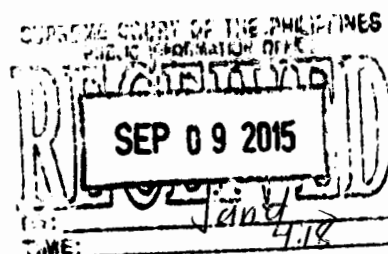




Republic of the Philippines
 Supreme Court
 Manila



EN BANC

ROMMEL C. ARNADO,
Petitioner,

G.R. No. 210164

Present:

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

- versus -

COMMISSION ON ELECTIONS
 and FLORANTE CAPITAN,
Respondents.

Promulgated:
 August 18, 2015

X-----

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DECISION

DEL CASTILLO, *J.:*

Only natural-born Filipinos who owe total and undivided allegiance to the Republic of the Philippines could run for and hold elective public office.

Before this Court is a Petition for *Certiorari*¹ filed under Rule 64 in relation to Rule 65 of the Rules of Court assailing the *Per Curiam* Resolution² dated

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* On Official Leave.

** On Leave.

*** No part.

¹ *Rollo*, pp. 3-19.

² *Id.* at 20-32; signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Lucenito N. Tagle, Elias R. Yusoph, Christian Robert S. Lim, Maria Gracia Cielo M. Padaca, Al A. Pareño and Luie Tito F. Guia.

December 9, 2013 of respondent Commission on Elections (Comelec) *En Banc* in SPA No. 13-309 (DC), which affirmed the Resolution³ dated September 6, 2013 of the Comelec Second Division. The Comelec, relying on our ruling in *Maquiling v. Commission on Elections*,⁴ disqualified petitioner Rommel C. Arnado (Arnado) from running in the May 13, 2013 elections, set aside his proclamation as elected mayor of Kauswagan, Lanao del Norte, and declared respondent Florante T. Capitan (Capitan) as the duly elected mayor of said municipality.

Factual Antecedents

Petitioner Arnado is a natural-born Filipino citizen who lost his Philippine citizenship after he was naturalized as citizen of the United States of America (USA). Subsequently, and in preparation for his plans to run for public office in the Philippines, Arnado applied for repatriation under Republic Act No. 9225⁵ (RA 9225) before the Consul General of the Philippines in San Francisco, USA. He took an Oath of Allegiance to the Republic of the Philippines on July 10, 2008 and, on even date, an Order of Approval of Citizenship Retention and Re-acquisition was issued in his favor. On April 3, 2009, Arnado executed an Affidavit of Renunciation of his foreign citizenship.

On November 30, 2009, Arnado filed his Certificate of Candidacy (CoC) for the mayoralty post of Kauswagan, Lanao del Norte for the May 10, 2010 national and local elections.

Linog C. Balua (Balua), another mayoralty candidate, however, filed a petition to disqualify Arnado and/or to cancel his CoC on the ground, among others, that Arnado remained a US citizen because he continued to use his US passport for entry to and exit from the Philippines after executing aforesaid Affidavit of Renunciation.

While Balua's petition remained pending, the May 10, 2010 elections proceeded where Arnado garnered the highest number of votes for the mayoralty post of Kauswagan. He was proclaimed the winning candidate.

On October 5, 2010, the Comelec First Division issued a Resolution holding that Arnado's continued use of his US passport effectively negated his April 3, 2009 Affidavit of Renunciation. Thus, he was disqualified to run for public office for failure to comply with the requirements of RA 9225. The

³ Id. at 37-46; signed by Commissioners Elias R. Yusoph, Maria Gracia Cielo M. Padaca, and Luie Tito F. Guia.

⁴ G.R. No. 195649, April 16, 2013, 696 SCRA 420.

⁵ CITIZENSHIP RETENTION AND RE-ACQUISITION ACT OF 2003.



Comelec First Division accordingly nullified his proclamation and held that the rule on succession should be followed.

Arnado moved for reconsideration. In the meantime, Casan Macode Maquiling (Maquiling), another mayoralty candidate who garnered the second highest number of votes, intervened in the case. He argued that the Comelec First Division erred in applying the rule on succession.

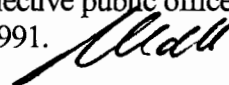
On February 2, 2011, the Comelec *En Banc* rendered a Resolution reversing the ruling of the Comelec First Division. It held that Arnado's use of his US passport did not operate to revert his status to dual citizenship. The Comelec *En Banc* found merit in Arnado's explanation that he continued to use his US passport because he did not yet know that he had been issued a Philippine passport at the time of the relevant foreign trips. The Comelec *En Banc* further noted that, after receiving his Philippine passport, Arnado used the same for his subsequent trips.

Maquiling then sought recourse to this Court by filing a petition docketed as G.R. No. 195649.

While G.R. No. 195649 was pending, the period for the filing of CoCs for local elective officials for the May 13, 2013 elections officially began. On October 1, 2012, Arnado filed his CoC⁶ for the same position. Respondent Capitan also filed his CoC for the mayoralty post of Kauswagan.

On April 16, 2013, this Court rendered its Decision in *Maquiling*. Voting 10-5, it annulled and set aside the Comelec *En Banc*'s February 2, 2011 Resolution, disqualified Arnado from running for elective position, and declared Maquiling as the duly elected mayor of Kauswagan, Lanao Del Norte in the May 10, 2010 elections. In so ruling, the majority of the Members of the Court opined that in his subsequent use of his US passport, Arnado effectively disavowed or recalled his April 3, 2009 Affidavit of Renunciation. Thus:

We agree with the pronouncement of the COMELEC First Division that "Arnado's act of consistently using his US passport effectively negated his "Affidavit of Renunciation." This does not mean that he failed to comply with the twin requirements under R.A. No. 9225, for he in fact did. It was after complying with the requirements that he performed positive acts which effectively disqualified him from running for an elective public office pursuant to Section 40(d) of the Local Government Code of 1991.



⁶ *Rollo*, p. 73.

The purpose of the Local Government Code in disqualifying dual citizens from running for any elective public office would be thwarted if we were to allow a person who has earlier renounced his foreign citizenship, but who subsequently represents himself as a foreign citizen, to hold any public office.

x x x x

We therefore hold that Arnado, by using his US passport after renouncing his American citizenship, has recanted the same Oath of Renunciation he took. Section 40(d) of the Local Government Code applies to his situation. He is disqualified not only from holding the public office but even from becoming a candidate in the May 2010 elections.⁷

The issuance of this Court's April 16, 2013 Decision sets the stage for the present controversy.

On May 9, 2013 or shortly after the Court issued its Decision in *Maquiling*, Arnado executed an Affidavit Affirming Rommel C. Arnado's "Affidavit of Renunciation Dated April 3, 2009."⁸

The following day or on May 10, 2013, Capitan, Arnado's lone rival for the mayoralty post, filed a Petition⁹ seeking to disqualify him from running for municipal mayor of Kauswagan and/or to cancel his CoC based on the ruling of this Court in *Maquiling*. The case was docketed as SPA No. 13-309 (DC) and was raffled to the Comelec's Second Division. The resolution of said petition was, however, overtaken by the May 13, 2013 elections where Arnado garnered 8,902 votes (84% of the total votes cast) while Capitan obtained 1,707 (16% of the total votes cast) votes only.

On May 14, 2013, Arnado was proclaimed as the winning candidate.

Unfazed, Capitan filed another Petition¹⁰ this time seeking to nullify Arnado's proclamation. He argued that with the April 16, 2013 Decision of this Court in *Maquiling*, there is no doubt that Arnado is disqualified from running for any local elective office. Hence, Arnado's proclamation is void and without any legal effect.

Ruling of the Comelec Second Division

On September 6, 2013, the Comelec Second Division promulgated a Resolution granting the petition in SPA No. 13-309 (DC) and disqualifying

⁷ Supra note 4, at 453-455.

⁸ *Rollo*, p. 74.

⁹ Id. at 47-53.

¹⁰ Id. at 442-454.



Arnado from running in the May 13, 2013 elections. Following *Maquiling*, it ratiocinated that at the time he filed his CoC on October 1, 2012, Arnado still failed to comply with the requirement of RA 9225 of making a personal and sworn renunciation of any and all foreign citizenship. While he executed the April 3, 2009 Affidavit of Renunciation, the same was deemed withdrawn or recalled when he subsequently traveled abroad using his US passport, as held in *Maquiling*.

The Comelec Second Division also noted that Arnado failed to execute another Affidavit of Renunciation for purposes of the May 13, 2013 elections. While a May 9, 2013 Affidavit Affirming Rommel C. Arnado's "Affidavit of Renunciation dated April 3, 2009" was submitted in evidence, the same would not suffice because it should have been executed on or before the filing of the CoC on October 1, 2012.

The dispositive portion of the Comelec Second Division's Resolution reads:

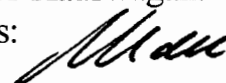
WHEREFORE, premises considered, the instant Petition is granted. Respondent Rommel Cagoco Arnado is disqualified from running in the 13 May 2013 National and Local Elections.

SO ORDERED.¹¹

Ruling of the Comelec En Banc

Aggrieved, Arnado filed a Verified Motion for Reconsideration.¹² He argued that the Comelec Second Division erred in applying *Maquiling* claiming that the said case is not on all fours with the present controversy; that Capitan's Petition was filed beyond the 25-day reglementary period reckoned from the filing of the CoC sought to be cancelled; and, that the Comelec must uphold the sovereign will of the people of Kauswagan who expressed, thru the ballots, their overwhelming support for him as their mayor. Arnado prayed that the Comelec Second Division's September 6, 2013 Resolution be reversed and that he be declared as eligible to run for mayor of Kauswagan.

On December 9, 2013, the Comelec *En Banc* affirmed the ruling of the Comelec Second Division. It accordingly annulled the proclamation of Arnado and declared Capitan as the duly elected mayor of Kauswagan. The dispositive portion of the Comelec *En Banc*'s Resolution reads:



¹¹ Id. at 45.

¹² Id. at 75-84.

WHEREFORE, premises considered, the instant motion for reconsideration is hereby DISMISSED. The Proclamation of Private Respondent Rommel C. Arnado as the duly elected mayor of Kauswagan, Lanao del Norte is hereby ANNULLED and SET ASIDE. FLORANTE T. CAPITAN is hereby DECLARED the duly elected Mayor of Kauswagan, Lanao del Norte in the May 13, 2013 Elections.

SO ORDERED.¹³

Hence, on December 16, 2013 Arnado filed the instant Petition with ancillary prayer for injunctive relief to maintain the status *quo ante*. On December 26, 2013, Arnado filed an Urgent Motion for Issuance of Status Quo Ante Order or Temporary Restraining Order¹⁴ in view of the issuance by the Comelec *En Banc* of a Writ of Execution to implement its December 9, 2013 Resolution.

On January 14, 2014, this Court issued a Resolution¹⁵ requiring the respondents to file their respective comments on the petition. In the same Resolution, this Court granted Arnado's ancillary relief for temporary restraining order.

Capitan thus filed an Urgent Motion to Lift and/or Dissolve Temporary Restraining Order dated January 14, 2014,¹⁶ contending that the acts sought to be restrained by Arnado are already *fait accompli*. He alleged that the Comelec *En Banc* had already issued a Writ of Execution¹⁷ and pursuant thereto a Special Municipal Board of Canvassers was convened. It proclaimed him to be the duly elected mayor of Kauswagan and on January 2, 2014 he took his oath of office. Since then, he has assumed and performed the duties and functions of his office.

In a Resolution¹⁸ dated February 25, 2014, this Court ordered the issuance of a Status *Quo Ante* Order directing the parties to allow Arnado to continue performing his functions as mayor of Kauswagan pending resolution of this case.

Issues

In support of his Petition, Arnado raises the following issues:

I

WHETHER x x x THE COMELEC EN BANC AND 2ND DIVISION VIOLATED PROCEDURAL DUE PROCESS AND COMMITTED GRAVE

¹³ Id. at 31.
¹⁴ Id. at 85-94.
¹⁵ Id. at 116-117.
¹⁶ Id. at 133-142.
¹⁷ Id. at 143-146.
¹⁸ Id. at 418-421.

ABUSE OF DISCRETION IN FAILING TO DISMISS THE PETITIONS OF RESPONDENT CAPITAN ON THE GROUND OF FORUM-SHOPPING AND/OR LATE FILING, ETC.

II

WHETHER x x x THE COMELEC EN BANC VIOLATED DUE PROCESS AND COMMITTED GRAVE ABUSE OF DISCRETION BY ALLOWING COM. ELIAS YUSOPH TO REVIEW THE DECISION HE WROTE FOR THE 2ND DIVISION.

III

WHETHER x x x THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION IN DISENFRANCHISING 84% OF THE VOTERS OF KAUSWAGAN IN THE MAY 2013 ELECTIONS.

IV

WHETHER x x x THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION IN DISQUALIFYING PETITIONER WHO HAS FULLY COMPLIED WITH THE REQUIREMENTS OF RA 9225 BEFORE THE FILING OF HIS COC ON OCTOBER 1, 2012.¹⁹

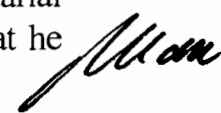
Arnado claims that the Comelec committed grave abuse of discretion and violated his right to procedural due process in not dismissing Capitan's Petition in SPA No. 13-309 (DC). He avers that Capitan is guilty of forum-shopping because the latter subsequently filed a similar case docketed as SPC No. 13-019. In addition, SPA No. 13-309 (DC) was filed beyond the 25-day prescriptive period reckoned from the time of the filing of his CoC on October 1, 2012.

Arnado likewise claims that the proceeding before the Comelec is peppered with procedural infirmities. He asserts that the Comelec violated its own rules in deciding SPA No. 13-309 (DC) without first resolving Capitan's motion to consolidate; that SPA No. 13-309 (DC) was not set for trial and no hearing for the reception of evidence was ever conducted; and, that the Comelec did not follow its own rules requiring the issuance of a notice of promulgation of resolutions.

Arnado further claims that the Comelec *En Banc* not only committed grave abuse of discretion but also violated his constitutional right to due process when it allowed Commissioner Elias R. Yusoph (Commissioner Yusoph) to participate in the review of the Decision he penned for the Second Division. Furthermore, the Comelec *En Banc* committed grave abuse of discretion when it disqualified him from running in the May 13, 2013 elections, thereby disenfranchising 84% of the voters of Kauswagan who all voted for him.

Finally, Arnado avers that further inquiry and examination of the notarial register of his former counsel, Atty. Thomas Dean M. Quijano, revealed that he

¹⁹ Id. at 8.



executed an Affidavit of Renunciation with Oath of Allegiance²⁰ on November 30, 2009. Hence, at the time he filed his CoC on October 1, 2012, he is a citizen of the Philippines who does not owe allegiance to any other country and, therefore, is qualified to run for mayor of Kauswagan in the May 13, 2013 elections.

Our Ruling


The Petition is devoid of merit.

Petition for certiorari is limited to the determination of whether the respondent tribunal acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

In a petition for *certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court, the primordial issue to be resolved is whether the respondent tribunal committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed resolution. And as a matter of policy, this Court will not interfere with the resolutions of the Comelec unless it is shown that it had committed grave abuse of discretion.²¹ Thus, in the absence of grave abuse of discretion, a Rule 64 petition will not prosper. Jurisprudence, on the other hand, defines grave abuse of discretion as the “capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.”²² “Mere abuse of discretion is not enough; it must be grave.”²³ Grave abuse of discretion has likewise been defined as an act done contrary to the Constitution, the law or jurisprudence.²⁴

In this case, and as will be discussed below, there is no showing that the Comelec *En Banc* acted capriciously or whimsically in issuing its December 9, 2013 Resolution. Neither did it act contrary to law or jurisprudence.

Arnado’s allegations that Capitan violated the rule against forum-shopping and that the latter’s petition in SPA No. 13-309(DC) was filed late, are unsubstantiated and erroneous.



²⁰ Id. at 84.

²¹ *Velasco v. Commission on Elections*, 595 Phil. 1172, 1183 (2008).

²² *Mayor Varias v. COMELEC*, 626 Phil. 292, 314 (2010).

²³ Id.

²⁴ *Information Technology Foundation of the Philippines v. COMELEC*, 464 Phil. 173, 190 (2004).

There is forum-shopping when two or more actions or proceedings, founded on the same cause, are instituted by a party on the supposition that one or the other court would make a favorable disposition.²⁵ It exists when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the other.²⁶ Thus, there is forum-shopping when in both actions there exist: (1) identity of parties, or at least such parties as would represent the same interests in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) the identity of the two preceding particulars is such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.²⁷

Here, Arnado failed to substantiate his claim of forum-shopping. He merely made a general averment that in resolving the petitions of Capitan in SPA No. 13-309 (DC) and SPC No. 13-019, the Comelec *En Banc*, as well as its Second Division, failed to comply with this Court's Revised Circular No. 28-91,²⁸ without demonstrating how forum-shopping was supposed to be present. He has not shown that the petitions in SPA No. 13-309 (DC) and SPC No. 13-019 involved the same parties, issues, and reliefs. In fact, Arnado did not even bother to submit to this Court a copy of the Petition in SPC No. 13-019 (annulment of proclamation case). As the party insisting that Capitan committed forum-shopping, Arnado bears the burden of establishing the same. After all, it is settled that he who alleges has the burden of proving it; mere allegation is not sufficient.²⁹

Besides, and as correctly observed by the Solicitor General, the parties in SPA No. 13-309 (DC) and SPC No. 13-019 are not the same. In the first case, the parties are only Capitan and Arnado. In the second case, the Municipal Board of Canvassers of Kauswagan, Lanao del Norte is impleaded as respondent. There is also dissimilitude in the reliefs sought. The former case sought to disqualify Arnado and/or to cancel his CoC while the latter case prayed for the annulment of Arnado's proclamation as mayor of Kauswagan.

With regard to the alleged tardiness in the filing of Capitan's Petition in SPA No. 13-309 (DC), it appears that Arnado either failed to grasp the import of Capitan's allegations therein or he made a deliberate partial misrepresentation in stating that the same is one for cancellation of CoC. A copy³⁰ thereof annexed to Arnado's herein petition states that it is a petition "to disqualify and/or cancel the certificate of candidacy" of Arnado. The allegations therein state in no uncertain

²⁵ *Asia United Bank v. Goodland Company, Inc.*, 652 Phil. 234, 239 (2010).

²⁶ *Id.*

²⁷ *Chavez v. Court of Appeals*, 624 Phil. 396, 400 (2010).

²⁸ ADDITIONAL REQUISITES FOR PETITIONS FILED WITH THE SUPREME COURT AND THE COURT OF APPEALS TO PREVENT FORUM SHOPPING OR MULTIPLE FILING OF PETITIONS AND COMPLAINTS (1991).

²⁹ *Morales v. Skills International Co. and/or Maher Daas*, 531 Phil. 579, 590 (2006).

³⁰ *Rollo*, pp. 47-51.

terms that it is one for disqualification based on Arnado's failure to comply with the requisites of RA 9225 and on the ruling of this Court in *Maquiling*. Thus, the Comelec Second Division appropriately treated it as a petition for disqualification with the alternative prayer to cancel Arnado's CoC. It is elementary that the nature of the action is determined by the allegations in the petition.³¹

Under Section 3, Rule 25 of the Comelec Rules of Procedure,³² a petition for disqualification should be filed "any day after the last day for filing of certificates of candidacy *but not later than the date of proclamation*." Here, Arnado was proclaimed as the winning candidate on May 14, 2013.³³ Thus, the petition in SPA No. 13-309 (DC) was seasonably filed on May 10, 2013.³⁴

The other procedural lapses allegedly committed by the Comelec are likewise unsubstantiated. Assuming the allegations of Arnado to be true, the Comelec did not commit grave abuse of discretion amounting to lack or excess of jurisdiction.

Arnado's claim that the Comelec gravely abused its discretion in deciding SPA No. 13-309 (DC) without first resolving Capitan's motion to consolidate likewise lacks substantiation. In the first place, Arnado has not attached a copy of said motion to his petition. This alone is sufficient ground for the dismissal of his Rule 64 Petition, filed in relation to Rule 65 of the Rules of Court, for not being accompanied by pleadings and documents relevant and pertinent thereto.³⁵ Also, it was Capitan who filed the motion for consolidation. Not being the movant, Arnado is not in a position to question the alleged inaction of the Comelec on said motion. And even assuming that he has, by filing a Verified Motion for Reconsideration with the Comelec *En Banc* and subsequently appealing to this Court despite the still unresolved motion for consolidation, Arnado effectively abandoned said motion for consolidation. In *Cayago v. Hon. Lina*,³⁶ it was held that once a party elevates the case before the appellate tribunal, the appellant is deemed to have abandoned the unresolved motion which remains pending with

³¹ *Banaga, Jr. v. Commission on Elections*, 391 Phil. 596, 605 (2000).

³² Rule 25—Disqualification of Candidates

Sec. 3. Period to File Petition. — The petition shall be filed any day after the last day for filing of certificates of candidacy but not later than the date of proclamation.

For further discussion on the period for filing a petition for disqualification, see also *Gonzalez v. COMELEC*, 660 Phil. 225 (2011) and the case of *Loong v. Commission on Elections*, G.R. No. 93986, December 22, 1992, 216 SCRA 760, cited therein.

³³ *Rollo*, p. 68.

³⁴ *Id.* at 47.

³⁵ Section 1, Rule 65 of the Rules of Court requires that "[t]he petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, *copies of all pleadings and documents relevant and pertinent thereto*, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

³⁶ 489 Phil. 735 (2005).

the tribunal of origin. “[I]t is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards make a *volte face* and deny that same jurisdiction.”³⁷

In any case, under Section 9, Rule 3 of the Comelec Rules of Procedure, consolidation is only permissive. It is not mandatory. Section 9 reads:

Sec. 9. Consolidation of Cases. – When an action or proceeding involves a question of law and fact which is similar to or common with that of another action or proceeding, the same *may* be consolidated with the action or proceeding bearing the lower docket number.

In *Muñoz v. Comelec*,³⁸ this Court accentuated “that the term ‘*may*’ is indicative of a mere possibility, an opportunity or an option. The grantee of that opportunity is vested with a right or faculty which he has the option to exercise. If he chooses to exercise the right, he must comply with the conditions attached thereto, which in this case require that the cases to be consolidated must involve similar questions of law and fact.”³⁹ In this case, the consolidation of SPA No. 13-309 (DC) and SPC No. 13-019 does not appear to be necessary. As earlier mentioned, said cases do not even involve the same parties and reliefs sought. Hence, no grave abuse of discretion can be attributed to the Comelec in not consolidating them.

Arnado’s protestation that the Comelec violated its own rules when it decided SPA No. 13-309 (DC) without setting it for trial likewise deserves scant consideration. The proceedings in a special action for disqualification of candidates under Rule 25 of the Comelec Rules of Procedure are summary in nature where a trial type proceeding may be dispensed with.⁴⁰ In *Diangka v. Comelec*,⁴¹ this Court held that:

Again, our ingrained jurisprudence is that technical rules of evidence should not be rigorously applied in administrative proceedings specially where the law calls for the proceeding to be summary in character. Pursuant to Section 4, Rule 25 of the 1993 COMELEC Rules of Procedure, petitions for disqualifications are subject to summary hearings. In relation thereto, Section 3, Rule 17 of the said Rules provides that it remains in the sound discretion of the COMELEC whether clarificatory questions are to be asked the witnesses-affiants, and whether the adverse party is to be granted opportunity to cross-examine said witnesses-affiants. Furthermore, when the COMELEC *en banc* reviews and evaluates a party’s petition, or as in the case at bar, a party’s answer and the supporting papers attached thereto, the same is tantamount to a fair “hearing” of his case.⁴²

³⁷ Id. at 749.

³⁸ 527 Phil. 733 (2006).

³⁹ Id. at 741-742.

⁴⁰ Section 4 of Rule 25 of the Comelec Rules of Procedure; *Nolasco v. COMELEC*, 341 Phil. 761, 773 (1997).
⁴¹ 380 Phil. 859 (2000).

⁴² Id. at 873-874.

Arnado's claim that the Comelec En Banc committed grave abuse of discretion and violated his right to due process in allowing Commissioner Yusoph to participate in the deliberation of the assailed Comelec En Banc Resolution is likewise bereft of substantiation.

Arnado's claim that Commissioner Yusoph penned both the September 6, 2013 Resolution of the Comelec Second Division and the December 9, 2013 Resolution of the Comelec *En Banc* is not correct. While Commissioner Yusoph, together with Commissioners Maria Gracia Cielo M. Padaca and Luie Tito F. Guia, signed said Resolution, there is nothing therein which would indicate that Commissioner Yusoph was the writer or the *ponente* of said Resolution. The September 6, 2013 Resolution of the Comelec Second Division does not state who the *ponente* is. The same goes true with the questioned December 9, 2013 *Per Curiam* Resolution⁴³ of the Comelec *En Banc*. As a *per curiam* resolution, it was arrived at by the Comelec *En Banc* as a whole and without any particular *ponente*. Hence, we need not belabor Arnado's claim of denial of due process as his basis therefor lacks factual moorings.

Arnado has not yet satisfied the twin requirements of Section 5(2) of RA 9225 at the time he filed his CoC for the May 13, 2013 elections; subsequent compliance does not suffice.

Under Section 4(d) of the Local Government Code, a person with "dual citizenship" is disqualified from running for any elective local position. In *Mercado v. Manzano*,⁴⁴ it was clarified that the phrase "dual citizenship" in said Section 4(d) must be understood as referring to "dual allegiance."⁴⁵ Subsequently,

⁴³ *Rollo*, pp. 20-31.

⁴⁴ 367 Phil. 132 (1999).

⁴⁵ *Id.* In this case the Court differentiated dual citizenship from dual allegiance as follows:

The former arises when, as a result of the concurrent application of the different laws of two or more states, a person is simultaneously considered a national by the said states. For instance, such a situation may arise when a person whose parents are citizens of a state which adheres to the principle of *jus sanguinis* is born in a state which follows the doctrine of *jus soli*. Such a person, *ipso facto* and without any voluntary act on his part, is concurrently considered a citizen of both states. Considering the citizenship clause (Art. IV) of our Constitution, it is possible for the following classes of citizens of the Philippines to possess dual citizenship:

(1) Those born of Filipino fathers and/or mothers in foreign countries which follow the principle of *jus soli*;

(2) Those born in the Philippines of Filipino mothers and alien fathers if by the laws of their fathers' country such children are citizens of that country;

(3) Those who marry aliens if by the laws of the latter's country the former are considered citizens, unless by their act or omission they are deemed to have renounced Philippine citizenship.



Congress enacted RA 9225 allowing natural-born citizens of the Philippines who have lost their Philippine citizenship by reason of their naturalization abroad to reacquire Philippine citizenship and to enjoy full civil and political rights upon compliance with the requirements of the law. They may now run for public office in the Philippines provided that they: (1) meet the qualifications for holding such public office as required by the Constitution and existing laws; and, (2) make a personal and sworn renunciation of any and all foreign citizenships before any public officer authorized to administer an oath⁴⁶ prior to or at the time of filing of their CoC. Thus:

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

(2) Those seeking elective public office 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;

In the case at bench, the Comelec Second Division, as affirmed by the Comelec *En Banc*, ruled that Arnado failed to comply with the second requisite of Section 5 (2) of RA 9225 because, as held in *Maquiling v. Commission on Elections*,⁴⁷ his April 3, 2009 Affidavit of Renunciation was deemed withdrawn when he used his US passport after executing said affidavit. Consequently, at the time he filed his CoC on October 1, 2012 for purposes of the May 13, 2013 elections, Arnado had yet to comply with said second requirement. The Comelec also noted that while Arnado submitted an affidavit dated May 9, 2013, affirming his April 3, 2009 Affidavit of Renunciation, the same would not suffice for having been belatedly executed.

The Comelec *En Banc* did not err, nor did it commit grave abuse of discretion, in upholding the Resolution of the Comelec Second Division disqualifying Arnado from running for public office. It is worth noting that the reason for Arnado's disqualification to run for public office during the 2010 elections – being a candidate without total and undivided allegiance to the

There may be other situations in which a citizen of the Philippines may, without performing any act, be also a citizen of another state; but the above cases are clearly possible given the constitutional provisions on citizenship.

Dual allegiance, on the other hand, refers to the situation in which a person simultaneously owes, by some positive act, loyalty to two or more states. While dual citizenship is involuntary, dual allegiance is the result of an individual's volition.

With respect to dual allegiance, Article IV, §5 of the Constitution provides: "Dual allegiance of citizens is inimical to the national interest and shall be dealt with by law."

⁴⁶ Section 5(2), R.A. 9225; *Japzon v. COMELEC*, 596 Phil. 354, 368 (2009).

⁴⁷ Entry of judgment was made on August 16, 2013.

Republic of the Philippines – still subsisted when he filed his CoC for the 2013 elections on October 1, 2012. The Comelec *En Banc* merely adhered to the ruling of this Court in *Maquiling* lest it would be committing grave abuse of discretion had it departed therefrom.

Moreover, it cannot be validly argued that Arnado should be given the opportunity to correct the deficiency in his qualification because at the time this Court promulgated its Decision in *Maquiling* on April 16, 2013, the period for filing the CoC for local elective office had already lapsed. Or, as Justice Arturo D. Brion puts it in his Dissenting Opinion, “[t]o the extent that Arnado was denied the chance to submit a replacement oath of renunciation in 2013, then there was an unfair and abusive denial of opportunity equivalent to grave abuse of discretion.” Besides, shortly after learning of the Court’s April 16, 2013 ruling in *Maquiling* or on May 9, 2013, Arnado substantially complied therewith by executing an affidavit affirming his April 3, 2009 Affidavit of Renunciation.

The ruling in *Maquiling* is indeed novel in the sense that it was the first case dealing with the effect of the use of a foreign passport on the qualification to run for public office of a natural-born Filipino citizen who was naturalized abroad and subsequently availed of the privileges under RA 9225. It was settled in that case that the use of a foreign passport amounts to repudiation or recantation of the oath of renunciation. Yet, despite the issue being novel and of first impression, plus the fact that Arnado could not have divined the possible adverse consequences of using his US passport, the Court in *Maquiling* did not act with leniency or benevolence towards Arnado. Voting 10-5, the Court ruled that matters dealing with qualifications for public elective office must be strictly complied with. Otherwise stated, the Court in *Maquiling* did not consider the novelty of the issue as to excuse Arnado from strictly complying with the eligibility requirements to run for public office or to simply allow him to correct the deficiency in his qualification by submitting another oath of renunciation. Thus, it is with more reason that in this case, we should similarly require strict compliance with the qualifications to run for local elective office.

The circumstances surrounding the qualification of Arnado to run for public office during the May 10, 2010 and May 13, 2013 elections, to reiterate for emphasis, are the same. Arnado’s use of his US passport in 2009 invalidated his oath of renunciation resulting in his disqualification to run for mayor of Kauswagan in the 2010 elections. Since then and up to the time he filed his CoC for the 2013 elections, Arnado had not cured the defect in his qualification. *Maquiling*, therefore, is binding on and applicable to this case following the salutary doctrine of *stare decisis et non quieta movere*, which means to adhere to precedents, and not to unsettle things which are established.⁴⁸ Under the doctrine, “[w]hen the court has once laid down a principle of law as applicable to a certain

⁴⁸ *Lazatin v. Hon. Desierto*, 606 Phil. 271, 281 (2009).



state of facts, it will adhere to that principle and apply it to all future cases where facts are substantially the same.”⁴⁹ It enjoins adherence to judicial precedents and bars relitigation of the same issue.⁵⁰

It may not be amiss to add that as early as 2010, the year when Balua filed a petition to disqualify him, Arnado has gotten wind that the use of his US passport might pose a problem to his candidacy. In other words, when Arnado filed his CoC on October 1, 2012, he was not totally unaware that the use of his US passport after he had executed the Affidavit of Renunciation might have an impact on his qualification and candidacy. In fact, at that time, *Maquiling* had already reached this Court. But despite the petitions filed against him questioning his qualification to run for public office in 2010, Arnado filed his CoC on October 1, 2012 unmindful of any possible legal setbacks in his candidacy for the 2013 elections and without executing another Affidavit of Renunciation. In short, the argument that Arnado should be given the opportunity to correct the deficiency in his CoC since *Maquiling* was promulgated after the lapse of the period for filing a CoC for the 2013 elections, is totally bereft of merit. Consistent with our April 16, 2013 ruling in *Maquiling*, Arnado should be made to face the consequences of his inaction since he could have remedied it at the time he filed his CoC on October 1, 2012 or even before that. There is no law prohibiting him from executing an Affidavit of Renunciation every election period if only to avert possible questions about his qualifications.

***The alleged November 30, 2009
Affidavit of Renunciation with Oath of
Allegiance cannot be given any
probative weight.***

As to the alleged recently discovered November 30, 2009 Affidavit of Renunciation with Oath of Allegiance, the same is highly suspect. As correctly pointed out by the Solicitor General, the original or certified true copy thereof was not presented. In addition, such crucial evidence sufficient to alter the outcome of the case was never presented before the Comelec much less in the *Maquiling* case. Curiously, it only surfaced for the first time in this petition. In *Jacot v. Dal*,⁵¹ this Court disallowed the belated presentation of similar evidence on due process considerations. Thus:

As a rule, no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court, administrative agency or quasi-judicial body need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due

⁴⁹ *Tung Chin Hui v. Rodriguez*, 395 Phil. 169, 177 (2000).

⁵⁰ *Philippine Guardians Brotherhood, Inc. (PGBI) v. COMELEC*, 633 Phil. 590, 603 (2010).

⁵¹ 592 Phil. 661 (2008).



process impel this rule. Courts have neither the time nor the resources to accommodate parties who chose to go to trial haphazardly.

Likewise, this Court does not countenance the late submission of evidence. Petitioner should have offered the Affidavit dated 7 February 2007 during the proceedings before the COMELEC.

Section 1 of Rule 43 of the COMELEC Rules of Procedure provides that “In the absence of any applicable provisions of these Rules, the pertinent provisions of the Rules of Court in the Philippines shall be applicable by analogy or in suppletory character and effect.” Section 34 of Rule 132 of the Revised Rules of Court categorically enjoins the admission of evidence not formally presented:

SEC. 34. *Offer of evidence.* - The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

Since the said Affidavit was not formally offered before the COMELEC, respondent had no opportunity to examine and controvert it. To admit this document would be contrary to due process. Additionally, the piecemeal presentation of evidence is not in accord with orderly justice.⁵²

Moreover, in *Maquiling* it was mentioned that Arnado used his US passport on January 12, 2010 and March 23, 2010. Thus:

Balua likewise presented a certification from the Bureau of Immigration dated 23 April 2010, certifying that the name “Arnado, Rommel Cagoco” appears in the available Computer Database/Passenger manifest/IBM listing on file as of 21 April 2010, with the following pertinent travel records:

DATE OF Arrival	: 01/12/2010
NATIONALITY	: USA-AMERICAN
PASSPORT	: 057782700
DATE OF Arrival	: 03/23/2010
NATIONALITY	: USA-AMERICAN
PASSPORT	: 057782700 ⁵³


Despite the existence of such statement in *Maquiling*, We are puzzled why Arnado never bothered to correct or refute it. He neither alleged nor presented evidence in this petition to prove that he did not travel abroad on those dates using his US passport.

Justice Marvic M.V.F. Leonen, however, dissents and maintains the same position he had taken in *Maquiling* that Arnado’s use of his US passport in 2009 is an isolated act justified by the circumstances at that time. At any rate, Arnado started to use his Philippine passport in his travels abroad beginning December 11,

⁵² Id. at 675-676.

⁵³ Supra note 4 at 433.

2009 and thenceforth. This, according to J. Leonen, is borne out by Arnado's Philippine passport.

With due respect to my esteemed colleague, it appears that J. Leonen is not only reviving an issue that had already been settled with finality in the *Maquiling* case, but he is also going beyond the issues raised in this petition. To reiterate for clarity, Arnado's argument in this case – that he is qualified to run for mayor as he has satisfied the requirements of Sec. 5(2) of RA 9225 relative to the May 13, 2013 elections – is premised only on the alleged newly discovered November 30, 2009 Affidavit. Nothing more. He does not claim in this case that his use of US passport in his travel abroad in 2009 is an isolated act, as J. Leonen insists. In *Vazquez v. De Borja*,⁵⁴ it was held that courts do not have jurisdiction over issues neither raised in the pleading nor tried with the express or implied consent of the parties. They cannot render judgment based on issues that have never been raised before them. Equally settled is the rule that “points of law, theories, issues, and arguments not brought to the attention of the lower [tribunal] need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. Basic considerations of due process underlie this rule.”⁵⁵ The same goes true with J. Brion's theory that what was cancelled by virtue of *Maquiling* was only the April 3, 2009 Affidavit of Renunciation where Arnado expressly renounced any foreign citizenship; not the July 10, 2008 Oath of Allegiance which carried with it an implied abdication of foreign citizenship. For J. Brion, “[t]he requirement of an express renunciation x x x does not negate the effect of, or make any less real, the prior implicit renunciation of citizenship and allegiance made upon taking the oath of allegiance.” Again, this was never raised in this petition. At any rate, the execution of an Oath of Allegiance is required by Section 3⁵⁶ of RA 9225. For those who avail themselves of RA 9225 and intend to run for public office, Section 5(2) thereof provides the additional requirement of making a personal and sworn renunciation of any and all foreign citizenships prior to or at the time of filing of their CoC. Definitely, the provisions of Section 5(2) are not useless or meaningless surplusage. When the law expressly requires an explicit renunciation, an implicit one would be insufficient. Furthermore, even assuming that Arnado's 2008 implied renunciation is sufficient, the same has also been negated by his use of his US passport in 2009, following the ruling in *Maquiling*. 

⁵⁴ 74 Phil. 560, 568 (1944).

⁵⁵ *Penera v. Commission on Elections*, 615 Phil. 667, 708 (2009).

⁵⁶ Section 3. *Retention of Philippine Citizenship*. – Any provision of law to the contrary notwithstanding, natural-born citizens of the Philippines who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country are hereby deemed to have re-acquired Philippine citizenship upon taking the following oath of allegiance to the Republic:

“I _____, solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines, and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion.”

Natural-born citizens of the Philippines who, after the effectivity of this Act, become citizens of the foreign country shall retain their Philippine citizenship upon taking the aforesaid oath.

Otherwise, we would give more weight to an implied renunciation than to an express one specifically required by law.

Besides, the Decision of this Court in *Maquiling* holding that Arnado's use of his US passport effectively recanted his Affidavit of Renunciation has already become final and immutable. We can no longer resurrect in this case the issues that have already been resolved there with finality.

In maintaining that Arnado used his Philippine passport in travelling abroad in the first quarter of 2010, J. Leonen relies on the copy thereof attached to the *rollo* of the *Maquiling* case. But said copy of Arnado's Philippine passport⁵⁷ is a mere "CERTIFIED TRUE COPY **FROM THE MACHINE COPY ON FILE**" as attested to by Rosario P. Palacio, Records Officer III of the Comelec.⁵⁸ This is clearly stamped on aforesaid copy of Arnado's Philippine passport. A machine copy or photocopy is a mere secondary evidence.⁵⁹ As such, it cannot be admitted in evidence until and unless the offeror has proven the due execution and the subsequent loss or unavailability of the original.⁶⁰ In this case, however, Arnado's Philippine passport is not missing. Thus, said photocopy of Arnado's Philippine passport cannot sway us to depart from the uncontroverted certification of the Bureau of Immigration that Arnado used his US passport on January 12, 2010 and March 23, 2010. Consequently, even assuming that the recently discovered November 30, 2009 Affidavit of Renunciation with Oath of Allegiance is true and authentic, Arnado once more performed positive acts on January 12, 2010 and March 23, 2010, which effectively negated the alleged November 30, 2009 Affidavit resulting in his disqualification to run for an elective public office.

Landslide election victory cannot override eligibility requirements.

In *Maquiling*, this Court emphasized that popular vote does not cure the ineligibility of a candidate. Thus, while in this case Arnado won by landslide majority during the 2013 elections, garnering 84% of the total votes cast, the same "cannot override the constitutional and statutory requirements for qualifications and disqualifications."⁶¹ In *Velasco v. Comelec*,⁶² this Court pronounced that election victory cannot be used as a magic formula to bypass election eligibility requirements; otherwise, certain provisions of laws pertaining to elections will become toothless. One of which is Section 39 of the Local Government Code of 1991, which specifies the basic positive qualifications of local government officials. If in *Velasco* the Court ruled that popular vote cannot override the

⁵⁷ *Rollo* (G.R. No. 195649), pp. 242-245.

⁵⁸ Emphasis supplied.

⁵⁹ *Country Bankers Insurance Corporation v. Lagman*, 669 Phil. 205, 216 (2011).

⁶⁰ *Citibank, N.A. Mastercard v. Teodoro*, 458 Phil. 480, 489 (2003).

⁶¹ *Supra* note 4 at 459.

⁶² *Supra* note 21 at 1195.

required qualifications under Section 39,⁶³ *a fortiori*, there is no reason why the Court should not follow the same policy when it comes to disqualifications enumerated under Section 40⁶⁴ of the same law. After all, “[t]he qualifications set out in [Section 39] are roughly half of the requirements for election to local public offices. The other half is contained in the succeeding section which lays down the circumstances that disqualify local candidates.”⁶⁵

Finally, this case is strikingly similar to the case of *Lopez v. Comelec*.⁶⁶ In that case, petitioner Lopez was also a natural-born Filipino who lost his Philippine citizenship after he became a naturalized US citizen. He later reacquired his Philippine citizenship by virtue of RA 9225. Thereafter, Lopez filed his candidacy for Chairman of *Barangay* Bagacay, San Dionisio, Iloilo in the synchronized *Barangay* and *Sangguniang Kabataan* Elections held on October 29, 2007 without first making a personal and sworn renunciation of his foreign citizenship. In spite of the fact that Lopez won in the elections, this Court still affirmed the Resolution of the Comelec disqualifying Lopez as a candidate for a local elective position for his failure to comply with the requirements of Section 5(2) of RA 9225. Thus:

While it is true that petitioner won the elections, took his oath and began to discharge the functions of Barangay Chairman, his victory cannot cure the defect of his candidacy. Garnering the most number of votes does not validate the election of a disqualified candidate because the application of the



⁶³ 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, 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.

(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, municipalities must be at least twenty-one (21) years of age on election day.

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

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

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

⁶⁴ 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 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 nonpolitical 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.

⁶⁵ Pimentel, Jr., *The Local Government Code Revisited*, 2011 ed., 164.

⁶⁶ 581 Phil. 657 (2008).

constitutional and statutory provisions on disqualification is not a matter of popularity.⁶⁷


In fine, this Court finds no grave abuse of discretion on the part of the Comelec *En Banc* in sustaining the Resolution of the Comelec Second Division disqualifying Arnado from running in the May 13, 2013 elections and in accordingly setting aside his proclamation as elected mayor of Kauswagan, Lanao del Norte and proclaiming Capitan as the duly elected mayor of said municipality.

WHEREFORE, the instant Petition is hereby **DISMISSED** and the assailed Comelec Resolutions are **AFFIRMED**. The Status Quo Ante Order issued by this Court is **LIFTED**.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

See Concurring Opinion

MARIA LOURDES P. A. SERENO
Chief Justice


ANTONIO T. CARPIO
Associate Justice



PRESBITERO J. VELASCO, JR.
Associate Justice


See concurring opinion of Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

See my Dissent


ARTURO D. BRION
Associate Justice

⁶⁷ Id. at 663.


DIOSDADO M. PERALTA
Associate Justice


LUCAS P. BERSAMIN
Associate Justice

(On Official Leave)
MARTIN S. VILLARAMA, JR.
Associate Justice

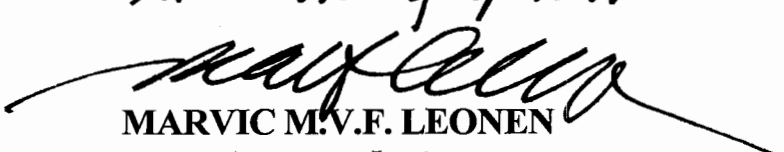
I join the dissent of J. Villarama

JOSE PORTUGAL PEREZ
Associate Justice

I join the dissents of J. Brion & J. Leonen

JOSE CATRAL MENDOZA
Associate Justice

(On Leave)
BIENVENIDO L. REYES
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

See dissenting opinion

MARVIC M.V.F. LEONEN
Associate Justice

(No part)
FRANCIS H. JARDELEZA
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.


MARIA LOURDES P. A. SERENO
Chief Justice

