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[G.R. No. 209835. September 22, 2015]

ROGELIO BATIN CABALLERO, *petitioner, vs.* **COMMISSION ON ELECTIONS and JONATHAN ENRIQUE V. NANUD, JR.,** *respondents.*

SYLLABUS

1. POLITICAL LAW; COMMISSION ON ELECTIONS (COMELEC); COMELEC RULES OF PROCEDURE ARE SUBJECT TO LIBERAL CONSTRUCTION; THE COMELEC MAY ALSO SUSPEND ITS OWN RULES IN THE INTEREST OF JUSTICE AND IN ORDER TO OBTAIN SPEEDY DISPOSITION OF ALL MATTERS PENDING BEFORE IT.— While private respondent failed to comply with the above-mentioned requirements, the settled rule, however, is that the COMELEC Rules of Procedure are subject to liberal construction. Moreover, the COMELEC may exercise its power to suspend its own rules as provided under Section 4, Rule 1 of their Rules of Procedure. Sec. 4. *Suspension of the Rules*. — In the interest of justice and in order to obtain speedy disposition of all matters pending before the Commission, these rules or any portion thereof may be suspended by the Commission. Under this authority, the Commission is similarly enabled to cope with all situations without concerning itself about procedural niceties that do not square with the need to do justice, in any case without further loss of time, provided that the right of the parties to a full day in court is not substantially impaired. Here, we find that the issue raised, *i.e.*, whether petitioner had been a resident of Uyugan, Batanes at least one (1) year before the elections held on May 13, 2013 as he represented in his COC, pertains to his qualification and eligibility to run for public office, therefore imbued with public interest, which justified the COMELEC's suspension of its own rules. We adopt the COMELEC's ratiocination in accepting the petition.

2. ID.; ID.; CITIZENSHIP RETENTION AND REACQUISITION ACT OF 2003 (R.A. 9225); THE LAW DOES NOT PROVIDE FOR RESIDENCY REQUIREMENT FOR THE REACQUISITION OR

Supreme Court E-Library

RETENTION OF PHILIPPINE CITIZENSHIP; NOR DOES IT MENTION ANY EFFECT OF SUCH REACQUISITION OR RETENTION OF PHILIPPINE CITIZENSHIP ON THE CURRENT RESIDENCE OF THE CONCERNED NATURAL-BORN FILIPINO.— RA No. 9225, which is known as the *Citizenship Retention and Reacquisition Act of 2003*, declares that natural-born citizens of the Philippines, who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country, can re-acquire or retain his Philippine citizenship under the conditions of the law. The law does not provide for residency requirement for the reacquisition or retention of Philippine citizenship; nor does it mention any effect of such reacquisition or retention of Philippine citizenship on the current residence of the concerned natural-born Filipino. RA No. 9225 treats citizenship independently of residence. This is only logical and consistent with the general intent of the law to allow for dual citizenship. Since a natural-born Filipino may hold, at the same time, both Philippine and foreign citizenships, he may establish residence either in the Philippines or in the foreign country of which he is also a citizen. However, when a natural-born Filipino with dual citizenship seeks for an elective public office, residency in the Philippines becomes material.

3. **ID.; ID.; THE LOCAL GOVERNMENT CODE; ONE (1) YEAR RESIDENCY REQUIREMENT; THE TERM "RESIDENCE" IS TO BE UNDERSTOOD NOT IN ITS COMMON ACCEPTATION AS REFERRING TO "DWELLING" OR "HABITATION," BUT RATHER TO "DOMICILE" OR LEGAL RESIDENCE, THAT IS, "THE PLACE WHERE A PARTY ACTUALLY OR CONSTRUCTIVELY HAS HIS PERMANENT HOME, WHERE HE, NO MATTER WHAT WHERE HE BE MAY BE FOUND AT ANY GIVEN TIME, EVENTUALLY INTENDS TO RETURN AND REMAIN (*ANIMUS MANENDI*).—** Clearly, the Local Government Code requires that the candidate must be a resident of the place where he seeks to be elected at least one year immediately preceding the election day. Respondent filed the petition for cancellation of petitioner's COC on the ground that the latter made material misrepresentation when he declared therein that he is a resident of Uyugan, Batanes for at least one year immediately preceeding the day of elections. The term "residence" is to be understood not in its common

Supreme Court E-Library

acceptation as referring to "dwelling" or "habitation," but rather to "domicile" or legal residence, that 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 (*animus manendi*)." A domicile of origin is acquired by every person at birth. It is usually the place where the child's parents reside and continues until the same is abandoned by acquisition of new domicile (*domicile of choice*). It consists not only in the intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention.

4. **ID.; ID.; PETITIONER HAD EFFECTIVELY ABANDONED HIS DOMICILE IN THE PHILIPPINES AND TRANSFERRED HIS DOMICILE OF CHOICE IN CANADA; HIS FREQUENT VISITS TO UYUGAN, BATANES DURING HIS VACATION FROM WORK IN CANADA CANNOT BE CONSIDERED AS WAIVER OF SUCH ABANDONMENT.—** Petitioner was a natural born Filipino who was born and raised in Uyugan, Batanes. Thus, it could be said that he had his domicile of origin in Uyugan, Batanes. However, he later worked in Canada and became a Canadian citizen. In *Coquilla v. COMELEC*, we ruled that naturalization in a foreign country may result in an abandonment of domicile in the Philippines. This holds true in petitioner's case as permanent resident status in Canada is required for the acquisition of Canadian citizenship. Hence, petitioner had effectively abandoned his domicile in the Philippines and transferred his domicile of choice in Canada. His frequent visits to Uyugan, Batanes during his vacation from work in Canada cannot be considered as waiver of such abandonment.

5. **ID.; ID.; PETITIONER FAILED TO PRESENT COMPETENT EVIDENCE TO PROVE THAT HE WAS ABLE TO RE-ESTABLISH HIS RESIDENCE IN UYUGAN WITHIN THE PERIOD OF ONE YEAR IMMEDIATELY PRECEDING THE MAY 13, 2013 ELECTIONS.—** Petitioner's retention of his Philippine citizenship under RA No. 9225 did not automatically make him regain his residence in Uyugan, Batanes. He must still prove that after becoming a Philippine citizen on September 13, 2012, he had reestablished Uyugan, Batanes as his new domicile of choice which is reckoned from the time he made it

Supreme Court E-Library

as such. The COMELEC found that petitioner failed to present competent evidence to prove that he was able to reestablish his residence in Uyugan within a period of one year immediately preceding the May 13, 2013 elections. It found that it was only after reacquiring his Filipino citizenship by virtue of RA No. 9225 on September 13, 2012 that petitioner can rightfully claim that he re-established his domicile in Uyugan, Batanes, if such was accompanied by physical presence thereat, coupled with an actual intent to reestablish his domicile there. However, the period from September 13, 2012 to May 12, 2013 was even less than the one year residency required by law.

6. ID.; ID.; THE COMELEC PROPERLY CANCELLED PETITIONER'S CERTIFICATE OF CANDIDACY (COC) FOR MATERIAL MISREPRESENTATION.— We have held that in order to justify the cancellation of COC under Section 78, it is essential that the false representation mentioned therein pertains to a material matter for the sanction imposed by this provision would affect the substantive rights of a candidate — the right to run for the elective post for which he filed the certificate of candidacy. We concluded that material representation contemplated by Section 78 refers to qualifications for elective office, such as the requisite residency, age, citizenship or any other legal qualification necessary to run for a local elective office as provided for in the Local Government Code. Furthermore, aside from the requirement of materiality, the misrepresentation must consist of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible. We, therefore, find no grave abuse of discretion committed by the COMELEC in canceling petitioner's COC for material misrepresentation.

BRION, *J.*, *separate concurring opinion*:

1. POLITICAL LAW; COMMISSION ON ELECTIONS (COMELEC); CITIZENSHIP RETENTION AND REACQUISITION ACT OF 2003 (R.A. 9225); DOES NOT TOUCH ON RESIDENCY; CITIZENSHIP AND RESIDENCY ARE SEPARATE AND DISTINCT REQUIREMENTS FOR QUALIFICATIONS FOR LOCAL ELECTIVE OFFICE.— RA 9225 does not touch on a person's residence; does not mention it; and does not even require residence in the Philippines prior

Supreme Court E-Library

to or at the time he or she takes the oath to re-acquire Philippine citizenship. In fact, RA 9225 allows former natural-born citizens to re-acquire their Philippine citizenship while still residing in the country that granted them naturalized citizenship status. ***Residency in the Philippines becomes material only when the natural-born Filipino availing of RA 9225, decides to run for public office***. As provided under Section 5 of this law, those who seek elective public office shall, in addition to taking the oath of allegiance, make a personal and sworn renunciation of any and all foreign citizenship and *meet the qualifications for holding such public office that the Constitution and existing laws require.*

2. ID.; ID.; ID.; RE-ACQUISITION OF CITIZENSHIP, DOES NOT, BY ITSELF, IMPLY NOR ESTABLISH THE FACT OF PHILIPPINE RESIDENCY.— The qualifications for holding local elective office are found in Section 39 of the LGC. Among others, Section 39 requires a candidate for a local elective post to be a citizen of the Philippines and a resident of the locality where he or she intends to be elected for at least one year immediately preceding the day of the election. RA 9225 provides the citizenship requirement when the former natural-born Filipino re-acquires Philippine citizenship under this law's terms. Residency, on the other hand, is the domain of Section 39 of the LGC. These two laws complement each other in qualifying a Filipino with a re-acquired citizenship, for candidacy for a local elective office. Notably under this relationship, RA 9225 does not require any residency allegation, proof or qualification to avail of its terms. RA 9225 does not even require Filipinos with re-acquired citizenship to establish or maintain any Philippine residence, although they can, as Filipinos, come and go as they please into the country without any pre-condition other than those applicable to all Filipino citizens. By implication, RA 9225 (a dual citizenship law) allows residency anywhere, within or outside the Philippines, before or after re-acquisition of Philippine citizenship under its terms. Re-acquisition of citizenship, however, does not — by itself — imply nor establish the fact of Philippine residency. In these senses, RA 9225 and the LGC are complementary to, yet are independent of, one another.

3. ID.; ID.; SETTLED RULES AND JURISPRUDENCE ON DOMICILE.— Jurisprudence provides the following

Supreme Court E-Library

requirements to effect a change of domicile or to acquire a domicile by choice: (1) residence or bodily presence in the new locality; (2) a *bona fide* intention to remain there; and (3) a *bona fide* intention to abandon the old domicile. These are the *animus manendi* and the *animus non revertendi* that jurisprudence requires to be satisfied. Under these requirements, no specific unbending rule exists in the appreciation of compliance because of the element of intent — an abstract and subjective proposition that can only be determined from the surrounding circumstances. Separately from intent is the question of the actions taken pursuant to the intent, and the consideration of the applicable laws, rules and regulations. Jurisprudence has likewise laid out three basic **foundational rules** in the consideration of domicile: *First*, a man must have a residence or domicile somewhere; *Second,* when once established, it remains until a new one is acquired; and *Third*, **a man can have but one residence or domicile at a time**. As jurisprudential foundational rules, these should be fully applied in appreciating Caballero's circumstances.

4. ID.; ID.; PETITIONER LOST HIS DOMICILE IN *UYUGAN* WHEN HE ESTABLISHED A NEW DOMICILE IN CANADA; TO TRANSFER BACK HIS DOMICILE IN *UYUGAN*, HE HAS TO PROVE THE FACT OF TRANSFER AND THE CONSEQUENT RE-ESTABLISHMENT OF A NEW DOMICILE IN *UYUGAN*.— In this limited sense, I believe that the Court may look into the Canadian citizenship laws to get an insight into Caballero's intent. To reiterate, Caballero would not have been granted Canadian citizenship had he not applied for it and had he not been a Canadian permanent resident for the required period. Under the foundational rule that a man can only have one domicile, Caballero's moves constitute positive, voluntary, overt and intentional abandonment of his domicile of origin. His moves signified, too, the establishment of a new domicile of choice in Canada. Thus, to comply with Section 39 of the LGC by transferring his domicile anew to Uyugan, Caballero has to prove the fact of transfer and his re-established domicile by residing in Uyugan for at least one year immediately before the May 13, 2013 elections. In accordance with the jurisprudential rules on change of domicile, he must establish substantial physical presence in Uyugan during the required period.

Supreme Court E-Library

5. ID.; ID.; OMNIBUS ELECTION CODE; CERTIFICATE OF CANDIDACY (COC); GROUNDS FOR CANCELLATION; PETITIONER COMMITTED MATERIAL MISREPRESENTATION.— The present Rule 65 petition for *certiorari*, filed in relation with Rule 64 of the Rules of Court, arose from the petition to cancel the CoC of Caballero. In this context, the nature and requisites of CoC cancellation proceedings are and should be the primary considerations in the resolution of the present petition. A petition to cancel CoC is governed by Section 74 in relation with Section 78 of the Omnibus Election Code (*OEC*). As these provisions operate, the would-be candidate must state only **true facts** in the CoC, as provided by Section 74; any false representation of a material fact may lead to the cancellation or denial of his or her CoC, under Section 78. x x x In the present case, Caballero filed his CoC on October 3, 2012. He asserted in his CoC that he is a resident of Uyugan (and impliedly, not a permanent resident of a foreign country) for at least one year immediately preceding the May 13, 2013 elections. By making this assertion, Caballero committed a material misrepresentation in his CoC since he effectively re-established his domicile in Uyugan and could have been a permanent resident only from September 12, 2012.

6. ID.; ID.; ID.; ID.; NO GRAVE ABUSE OF DISCRETION ON THE PART OF THE COMELEC IN CANCELLING PETITIONER'S COC.— Jurisprudence has consistently defined grave abuse of discretion as a "capricious or whimsical exercise of judgment x x x equivalent to lack of jurisdiction." The abuse of discretion, to be grave, must be so patent and gross as to amount to an "evasion of a positive duty or to 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." Based on this definition, the grave abuse of discretion that justifies the grant of *certiorari* involves an error or defect of jurisdiction resulting from, among others, an indifferent disregard for the law, arbitrariness and caprice, an omission to weigh pertinent considerations, or lack of rational deliberation in decision making. It should also be remembered that the remedy of *certiorari* applies only to rulings that are not, or are no longer, appealable. Thus, *certiorari* is not an appeal that opens up the whole case for review; it is limited to a consideration of

Supreme Court E-Library

the specific aspect of the case necessary to determine if grave abuse of discretion had intervened. In short, to assail a Comelec ruling, the assailing party must show that the final and inappealable ruling is completely void, not simply erroneous, because the Comelec gravely abused its discretion in considering the case or in issuing its ruling.

LEONEN, *J.*, *concurring opinion*:

1. POLITICAL LAW; COMMISSION ON ELECTIONS (COMELEC); DOMICILE IS DISTINCT FROM CITIZENSHIP; FOR PURPOSES OF ELECTION LAW, "RESIDENCE" IS SYNONYMOUS WITH DOMICILE AND THE TERM "RESIDENCE" CONTEMPLATES "DOMICILE."— Domicile is distinct from citizenship. They are separate matters. Domicile is not a mere incident or consequence of citizenship and is not dictated by it. The case of petitioner Rogelio Batin Caballero who, as it is not disputed, has Uyugan, Batanes as his domicile of origin must be resolved with this fundamental premise in mind. It is settled that for purposes of election law, "residence" is synonymous with "domicile." "Domicile" denotes a fixed permanent residence to which, when absent for business, pleasure, or like reasons, one intends to return. Jurisprudence has established three fundamental principles governing domicile: "first, that [one] must have a residence or domicile somewhere; second, that where once established it remains until a new one is acquired; and third, [one] can have but one domicile at a time." In this jurisdiction, it is settled that, for election purposes, the term "residence" contemplates "domicile."

2. ID.; ID.; QUESTION OF RESIDENCE IS MAINLY ONE OF INTENTION.— For the same purpose of election law, the question of residence is *mainly one of intention*. As explained in *Gallego v. Verra*: The term "residence" as used in the election law is synonymous with "domicile," which imports not only intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention. In order to acquire a domicile by choice, there must concur (1) residence or bodily presence in the new locality, (2) an intention to remain there, and (3) an intention to abandon the old domicile. In other words, there must be an *animus non revertendi* and an *animus manendi*. The purpose to remain in or at the domicile

Supreme Court E-Library

of choice must be for an indefinite period of time. The acts of the person must conform with his purpose. The change of residence must be voluntary; the residence at the place chosen for the domicile must be actual; and to the fact of residence there must be added the *animus manendi*.

3. **ID.; ID.; THE REACQUISITION OF CITIZENSHIP DOES NOT IPSO FACTO RESULT IN THE REACQUISITION OF DOMICILE.—** Section 39 (a) of the Local Government Code provides that in order to be eligible for local elective public office, a candidate must possess the following qualifications: (a) a citizen of the Philippines; (b) a registered voter in the barangay, municipality, city, province, or in the case of a member of the Sangguniang Panlalawigan, Sangguniang Panlungsod, or Sangguniang Bayan, the district where he or she intends to be elected; (c) *a resident therein for at least one (1) year immediately preceding the day of the election;* and (d) able to read and write Filipino or any other local language or dialect. A position equating citizenship with residency is unwarranted. Citizenship and domicile are two distinct concepts. One is not a function of the other; the latter is not contingent on the former. Thus, the loss of one does not necessarily result in the loss of the other. Loss of domicile as a result of acquiring citizenship elsewhere is neither inevitable nor inexorable. This is the clear import of *Japzon v. COMELEC*, where this court dissociated domicile from citizenship by disproving the obverse, i.e., explaining that the reacquisition of one does not ipso facto result in the reacquisition of the other:

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

Supreme Court E-Library

5. ID.; ID.; THE PRIMACY OF INTENTION IS EVIDENT IN THE REQUISITES FOR ACQUISITION OF DOMICILE OF CHOICE.— The primacy of intention is settled. In *Limbona v. COMELEC*, this court stated, in no uncertain terms, that "for purposes of election law, the question of residence is *mainly one of intention*." This primacy is equally evident in the requisites for acquisition of domicile by choice (and concurrent loss of one's old domicile): "In order to acquire a domicile by choice, these must concur: (1) residence or bodily presence in the new locality, (2) an intention to remain there, and (3) an intention to abandon the old domicile." These requisites were refined in *Romualdez-Marcos v. COMELEC*: [D]omicile of origin is not easily lost. To successfully effect a change of domicile, one must demonstrate: 1. An actual removal or an actual change of domicile; 2. A bona fide intention of abandoning the former place of residence and establishing a new one; and 3. Acts which correspond with the purpose.

6. ID.; ID.; DOMICILE IS ULTIMATELY A FACTUAL MATTER AND IS NOT SO EASILY RESOLVED BY MERE REFERENCE TO FORMALITIES THAT MAY HAVE OCCURRED AND THAT PERTAIN TO THE ENTIRELY DIFFERENT MATTER OF CITIZENSHIP.— Intention, however, is a state of mind. It can only be ascertained through overt acts. Ascertaining the second requirement — a bona fide intention to abandon and replace one's domicile with another — further requires an evaluation of the person's "acts, activities[,] and utterances." *Romualdez-Marcos'* inclusion of the third requirement evinces this. Bona fide intention cannot stand alone; it must be accompanied by and attested to by "[a]cts which correspond with the purpose." Examining a person's "acts, activities[,] and utterances" requires a nuanced approach. It demands a consideration of context. This court has made it eminently clear that there is no expedient solution as to how this is determined: "*There is no hard and fast rule by which to determine where a person actually resides*." Domicile is ultimately a factual matter and is not so easily resolved by mere reference to formalities that may have occurred and that pertain to the entirely different matter of citizenship.

7. ID.; ID.; STANDARDS AND REQUISITES IN APPLYING FOREIGN LAW IN PHILIPPINE TRIBUNALS.— I nevertheless manifest my reservation about the reference to and application

Supreme Court E-Library

of the Canadian Citizenship Law. The standards and requisites for applying foreign law in Philippine tribunals are settled. As aptly explained in *Zalamea v. Court of Appeals*: Foreign laws do not prove themselves nor can the courts take judicial notice of them. Like any other fact, they must be alleged and proved. Written law may be evidenced by an official publication thereof or by a copy attested by the officers having the legal custody of the record, or by his deputy, and accompanied with a certificate that such officer has custody. The certificate may be made by a secretary of an embassy or legation, consul general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

8. ID.; ID.; THE TASK OF ALLEGING AND PROVING THE EXISTENCE AND THE ACCURACY OF SUPPOSED STATEMENTS OF ANY FOREIGN LAW THAT COULD HELP HIS/HER CAUSE BELONGS TO THE PARTY ALLEGING IT.— Respondent Jonathan Enrique Nanud, Jr.'s Comment on the present Petition never referred to, alleged the existence of, or otherwise averred that the Canadian Citizenship Law supported his cause. Neither did this statute find its way in any of the assailed Commission on Elections Resolutions in support of the position that petitioner's naturalization resulted in the loss of his domicile. It is not for a court to, out of its own initiative, address the lacunae and fill the deficiencies in the arguments of a party or the reasoning of the tribunal whose ruling it is reviewing. The task of alleging and proving the existence and the accuracy of supposed statements of any foreign law that could have helped his cause was respondent's alone. Failing in this, he should not find solace before the court adjudicating his claims so it can do his work for him, buttress his arguments where their weakness were apparent, and ultimately, obtain his desired conclusion.

APPEARANCES OF COUNSEL

Leon P. Mogao, Jr. for petitioner.
The Solicitor General for public respondent.
Kristoffer James E. Purisima for private respondent.

Supreme Court E-Library

D E C I S I O N

PERALTA, *J.*:

Before us is a petition for *certiorari* with prayer for issuance of a temporary restraining order seeking to set aside the Resolution[1] dated November 6, 2013 of the Commission on Elections (COMELEC) En Banc which affirmed *in toto* the Resolution[2] dated May 3, 2013 of the COMELEC First Division canceling the Certificate of Candidacy (COC) of petitioner Rogelio Batin Caballero.

Petitioner[3] and private respondent Jonathan Enrique V. Nanud, Jr.[4] were both candidates for the mayoralty position of the Municipality of Uyugan, Province of Batanes in the May 13, 2013 elections. Private respondent filed a Petition[5] to deny due course to or cancellation of petitioner's certificate of candidacy alleging that the latter made a false representation when he declared in his COC that he was eligible to run for Mayor of Uyugan, Batanes despite being a Canadian citizen and a non- resident thereof.

During the December 10, 2012 conference, petitioner, through counsel, manifested that he was not properly served with a copy of the petition and the petition was served by registered mail not in his address in Barangay Imnajbu, Uyugan, Batanes. He, however, received a copy of the petition during the conference. Petitioner did not file an Answer but filed a Memorandum controverting private respondent's substantial allegations in his petition.

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[1] *Rollo*, pp. 23-28.

[2] Composed of Presiding Commissioner Lucenito N. Tagle, Commissioner Christian Robert S. Lim and Commissioner Al A. Parreño; Docketed as SPA No. 13-196 (DC) (F); *id*. at 67-72.

[3] *Rollo*, p. 146.

[4] *Id*. at 144.

[5] *Id*. at 117-121.

Supreme Court E-Library

Petitioner argued that prior to the filing of his COC on October 3, 2012, he took an Oath of Allegiance to the Republic of the Philippines before the Philippine Consul General in Toronto, Canada on September 13, 2012 and became a dual Filipino and Canadian citizen pursuant to Republic Act (RA) No. 9225, otherwise known as the *Citizenship Retention and Reacquisition Act of 2003*. Thereafter, he renounced his Canadian citizenship and executed an Affidavit of Renunciation before a Notary Public in Batanes on October 1, 2012 to conform with Section 5(2) of RA No. 9225.[6] He claimed that he did not lose his domicile of origin in Uyugan, Batanes despite becoming a Canadian citizen as he merely left Uyugan temporarily to pursue a brighter future for him and his family; and that he went back to Uyugan during his vacation while working in Nigeria, California, and finally in Canada.

On May 3, 2013, the COMELEC First Division issued a Resolution finding that petitioner made a material misrepresentation in his COC when he declared that he is a resident of Barangay Imnajbu, Uyugan, Batanes within one year prior to the election. The decretal portion of the resolution reads:

> WHEREFORE, premises considered, this Commission RESOLVED, as it hereby RESOLVES to GRANT the instant Petition. The Certificate of Candidacy of respondent Caballero is hereby CANCELLED.[7]

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

x x x x x x x x x.

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

[7] *Rollo*, p. 72.

Supreme Court E-Library

The COMELEC First Division did not discuss the procedural deficiency raised by petitioner as he was already given a copy of the petition and also in consonance with the Commission's constitutional duty of determining the qualifications of petitioner to run for elective office. It found that while petitioner complied with the requirements of RA No. 9225 since he had taken his Oath of Allegiance to the Philippines and had validly renounced his Canadian citizenship, he failed to comply with the other requirements provided under RA No. 9225 for those seeking elective office, *i.e.*, persons who renounced their foreign citizenship must still comply with the one year residency requirement provided for under Section 39 of the Local Government Code. Petitioner's naturalization as a Canadian citizen resulted in the abandonment of his domicile of origin in Uyugan, Batanes; thus, having abandoned his domicile of origin, it is incumbent upon him to prove that he was able to reestablish his domicile in Uyugan for him to be eligible to run for elective office in said locality which he failed to do.

Elections were subsequently held on May 13, 2013 and the election returns showed that petitioner won over private respondent.[8] Private respondent filed an Urgent *Ex-parte* Motion to Defer Proclamation.[9]

On May 14, 2013, petitioner was proclaimed Mayor of Uyugan, Batanes.

On May 16, 2013, petitioner filed a Motion for Reconsideration with the COMELEC En Banc assailing the May 3, 2013 Resolution issued by the COMELEC's First Division canceling his COC.

On May 17, 2013, private respondent filed a Petition to Annul Proclamation.[10]

On November 6, 2013, the COMELEC En Banc issued its assailed Resolution denying petitioner's motion for reconsideration.

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[8] *Id*. at 128-129.

[9] *Id*. at 130-133.

[10] *Id*. at 135-142.

Supreme Court E-Library

Petitioner filed with us the instant petition for *certiorari* with prayer for the issuance of a temporary restraining order.

In the meantime, private respondent filed a Motion for Execution[11] of the May 3, 2013 Resolution of the COMELEC First Division as affirmed by the En Banc and prayed for the cancellation of petitioner's COC, the appropriate correction of the certificate of canvas to reflect that all votes in favor of petitioner are stray votes, declaration of nullity of petitioner's proclamation and proclamation of private respondent as the duly-elected Mayor of Uyugan, Batanes in the May 13, 2013 elections.

On December 12, 2013, COMELEC Chairman Sixto S. Brillantes, Jr. issued a Writ of Execution.[12] Private respondent took his Oath of Office[13] on December 20, 2013.

In the instant petition for *certiorari*, petitioner raises the following assignment of errors, to wit:

THE COMELEC EN BANC GRAVELY ERRED IN DISREGARDING THE CLEAR IMPORT OF PROCEDURAL RULES PROVIDED FOR UNDER COMELEC RESOLUTION NO. 9523 PROMULGATED ON 25 SEPTEMBER 2012.

THE COMELEC EN BANC GRAVELY ERRED IN FINDING THAT PETITIONER ABANDONED HIS PHILIPPINE DOMICILE WHEN HE WORKED IN SEVERAL FOREIGN COUNTRIES FOR "GREENER PASTURE."

EVEN ASSUMING THAT PETITIONER HAS ABANDONED HIS PHILIPPINE DOMICILE WHEN HE BECAME A CANADIAN CITIZEN, HIS REACQUISITION OF HIS FILIPINO CITIZENSHIP, TAKING OATH OF ALLEGIANCE TO THE PHILIPPINE GOVERNMENT NINE (9) MONTHS PRIOR TO HIS ELECTION ON 13 MAY 2013, IS A SUBSTANTIAL COMPLIANCE WITH THE LAW ON RESIDENCY.[14]

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[11] *Id*. at 181-187.

[12] *Id*. at 204-207.

[13] *Id*. at 209.

[14] *Id*. at 8.

Supreme Court E-Library

Petitioner contends that when private respondent filed a petition to deny due course or to cancel his COC with the Office of the Municipal Election Officer of Uyugan, Batanes, a copy thereof was not personally served on him; that private respondent later sent a copy of the petition to him by registered mail without an attached affidavit stating the reason on why registered mail as a mode of service was resorted to. Petitioner argues that private respondent violated Section 4, paragraphs (1)[15] and (4),[16] Rule 23 of the COMELEC Rules of Procedure, as amended by COMELEC Resolution No. 9523, thus, his petition to deny due course or cancel petitioner's certificate of candidacy should have been denied outright.

We are not convinced.

While private respondent failed to comply with the above-mentioned requirements, the settled rule, however, is that the COMELEC Rules of Procedure are subject to liberal construction. Moreover, the COMELEC may exercise its power to suspend its own rules as provided under Section 4, Rule 1 of their Rules of Procedure.

> Sec. 4. *Suspension of the Rules*. - In the interest of justice and in order to obtain speedy disposition of all matters pending before the Commission, these rules or any portion thereof may be suspended by the Commission.

Under this authority, the Commission is similarly enabled to cope with all situations without concerning itself about procedural niceties that do not square with the need to do justice, in any

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[15] Section 4. *Procedure to be observed*. — Both parties shall observe the following procedure:

1. The petitioner shall, before filing of the Petition, furnish a copy of the Petition, through personal service to the respondent. In cases where personal service is not feasible, or the respondent refuses to receive the Petition, or the respondents' whereabouts cannot be ascertained, the petitioner shall execute an affidavit stating the reason or circumstances therefor and resort to registered mail as a mode of service. The proof of service or the affidavit shall be attached to the Petition to be filed.

[16] 4. No Petition shall be docketed unless the requirements in the preceding paragraphs have been complied with.

Supreme Court E-Library

case without further loss of time, provided that the right of the parties to a full day in court is not substantially impaired.[17]

In *Hayudini v. COMELEC*,[18] we sustained the COMELEC's liberal treatment of respondent's petition to deny due course or cancel petitioner's COC despite its failure to comply with Sections 2 and 4 of Rule 23 of the COMELEC Rules of Procedure, as amended by Resolution No. 9523, *i.e.*, pertaining to the period to file petition and to provide sufficient explanation as to why his petition was not served personally on petitioner, respectively, and held that:

> As a general rule, statutes providing for election contests are to be liberally construed in order that the will of the people in the choice of public officers may not be defeated by mere technical objections. Moreover, it is neither fair nor just to keep in office, for an indefinite period, one whose right to it is uncertain and under suspicion. It is imperative that his claim be immediately cleared, not only for the benefit of the winner but for the sake of public interest, which can only be achieved by brushing aside technicalities of procedure that protract and delay the trial of an ordinary action. This principle was reiterated in the cases of *Tolentino v. Commission on Elections* and *De Castro v. Commission on Elections*, where the Court held that "in exercising its powers and jurisdiction, as defined by its mandate to protect the integrity of elections, the COMELEC must not be straitjacketed by procedural rules in resolving election disputes."
>
> Settled is the rule that the COMELEC Rules of Procedure are subject to liberal construction. The COMELEC has the power to liberally interpret or even suspend its rules of procedure in the interest of justice, including obtaining a speedy disposition of all matters pending before it. This liberality is for the purpose of promoting the effective and efficient implementation of its objectives — ensuring the holding of free, orderly, honest, peaceful, and credible elections, as well as achieving just, expeditious, and inexpensive determination and disposition of every action and proceeding brought before the COMELEC. Unlike an ordinary civil action, an election contest is

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[17] See *Mentang v. Commission on Elections*, G.R. No. 110347, February 4, 1994, 229 SCRA 666, 675.

[18] G.R. No. 207900, April 22, 2014, 723 SCRA 223.

Supreme Court E-Library

imbued with public interest. It involves not only the adjudication of private and pecuniary interests of rival candidates, but also the paramount need of dispelling the uncertainty which beclouds the real choice of the electorate. And the tribunal has the corresponding duty to ascertain, by all means within its command, whom the people truly chose as their rightful leader.[19]

Here, we find that the issue raised, *i.e.,* whether petitioner had been a resident of Uyugan, Batanes at least one (1) year before the elections held on May 13, 2013 as he represented in his COC, pertains to his qualification and eligibility to run for public office, therefore imbued with public interest, which justified the COMELEC's suspension of its own rules. We adopt the COMELEC's s ratiocination in accepting the petition, to wit:

This Commission recognizes the failure of petitioner to comply strictly with the procedure for filing a petition to deny due course to or cancel certificate of candidacy set forth in Section 4, Rule 23 of the COMELEC Rules of Procedure as amended by COMELEC Resolution No. 9523, which requires service of a copy of the petition to respondent prior to its filing. But then, we should also consider the efforts exerted by petitioner in serving a copy of his petition to respondent after being made aware that such service is necessary. We should also take note of the impossibility for petitioner to personally serve a copy of the petition to respondent since he was in Canada at the time of its filing as shown in respondent's travel records.

The very purpose of prior service of the petition to respondent is to afford the latter an opportunity to answer the allegations contained in the petition even prior to the service of summons by the Commission to him. In this case, respondent was given a copy of the petition during the conference held on 10 December 2012 and was ultimately accorded the occasion to rebut all the allegations against him. He even filed a Memorandum containing his defenses to petitioner's allegations. For all intents and purposes, therefore, respondent was never deprived of due process which is the very essence of this Commission's Rules of Procedure.

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[19] *Hayudini v. COMELEC, supra*, at 242-243.

Supreme Court E-Library

Even the Supreme Court acknowledges the need for procedural rules to bow to substantive considerations "through a liberal construction aimed at promoting their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. x x x

x x x x x x x x x

When a case is impressed with public interest, a relaxation of the application of the rules is in order. x x x.

Unquestionably, the instant case is impressed with public interest which warrants the relaxation of the application of the [R]ules of [P]rocedure, consistent with the ruling of the Supreme Court in several cases.[20]

Petitioner next claims that he did not abandon his Philippine domicile. He argues that he was born and baptized in Uyugan, Batanes; studied and had worked therein for a couple of years, and had paid his community tax certificate; and, that he was a registered voter and had exercised his right of suffrage and even built his house therein. He also contends that he usually comes back to Uyugan, Batanes during his vacations from work abroad, thus, his domicile had not been lost. Petitioner avers that the requirement of the law in fixing the residence qualification of a candidate running for public office is not strictly on the period of residence in the place where he seeks to be elected but on the acquaintance by the candidate on his constituents' vital needs for their common welfare; and that his nine months of actual stay in Uyugan, Batanes prior to his election is a substantial compliance with the law. Petitioner insists that the COMELEC gravely abused its discretion in canceling his COC.

We are not persuaded.

RA No. 9225, which is known as the *Citizenship Retention and Reacquisition Act of 2003*, declares that natural-born citizens of the Philippines, who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country,

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[20] *Rollo*, pp. 25-26. (Citations omitted)

Supreme Court E-Library

can re-acquire or retain his Philippine citizenship under the conditions of the law.[21] The law does not provide for residency requirement for the reacquisition or retention of Philippine citizenship; nor does it mention any effect of such reacquisition or retention of Philippine citizenship on the current residence of the concerned natural-born Filipino.[22]

RA No. 9225 treats citizenship independently of residence.[23] This is only logical and consistent with the general intent of the law to allow for dual citizenship. Since a natural-born Filipino may hold, at the same time, both Philippine and foreign citizenships, he may establish residence either in the Philippines or in the foreign country of which he is also a citizen.[24] However, when a natural-born Filipino with dual citizenship seeks for an elective public office, residency in the Philippines becomes material. Section 5(2) of RA No. 9225 provides:

> SEC. 5. *Civil and Political Rights and Liabilities.* - Those who retain or reacquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:
>
> x x x x x x x x x
>
> (2) Those seeking elective public office in the Philippines shall meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath.

Republic Act No. 7160, which is known as the *Local Government Code of 1991*, provides, among others, for the qualifications of an elective local official. Section 39 thereof states:

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[21] Secs. 2 and 3.

[22] *Japzon v. Commission on Elections*, 596 Phil. 354, 367 (2009).

[23] *Id.*

[24] *Id.*

Supreme Court E-Library

SEC. 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 *sanggunian 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.

Clearly, the Local Government Code requires that the candidate must be a resident of the place where he seeks to be elected at least one year immediately preceding the election day. Respondent filed the petition for cancellation of petitioner's COC on the ground that the latter made material misrepresentation when he declared therein that he is a resident of Uyugan, Batanes for at least one year immediately preceeding the day of elections.

The term "residence" is to be understood not in its common acceptation as referring to "dwelling" or "habitation," but rather to "domicile" or legal residence,[25] that 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 (*animus manendi*)."[26] A domicile of origin is acquired by every person at birth. It is usually the place where the child's parents reside and continues until the same is abandoned by acquisition of new domicile (*domicile of choice*). It consists not only in the intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention.[27]

Petitioner was a natural born Filipino who was born and raised in Uyugan, Batanes. Thus, it could be said that he had

[25] *Coquilla v. Commission on Elections*, 434 Phil. 861, 871-872 (2002), citing *Nuval v. Guray*, 52 Phil. 645 (1928); *Gallego v. Verra,* 73 Phil. 453 (1941); *Romualdez v. RTC, Br. 7, Tacloban City*, G.R. No. 104960, September 14, 1993, 226 SCRA 408.

[26] *Id.* at 872, citing *Aquino v. COMELEC*, G.R. No. 120265, September 18, 1965, 248 SCRA 400, 420.

[27] *Id*, citing 25 Am. Jur. 2d, §11.

Supreme Court E-Library

his domicile of origin in Uyugan, Batanes. However, he later worked in Canada and became a Canadian citizen. In *Coquilla v. COMELEC*,[28] we ruled that naturalization in a foreign country may result in an abandonment of domicile in the Philippines. This holds true in petitioner's case as permanent resident status in Canada is required for the acquisition of Canadian citizenship.[29] Hence, petitioner had effectively abandoned his domicile in the Philippines and transferred his domicile of choice in Canada. His frequent visits to Uyugan, Batanes during his vacation from work in Canada cannot be considered as waiver of such abandonment.

The next question is what is the effect of petitioner's retention of his Philippine citizenship under RA No. 9225 on his residence or domicile?

In *Japzon v. COMELEC*,[30] wherein respondent Ty reacquired his Philippine citizenship under RA No. 9225 and run for Mayor of General Macarthur, Eastern Samar and whose residency in the said place was put in issue, we had the occasion to state, thus:

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[28] *Id*. at 873.

[29] Citizenship Act (Canada)
Section 5. (1) The Minister shall grant citizenship to any person who

- (*a*) makes application for citizenship;
- (*b*) is eighteen years of age or over;
- (*c*) is a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act, has, within the four years immediately preceding the date of his or her application, accumulated at least three years of residence in Canada calculated in the following manner:
  - (i) for every day during which the person was resident in Canada before his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one-half of a day or residence, and
  - (ii) for every day during which the person was resident in Canada after his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one day of residence;

x x x x x x x x x

[30] *Japzon v. Commission on Elections*, *supra* note 22, at 367.

Supreme Court E-Library

Petitioner's reacquisition of his Philippine citizenship under Republic Act No. 9225 had no automatic impact or effect on his residence/ domicile. He could still retain his domicile in the USA, and he did not necessarily regain his domicile in the Municipality of General Macarthur, Eastern Samar, Philippines. Ty merely had the option to again establish his domicile in the Municipality of General Macarthur, Eastern Samar, Philippines, said place becoming his new domicile of choice. The length of his residence therein shall be determined from the time he made it his domicile of choice, and it shall not retroact to the time of his birth.[31]

Hence, petitioner's retention of his Philippine citizenship under RA No. 9225 did not automatically make him regain his residence in Uyugan, Batanes. He must still prove that after becoming a Philippine citizen on September 13, 2012, he had reestablished Uyugan, Batanes as his new domicile of choice which is reckoned from the time he made it as such.

The COMELEC found that petitioner failed to present competent evidence to prove that he was able to reestablish his residence in Uyugan within a period of one year immediately preceding the May 13, 2013 elections. It found that it was only after reacquiring his Filipino citizenship by virtue of RA No. 9225 on September 13, 2012 that petitioner can rightfully claim that he re-established his domicile in Uyugan, Batanes, if such was accompanied by physical presence thereat, coupled with an actual intent to reestablish his domicile there. However, the period from September 13, 2012 to May 12, 2013 was even less than the one year residency required by law.

Doctrinally entrenched is the rule that in a petition for *certiorari*, findings of fact of administrative bodies, such as respondent COMELEC in the instant case, are final unless grave abuse of discretion has marred such factual determinations.[32] Clearly, where there is no proof of grave abuse of discretion, arbitrariness, fraud or error of law in the questioned Resolutions, we may

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[31] *Id.* at 347. (Emphasis supplied)

[32] *Pangkat Laguna v. Commission on Elections*, 426 Phil. 480, 486 (2002).

Supreme Court E-Library

not review the factual findings of COMELEC, nor substitute its own findings on the sufficiency of evidence.[33]

Records indeed showed that petitioner failed to prove that he had been a resident of Uyugan, Batanes for at least one year immediately preceding the day of elections as required under Section 39 of the Local Government Code.

Petitioner's argument that his nine (9) months of actual stay in Uyugan, Batanes, prior to the May 13, 2013 local elections is a substantial compliance with the law, is not persuasive. In *Aquino v. Commission on Elections*,[34] we held:

> x x x A democratic government is necessarily a government of laws. In a republican government those laws are themselves ordained by the people. Through their representatives, they dictate the qualifications necessary for service in government positions. And as petitioner clearly lacks one of the essential qualifications for running for membership in the House of Representatives, not even the will of a majority or plurality of the voters of the Second District of Makati City would substitute for a requirement mandated by the fundamental law itself.[35]

Petitioner had made a material misrepresentation by stating in his COC that he is a resident of Uyugan, Batanes for at least one (1) year immediately proceeding the day of the election, thus, a ground for a petition under Section 78 of the Omnibus Election Code. Section 74, in relation to Section 78, of the OEC governs the cancellation of, and grant or denial of due course to COCs, to wit:

> SEC. 74. *Contents of certificate of candidacy*. – The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said

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[33] *Domingo, Jr. v. Commission on Elections*, 372 Phil. 188, 202 (1999), citing *Nolasco v. Commission on Elections*, 341 Phil. 761 (1997); *Lozano v. Yorac,* G.R. No. 94521, October 28, 1991, 203 SCRA 256; *Apex Mining Co., Inc. v. Garcia*, 276 Phil. 301 (1991).

[34] 318 Phil. 467 (1995).

[35] *Aquino v. Commission on Elections, supra*, at 509.

Supreme Court E-Library

office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or 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.

x x x x x x x x x

SEC. 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.

We have held that in order to justify the cancellation of COC under Section 78, it is essential that the false representation mentioned therein pertains to a material matter for the sanction imposed by this provision would affect the substantive rights of a candidate – the right to run for the elective post for which he filed the certificate of candidacy.[36] We concluded that material representation contemplated by Section 78 refers to qualifications for elective office, such as the requisite residency, age, citizenship or any other legal qualification necessary to run for a local elective office as provided for in the Local Government Code.[37] Furthermore, aside from the requirement of materiality, the misrepresentation must consist of a deliberate attempt to mislead,

[36] *Salcedo II v. COMELEC,* 371 Phil. 377, 386 (1999).

[37] *Villafuerte v. Commission on Elections*, G.R. No. 206698, February 25, 2014, 717 SCRA 312, 323, citing *Salcedo II v. Commission on Elections, supra*, at 389, citing RA 7160, Section 39 on qualifications.

Supreme Court E-Library

misinform, or hide a fact which would otherwise render a candidate ineligible.[38] We, therefore, find no grave abuse of discretion committed by the COMELEC in canceling petitioner's COC for material misrepresentation.

WHEREFORE, the petition for *certiorari* is **DISMISSED**. The Resolution dated May 3, 2013 of the COMELEC First Division and the Resolution dated November 6, 2013 of the COMELEC En Banc are hereby **AFFIRMED**.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Bersamin, del Castillo, Villarama, Jr., and *Perez, JJ.,* concur.

Brion and *Leonen, JJ.*, see separate concurring opinions.

Jardeleza, J., no part, prior OSG action.

Mendoza and *Perlas-Bernabe, JJ.,* on official leave.

Reyes, J., on leave.

SEPARATE CONCURRING OPINION

BRION, *J.*:

I concur with the *ponencia*'s dismissal of the petition since the Commission on Elections *(Comelec)* did not commit any grave abuse of discretion when it cancelled the certificate of candidacy *(CoC)* of petitioner Rogelio Batin ***Caballero*** for the mayoralty post of Uyugan, Batanes in the May 13, 2013 Elections.

I agree that the issue of Caballero's residency[1] in Uyugan – an issue that pertains to Caballero's qualification and eligibility to run for public office – is imbued with public interest. In the absence of any grave abuse of discretion, this characterization is sufficient to justify the Comelec's move to suspend its own rules of procedure in handling Caballero's case.

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[38] *Id*. at 323.

[1] Under Section 39 of the Local Government Code.

Supreme Court E-Library

I also agree with the *ponencia*'s conclusion that Caballero failed to comply with the one-year residency requirement under Section 39 of the Local Government Code *(LGC)*. Likewise, I hold that Caballero's reacquisition of Filipino citizenship under the provisions of Republic Act *(RA)* No. 9225[2] did not have the effect of automatically making him a resident of Uyugan since RA 9225 treats citizenship independently of residence. As I will discuss below, citizenship and residency are distinct from one another and are separate requirements for qualification for local elective office; thus, they must be considered under the laws respectively governing them.

I concur as well with the *ponencia*'s conclusion that, by stating in his CoC that he had completed the required one-year residency when he actually did not, Caballero made a material misrepresentation that justified the Comelec's cancellation of his CoC.

I submit this Separate Concurring Opinion to add that, as the loss and acquisition of residence involve the determination of intent, the action taken pursuant to the intent and the applicable laws and rules on residency and immigration, these laws and rules must necessarily be considered to ascertain Caballero's intent and to determine whether Caballero had actually complied with the one-year residency requirement.

As well, given Caballero's undisputed Canadian citizenship by naturalization, due notice of the conditions required for Canadian naturalization should assist the Court in examining Caballero's intention and in resolving any perceived doubt regarding the loss of his domicile of origin in Uyugan and the establishment of a new domicile of choice in Canada.

To be sure, Canadian laws are not controlling and cannot serve as basis for the resolution of the loss and re-acquisition of domicile issue; the Court, too, cannot take cognizance of foreign laws as these must first be properly proven to be given recognition. Nonetheless, I believe that the Court can look up to them, not as statutory basis for resolving the residency issue, but as supporting guides in determining Caballero's intent.

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[2] Enacted on August 29, 2003.

Supreme Court E-Library

As the *ponencia* defined, the issues for the Court's resolution are: ***first,*** whether the Comelec should have denied outright the petition to deny due course or to cancel private respondent Jonathan Enrique V. ***Nanud*'s** CoC, as Caballero failed to personally serve him a copy of the petition and to attach an affidavit explaining the use of service by registered mail, in violation of Section 4, Rule 23 of the Comelec Rules of Procedure.[3]

And ***second,*** whether Caballero abandoned his Philippine domicile when he became a Canadian citizen; assuming that he did, whether his nine-month residency in Uyugan prior to the May 13, 2013 elections constitutes substantial compliance with the residency requirement.

I shall no longer touch on the first issue as I fully agree with the *ponencia* on this point. My subsequent discussions will deal only with the issue of Caballero's residence in Uyugan for the required duration.

My Positions

a) ***RA 9225 does not touch on residency; citizenship and residency are separate and distinct requirements for qualification for local elective office***

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[3] The Section 4, paragraphs (1) and (4), Rule 23 of the Comelec Rules of Procedure provides:

Section 4. *Procedure to be observed.* – Both parties shall observe the following procedure:

1. The petitioner shall, before filing of the Petition, furnish a copy of the Petition, through personal service to the respondent. In cases where personal service is not feasible, or the respondent refuses to receive the Petition, or the respondent's whereabouts cannot be ascertained, the petitioner shall execute an affidavit stating the reason and circumstances therefor and resort to registered mail as mode of service. The proof of service or the affidavit shall be attached to the Petition to be filed.

x x x x x x x x x

4. No petition shall be docketed unless the requirements in the preceding paragraphs have been complied with.

Supreme Court E-Library

RA 9225 was enacted to allow natural-born Filipinos (who lost their Philippine citizenship by naturalization in a foreign country) to expeditiously re-acquire their Filipino citizenship by taking an oath of allegiance to the Republic of the Philippines. Upon taking the oath, they re-acquire their Philippine citizenship and the accompanying civil and political rights that attach to citizenship.

RA 9225 does not touch on a person's residence; does not mention it; and does not even require residence in the Philippines prior to or at the time he or she takes the oath to re-acquire Philippine citizenship. In fact, RA 9225 allows former natural-born citizens to re-acquire their Philippine citizenship while still residing in the country that granted them naturalized citizenship status.[4]

Residency in the Philippines becomes material only when the natural-born Filipino availing of RA 9225, decides to run for public office. As provided under Section 5 of this law, those who seek elective public office shall, in addition to taking the oath of allegiance, make a personal and sworn renunciation of any and all foreign citizenship and *meet the qualifications for holding such public office that the Constitution and existing laws require*.

The qualifications for holding local elective office are found in Section 39 of the LGC. Among others, Section 39 requires a candidate for a local elective post to be a citizen of the Philippines and a resident of the locality where he or she intends to be elected for at least one year immediately preceding the day of the election.

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[4] See The Philippine Consulate General in Los Angeles Website, *Consular Services (Dual Citizenship),* http://www.philippineconsulatela.org/consular%20services/conserv-dual.htm#overseas, (last visited on September 24, 2015); and The Commission on Filipinos Overseas Website, *Programs and Services – Dual Citizenship,* http://www.cfo.gov.ph/index.php?option=com_content&view=article&id=1362%3Adual-citizenship&catid=145%3Aintegration-and-reintegration&Itemid=833 (last visited on September 24, 2015).

Supreme Court E-Library

RA 9225 provides the citizenship requirement when the former natural-born Filipino re-acquires Philippine citizenship under this law's terms. Residency, on the other hand, is the domain of Section 39 of the LGC. These two laws complement each other in qualifying a Filipino with a re-acquired citizenship, for candidacy for a local elective office.

Notably under this relationship, RA 9225 does not require any residency allegation, proof or qualification to avail of its terms. RA 9225 does not even require Filipinos with re-acquired citizenship to establish or maintain any Philippine residence, although they can, as Filipinos, come and go as they please into the country without any pre-condition other than those applicable to all Filipino citizens. By implication, RA 9225 (a dual citizenship law) allows residency anywhere, within or outside the Philippines, before or after re-acquisition of Philippine citizenship under its terms. Re-acquisition of citizenship, however, does not – by itself – imply nor establish the fact of Philippine residency. In these senses, RA 9225 and the LGC are complementary to, yet are independent of, one another.

Another legal reality that must be kept in mind in appreciating RA 9225 and residency is that entitlement to the civil and political rights that come with the re-acquired citizenship comes only when the requirements have been completed and Filipino citizenship has been re-acquired. Only then can re-acquiring Filipinos secure the right to reside in the country as Filipinos and the right to vote and be voted for elective office under the requirements of the Constitution and applicable existing laws. For would-be candidates to local elective office, these applicable requirements include the taking of an oath of renunciation of all other citizenships and allegiance, and allegation and proof of residency for at least a year counted from the date of the election.

b) ***Principles governing loss of domicile of origin and change or acquisition of new domicile***

Under our election laws, the term "residence" is synonymous with domicile and refers to the individual's permanent home or

Supreme Court E-Library

the place to which, whenever absent for business or pleasure, one intends to return.[5]

Domicile is classified into three, namely: (1) ***domicile of origin***, which is acquired by every person at birth; (2) ***domicile of choice***, which is acquired upon abandonment of the domicile of origin; and (3) ***domicile by operation of law***, which the law attributes to a person independently of his residence or intention.

Caballero's indisputable domicile of origin is Uyugan, Batanes. He subsequently went abroad for work, established his residence in Canada beginning 1989, and acquired Canadian citizenship in 2007. On September 12, 2012, and while still residing in Canada, he applied with the Philippine Consul General of Toronto, Canada for the re-acquisition of his Philippine citizenship under RA 9225.

Jurisprudence provides the following requirements to effect a change of domicile or to acquire a domicile by choice:

(1) residence or bodily presence in the new locality;
(2) a *bona fide* intention to remain there; and
(3) a *bona fide* intention to abandon the old domicile.

These are the *animus manendi* and the *animus non revertendi* that jurisprudence requires to be satisfied.

Under these requirements, no specific unbending rule exists in the appreciation of compliance because of the element of intent[6] – an abstract and subjective proposition that can only be determined from the surrounding circumstances. Separately from intent is the question of the actions taken pursuant to the intent, and the consideration of the applicable laws, rules and regulations.

Jurisprudence has likewise laid out three basic **foundational rules** in the consideration of domicile:

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[5] See *Macalintal v. Comelec,* 453 Phil. 586 (2003); and *Japzon v. Comelec,* 596 Phil. 354 (2009).

[6] See *Abella v. Commission on Elections and Larazzabal v. Commission on Elections,* 278 Phil. 275 (1991). See also *Pundaodaya v. Comelec,* 616 Phil. 167 (2009).

Supreme Court E-Library

First, a man must have a residence or domicile somewhere;

Second, when once established, it remains until a new one is acquired; and

Third, **a man can have but one residence or domicile at a time**.[7]

As jurisprudential foundational rules, these should be fully applied in appreciating Caballero's circumstances.

c) ***Permanent residency is a requirement for naturalization as Canadian citizen***

Under Section 5 (1), Part I of the Canadian Citizenship Law,[8] Canadian citizenship may be granted to anyone who, among other requirements: makes an application for citizenship; **IS A PERMANENT RESIDENT**; and who, if granted citizenship, intends to continue to reside in Canada.[9]

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[7] See *Pundaodaya v. Comelec, supra* note 6; and *Jalosjos v. Comelec,* G.R. No. 191970, April 24, 2012.

[8] See http://laws-lois.justice.gc.ca/eng/acts/C-29/page-2.html#docCont (last accessed September 10, 2015).

[9] This provision pertinently reads:

(a) **makes application for citizenship**;

(b) is eighteen years of age or over;

(c) **is a permanent resident** within the meaning of subsection 2 (1) of the Immigration and refugee Protection Act, has, subject to the regulations, no unfulfilled conditions under the Act relating to his or her status as a permanent resident and has, since becoming a resident,

(i) been physically present in Canada for at least 1,460 days during the six years immediately before the date of his or her application,

(ii) been physically present in Canada for at least 183 days during each of four calendar years that are fully or partially within the six years immediately before the date of his or her application, and

(iii) met any applicable requirement under the *Income Tax Act* to file a return of income in respect of four taxation

Supreme Court E-Library

d) ***Caballero lost his domicile of origin (in Uyugan) when he established a new domicile of choice in Canada; to transfer his domicile back to Uyugan, he has to prove the fact of transfer and the consequent re-establishment of a new domicile in Uyugan.***

Given the Canadian citizenship requirements, Caballero (who had been living in Canada since 1989 prior to his naturalization as Canadian citizen in 2007) would not have been granted Canadian citizenship had he not applied for it and had he not shown proof of permanent residence in that country. This is the **indicator of intent** that I referred to in considering the question of Caballero's Philippine residency and his factual claim that he never abandoned his Philippine residence.

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years that are fully or partially within the six years immediately before the date of his or her application;

(*c.1*) **intends, if granted citizenship**,

(i) **to continue to reside in Canada**,

(ii) to enter into, or continue in, employment outside Canada in or with the Canadian Armed Forces, the federal public administration or the public service of a province, otherwise than as a locally engaged person, or

(iii) to reside with his or her spouse or common-law partner or parent, who is a Canadian citizen or permanent resident and is employed outside Canada in or with the Canadian Armed Forces, the federal public administration or the public service of a province, otherwise than as a locally engaged person;

(d) if under 65 years of age at the date of his or her application, has an adequate knowledge of one of the official languages of Canada;

(e) if under 65 years of age at the date of his or her application, demonstrates in one of the official languages of Canada that he or she has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship; and

(f) is not under a removal order and is not the subject of a declaration by the Governor in Council made pursuant to Section 20.

Supreme Court E-Library

Parenthetically, the requirement that a foreign national be a resident of the State for a given period prior to the grant of the State's citizenship is not unique to the Canadian jurisdiction. The requirement proceeds from the State's need to ensure that the foreign applicant is integrated to the society he is embracing, and that he has actual attachment to his new community before citizenship is granted. The requirement can be said to be a preparatory move as well since the grant of citizenship carries with it the right to enjoy civil and political rights that are not ordinarily granted to non-citizens.

Even the Philippines, through our laws on naturalization, recognizes these requirements prior to the grant of Philippine citizenship. Our existing laws require continued residency in the Philippines for a given period[10] before any foreign national who wishes to become a Philippine citizen is conferred this status.

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[10] See Section 2 of Commonwealth Act No. 473 which enumerates the qualifications for naturalization as Philippine citizen. It reads:

Sec. 2. Qualifications. – Subject to Section four of this Act, any person having the following qualifications may become a citizen of the Philippines by naturalization:

First. He must be not less than twenty-one years of age on the day of the hearing of the petition;

Second. He must have **resided in the Philippines for a continuous period of not less than ten years**;

Third. He must be of good moral character and believes in the principles underlying the Philippine Constitution, and must have conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines in his relation with the constituted government as well as with the community in which he is living.

Fourth. He must own real estate in the Philippines worth not less than five thousand pesos, Philippine currency, or must have some known lucrative trade, profession, or lawful occupation;

Fifth. He must be able to speak and write English or Spanish and any one of the principal Philippine languages;

Sixth. He must have enrolled his minor children of school age, in any of the public schools or private schools recognized by the Office of Private Education of the Philippines, where the Philippine history, government and civics are taught or prescribed as part of the school

Supreme Court E-Library

In this limited sense, I believe that the Court may look into the Canadian citizenship laws to get an insight into Caballero's intent. To reiterate, Caballero would not have been granted Canadian citizenship had he not applied for it and had he not been a Canadian permanent resident for the required period. Under the foundational rule that a man can only have one domicile,

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curriculum, during the entire period of the residence in the Philippines required of him prior to the hearing of his petition for naturalization as Philippine citizen. [Emphasis supplied]

See also Section 3 of RA 9139, which reads:

Section 3. Qualifications. - Subject to the provisions of the succeeding section, any person desiring to avail of the benefits of this Act must meet the following qualifications:

(a) The applicant must be **born in the Philippines and residing therein since birth**;

(b) The applicant must not be less than eighteen (18) years of age, at the time of filing of his/her petition;

(c) The applicant must be of good moral character and believes in the underlying principles of the Constitution, and must have conducted himself/herself in a proper and irreproachable manner during his/her entire period of residence in the Philippines in his relation with the duly constituted government as well as with the community in which he/she is living;

(d) The applicant must have received his/her primary and secondary education in any public school or private educational institution dully recognized by the Department of Education, Culture and Sports, where Philippine history, government and civics are taught and prescribed as part of the school curriculum and where enrollment is not limited to any race or nationality: Provided, That should he/she have minor children of school age, he/she must have enrolled them in similar schools;

(e) The applicant must have a known trade, business, profession or lawful occupation, from which he/she derives income sufficient for his/her support and if he/she is married and/or has dependents, also that of his/her family: Provided, however, That this shall not apply to applicants who are college degree holders but are unable to practice their profession because they are disqualified to do so by reason of their citizenship;

(f) The applicant must be able to read, write and speak Filipino or any of the dialects of the Philippines; and

(g) The applicant must have mingled with the Filipinos and evinced a sincere desire to learn and embrace the customs, traditions and ideals of the Filipino people. [Emphasis supplied]

Supreme Court E-Library

Caballero's moves constitute positive, voluntary, overt and intentional abandonment of his domicile of origin. His moves signified, too, the establishment of a new domicile of choice in Canada.

Thus, to comply with Section 39 of the LGC by transferring his domicile anew to Uyugan, Caballero has to prove the fact of transfer and his re-established domicile by residing in Uyugan for at least one year immediately before the May 13, 2013 elections. In accordance with the jurisprudential rules on change of domicile, he must establish substantial physical presence in Uyugan during the required period.

Moreover, under the terms of RA 9225 and its provisions on the grant of civil and political rights,[11] Caballero can be said to have acquired the right to reside in and re-establish his domicile in Uyugan (or any part of the Philippines) only from September 12, 2012, *i.e.,* when he re-acquired his Philippine citizenship under RA 9225.

Unfortunately for him, his Uyugan residency, even if counted from September 12, 2012, would still be short of the required one-year residency period. And he was not simply absent from Uyugan before September 12, 2012 during the period the law required him to be in residence; he never even claimed that he was in Uyugan then as a resident who intended to stay.

Of course, existing immigration laws allow former natural-born Filipinos, who lost their Philippine citizenship by naturalization in a foreign country, to acquire permanent residency in the Philippines even prior to, or without re-acquiring, Philippine citizenship under RA 9225.

Under Section 13 (f) of Commonwealth Act No. 613[12] (the Philippine Immigration of 1940), as amended, "a natural-born citizen of the Philippines, who has been naturalized in a foreign country and is returning to the Philippines for permanent residence x x x shall be considered a non-quota immigrant for purposes

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[11] See Section 5 of RA 9225.

[12] Enacted on August 26, 1940.

Supreme Court E-Library

of entering the Philippines." The returning former Filipino can apply for a permanent resident visa (otherwise known as Returning Former Filipino Visa) which, when granted, shall entitle the person to stay indefinitely in the Philippines.[13] Other than through such permanent resident visa, Caballero could have stayed in the Philippines only for a temporary period.[14] Any such temporary stay, of course, cannot be considered for purposes of Section 39 of the LGC as it does not fall within the concept of "residence."

In the present case, the records do not contain any evidence that Caballero ever secured a permanent resident visa and has been residing in the Philippines prior to his re-acquisition of Philippine citizenship under RA 9225. Thus, Caballero's re-established domicile in Uyugan can be counted only from the time he re-acquired his Philippine citizenship. This period, as earlier pointed out, is less than the required one-year residency.

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[13] See www.immigration.gov.ph/faqs/visa-inquiry/returning-former-natural-born-filipino (last visited on September 20, 2015). The other rights granted to former natural-born Philippine citizens under the Returning Former Filipino Visa are:

1. He/she is allowed to stay indefinitely in the Philippines.
2. He/she can establish a business.
3. He/she can invest in shares of stock.
4. He/she may form an association and corporation.
5. He/she has the right of access to the courts.
6. He/she is allowed to work without securing an alien employment permit.
7. He/she may leave private lands or purchase a condominium.
8. He/she may purchase an automobile.

[14] See www.immigration.gov.ph/faqs/visa-inquiry/balikbayan-privelege (last visited on September 20. 2015). The one year period of stay in the Philippines can be extended for another one, two or six months, up to thirty-six months, subject to certain requirements.

Supreme Court E-Library

e) ***The nature of a CoC cancellation proceeding should be considered in the resolution of the present certiorari petition***

The present Rule 65 petition for *certiorari*,[15] filed in relation with Rule 64 of the Rules of Court, arose from the petition to cancel the CoC of Caballero. In this context, the nature and requisites of CoC cancellation proceedings are and should be the primary considerations in the resolution of the present petition.

A petition to cancel CoC is governed by Section 74 in relation with Section 78 of the Omnibus Election Code *(OEC)*. As these provisions operate, the would-be candidate must state only **true facts** in the CoC, as provided by Section 74; any false representation of a material fact may lead to the cancellation or denial of his or her CoC, under Section 78. These provisions read:

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

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SEC. 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

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[15] *Rollo,* pp. 23-28.

Supreme Court E-Library

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. [Emphasis and underscoring supplied]

In *Mitra v. Comelec*,[16] the Court explained that the false representation that these provisions mention necessarily pertains to material facts, or those that refer to a candidate's qualification for elective office. The false representation must also involve a deliberate attempt to mislead, misinform, or hide a fact that would otherwise render a candidate ineligible, as provided under Section 78 of the OEC.

Notably, the positive representation in the CoC that the would-be candidate is required to make under Section 74 of the OEC, in relation with the residency requirement of Section 39 of the LGC, complements the disqualifying ground of being an immigrant or permanent resident in a foreign country under Section 40 of the LGC.[17] In plainer terms, the assertion that the would-be

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[16] 636 Phil. 753 (2010).

[17] Section 40 of the LGC read in full:

Section 40. *Disqualifications.* – The following persons are disqualified from running for any elective local position:

(a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;

(b) Those removed from office as a result of an administrative case;

(c) Those convicted by final judgment for violating the oath of allegiance to the Republic;

(d) Those with dual citizenship;

(e) Fugitives from justice in criminal or non-political cases here or abroad;

(f) Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and

(g) The insane or feeble-minded. [Emphasis supplied]

Supreme Court E-Library

candidate is a resident of the locality where he intends to be elected carries with it the negative assertion that he has neither been an immigrant nor a permanent resident in a foreign country for at least one year immediately preceding the election.

In the present case, Caballero filed his CoC on October 3, 2012. He asserted in his CoC that he is a resident of Uyugan (and impliedly, not a permanent resident of a foreign country) for at least one year immediately preceding the May 13, 2013 elections. By making this assertion, Caballero committed a material misrepresentation in his CoC since he effectively re-established his domicile in Uyugan and could have been a permanent resident only from September 12, 2012.

f) *Under the circumstances, the Comelec did not commit grave abuse of discretion in cancelling Caballero's CoC*

Jurisprudence has consistently defined grave abuse of discretion as a "capricious or whimsical exercise of judgment x x x equivalent to lack of jurisdiction." The abuse of discretion, to be grave, must be so patent and gross as to amount to an "evasion of a positive duty or to 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."[18]

Based on this definition, the grave abuse of discretion that justifies the grant of *certiorari* involves an error or defect of jurisdiction resulting from, among others, an indifferent disregard for the law, arbitrariness and caprice, an omission to weigh pertinent considerations, or lack of rational deliberation in decision making.[19]

It should also be remembered that the remedy of *certiorari* applies only to rulings that are not, or are no longer, appealable.

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[18] See *J.* Brion's Separate Opinion in *Atty. Risos-Vidal v. Commission on Elections and Joseph Ejercito Estrada,* G.R. No. 206666, January 21, 2015.

[19] *Id.*, citing *Aratuc v. Comelec,* 177 Phil. 205, 222 (1979).

Supreme Court E-Library

Thus, *certiorari* is not an appeal that opens up the whole case for review; it is limited to a consideration of the specific aspect of the case necessary to determine if grave abuse of discretion had intervened.[20]

In short, to assail a Comelec ruling, the assailing party must show that the final and inappealable ruling is completely void, not simply erroneous, because the Comelec gravely abused its discretion in considering the case or in issuing its ruling.

It is within this context that I fully concur with the *ponencia*'s dismissal of the petition. Caballero's assertion in his CoC that he has been a resident of Uyugan for at least one year immediately preceding the May 13, 2013 elections – a clear material misrepresentation on his qualification for the mayoralty post – undoubtedly justified the Comelec in cancelling his CoC pursuant to Section 78 of the OEC. In acting as it did, the Comelec simply performed its mandate and enforced the law based on the established facts and evidence. Clearly, no grave abuse of discretion can be attributed to its actions.

In closing, I reiterate that RA 9225 is concerned only with citizenship; it does not touch on and does not require residency in the Philippines to re-acquire Philippine citizenship. *Residency in the Philippines becomes material only when the natural-born Filipino who re-acquires or retains Philippine citizenship under the provisions of RA 9225 decides to run for public office*. Even then, RA 9225 leaves the resolution of any residency issue to the terms of the Constitution and specifically applicable existing laws.

For all these reasons, I vote to dismiss Rogelio Batin Caballero's petition for lack of merit.

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[20] *Id*.

Supreme Court E-Library

CONCURRING OPINION

LEONEN, *J.*:

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

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

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

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[1] Justice Brion's Separate Concurring Opinion, p. 3.

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

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

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

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

Supreme Court E-Library

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

> The term "residence" as used in the election law is synonymous with "domicile," which imports not only intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention. In order to acquire a domicile by choice, there must concur (1) residence or bodily presence in the new locality, (2) an intention to remain there, and (3) an intention to abandon the old domicile. In other words, there must be an *animus non revertendi* and an *animus manendi*. The purpose to remain in or at the domicile of choice must be for an indefinite period of time. The acts of the person must conform with his purpose. The change of residence must be voluntary; the residence at the place chosen for the domicile must be actual; and to the fact of residence there must be added the *animus manendi*.[8]

Section 39(a)[9] of the Local Government Code provides that in order to be eligible for local elective public office, a candidate

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

[7] 73 Phil. 453 (1941) [Per *J*. Ozaeta, *En Banc*].

[8] *Id*. at 456, citing *Nuval v. Guray*, 52 Phil. 645 (1928) [Per *J*. Villareal, *En Banc*] and 17 Am. Jur., Section 16, pages 599-601.

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

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

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

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

Supreme Court E-Library

must possess the following qualifications: (a) a citizen of the Philippines; (b) a registered voter in the barangay, municipality, city, province, or in the case of a member of the Sangguniang Panlalawigan, Sangguniang Panlungsod, or Sangguniang Bayan, the district where he or she intends to be elected; (c) *a resident therein for at least one (1) year immediately preceding the day of the election*; and (d) able to read and write Filipino or any other local language or dialect.

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

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

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

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

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

[11] 596 Phil. 354 (2009) [Per *J.* Chico-Nazario, *En Banc*].

[12] *Id*. at 369-370.

Supreme Court E-Library

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

The primacy of intention is settled. In *Limbona v. COMELEC*,[13] this court stated, in no uncertain terms, that "for purposes of election law, the question of residence is *mainly one of intention*."[14]

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

These requisites were refined in *Romualdez-Marcos v. COMELEC*:[16]

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

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

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[13] 578 Phil. 364 (2008) [Per *J.* Ynares-Santiago, *En Banc*].

[14] *Id.* at 374.

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

[16] 318 Phil. 329 (1995) [Per *J.* Kapunan, *En Banc*].

[17] *Id.* at 386.

Supreme Court E-Library

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

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

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

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

Foreign laws do not prove themselves nor can the courts take judicial notice of them. Like any other fact, they must be alleged and proved.

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

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

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

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

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

Supreme Court E-Library

Written law may be evidenced by an official publication thereof or by a copy attested by the officers having the legal custody of the record, or by his deputy, and accompanied with a certificate that such officer has custody. The certificate may be made by a secretary of an embassy or legation, consul general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.[23]

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

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

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

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[23] *Id*. at 30, citing *Collector of Internal Revenue v. Fisher and Court of Tax Appeals*, 110 Phil. 686, 700 (1961) [Per *J*. Barrera, *En Banc*] and JOVITO SALONGA, *Private International Law* 82-83 (1979).

[24] *Rollo*, pp. 96-111.

[25] *Id*. at 3-19.