutions[2] dated January 26, 2010 and August 17, 2010 of the Commission on Elections (COMELEC) in SPA No. 09-047 (DC), which denied due course to, and canceled, the Certificate of Candidacy (COC) of petitioner Meynardo Sabili (Sabili) for the position of Mayor of Lipa City in the May 2010 elections on the ground of his misrepresentation that he is a resident of *Barangay* (Brgy.) Pinagtong-ulan, Lipa City.

During the 1995 and 1998 elections, petitioner Sabili was elected as a member of the Provincial Board representing the 4th District of Batangas. During the 2007 elections, he ran for the office of Congressman of the 4th District of Batangas but lost. During these times, he admitted that he was a resident of Brgy. Sico, San Juan, Batangas. On December 1, 2009, however, petitioner Meynardo Sabili filed a COC for Mayor of Lipa City, Batangas for the May 2010 elections. In his COC, he wrote that he had been a resident of Brgy. Pinagtong-ulan, Lipa City for two (2) years and eight (8) months.

On December 5, 2009, private respondent Florencio Librea (Librea) filed a verified *Petition to Deny Due Course and to Cancel Certificate of Candidacy and to Disqualify a Candidate for Possessing Some Grounds for Disqualifications* with respondent COMELEC, which was docketed as SPA No. 09-047 (DC). In his petition, private respondent Librea maintained that petitioner made several material misrepresentations in his COC where he indicated that he was a resident of Brgy. Pinagtong-ulan for the last two years when in fact he was, and is, a resident of Brgy. Sico, San Juan, Batangas, and so failed to meet the one-year residence requirement under Section 39 of the Local Government Code.[3]

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[1] Under Rule 64 in relation to Rule 65 of the Rules of Court.

[2] Both penned by Judge Jose Emmanuel M. Castillo.

[3] Sec. 39. Qualifications.—

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In resolving the controversy, the COMELEC held in its January 26, 2010 Resolution that the evidence presented by petitioner, as respondent in SPA No. 09-047 (DC), failed to establish an abandonment of his domicile of origin and the adoption of Lipa City as his domicile of choice or residence for election law purposes. Hence, petitioner was disqualified to run in the May 2010 elections for the mayoralty position in that city. The COMELEC stated:

> In the case before us, it is not denied that Respondent's domicile of origin is in San Juan, Batangas. What Respondent repeatedly asserts is that since 2007, he transferred his domicile to Lipa City after allegedly acquiring the Bgy. Pinagtong Ulan property and claiming that he continuously lived there.
>
> In the first place, domicile or origin is not easily lost. **If one wishes to successfully effect a change of domicile, he must demonstrate by evidence 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.** These elements must concur, and absent clear and positive proof of the concurrence of these three requirements, the domicile of origin continues x x x.
>
> x x x x x x x x x
>
> **The above pieces of documentary evidence, all taken together however, fail to convince us that Respondent Sabili successfully effected a change of domicile.** In all, **the evidence adduced by Respondent Sabili plainly lacks the degree of persuasiveness required to convince this Commission that an abandonment of domicile or origin in favor of a domicile of choice indeed occurred.** The claim of an incidental change of residence, lacking evidence determinative of abandonment of domicile of origin, without more, would not be sufficient to break the principle, long followed in cases

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(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. (Underscoring supplied.)

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involving questions of domicile that there was clear intent to abandon and repudiate his domicile in San Juan, Batangas. **To effect abandonment requires the voluntary act of relinquishing Petitioner's former domicile *with* intent to supplant the former domicile with one of his own choosing.** Since he is a new voter of Lipa City, the records clearly indicating that officially, his registration came into effect only on October 31, 2009; the said voter's document hardly furnishes sufficient proof of abandonment of domicile of origin and a change of domicile of choice. Indeed, while we have ruled in the past that voting gives rise to a strong presumption of residence, it is not conclusive evidence thereof. **Sabili, in fact, has never even voted in Lipa City** x x x.

To establish a new domicile of choice, personal presence in the place must be coupled with conduct indicative of that intention. It 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.

In this case, **Sabili's claim of a common law relationship with Bernadette Palomares does not establish his actual physical presence in Bgy. Pinagtong-ulan, Lipa City**. In fact, the documents pertaining to Palomares' actual place of residence are conflicting, since **she is listed as a resident of Parañaque City.** The Deed of Sale and registration of the house in Bgy. Pinagtong-ulan, Lipa City, merely proves Palomares' ownership or that she own property in the city. And it is not impossible that, as indicated in documents presented herein, she is a resident of Parañaque City owning property in Lipa City.[4]

On January 28, 2010, petitioner filed a Motion for Reconsideration of the COMELEC's January 26, 2010 Resolution, and a Supplemental Motion the following day.

On February 2, 2010, the case was elevated to the COMELEC *En Banc*. In the meantime, the May 10, 2010 elections were conducted and petitioner emerged as the winning candidate for Mayor of Lipa City.[5] He eventually took his oath and assumed office.[6]

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[4] *Rollo*, pp. 59-61. Emphasis supplied.

[5] Annex "P" to the Petition.

[6] *Rollo*, p. 293, Annex "Q" to the Petition.

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In a Manifestation dated June 15, 2010, petitioner informed the COMELEC *En Banc* of these developments and again prayed for the setting aside of the January 26, 2010 Resolution.

In its August 17, 2010 Resolution, however, the COMELEC *En Banc* denied petitioner's Motion for Reconsideration. Discussing each point petitioner raised in that motion, the COMELEC *En Banc* held:

> We find that the Second Division fully appreciated the evidence presented by both parties and correctly found Sabili disqualified for failing to comply with the one (1) year residency requirement.
>
> Anent Sabili's first ground in his motion for reconsideration, We find it important to state that Sabili admitted in Paragraph 14 of his Answer that his domicile of origin is in Brgy. Sico, San Juan, Batangas. This admission on the part of Sabili was construed in conjunction with related jurisprudence that domicile of origin is not easily lost. In order "[t]o successfully effect a change of domicile, one must demonstrate 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." Undoubtedly, Librea must prove his allegations in support of his petition for disqualification, but **since Sabili did not deny that his domicile of origin is different from the place where he intends to run, he now has to prove that he has abandoned his domicile of origin in favor of Lipa City. Unfortunately, he failed to prove the same to the satisfaction of the Second Division.**
>
> Sabili's second and third grounds refer to the Second Division's supposed failure to appreciate the evidence adduced in this case. We do not find basis for these arguments. The evidence presented, together with the arguments of the parties, were inextricably interrelated and were thoroughly discussed and resolved by the Second Division in the assailed 15-page Resolution. **The Second Division was correct in giving little or no weight to the following pieces of evidence presented by Sabili: a) Affidavit of Bernadette P. Palomares which is self-serving for being executed by the common-law wife, and has no independent corroboration that they are residing in Lipa City since 2007 or that the property was purchased with Sabili's personal funds; b) Affidavit of Lenila G. Suarez, the previous owners of the property in Lipa City supposedly occupied by Sabili and his family, which merely narrates the**

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circumstances surrounding the sale of the property and mentions in passing that Sabili and Palomares lived in Pinagtong-ulan since April 2007 up to the present; c) Certification issued by Hon. Dominador B. Honrade, Barangay Captain of Brgy. Pinagtong-ulan, Lipa City, which is unsworn and thus cannot be relied on; d) Certificate of Appreciation issued by the Parish of Santo Niño, Brgy. Pinagtong-ulan, Lipa City which is nothing more than an acknowledgment of Sabili's material and financial support and not an indication of residence; e) Designation as member of the Advisory Body of Guardians Brotherhood, Inc., San Jose/Lipa City Chapter effective 02 January 2009 which merely declares the designation of Sabili without any showing that residence in the locality is a requirement for such designation; f) Voter Certification issued by Atty. Juan B. Aguila, Jr. Election Officer of COMELEC Lipa City and the Application for Transfer of Registration Record Due to Change of Residence filed with the COMELEC on 06 June 2009 which are not conclusive proof of change of domicile; g) Income Tax Returns of respondent for the years 2007 and 2008 and the corresponding Official Receipts which are not indications of residence since Sec. 51(B) of the National Internal Revenue Code does not only state that it shall be filed in a person's legal residence but that it may also be filed in a person's princip[al] place of business, and in most cases the return is filed where the individual earns his income. The only other evidence for Sabili on record are the affidavits he submitted which, standing alone, cannot be considered, no matter how many, as sufficient proof of one's change of domicile. There has to be more.

With regard to Sabili's fourth ground, We find that the Second Division made no pronouncement adding a property requirement as a qualification of an elective official.

As to the fifth ground, We will sustain the position of the Second Division when it ruled:

> In this case, Sabili's claim of a common law relationship with Bernadette Palomares does not establish his actual physical presence in Bgy. Pinagtong-ulan, Lipa City x x x as indicated in documents presented herein, she is a resident of Parañaque City owning property in Lipa City.

Sabili's sixth and seventh grounds deserve little merit. Nothing in the Assailed Resolution reveals that Sabili's relationship with

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Palomares or the property regime governing such relationship had direct bearing on the Second Division's determination of Sabili's qualification. Sabili's relationship was merely discussed in relation to the allegations that Sabili bought a house using his personal funds but decided to register the property only in the name of Palomares which is quite peculiar.

Finally, on the eight ground, We hereby declare that Sabili's residence is a matter that will affect his qualification to run for public office in Lipa City. In view of the evidence presented in this case, his declaration in his certificate of candidacy that he is a resident of Lipa City, when in fact he had not yet abandoned his domicile of origin in San Juan, Batangas, may convince the voters that he has all the qualifications to run for the position of mayor, which tends to mislead the public from a fact that would otherwise render him ineligible, is precisely what is being referred to in the case of *Ugdoracion*.[7]

Aggrieved, petitioner filed with this Court a *Petition for Certiorari with Extremely Urgent Application for the Issuance of a Status Quo Order* under Rule 64 in relation to Rule 65 of the Rules of Court, seeking the nullification of the COMELEC's Resolutions for supposedly having been issued without or in excess of respondent COMELEC's jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. Among the documents attached to his petition is a new Certification of Residency issued by the Pinagtong-ulan *barangay* chairman Dominador Honrade that had been sworn before a notary public.[8]

On September 7, 2010, this Court issued a Status Quo Ante Order requiring the parties to observe the status quo before the issuance of the assailed COMELEC Resolutions.

As pointed out by Justice Sereno in her opinion, the following are the issues for Our Resolution:

(1) Whether the COMELEC acted with grave abuse of discretion when it failed to promulgate its Resolution dated 17 August 2010 in accordance with its own Rules of Procedure; and

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[7] Emphasis supplied.

[8] *Rollo*, p. 300, Annex "S" to the Petition.

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(2) Whether the COMELEC committed grave abuse of discretion in holding that Sabili failed to prove compliance with the one-year residency requirement for local elective officials.

Failure to serve advance notice of the promulgation of the resolution does not affect the validity of the resolution

On the first issue, petitioner posits that the COMELEC acted with grave abuse of discretion when it failed to serve advance notice of the promulgation of the August 17, 2010 Resolution under Sec. 6, COMELEC Resolution No. 8696 (Rules on Disqualification of Cases Filed in Connection with the May 10, 2010 Automated National and Local Elections).[9] Hence, so petitioner claims, his right to due process was violated. Respondents, on the other hand, argue that Sec. 9 of COMELEC Resolution 8696 had been suspended by COMELEC Order dated May 4, 2010 in view of the exigencies attendant to the holding of the country's first automated national elections.

Justice Sereno is of the opinion that petitioner erred in his claim of having been deprived of due process, adding that the August 17, 2010 Resolution was validly promulgated. On this issue, I fully agree with my esteemed colleague.

The suspension of Sec. 6, COMELEC Resolution No. 8696 and the consequential lack of advance notice regarding the date of promulgation of the COMELEC *En Banc*'s August 17, 2010 Resolution is in accordance with the COMELEC's constitutionally granted power to make its own rules of procedure. The suspension action, without more, did not violate the petitioner's right to due process or vitiate the validity of the COMELEC's resolution. After all, as pointed out by Justice Sereno, the advance notice of the date of promulgation is not part of the process of promulgation. More than that, the COMELEC *En Banc*'s Resolution was sufficiently made known to petitioner who was

[9] SEC. 6. Promulgation. — The promulgation of a Decision or Resolution of the Commission or a Division shall be made on a date previously fixed, notice of which shall be served in advance upon the parties or their attorneys personally, or by registered mail, telegram, fax or thru the fastest means of communication.

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able to timely file the present petition to assail and question the same Resolution. Clearly, the suspension of Sec. 6, COMELEC Resolution No. 8696 and the non-service of an advance notice to petitioner are of no consequence to the validity of the Resolution and the findings of the COMELEC, or to the opportunity granted to petitioner to assail the Resolution.

A *certiorari* writ is not available to correct errors in the appreciation of evidence by the lower tribunal

On the second issue, however, I respectfully disagree with Justice Sereno who maintains that the COMELEC committed errors in the appreciation and evaluation of evidence so that "the Court is compelled by it[s] bounden constitutional duty to intervene and correct the COMELEC's errors."[10]

Lest it be forgotten, the present recourse was filed under the aegis of Rule 64 in relation to Rule 65 of the Rules of Court. Time and again, this Court has emphasized that a Rule 65 petition for *certiorari* is a limited remedy to correct only errors of jurisdiction, not of judgment.[11] Its only function is to keep a lower tribunal within its jurisdiction[12] and not to authorize the court exercising *certiorari* powers to review, reconsider, re-evaluate, and re-calibrate the evidence previously presented before and considered by the lower tribunal. In *First Corporation v. Former Sixth Division of the Court of Appeals*,[13] We reiterated this elementary precept:

> It is a fundamental aphorism in law that a review of facts and evidence is not the province of the extraordinary remedy of *certiorari*, which is *extra ordinem* — beyond the ambit of appeal. **In *certiorari***

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[10] *Ponencia*, p. 12.

[11] *Lydia R. Pagaduan v. Commission on Elections*, G.R. No. 172278, March 29, 2007, 519 SCRA 512.

[12] *Angara v. Fedman Development Corporation*, 483 Phil. 495 (2004); quoted in *PCGG v. Silangan Investors and Managers, Inc.*, G.R. Nos. 167055-56 & 170673, March 25, 2010, 616 SCRA 382.

[13] G.R. No. 171989, July 4, 2007, 526 SCRA 564, 578 (emphasis supplied); quoted in *Soriano v. Marcelo*, G.R. No. 160772, July 13, 2009, 592 SCRA 394.

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proceedings, judicial review does not go as far as to examine and assess the evidence of the parties and to weigh the probative value thereof. It does not include an inquiry as to the correctness of the evaluation of the evidence. Any error committed in the evaluation of the evidence is merely an error of judgment that cannot be remedied by *certiorari*. An *error of judgment* is one which the court may commit in the exercise of its jurisdiction. An *error of jurisdiction* is one where the act complained of was issued by the court without or in excess of jurisdiction, or with grave abuse of discretion, which is tantamount to lack or in excess of jurisdiction and which error is correctible only by the extraordinary writ of *certiorari*. ***Certiorari* will not be issued to cure errors of the trial court in its appreciation of the evidence of the parties, or its conclusions anchored on the said findings and its conclusions of law. It is not for this Court to re-examine conflicting evidence, re-evaluate the credibility of the witnesses or substitute the findings of fact of the court *a quo***.

This rule holds greater force in an application for *certiorari* against the COMELEC as it is the institution created by the Constitution precisely to handle election matters and so presumed to be most competent in matters falling within its domain.[14] Hence, the factual findings of the COMELEC *En Banc* are binding on this Court[15] absent any showing of a grave abuse of its discretion.

Expectedly, petitioner Sabili attributes grave abuse of discretion to respondent COMELEC to justify a review and re-evaluation of the evidence presented by the parties. However, not every claim of an existence of a grave abuse of discretion deserves consideration; otherwise, every erroneous judgment will be void, appellate courts will be overburdened and the administration of justice will not survive.[16] Mere abuse of discretion is not enough.

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[14] *Matalam v. Commission on Elections*, 338 Phil. 447, 470 (1997).

[15] *Japzon v. Commission on Elections*, G.R. No. 180088, January 19, 2009, 576 SCRA 331; citing *Dagloc v. Commision on Elections*, 463 Phil. 263, 288 (2003); *Mastura v. Commission on Elections*, 349 Phil. 423, 429 (1998).

[16] *San Fernando Rural Bank, Inc. v. Pampanga Omnibus Development Corporation*, G.R. No. 168088, April 4, 2007, 520 SCRA 564.

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"Grave abuse of discretion" exists only when there is a "capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law."[17] An unfavorable evaluation of the sufficiency of the evidence presented by a party will not be inquired into unless it is shown that the evaluation was done in an "arbitrary manner by reason of passion, prejudice, or personal hostility."[18] This, the petitioner has failed to prove in his petition for *certiorari*.

In fact, petitioner has not disputed or even mottled the presumption that the COMELEC has "regularly performed"[19] its duties "in the lawful exercise of its jurisdiction."[20] Thus, this Court must not, as it cannot, stray beyond the confines of a *certiorari* review and go so far as to re-examine and re-assess the evidence of the parties and weigh anew its probative value.[21]

Nonetheless, Justice Sereno subscribes to the view that the COMELEC's appreciation and evaluation of evidence are so "grossly unreasonable as to turn into errors of jurisdiction."[22] I beg to disagree. Even if We consider the present case as an exception to the rule on the limitations of a *certiorari* review, the evidence presented by petitioner does not persuade an actual change of his domicile.

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[17] *Id.*; citing *Lee v. People*, G.R. No. 159288, October 19, 2004, 440 SCRA 662, 678-679.

[18] *Rimbunan Hijau Group of Companies v. Oriental Wood Processing Corporation*, G.R. No. 152228, September 23, 2005, 470 SCRA 650, 661.

[19] RULES OF COURT, Rule 131, Sec. 2(m).

[20] *Id., id.*, Sec. 2(n).

[21] *Macawaig v. Balindong*, G.R. No. 159210, September 20, 2006, 502 SCRA 454; citing *Garcia v. National Labor Relations Commission*, G.R. No. 147427, February 7, 2005, 450 SCRA 535, 547.

[22] *Ponencia*, p. 12.

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Petitioner failed to establish compliance with all the requisites for a change of domicile

Petitioner admits that before April 2007 he was a resident of, and his domicile of origin was, San Juan, Batangas. This Court has previously ruled that "domicile" and "residence" are synonymous in election law. A domicile is "the place where a party actually or constructively has his permanent home, where he, no matter where he may be found, at any given time, eventually **intends** to return and remain."[23] Thus, the question of domicile is mainly one of intention[24] and circumstances.[25]

In the consideration of circumstances, three rules must be borne in mind: (1) a man must have residence or domicile somewhere; (2) a residence once established remains until a new one is acquired; and (3) a man can only have one residence or domicile at a time.[26] Clearly, therefore, **there is a presumption in favor of a continuance of an existing domicile**.[27] When the evidence presented by the contending parties are in equipoise that it is impossible for the court to determine with certainty the real intent of the person whose domicile is in question, **the presumption requires the Court to decide against a change of domicile and the retention of a domicile in question.**[28] **Hence, the burden of proving a change of domicile lies on the person who claims that a change has occurred**.[29] In this case, the burden lies on the petitioner.

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[23] *Japzon v. COMELEC*, *supra* note 15; emphasis supplied.

[24] *Limbona v. Commission on Elections*, G.R. No. 186006, October 16, 2009, 604 SCRA 240.

[25] *Pundaodaya v. Commission on Elections*, G.R. No. 179313, September 17, 2009, 600 SCRA 178, 184-185; citing *Domino v. Commission on Elections*, 369 Phil. 798, 818 (1999).

[26] *Id.*

[27] *In the Matter of the Petition for Disqualification of Tess Dumpit-Michelena*, G.R. Nos. 163619-20, November 17, 2005, 475 SCRA 290, 303; Chesire, *PRIVATE INTERNATIONAL LAW*, pp. 218-219.

[28] *PRIVATE INTERNATIONAL LAW* by Chesire, pp. 218-219.

[29] *Bevilaqua v. Bernstein*, 642 F. Supp. 1072, 1073 (S.D.N.Y.1986); cited in *Israel v. Carpenter*, Not Reported in F.Supp., 1995 WL 640534

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For the petitioner to overcome the presumption of the continuity of his domicile of origin, he must show by clear and convincing evidence of (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) definite acts which correspond with the purpose.[30] Thus, to **establish a new domicile of choice, personal presence in the place must be coupled with conduct indicative of that intention**. **Bodily presence in the new locality is not the only requirement; there must be a declared and probable intent to make it one's fixed and permanent place of abode**.[31] Indeed, the most important requirements for the establishment of a new domicile is (1) an actual and physical presence in the new locality; and (2) a clear and declared intent to abandon the old domicile (*animus non revertendi*) and remain in the new place of residence (*animus manendi*).

Intending to establish that petitioner failed to meet the foregoing requisites, respondent Librea presented the following documentary exhibits:

1. Petitioner Sabili's COC filed on December 1, 2009;[32]
2. Tax Declaration issued in 2009 covering the property in Brgy. Pinagtong-ulan, Lipa City and in the name of Bernadette Palomares (Palomares);[33]
3. Certification of Property Holdings issued on November 24, 2009 covering the properties in Pinagtong-ulan, Lipa City in the name of Palomares;[34]

(S.D.N.Y.); *Rich Products Corp. v. Diamond*, 51 Misc.2d 675, 273 N.Y.S.2d 687, N.Y.Sup. 1966, October 11, 1966.

[30] *Id.*

[31] *Domino v. Commission on Elections, supra* note 25, at 820 (1999); emphasis supplied.

[32] *Rollo*, p. 431.

[33] *Id.*

[34] *Id.* at 433.

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4. Palomares' Tax Declaration issued on December 14, 2009 over the lot bought from spouses Manolito and Leonila Suarez and covered by TCT No. T-173356;[35]
5. Palomares' Tax Declaration issued on December 14, 2009 over the lot bought from spouses Rodolfo and Rosalinda Macasaet and covered by TCT No. T-173355;[36]
6. Palomares' Tax Declaration issued on December 14, 2009 over the building on the lot covered by TCT No. T-173356 bought from the spouses Suarez and covered by TCT No. T-173355;[37]
7. Palomares' Tax Declaration issued on December 14, 2009 over the building on the lot covered by TCT No. T-173355 bought from the spouses Suarez and covered by TCT No. T-173355;[38]
8. Palomares' Tax Declaration issued on December 14, 2009 over the building on the lot no. 5553 bought from the spouses Suarez;[39]
9. Certification of No Improvement dated December 14, 2009 over Block 2, Lot 3, Brgy. Lodlod, Lipa City (TCT No. 164454) in the name of Sabili and Palomares;[40]
10. Certification of No Improvement dated December 14, 2009 over Block 2, Lot 5 Brgy. Lodlod, Lipa City (TCT No. T-164455) in the name of Sabili and Palomares;[41]
11. Affidavit of petitioner Florencio Librea dated December 4, 2009;[42]

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[35] *Id.* at 444.

[36] *Id.* at 445.

[37] *Id.* at 446.

[38] *Id.* at 447.

[39] *Id.* at 448.

[40] *Id.* at 442.

[41] *Id.* at 443.

[42] *Id.* at 434.

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12. *Sinumpaang Salysay* Eladio de Torres dated December 4, 2009;[43]
13. Affidavit executed by Violeta Fernandez dated December 28, 2009;[44]
14. Affidavit executed by Rodrigo Macasaet dated December 28, 2009;[45]
15. Affidavit executed by Pablo Lorzano;[46]
16. Voter Certification on petitioner Sabili issued by COMELEC Election Officer Juan D. Aguila, Jr.;[47]
17. Voter's Registration Record No. 07361248 of petitioner Sabili approved on June 21, 1997;[48]
18. 1997 Voter Registration Record of petitioner;
19. Sabili's 2007 COC for Member of House of Representative;[49]
20. Certification of No Marriage for Bernadette Palomares issued by the National Statistics Office (NSO) on December 22, 2009;
21. National Statistics Office (NSO) Advisory on Marriages stating that as of November 28, 2009, Sabili is married to Daisy Cervas;[50]
22. NSO Certification issued on December 22, 2009 stating that Palomares does not appear in the National Indices of Marriages;[51]

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[43] *Id.* at 436.

[44] *Id.* at 454.

[45] *Id.* at 455.

[46] *Id.* at 456.

[47] *Id.* at 438.

[48] *Id.* at 440.

[49] *Id.* at 457.

[50] *Id.* at 441.

[51] *Id.* at 439.

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23. Lipa City Permits and Licensing Office Certification that Sabili has no business therein dated December 11, 2009;[52]
24. Printout of a Facebook webpage of petitioner's daughter, Mey Bernadette Sabili stating that her hometown is "Portofino, Las Piñas, Philippines";[53]
25. Department of Education (DepEd) Lipa City Division Certification that the names Bernadette Palomares, Mey Bernadette Sabili and Francis Meynard Sabili (petitioner's son) do not appear on its list of graduates;[54]
26. Certification from the Office of the Election Officer of Lipa City dated December 28, 2009 that Bernadette Palomares, Mey Bernadette Sabili and Francis Meynard Sabili do not appear in its list of voters.[55]

On the other hand, to support his position that he has abandoned his domicile of origin and adopted Lipa City, Batangas as his domicile of choice, making him qualified to be elected as the City's Mayor, petitioner Sabili presented the following documentary evidence:

1. Affidavit of Bernadatte Palomares;[56]
2. Birth Certificate of Francis Meynard Sabili;[57]
3. Birth Certificate of Mey Bernadette Sabili;[58]
4. Affidavit of Leonila G. Suarez;[59]
5. Certification of Residency issued by Pinagtong-ulan Barangay Chairman Dominador Honrade dated October 30, 2009;[60]

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[52] *Id.* at 449.

[53] *Id.* at 450.

[54] *Id.* at 452.

[55] *Id.* at 453.

[56] Annex "1" to petitioner's Answer; *id.* at 102, 394.

[57] Annex "2" to Sabili's Answer; *id.* at 103, 395.

[58] Annex "3" to Sabili's Answer; *id.* at 394.

[59] Annex "4" to Sabili's Answer; *id.* at 104, 397.

[60] Annex "5" to Sabili's Answer; *id.* at 105, 398.

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6. Notarized Certification of Residency issued by Pinagtong-ulan Barangay Chairman Dominador Honrade dated August 25, 2010;[61]
7. Affidavit executed by Jacinto Honrade Cornejo, Sr.;[62]
8. Affidavit executed by Rosalinda Macasaet;[63]
9. Certificate of Appreciation issued by the parish of Sto. Niño of Pinagtong-ulan;[64]
10. Designation of petitioner in the Advisory Body (AB) of Pinagtong-ulan, San Jose/Lipa City Chapter of Guardians Brotherhood, Inc.;[65]
11. COMELEC Voter Certification on petitioner issued by Election Officer Juan Aguila, Jr.;[66]
12. COMELEC Application for Transfer/Transfer with Reactivation dated June 6, 2009;[67]
13. Petitioner's Income Tax Return for 2007;[68]
14. Official Receipt for petitioner's income tax payment for 2007;[69]
15. Petitioner's Income Tax Return for 2008;[70]
16. Official Receipt for petitioner's income tax payment for 2008;[71]
17. *Pinagsama-samang Sinumpaang Salaysay* dated January 16, 2010;[72]

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[61] Annex "S" to Sabili's Petition for *Certiorari*; *id*. at 300.

[62] Annex "6" to Sabili's Answer; *id*. at 399.

[63] Annex "7" to Sabili's Answer; *id*. at 106, 400.

[64] Annex "8" to Sabili's Answer; *id*. at 107, 401.

[65] Annex "9" to Sabili's Answer; *id*. at 108, 402.

[66] Annex "10" to Sabili's Answer; *id*. at 109, 403.

[67] Annex "11" to Sabili's Answer; *id*. at 110, 404.

[68] Annex "12" to Sabili's Answer; *id*. at 111, 405.

[69] Annex "12-A" to Sabili's Answer; *id*. at 112, 407.

[70] Annex "13" to Sabili's Answer; *id*. at 113, 406.

[71] Annex "13-A" to Sabili's Answer; *id*. at 114, 408.

[72] *Rollo*, p. 212.

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18. *Sinumpaang Salaysay* dated January 16, 2010 executed by Dominador Macuha;[73]
19. Certificate of Canvass of Votes and Proclamation of Winning Candidates for Lipa City Mayor and Vice-Mayor;[74]
20. Sabili's *Panunumpa sa Katungkulan* dated July 30, 2010.[75]

Petitioner claims that the foregoing documents are sufficient to constitute substantial evidence of his change of domicile pursuant to this Court's pronouncements in *Mitra v. COMELEC*.[76] A closer inquiry, however, will reveal a whale of difference between the present case and *Mitra*. Consider: While there were circumstances in *Mitra* that led the majority of this Court to conclude that petitioner Mitra made "incremental transfer moves" to change his domicile (by, among others, leasing a dwelling, purchasing a lot for his permanent home, building a house thereon, and maintaining substantial investments in the new locality in the form of an experimental pineapple plantation, farm, farmhouse, and a cock farm), the petitioner in this case, Sabili, failed to adduce any evidence that would substantially prove a change of his domicile from San Juan, Batangas to Lipa City whether by incremental acts or an immediate deed. There lies the difference.

As shown by the Certification of No Improvement issued by the Lipa City assessor, petitioner made no efforts to build a house on the lots located in Brgy. Lodlod that are actually registered in his own name.[77] Neither has he maintained any business in the locality despite his avowed profession as a businessman.[78] As implied by *Mitra*, having substantial investments and constructing improvements on properties bought

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[73] *Id.* at 213.

[74] Annex "P" to Petition for *Certiorari*.

[75] Annex "Q" to Petition for *Certiorari*.

[76] G.R. No. 191938, October 19, 2010.

[77] *Rollo*, pp. 442-443.

[78] *Id.* at 449.

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in the new locality are indicative of *animus manendi*. Hence, the non-existence of such evidence in the present case supports respondents' claim of continuance of his domicile of origin in San Juan, Batangas.

Indeed, petitioner heavily anchors his claimed residency in Pinagtong-ulan, Lipa City since April 2007 primarily on his allegation that he purchased a house and lot thereat in the same month, registered the property in the name of his "common-law spouse," Bernadette Palomares (Palomares), and actually resided therein since April 2007 together with Palomares and their children.

To say the least, this claim is not only questionable but appalling. Petitioner's temerity in asserting that he had been living with Palomares for 20 years, **while he was legally married to another**, and so should be considered to have followed his paramour's residence simply goes against the norms of decency, if not the law against concubinage under Article 334 of the Revised Penal Code.

Thus, We cannot now recognize his residency in Lipa City on the pretext that his "common-law spouse" lives therein. ***Commodum ex injuria sua non habere debet.*** **No person ought to derive any advantage of his own wrong**.[79]

Even in *Romualdez-Marcos v. COMELEC*,[80] this Court did not consider Mrs. Marcos to have followed the residence of former President Marcos, her legal spouse. Why should this Court now consider Sabili to have adopted a domicile of choice in Lipa just because his "common-law spouse" has a house registered in her name located in the same city? To consider a

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[79] *Rimbunan Hijau Group of Companies and Niugini Lumber Merchants Pty., Ltd. v. Oriental Wood Processing Corporation*, G.R. No. 152228, September 23, 2005, 470 SCRA 650; *European Resources and Technologies, Inc. v. Ingenieuburo Birkhahn + Nolte, Ingeniurgesellschaft mbh*, G.R. No. 159586, July 26, 2004, 435 SCRA 246; *Communication Materials Design, Inc. v. Court of Appeals*, G.R. No. 102223, August 22, 1996, 260 SCRA 673.

[80] G.R. No. 119976, September 18, 1995, 248 SCRA 300.

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man to follow the residence of the woman who he cannot marry is dangerous precedent.

If this Court is disposed to establish a rule that a man can follow the residence of a woman, that woman must be the man's lawful wife, not his concubine. This is corollary to the provisions of the Family Code explicitly imposing on the husband the obligation to establish his domicile with his wife and live with her:

> Art. 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.
>
> Art. 69. The husband and wife shall fix the family domicile. In case of disagreement, the court shall decide.
>
> The court may exempt one spouse from living with the other if the latter should live abroad or there are other valid and compelling reasons for the exemption. However, such exemption shall not apply if the same is not compatible with the solidarity of the family.

Further, even assuming that it was petitioner who negotiated the purchase and paid for the property in Pinagtong-ulan (no deed of sale was presented), his act of having it registered in the name of his "common-law" spouse only indicates a donative intent without the necessary formalities or the payment of taxes, **not** the intent to abandon his domicile of origin and maintain a new domicile of choice.

In fact, Sabili's resounding omission to provide the COMELEC and this Court the deeds of sale over the properties in Pinagtong-ulan, Lipa City executed by the spouses Manolito and Leonila Suarez and the spouses Rodolfo and Rosalinda Macasaet in favor of Palomares, as well as the certificates of title, puts doubt on Sabili's allegation that there was a transfer of ownership over the properties to Palomares in April 2007 that would have allowed her and/or the petitioner to claim the right to reside in the properties. This doubt is aggravated by the fact that the tax declarations over the properties show that the deeds of sale were drawn up and notarized only in August 2008.[81]

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[81] *Rollo*, pp. 444-448; Private respondent's Annex "B".

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Indeed, the claim of an actual and physical transfer on the same month of the negotiation, April 2007, strains credulity considering that it is admitted by Sabili that he ran for a position in the lower house of Congress in the May 2007 elections (for which he filed a COC indicating his domicile as San Juan, Batangas). Was there enough time to effect an actual and physical change a month before the elections? If there was time to relocate, why were the deeds of sale drawn up and notarized only in August 2008[82] and the tax declarations transferred in the name of Palomares only in the same month if they had already relocated in April 2007?

All these inconsistencies easily show that when Sabili stated in his COC that he had lived in Brgy. Pinagtong-ulan since April 2007, he had deliberately committed a material misrepresentation obviously to deceive the voting public.

It is also curious to note that even Sabili's common-law spouse, named as the owner of the property in Brgy. Pinagtong-ulan, is registered as a resident of 215 Elizalde Street, BF Homes, Parañaque City in the tax declarations covering the Pinagtong-ulan property.[83] Clearly, the COMELEC could not be held "grossly unreasonable" for holding that **while Palomares might be a Lipa City property owner, she was a resident of Parañaque City**. Official documents issued by the Office of the City Assessor of Lipa City clearly establish such fact. This official records cannot be defeated by a self-serving affidavit drawn up by petitioner's common-law wife that she resides in Lipa City in order to support petitioner's claim that he too is a resident of the city.

Parenthetically, Palomares' Affidavit cannot be considered as a declaration against her interest under the rules on evidence because the primary requisite of Sec. 38, Rule 130[84] is that the

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[82] *Id.*

[83] *Id.*

[84] Section 38. *Declaration against interest.* — The declaration made by a person deceased, or unable to testify, against the interest of the declarant,

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declarant is dead or unable to testify, and it is not alleged that Palomares has died or is now unable to testify.

Instead, Palomares' Affidavit should be taken with the metaphorical grain of salt. The numerous falsities committed by Palomares in various official and governmental documents negate any faith on her word and betray her propensity to lie to favor her "family" so that it is not grossly unreasonable to hold that Palomares have committed a misrepresentation in her affidavit in order to support Sabili. This is readily apparent in the very documents presented by Sabili as his own evidence. For instance, Palomares had previously perjured herself as the informant in the birth certificates of her children sired by petitioner.[85] Palomares asserted in the birth certificate of her son that she married petitioner on December 2, 1980 in Bulacan, Bulacan. On the other hand, she claimed that she and petitioner were married on March 2, 1983 in Manila in the birth certificate of her daughter when the fact certified by the NSO is that she and petitioner had never been married.[86] These misrepresentations are undeniably important as they determine the legitimacy or illegitimacy of the children. Hence, the doctrine of *falsus in uno, falsus in omnibus* clearly applies and the COMELEC had reason not to find Palomares' statements worthy of credit.

So are Sabili's statements. It should not escape this Court that Sabili has adopted the untruthful statements of Palomares in the birth certificates of their children as his own evidence in the proceedings before the COMELEC and this Court. He has, therefore, clearly sanctioned the falsities boldly stated thereon. Worse, the same predilection for the untruth can be observed in Sabili's Voter's Certification that he presented as his own evidence. While it is not denied that he is married to Daisy

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if the fact is asserted in the declaration was at the time it was made so far contrary to declarant's own interest, that a reasonable man in his position would not have made the declaration unless he believed it to be true, may be received in evidence against himself or his successors in interest and against third persons.

[85] *Rollo*, pp. 58-59.

[86] *Id.* at 439; Respondent's Annex "F".

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Cervas Sabili, he did not dispute the entry made on his status as "single." In fact, in his Income Tax Returns (ITRs) for 2007 and 2008 he claimed that his spouse's name was "Sabili Bernadette Palomares," when the NSO certified that as of November 2009, Sabili was still legally married to Daisy Cervas. Clearly, petitioner shows a pattern of false machinations intended to assume a coveted electoral position. Unfortunately for him, deceit cannot take the place of compliance with the statutory qualifications for office.

It is also notable that petitioners' children by Palomares have not attended any of the educational institutions in Lipa City,[87] nor have Palomares or the children been registered as voters of Lipa City[88] despite the fact that Sabili filed a COC for the Mayoralty position. Instead, Sabili's own daughter made an extra-judicial declaration that she considers "Portofino, Las Piñas" as her hometown, not Batangas.

In the case of *Fernandez v. House of Representatives Electoral Tribunal*,[89] this Court considered the existence of "real and substantial reason" to indicate *animus manendi* in the purported new domicile of choice:

> In the case at bar**, there are real and substantial reasons for petitioner to establish Sta. Rosa as his domicile of choice and abandon his domicile of origin and/or any other previous domicile. To begin with, petitioner and his wife have owned and operated businesses in Sta. Rosa since 2003. Their children have attended schools in Sta. Rosa at least since 2005.** Although ownership of property should never be considered a requirement for any candidacy, petitioner had sufficiently confirmed his intention to permanently reside in Sta. Rosa by purchasing residential properties in that city even prior to the May 2007 election, as evidenced by **certificates of title issued in the name of petitioner** and his wife. One of these properties is a residence in Bel-Air, Sta. Rosa which petitioner acquired even before 2006 but which petitioner had been leasing

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[87] *Id.* at 452.

[88] *Id.* at 453.

[89] G.R. No. 187478, December 21, 2009, 608 SCRA 733.

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out. He claims that he rented out this property because prior to 2006 he had not decided to permanently reside in Sta. Rosa. This could explain why in early 2006 petitioner had to rent a townhouse in Villa de Toledo — his Bel-Air residence was occupied by a tenant. The relatively short period of the lease was also adequately explained by petitioner – they rented a townhouse while they were in the process of building their own house in Sta. Rosa. True enough**, petitioner and his spouse subsequently purchased a lot also in Villa de Toledo in April 2007, about a month before election day, where they have constructed a home for their family's use as a residence.** In all, petitioner had adequately shown that his transfer of residence to Sta. Rosa was bona fide and was not merely for complying with the residency requirement under election laws.[90]

Unlike in *Fernandez* where We sustained petitioner's change of domicile and qualification for his office, Sabili has no "real and substantial reason" to establish his domicile in Lipa City and abandon his domicile of origin in San Juan, Batangas. With no children or wife actually residing in Lipa City, or business interests therein, it is not "grossly unreasonable" for the COMELEC to conclude that petitioner had no "declared and probative intent" to adopt Lipa City as his domicile of choice in the absence of a real and substantial reason to do so.

Contrary to Justice Sereno's Opinion, Sabili's act of filing his ITR in Revenue District Office No. (RDO) 59 in Lipa City for the years 2007 and 2008 does not indicate a change of domicile from San Juan to Lipa City, Batangas. RDO 59's jurisdiction includes both San Juan and Lipa City[91] so that the intent to remain cannot immediately be ascribed to Lipa City. On the contrary, his filing of the ITR in RDO 59 can also be used to support his intent to remain in San Juan, Batangas—his domicile of origin. In fact, petitioner left the space for his residence in his 2007 ITR blank without indicating where he was actually residing. To reiterate, any doubt on residency or domicile shall be resolved in favor of the domicile of origin.

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[90] Emphasis supplied.

[91] <http://www.bir.gov.ph/directory/rdoinner.htm#66> visited March 15, 2012.

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In the clear absence of the most important element in the establishment of a domicile—*animus manendi*-—it is of no use to discuss the consequence of testimonies as to his bodily presence in the locality. As stated, **all the requisites** for a valid change of domicile or residence is necessary for election law purposes. In the absence of even just one element, the presumption is in favor of the maintenance and continuity of the domicile of origin. Hence, in this case, petitioner is presumed to still be a resident of San Juan, Batangas and disqualified from taking the mayoralty position in Lipa City, Batangas.

The notarized certification of the *Baranggay Chairman* of Brgy. Pinagtong-ulan, Lipa City does not bar Us from holding this position contrary to Justice Sereno's opinion. My esteemed colleague bases her appreciation of the notarized certification on Section 44, Rule 130 of the Rules of Court, which states:

> Section 44. *Entries in official records.* — Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated.

As is readily apparent, Section 44, Rule 130 pertains to "entries in official records." Needless to state, no such "entries" or "records" were referred to in the certification, much less presented before the COMELEC or this Court. Instead, the certification plainly states in a pro-forma way: "This is to certify that Meynardo A. Sabili, 53 years old is a resident of Zone 5 of Barangay Pinagtong-ulan Lipa City since April 2007." Neither does the certification mention any record kept by the Baranggay Secretary, or even cite any of its entries. Clearly, Section 44, Rule 130 cannot clothe the certification executed by the Baranggay Chairman of Pinagtong-ulan with finality and conclusiveness. Instead, as it is not the duty of the Baranggay Chairman, but the duty of the Baranggay Secretary, "to keep an updated record of all inhabitants of the *baranggay*,"[92] the certification must be dismissed as nothing but containing hearsay statements.

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[92] Section 394 (d) (6), Local Government Code.

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In fact, even if we consider *arguendo* the Baranggay Chairman's certification stating that Sabili is a resident of his *baranggay*, there is no indication that the term "resident" used therein carries the same meaning as the "resident" used in the provision requiring residence as a qualification for candidacy, which is equivalent to domicile that requires not just physical presence but, again, *animus manendi*. At most, the certification may only attest to the bodily presence of petitioner in his *baranggay*, but not the element of Sabili's intent to remain therein which, as indicated by circumstances, is patently absent.

The certification is also negated given the *conflicting* testimonies of residents of the Brgy. Pinagtong-ulan where petitioner claims to be residing.[93] Again, the rule is in the presence of conflicting evidence on the issue of domicile, the Court is behooved to uphold the ***presumption of the continuity of the domicile of origin***.[94]

Both the Certificate of Appreciation issued by the Parish of Santo Niño and Sabili's Designation as a Member of the Advisory Body of Guardians Brotherhood Incorporated cannot be considered to establish Sabili's domicile in Brgy. Pinagtong-ulan since, as noted by the COMELEC, the first merely mentions material and financial support to the fiesta celebration. And there is nothing in the second document making residency in Brgy. Pinagtong-ulan as a requisite for the designation in the Advisory Board.

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[93] Respondent Librea presented his Affidavit as well as the Affidavits of Eladio de Torres, Violeta Fernandez, Rodrigo Macasaet and Pablo Lorzano. Sabili on the other hand, presented the Affidavits of Leonila Suarez, Jacinto Cornejo Sr. and Rosalinda Macasaet. Notably, the witnesses of Sabili all benefited from a business transaction with Palomares, Sabili's common-law wife. Suarez and Macasaet sold properties to Palomares while Cornejo was hired by her to renovate a house. Hence, it is not far-fetched to conclude that they would be biased in favour of Sabili. Furthermore, the *Pinagsama-samang Sinumpaang Salaysay* dated January 16, 2010 and the *Sinumpaang Salaysay* executed by Dominador Macuha attributed familial relations to the witnesses of Librea and the wife of Sabili's opponent for the mayoralty position.

[94] Bevilaqua, *supra* note 29.

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Furthermore, it notable that Sabili applied for transfer of his registration record only on June 9, 2009 and the same was approved in October 31, 2009 as proven by Sabili's voter certification. Technically, therefore, Sabili is a registered voter of Lipa City only in October 2009, **seven** months prior to the May 2010 elections.

Indeed, it is not only that "each evidence presented by petitioner… fail(s) to convincingly show that fact of his residence at Pinagtong-ulan since 2007,"[95] even collectively considered, these pieces of evidence tend to sufficiently establish such failure.

As Sabili's acts belie his intent to change his domicile and be a resident of Lipa City, he had deliberately and falsely misrepresented in his COC that he is resident of Lipa City, knowing fully well that he is not, in order to qualify as a candidate for the office of the Mayor. Sabili's statement in the COC cannot be dismissed as a simple mistake that does not warrant its cancellation since residence being primarily a matter of intent, any falsehood with regards thereto, as in this case, reveals an intentional and deliberate misrepresentation that cannot be sanctioned by this Court. Hence, the misrepresentation committed by Sabili regarding his residence is a clear ground for the cancellation of his COC under Section 78 of the Omnibus Election Code (OEC) and his disqualification from the office he is presently occupying.

Sabili's subsequent election is of no consequence considering that an invalid COC cannot give rise to a valid candidacy, much less valid votes. More importantly, while the electorate's will is indeed primary, the electorate likewise deserves a person who is unwilling to resort to a Machiavellian circumvention of the laws and blatant falsehood just to suit his own purposes. He is not only disqualified from a public office but more importantly does not deserve the public's trust.

I, therefore, submit that the COMELEC's Resolutions be upheld and the instant petition for *certiorari* be denied.

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[95] *Ponencia*, pp. 23-24.