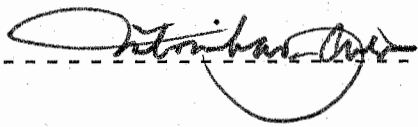


G.R. NOS. 260219 & 260231 – DATU PAX ALI S. MANGUDADATU,
Petitioner v. **THE COMMISSION ON ELECTIONS, SHARIFA AKEEL**
MANGUDADATU, AZEL V. MANGUDADATU, and BAI ALI A.
UNTONG, Respondents.

Promulgated:

April 22, 2025

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DISSENTING OPINION

HERNANDO, J.:

The present petition for *certiorari*¹ seeks to nullify the Resolutions² of the Commission on Elections (COMELEC) for allegedly being issued with grave abuse of discretion amounting to a lack or excess of jurisdiction. In the assailed Resolutions, the COMELEC cancelled petitioner Pax Ali S. Mangudadatu's (Pax Ali) Certificate of Candidacy (COC) for the position of Governor of Sultan Kudarat for the May 9, 2022 elections anchored on "false material representations" when he stated therein that he is a resident of Purok Garden, Tamnag, Lutayan, Sultan Kudarat, and that the period of his residence in Sultan Kudarat up to the day before May 9, 2022 is one year and eight months,³ which is contrary to the facts as found by the COMELEC.

When Pax Ali filed his COC for the position of Governor of Sultan Kudarat, he was the incumbent Mayor of the Municipality of Datu Abdullah Sangki (DAS), Maguindanao.

Sharifa Akeel Mangudadatu, Azel Mangudadatu, and Bai Ali A. Untong, separately filed before the COMELEC a Petition to Deny Due Course or to Cancel the COC of Pax Ali. They essentially argued that Pax Ali misrepresented in his COC that he had been residing in Sultan Kudarat for at least one year immediately preceding the 2022 elections when in truth, he remained as Mayor of DAS which showed his lack of intent to abandon his residence therein.⁴

In his Answer, Pax Ali averred that his domicile of origin is Purok Garden, Tamnag, Lutayan, Sultan Kudarat where he grew up. He merely established a temporary residence at Barangay Talisawa, DAS, Maguindanao, to comply with the residency requirement for the position of Mayor; however, he always had the inherent intention to return to his roots in Sultan Kudarat. In fact, he moved back to Lutayan, Sultan Kudarat in October 2020 and only travelled to DAS on a daily basis to perform his functions as Mayor. By the time he filed his COC

¹ With Extremely Urgent Application for the Issuance of a Temporary Restraining Order or Status Quo Order and for the Conduct of a Special Raffle of this Case. *Rollo*, vol. 1, pp. 3–64.

² *Rollo*, vol. 1, pp. 65–76 and 86–93.

³ Draft *ponencia*, p. 3.

⁴ *Id.* at 4.

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on October 7, 2021, therefore, he had already complied with the one-year residency requirement under the Local Government Code. Finally, as a sign of total and complete abandonment of his residence and occupation in Maguindanao, he resigned from his position as Mayor of DAS on November 15, 2021.⁵

The *ponencia* denies Pax Ali's petition finding that he deliberately misrepresented that his residence is in Lutayan, Sultan Kudarat to mislead the electorate of Sultan Kudarat into thinking that he is eligible to run for the position of Governor.⁶ According to the *ponencia*, Pax Ali failed to effect a change of domicile from DAS, Maguindanao to Lutayan, Sultan Kudarat, one year immediately preceding the May 9, 2022 elections because he remained as Mayor of DAS, Maguindanao. For the Majority, it was only after Pax Ali resigned as Mayor of DAS on November 15, 2021 that he can rightfully claim to have reestablished his domicile in Lutayan, Sultan Kudarat. The *ponencia* explains that remaining as the local chief executive of DAS is antithetical to a claim of *animus non-revertendi*. While there is substantial evidence that Pax Ali had bodily or physical presence in Lutayan, Sultan Kudarat, his intent to remain there for an indefinite period, and to abandon DAS, Maguindanao is lacking.⁷

The *ponencia* further considers Pax Ali's resignation as Mayor of DAS on November 15, 2021 as a mere afterthought to foreclose any issue with compliance with the residency requirement as the same was done only after the filing of two disqualification cases against him.⁸

The crux of the controversy therefore is whether or not Pax Ali was able to successfully prove by substantial evidence that he has indeed transferred his residence from DAS, Maguindanao to Purok Garden, Tamnag, Lutayan, Sultan Kudarat one year immediately preceding the May 9, 2022 elections. There is no question regarding Pax Ali's bodily presence in Lutayan, Sultan Kudarat since August 2020. What is being assailed is the *animus* to stay therein and to abandon his domicile in DAS, Maguindanao.

I respectfully register my dissent to the pronouncement of the Majority that Pax Ali failed to meet the *animus non-revertendi* requirement on the ground that he remained as Mayor of DAS, Maguindanao until November 15, 2021.

The *ponencia's* ruling that Pax Ali failed to meet the *animus non-revertendi* requirement disregards the overwhelming evidence showing that Pax Ali intended, and had in fact reestablished, his domicile in Lutayan, Sultan Kudarat. In addition, the ruling contradicts several settled jurisprudence.

⁵ *Id.* at 4–5.

⁶ *Id.* at 20.

⁷ *Id.* at 14.

⁸ *Id.* at 16.

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In the case of *Mitra v. Commission on Elections*,⁹ the Court upheld the validity of Mitra's COC and held that he did not commit any false misrepresentation when he declared in his COC that he is a resident of Aborlan, Palawan.

Mitra shares the same factual milieu as this case. To recall, the petitioner in *Mitra* was also the incumbent representative of the Second District of Palawan. Similarly, Pax Ali is also the incumbent Mayor of DAS, Maguindanao. During Mitra's incumbency as representative, he made several incremental moves to transfer his domicile from Puerto Princesa City to Aborlan, Palawan in order to satisfy the residency requirement for eligibility to run as Governor of the province of Palawan. Likewise, Pax Ali made incremental moves to transfer his domicile from DAS, Maguindano to Lutayan, Sultan Kudarat. *Mitra* and this case have almost identical set of evidence. Unfortunately, the conclusions reached in both cases are contradictory to each other. In *Mitra*, the Court held that Mitra has indeed been physically present in Aborlan for the required period with every intent to settle there when he made definite, although incremental, transfer moves as shown by the undisputed business interests he has established in Aborlan in 2008; by the lease of a dwelling where he established his base; by the purchase of a lot for his permanent home; by his transfer of registration as a voter in March 2009; and by the construction of a house therein.

Like Mitra, Pax Ali's transfer of residence was accomplished, not in one single move but, through an incremental process that started in August 2020 and was in place by October 2020.

In fact, no less than the *ponencia* itself found that Pax Ali had duly proven his physical presence at Purok Garden, Tamnag, Lutayan Sultan Kudarat through the following: (1) The November 16, 2021 Affidavit of the *Punong Barangay* of Tamnag, Lutayan, Sultan Kudarat, confirming Pax Ali's physical presence in Purok Garden since August 2020 and the fact that the *Punong Barangay* regularly spoke with Pax Ali regarding the issues and concerns of the residents in their barangay and how he (Pax Ali) could help them; (2) Certificate of Residency issued by the *Barangay* Secretary of Tamnag and approved by the *Punong Barangay* indicating that Pax Ali has been residing in the *barangay* since August 2020; and (3) Sworn statements of several next-door neighbors of Pax Ali in Purok Garden attesting to his physical presence in the area starting August 2020.¹⁰

However, the *ponencia* considers the foregoing pieces of evidence only as proof of Pax Ali's bodily presence in the locality in which he seeks election, but not of his intent to remain there for an indefinite period and to abandon his domicile in DAS, Maguindanao.

⁹ 636 Phil. 753, 794 (2010) [Per J. Brion, *En Banc*].

¹⁰ Draft *ponencia*, p. 15.

I disagree. Similar to *Mitra*, the overwhelming proof adduced by Pax Ali, not only substantiate his physical presence in Lutayan, Sultan Kudarat, but also his intent to settle therein. Indeed, Pax Ali's intent to reestablish his residence in Lutayan, Sultan Kudarat is discernible from his acts executed beginning August 2020 as evidenced by the Affidavits of his various witnesses which the *ponencia* in fact considers as more credible.¹¹

In addressing the residency issue, however, the *ponencia*, just like the COMELEC, practically focused its lens solely on Pax Ali's continued discharge of his duties as Mayor of DAS, Maguindanao until November 15, 2021. According to the *ponencia*, since residency is a continuing qualification for every elective official, Pax Ali's intent to remain permanently in Lutayan, Sultan Kudarat at the time he filed his COC for Governor, and to abandon his domicile in DAS, Maguindanao, is negated by his incumbency as mayor thereof.

I respectfully disagree with the above ratiocination.

I wish to point out that **the issue herein is whether or not Pax Ali has sufficiently proved by substantial evidence that he had effectively transferred his domicile from DAS, Maguindanao to Lutayan, Sultan Kudarat, in order to be eligible to run for the post of Governor of Sultan Kudarat, and not whether he could have continued sitting as Mayor of DAS. The determination of an elective official's continuing qualification for his/her present position is not the objective of a petition to deny due course and/or cancel COC for the new position he/she aspires for.**

At this juncture, the Court's pronouncement in *Torayno, Sr. v. Commission on Elections*,¹² is instructive:

To petitioners' argument that Emano could not have continued to qualify as provincial governor if he was indeed a resident of Cagayan de Oro City, we respond that **the issue before this Court is whether Emano's residence in the city qualifies him to run for and be elected as mayor, not whether he could have continued sitting as governor of the province.** There was no challenge to his eligibility to continue running the province; hence, this Court cannot make any pronouncement on such issue. Considerations of due process prevent us from adjudging matters not properly brought to us. On the basis, however, of the facts proven before the Comelec, we hold that he has satisfied the residence qualification required by law for the mayorship of the city.¹³ (Emphasis supplied)

Prescinding from the foregoing, it must be stressed that in the case of Pax Ali, the issue is whether Pax Ali's residence in Purok Garden, Tamnag, Lutayan, Sultan Kudarat, makes him eligible to run for the post of governor of Sultan Kudarat. Whether his transfer of domicile to Purok Garden, Tamnag, Lutayan,

¹¹ *Id.*

¹² 392 Phil. 342 (2000) [Per J. Panganiban, *En Banc*].

¹³ *Id.* at 355-356.

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Sultan Kudarat disqualified him from serving as Mayor of DAS, Maguindanao was never an issue.

In *Mitra*, the Court focused on the overt acts executed by Mitra indubitably showing his intent to settle in Aborlan, Palawan and to abandon his residence in Puerto Princesa City. It did not even touch on the supposed incumbency of Mitra as representative of the Second District of Palawan to disqualify or to cancel his COC for Governor. In contrast, the *ponencia* here focused on the fact that Pax Ali is the incumbent Mayor of DAS, Maguindanao, in establishing his *animus revertendi*. It barely considered the incremental overt acts committed by Pax Ali to reestablish his domicile in Sultan Kudarat. In *Mitra*, the Court even acknowledged that the transfer of residence is not a strange occurrence among elective officials, *viz.*:

This case, incidentally, is not the first that we have encountered where a former elective official had to transfer residence in order to continue his public service in another political unit that he could not legally access, as a candidate, without a change of residence.¹⁴

Given the foregoing, I respectfully submit that the COMELEC and the *ponencia* utterly erred in their appreciation of the evidence and used the wrong considerations which led to their incorrect conclusion that Pax Ali is not a resident of Lutayan, Sultan Kudarat.

Significantly, it must be noted that Mitra and Pax Ali have a similar set of evidence, i.e., Certificate of Residency issued by their respective *Punong Barangays*, numerous affidavits of next-door neighbors attesting to their physical presence in the localities in which they seek election, sworn statements of witnesses attesting to their intention to settle therein, various photographs showing their physical presence, as well as proof of business interests in the same locality, which the Court considered as adequate to establish Mitra's intent to settle in Aborlan, Palawan. Thus, I see no reason why the Court should not give the same weight and credit to the evidence of Pax Ali as sufficient to establish his intent to remain in Lutayan, Sultan Kudarat, and to abandon his domicile in DAS, Maguindanao, as in *Mitra*.

Also, in *Co. v. Electoral Tribunal of the House of Representatives*,¹⁵ the Court ordained that the fact that the respondent therein made periodical journeys to his home province in Laoag revealed that he always had *animus revertendi*. In this case, not only did Pax Ali make periodical journeys to his home province in Lutayan, Sultan Kudarat but also spent his weekends therein even while he was the Mayor of DAS, Maguindanao. Beginning October 2020, he even went home to his residence in Lutayan, Sultan Kudarat after office hours on a daily basis as evidenced by the Affidavits of the Human Resource Management Officer of the local government of DAS, Pax Ali's aide, bookkeeper, and police escort, who were with him on a regular basis.¹⁶

¹⁴ *Mitra v. Commission on Elections*, 636 Phil. 753, 790 (2010) [Per J. Brion, *En Banc*].

¹⁵ 276 Phil. 758, 793–794 (1991) [Per J. Gutierrez, Jr., *En Banc*].

¹⁶ *Rollo*, pp. 433–440.

Thus, it is inappropriate to reckon Pax Ali's acquisition of a new domicile only from the time he resigned as Mayor of DAS in the face of the compelling proof presented establishing his incremental transfer moves to Lutayan, Sultan Kudarat beginning August 2020.

More importantly, in *Mitra*, the Court rejected the allegation that Mitra committed any deliberate misrepresentation given what he knew of his transfer, as shown by the moves he had made to carry it out.

The Court stressed that false representation under Section 78 must likewise be a "deliberate attempt to mislead, misinform, or hide a fact that would otherwise render a candidate ineligible." Given the purpose of the requirement, it must be made with the intention to deceive the electorate as to the would-be candidate's qualifications for public office. Thus, the misrepresentation that Section 78 addresses cannot be the result of a mere innocuous mistake, and cannot exist in a situation where the intent to deceive is patently absent, or where no deception on the electorate results.¹⁷

Applying the foregoing to the instant case, I am not convinced that Pax Ali committed any misrepresentation, much more a deliberate one, with respect to his residence. Similar to *Mitra*, it is my position that Pax Ali was able to present competent evidence to prove that he had indeed reestablished his domicile in Lutayan, Sultan Kudarat within a period of one year immediately preceding the May 2022 elections. Verily, it cannot be said that he made a false representation as to his residence to mislead, misinform, or hide a fact which would otherwise render him ineligible to run for Governor.

Next, according to the *ponencia*, remaining as Mayor of DAS is a positive and voluntary act reflecting Pax Ali's choice of residence. Remaining as the local chief executive of DAS is antithetical to a claim of *animus revertendi*. Likewise, holding on to his position as Mayor meant that Pax Ali must comply with the continuing requirement of being a resident of DAS during his entire tenure in line with the Court's ruling in *Atty. Lico v. COMELEC En Banc*. Since Pax Ali failed to show that he had established a new domicile at the time of the filing of his COC, his residency in DAS continues. He remained a resident of DAS, Maguindanao as of October 7, 2021.¹⁸

Apparently, the *ponencia*'s conclusion that Pax Ali failed to establish a new domicile at the time of the filing of his COC is anchored only on the fact that he remained as the local chief executive of DAS, Maguindanao, negating any intent to abandon DAS as his domicile.

I respectfully submit that this reasoning is flawed and lacks legal support.

¹⁷ *Mitra v. Commission on Elections*, 636 Phil. 753, 780 (2010) [Per J. Brion, *En Banc*].

¹⁸ Draft *ponencia*, p. 15.

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To conclude that Pax Ali remained to be a resident of DAS, Maguindanao, simply because he continued to discharge his duties and responsibilities as Mayor thereof, notwithstanding the evidence to the contrary, is tantamount to imposing an arbitrary limitation on Pax Ali's fundamental right to liberty of abode that is guaranteed by no less than the Philippine Constitution. Article III, Section 6, provides:

SECTION 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. . .¹⁹

The liberty of abode includes the right to choose one's residence and to leave it whenever he/she pleases. A person is free to choose and change their place of residence within the country without interference. It is a fundamental aspect of personal freedom. The only explicit limitation on the liberty of abode is set forth in the above-cited provision, that is, upon a lawful order of the court.

In the case of *Villavicencio v. Lukban*,²⁰ the Court emphasized that the liberty of abode cannot be violated without legal authority, viz.:

In other countries, as in Spain and Japan, the privilege of domicile is deemed so important as to be found in the Bill of Rights of the Constitution. Under the American constitutional system, liberty of abode is a principle so deeply imbedded in jurisprudence and considered so elementary in nature as not even to require a constitutional sanction. Even the Governor-General of the Philippine Islands, even the President of the United States, who has often been said to exercise more power than any king or potentate, has no such arbitrary prerogative, either inherent or express. Much less, therefore, has the executive of a municipality, who acts within a sphere of delegated powers. If the mayor and the chief of police could, at their mere behest or even for the most praiseworthy of motives, render the liberty of the citizen so insecure, then the presidents and chiefs of police of one thousand other municipalities of the Philippines have the same privilege. If these officials can take to themselves such power, then any other official can do the same. And if any official can exercise the power, then all persons would have just as much right to do so. And if a prostitute could be sent against her wishes and under no law from one locality to another within the country, then officialdom can hold the same club over the head of any citizen.²¹

In this case, there is nothing in the records that would show that there was a court order preventing Pax Ali from changing his residence during his incumbency as Mayor of DAS, Maguindanao. Neither is there any law expressly precluding him from acquiring a *bona fide* domicile of choice in a different locality. As such, Pax Ali merely exercised his constitutional right to reestablish his residence in Sultan Kudarat. To force him to maintain his residence in DAS, Maguindanao is to unduly impair his constitutional right to liberty of abode.

¹⁹ CONST., art. III, sec. 6.

²⁰ 39 Phil. 778 (1919) [Per J. Malcolm, *En Banc*].

²¹ *Id.* at 786-787.

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In addition, the *ponencia* submits that Pax Ali must comply with the continuing requirement of remaining a resident of DAS during his entire tenure as Mayor.

While it may be argued that residency is a continuing requirement and must be possessed not only at the time of appointment or election or assumption of office but also during the officer's entire tenure, the *ponencia* misses out on the controlling rule as settled by the Court in *Frivaldo v. COMELEC*,²² and echoed in *Maquiling v. COMELEC*,²³ that the only consequence of an elected official's loss of any of the required qualifications during his/her tenure is that, his/her title to his/her [current position] may be "seasonably challenged". Otherwise stated, the elected official's eligibility to continuously hold office is simply open to challenge. As applied in this case, when Pax Ali decided to reestablish his domicile in Sultan Kudarat, he merely opened the possibility of being unseated as Mayor of DAS, Maguindanao, a risk he opted to take. Any challenge to his title as Mayor of DAS is an entirely different matter.

Clearly, Datu Pax Ali's continuous discharge of his functions as Mayor of DAS has nothing to do with his eligibility to run as Governor of Sultan Kudarat.

To reiterate, the pivotal issue here is whether or not Pax Ali was able to meet the required period of residency in Lutayan, Sultan Kudarat to qualify him to run for and be elected as Governor of Sultan Kudarat, and not whether he could have continued sitting as Mayor of DAS, Maguindanao. Simply stated, the contentious issue in this case relates to Pax Ali's intent to remain in Sultan Kudarat for an indefinite period. I submit that the pieces of evidence adduced by Pax Ali collectively demonstrate the conclusion that he has established an incremental transfer of domicile in Lutayan, Sultan Kudarat thereby erasing doubts as to the bona fide nature of his transfer. To my mind, Pax Ali's constant and undisputed physical presence in Lutayan, Sultan Kudarat since August 2020 speaks volume of his intent to remain therein and to abandon his domicile in DAS, Maguindanao.

Withal, I wish to point out that Pax Ali is not a stranger to Sultan Kudarat. He was raised in Lutayan, Sultan Kudarat. He had been exposed to the people of Sultan Kudarat at an early age because he belongs to a family of politicians whose lives had been dedicated to public service in their province.²⁴ Therefore, Pax Ali has a significant relationship with, and intimate knowledge of, the constituency he wishes to serve.

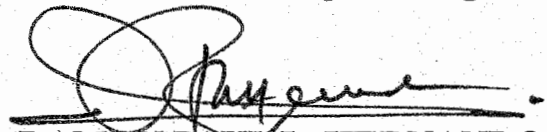
Finally, Pax Ali has been proclaimed winner in the electoral contest and has therefore the mandate of the electorate to serve.

²² 255 Phil. 934, 944 (1989) [Per J. Cruz, *En Banc*].

²³ 713 Phil. 178, 439 (2013) [Per C.J. Sereno, *En Banc*].

²⁴ *Rollo*, pp. 12–13.

In light of the foregoing, the petition for *certiorari* ought to be granted.



RAMON PAUL L. HERNANDO
Associate Justice