

CHUUK STATE SUPREME COURT APPELLATE DIVISION

PETE (PETRUS) JOHN LOPEZ,) CIVIL APPEAL NO. 03-2021
)
Appellant,)
)
vs.)
)
CHUUK ELECTION COMMISSION,)
)
Appellee,)
)
CHECHE ANDREL YAMAMOTO,)
)
Real Party in Interest.)
_____)

ORDER VACATING PREVIOUS OPINION AND ORDER

Decided: April 12, 2021
Entered: April 13, 2021

BEFORE:

Hon. Repeat R. Samuel, Chief Justice, Presiding
Hon. Larry Wentworth, Temporary Justice*
Hon. Bethwell O'Sonis, Temporary Justice**

*Associate Justice, FSM Supreme Court
**FSM Public Defender, Weno, Chuuk

APPEARANCES:

For the Appellant: Johnny Meippen, Esq.
P.O. Box 705
Weno, Chuuk FM 96942

For the Appellee: Picho Cheida
Chuuk Election Commission
P.O. Box 2171
Weno, Chuuk FM 96942

For the Real Party in Interest: Salomon Saimon, Esq.
P.O. Box 911
Kolonias, Pohnpei FM 96941

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HEADNOTES

Elections – Contest

When the general election results were certified on March 10, 2021, and the losing candidate filed his election contest complaint with the Election Commission on March 17, 2021, his election contest complaint was filed two days too late because the Election Code requires that an election contest must be filed within 5 days after the declaration of the result of the election by the body canvassing the returns thereof. Lopez v. Chuuk Election Comm'n, 23 FSM R. 226, 227 (Chk. S. Ct. App. 2021).

Elections – Contest

Since the Chuuk Election Code's language is mandatory and not discretionary and therefore must be strictly adhered to, when the Election Commission never had jurisdiction over the losing candidate's complaint because it was untimely, the Chuuk State Supreme Court appellate division therefore never had jurisdiction over the candidate's appeal from the Election Commission's denial of his election contest complaint and any previous court orders or opinions will be vacated. Lopez v. Chuuk Election Comm'n, 23 FSM R. 226, 227 (Chk. S. Ct. App. 2021).

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COURT'S OPINION

REPEAT R. SAMUEL, Chief Justice, Presiding:

Cheche Andrel Yamamoto's motion to reconsider our earlier rulings is hereby granted. It now appears that we never had jurisdiction over this appeal because the Election Commission never had jurisdiction over Petrus John Lopez's election contest complaint. That is because the results of the Chuuk March 2, 2021 general election were certified on March 10, 2021. Lopez filed his election contest complaint with the Election Commission on March 17, 2021. The Election Code requires that an election contest must be filed "within five (5) days after the declaration of the result of the election by the body canvassing the returns thereof." Chk S.L. No. 2-95-26, § 127. That would have made March 15, 2021, the deadline for Lopez to have filed an election contest complaint. Lopez filed his election contest complaint two days too late.

The Chuuk Election Code's language is mandatory and not discretionary and therefore must be strictly adhered to. Setile v. Chuuk State Election Comm'n, 18 FSM R. 641, 643 (Chk. S. Ct. App. 2013). Accordingly, the Election Commission never had jurisdiction over Lopez's complaint because it was untimely. We therefore never had jurisdiction over Lopez's appeal from the Election Commission's denial of his election contest complaint.

NOW THEREFORE IT IS HEREBY ORDERED that our opinion of April 12, 2021, and our Order of Remand of April 10, 2021 ARE HEREBY VACATED.

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