

EN BANC

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

Promulgated:

April 22, 2025

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SEPARATE CONCURRING AND DISSENTING OPINION

KHO, JR., J.:

The *ponencia* raised this question in the majority ruling in this case, to wit:

*Does an elected public official's incumbency and continuous discharge of his or her duties in a different locality preclude him or her from validly acquiring a new domicile of choice in another locality for purposes of satisfying the residency requirement under the Local Government Code?*

As a brief background, petitioner Datu Pax Ali S. Mangudadatu (Pax Ali), then incumbent Mayor of Datu Abdullah Sangki (DAS) in the province of Maguindanao, filed his Certificate of Candidacy (CoC) for Governor of the province of Sultan Kudarat in the 2022 National and Local Elections (NLE), wherein he declared that his period of residence in Sultan Kudarat up to election day is one year and eight months.<sup>1</sup>

Private respondents, namely: Sharifa Akeel Mangudadatu, who also filed a CoC for Governor of Sultan Kudarat; Azel Mangudadatu; and Bai Ali A. Untong, filed separate petitions with public respondent the Commission on Elections (COMELEC) to cancel or deny due course to Pax Ali's CoC alleging that he committed a material misrepresentation therein, particularly his residency qualification. Essentially, private respondents are claiming that Pax Ali could not have been a resident of Lutayan, Sultan Kudarat for at least one year immediately preceding election day because he was serving as mayor of DAS, Maguindanao, and was actively discharging his duties as such.<sup>2</sup>

<sup>1</sup> See *ponencia*, p. 2.

<sup>2</sup> *Id.* at 2–3.

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The COMELEC's First Division, which the COMELEC *En Banc* affirmed, ruled that Pax Ali materially misrepresented his residency in Lutayan, Sultan Kudarat because of Pax Ali's incumbency as mayor of DAS, Maguindanao.<sup>3</sup> In effect, the COMELEC ruled that Pax Ali cannot acquire a new residency in a locality while serving as mayor in another locality. Thus, Pax Ali elevated the matter to the Court.

To give further context regarding the above-posed question, it is well to stress that in *Limbona v. Commission on Elections*,<sup>4</sup> the Court explained that for purposes of election law, the question of residence or domicile is mainly one of intention. It is well established that a person has only one domicile at any given time, and that where once established it remains until a new one is acquired. 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.<sup>5</sup>

Thus, to successfully effect a change of domicile, one must demonstrate an actual removal or an actual change of domicile; a *bona fide* intention of abandoning the former place of residence and establishing a new one, and definite acts which correspond with the purpose. In other words, there must be both *animus manendi* and *animus non revertendi*. The purpose to remain in or at the domicile of choice must be for an indefinite period of time; the change of residence must be voluntary; and the residence at the place chosen for the new domicile must be actual.<sup>6</sup>

Given these, the *ponencia* answered the afore-described question by ruling that Pax Ali misrepresented his residency qualification and that COMELEC was correct in canceling his CoC as Governor for the Province of Sultan Kudarat. While I agree with the *ponencia*'s finding that there is substantial evidence that Pax Ali had bodily or physical presence in Lutayan, Sultan Kadarat, I respectfully disagree with the ruling that Pax Ali's intention to remain at Lutayan, Sultan Kudarat for an indefinite period, and to abandon DAS, Maguindanao, are missing.<sup>7</sup> The *ponencia* advances the view that because Pax Ali is still a mayor in DAS when he filed his CoC for governor of Sultan Kudarat, his choice of residence is clear, that is, in DAS.<sup>8</sup>

Thus, I respectfully register this dissent, and consequently, submit that Pax Ali may obtain new residency in Lutayan, Sultan Kudarat. The quantum of evidence in election law is only substantial evidence, or such relevant evidence as a reasonable mind might accept as adequate to support a

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<sup>3</sup> *Id.* at 5–6.

<sup>4</sup> 578 Phil. 364 (2008) [Per J. Ynares-Santiago, *En Banc*].

<sup>5</sup> *Id.* at 374. See also *ponencia*, p. 13.

<sup>6</sup> *Ponencia*, p. 13.

<sup>7</sup> *Id.*, citations omitted.

<sup>8</sup> *Id.* at 14.

conclusion,<sup>9</sup> even if other minds, equally reasonable, might conceivably opine otherwise.<sup>10</sup> In the hierarchy of evidentiary values, proof beyond reasonable doubt is placed at the highest level, followed by clear and convincing evidence, preponderance of evidence, and substantial evidence, in that order. Thus, in the hierarchy of evidence, substantial evidence is the least demanding.<sup>11</sup>

Taking in mind the quantum of evidence necessary to prove one's residency or domicile, I am of the opinion that Pax Ali was able to clearly establish his bodily or physical presence in Lutayan, Sultan Kudarat, as well as his intent to reacquire residency at his former residence for an indefinite period, and to abandon DAS, Maguindanao.

Intent is purely a mental act and for the court to know such intention, the court must look through overt acts of Pax Ali. Here, Pax Ali's physical presence in Lutayan since August 2020 is already established. To my mind, his physical presence in his former residence, is one of his overt acts to show his intent to return to it. In fact, affidavits are abound that starting in October 2020, Pax Ali started going back to Lutayan on daily basis after work. Thus, Pax Ali's efforts are already substantial enough to show his intention to reacquire his former residence. Moreover, his transfer of his voter's registration in Lutayan on May 17, 2021 is another overt act to show his intent to reacquire his former residency. Thus, the requirements of physical presence in his former residence, intention to reacquire residency at his former residence and to abandon his previous residence were established by Pax Ali by substantial evidence.

*What is then the effect on the part of Pax Ali serving as mayor in DAS, Maguindanao in relation to his effort to transfer his residency to Lutayan, Sultan Kudarat? Should incumbent public officials be prevented from acquiring residency in a new locality while serving as public officials in another locality?*

Being a high-ranking elected official, Pax Ali is aware that residency is a continuing requirement as a mayor. In fact, this incumbency as a mayor, as what the *ponencia* holds, is what prevents Pax Ali from acquiring a new residence in another locality. However, I offer a different view; the way I see it, Pax Ali's transferring his residence carries with it the risk of losing his position as a mayor.

<sup>9</sup> *Sabili v. Commission on Elections*, 686 Phil. 649, 670–671 (2012) [Per J. Sereno, *En Banc*]. See also Rule 133, Section 6 of the Rules on Evidence, as amended.

<sup>10</sup> See *Philippine Long Distance Telephone Co., Inc. v. Tiamson*, 511 Phil. 384, 395 (2005) [Per J. Callejo, Sr., Second Division]; and *JR Hauling Services v. Solamo*, 886 Phil. 842, 859 (2020) [Per J. Hernando, Second Division].

<sup>11</sup> *JR Hauling Services v. Solamo*, 886 Phil. 842, 858–859 (2020) [Per J. Hernando, Second Division].

It is true that one's residency is a question of fact. I therefore submit that considering that it is settled that a person can only have one residency or domicile at any given time and that residency of an elected public official is a continuing requirement, once an incumbent elected official make his intention to transfer his residence definitively unequivocal, he should be considered to have *ipso facto* resigned from his position.

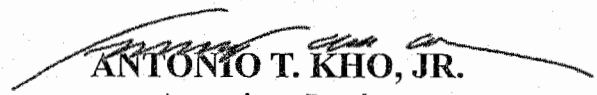
For avoidance of doubt, I submit the adoption of the following rules:

1. An incumbent elected official who transferred his or her voter's registration to another locality thereby violating the residency rule as a continuing requirement for his or her incumbency, shall be considered *ipso facto* resigned from his or her current position from the date when he or she filed his or her application for transfer of voter's registration – the overt act wherein he or she is deemed to have unequivocally transferred residency. Said elected official may be exposed to criminal, civil, and/or administrative liabilities, in case he or she continues to serve in his or her current position despite the approval of the transfer of his or her voter's registration.
2. An incumbent elected official who filed his or her certificate of candidacy for an elected position in another locality without transferring his or her voter's registration shall be considered *ipso facto* resigned from his or her current position upon filing of his or her certificate of candidacy. Said elected official may be exposed to criminal, civil, and/or administrative liabilities, in case he or she continues to serve in his or her elected position despite filing of his or her certificate of candidacy in another locality.

Applying the foregoing rules to this case, it is submitted that Pax Ali is deemed *ipso facto* resigned from his position as Mayor of DAS, Maguindanao from the moment he filed his application for transfer of voter's registration to Lutayan, Sultan Kudarat.

On the issue on the second placer rule, I agree with the *ponencia* that the second placer rule has no basis in law and should be abandoned. I also agree that the rules on succession under the Local Government Code shall apply in situations where a permanent vacancy occurs as a consequence of the disqualification from office of a local elective official.

**ACCORDINGLY, I VOTE to GRANT the petition.**

  
**ANTONIO T. KHO, JR.**  
Associate Justice