



Republic of the Philippines  
Supreme Court  
Manila

EN BANC

MAYOR EMMANUEL L. MALIKSI,  
Petitioner,

G.R. No. 203302

Present:

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

- versus -

COMMISSION ON ELECTIONS  
and HOMER T. SAQUILAYAN,  
Respondents.

Promulgated:

MARCH 12, 2013

X ----- X

DECISION

CARPIO, *J.*:

The Case

Before the Court is a petition for certiorari<sup>1</sup> assailing the 14 September 2012 Resolution<sup>2</sup> of the Commission on Elections (COMELEC) En Banc

<sup>1</sup> Under Rule 64 in relation to Rule 65 of the Rules of Court.

<sup>2</sup> *Rollo*, pp. 59-64. Signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Rene V. Sarmiento, Armando C. Velasco, and Elias R. Yusoph. Commissioner Lucenito N. Tagle took no part while Commissioner Christian Robert S. Lim inhibited himself from the case.

which affirmed the 15 August 2012 Resolution<sup>3</sup> of the COMELEC First Division in EAC (AE) No. A-22-2011.

### **The Antecedent Facts**

Emmanuel L. Maliksi (Maliksi) and Homer T. Saquilayan (Saquilayan) were both mayoralty candidates for the Municipality of Imus, Cavite during the 10 May 2010 Automated National and Local Elections. The Municipal Board of Canvassers (MBC) proclaimed Saquilayan as the duly elected municipal mayor garnering a total of 48,181 votes as against Maliksi's 39,682 votes. Thus, based on the MBC's canvass, Saquilayan won over Maliksi by 8,499 votes.

Maliksi filed an election protest before the Regional Trial Court of Imus, Cavite, Branch 22 (trial court), questioning the results of the elections in 209 clustered precincts. The case was docketed as Election Protest No. 009-10. In its 15 November 2011 Decision, the trial court declared Maliksi as the duly elected Municipal Mayor of Imus, Cavite. The trial court ruled that Maliksi garnered 41,088 votes as against Saquilayan's 40,423 votes. Thus, based on the trial court's recount, Maliksi won over Saquilayan by a margin of 665 votes. The dispositive portion of the trial court's decision reads:

WHEREFORE, in view of all the foregoing, this Court finds the Election Protest filed by Emmanuel L. Maliksi meritorious. Accordingly, Emmanuel L. Maliksi is hereby DECLARED as the duly elected Mayor of the Municipality of Imus, Province of Cavite after having obtained the highest number of legal votes of 41,088 as against Protestant Homer T. Saquilayan's 40,423 votes or a winning margin of 665 votes in favor of the former.

Thus, the election and proclamation of Homer T. Saquilayan as Mayor of Imus, Cavite is hereby ANNULLED and SET ASIDE and he is COMMANDED to immediately CEASE and DESIST from performing the duties and functions of said office.

Finally, pursuant to Section 4, Rule 14 of A.M. 10-4-1-SC, the Clerk of Court is hereby DIRECTED to personally deliver the copy of the signed and promulgated decision on the counsels of the parties.

SO ORDERED.<sup>4</sup>

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<sup>3</sup> Id. at 95-126. Signed by Commissioners Rene V. Sarmiento, Armando C. Velasco, and Christian Robert S. Lim.

<sup>4</sup> Id. at 95-96. The RTC decision was penned by Judge Cesar A. Mangrobang.

Saquilayan filed an appeal before the COMELEC, docketed as EAC (AE) No. A-22-2011. Meanwhile, in a Special Order dated 28 November 2011, the trial court granted Maliksi's motion for execution pending appeal.

On 2 December 2011, Saquilayan also filed with the COMELEC a petition for certiorari with prayer for the issuance of a writ of preliminary injunction and temporary restraining order or status quo order with prayer for early consideration, docketed as SPR (AE) No. 106-2011, assailing the trial court's Special Order of 28 November 2011 granting execution pending appeal. A COMELEC First Division Order dated 20 December 2011<sup>5</sup> enjoining the trial court from enforcing its 28 November 2011 Special Order was not implemented since only Presiding Commissioner Rene V. Sarmiento (Sarmiento) voted to grant the temporary restraining order while Commissioners Armando C. Velasco (Velasco) and Christian Robert S. Lim (Lim) dissented.

### **The Resolution of the COMELEC First Division**

The COMELEC First Division, after inspecting the ballot boxes, ruled that it was apparent that the integrity of the ballots had been compromised. To determine the true will of the electorate, and since there was an allegation of ballot tampering, the COMELEC First Division examined the digital images of the contested ballots stored in the Compact Flash (CF) cards. The COMELEC First Division used the following guidelines in appreciating the contested ballots:

1. *On Marked Ballots.* - The rule is that no ballot should be discarded as marked unless its character as such is unmistakable. The distinction should always be between marks that were apparently, carelessly, or innocently made, which do not invalidate the ballot, and marks purposely placed thereon by the voter with a view to possible future identification of the ballot, which invalidate it. In the absence of any circumstance showing that the intention of the voter to mark the ballot is unmistakable, or any evidence *aliunde* to show that the words or marks were deliberately written or put therein to identify the ballots, the ballots should not be rejected.
2. *On ballots claimed to have been shaded by two or more persons.* - Unlike in the manual elections where it is easy to identify if a ballot has been written by two persons, in case of an automated election, it would be very hard if not impossible to identify if two persons shaded a single ballot. The best way to identify if a ballot has been tampered is to go to the digital image of the ballot as the PCOS machine was able to capture such when the ballot was fed by the voter into the machine when he cast his vote. In the absence of any circumstance showing that the ballot was shaded by persons other than the voter, the ballots should not be rejected to give effect to the voter's intent.

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<sup>5</sup> Id. at 130-131.

3. *On ballots with ambiguous votes.* - It has been the position of the Commission to always take into consideration [that] the intent of the voter shall be given effect, taking aside any technicalities. A ballot indicates the voter's will. In the reading and appreciation of ballots, every ballot is presumed valid unless there is a clear reason to justify its rejection. The object in the appreciation of ballots is to ascertain and carry into effect the intention of the voter, if it can be determined with reasonable certainty.

4. *On spurious ballots.* - Ballots have security features like bar codes, ultra-violet inks and such other security marks to be able to preserve its integrity and the PCOS machines were programmed to accept genuine and valid ballots only. Further, the ballots used in the elections were precinct specific, meaning, the PCOS machine assigned to a specific precinct will only accept those ballots designated to such precinct. This follows that the digital images stored in the CF cards are digital images of genuine, authentic and valid ballots. In the absence of any evidence proving otherwise, the Commission will not invalidate a vote cast which will defeat the sovereign will of the electorate.

5. *On over-voting.* - It has been the position of the Commission that over-voting in a certain position will make the vote cast for the position stray but will not invalidate the entire ballot, so in case of over-voting for the contested position, such vote shall be considered stray and will not be credited to any of the contending parties.

6. *On rejected ballots.* - As correctly observed by [the] court *a quo*, with all the security features of the ballot, the PCOS machines will only accept genuine ballots and will reject it if, *inter alia*, fake, duplicate, ballots intended for another precinct, or has been fed an[d] accepted by the machines already. Bearing in mind the voter's will, rejected ballots can still be claimed by the parties and be admitted as valid votes, if, upon further examination, it is found that the ballot is genuine and was inadvertently rejected by the machine.<sup>6</sup>

After the counting and appreciation of the ballot images in the CF cards of the appealed clustered precincts, the COMELEC First Division came up with the following findings:

<b>Clustered Precinct No.</b>	<b>Ruling of Trial Court</b>	<b>Ruling of COMELEC First Division</b>	<b>Votes for Saquilayan</b>	<b>Votes for Maliksi</b>
96	84 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	235	270

<sup>6</sup> Id. at 102-104.

61	68 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	230	173
51	133 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded. 2 ballots were declared stray because the slots for Maliksi and Astillero were both shaded.	Upon examining the digital images of the ballots, there was no over-voting.	212	182
42	207 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded. 1 ballot was declared stray because the slots for Maliksi and Astillero were both shaded.	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Maliksi.	273	231
36	92 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded.	Upon examining the digital images of the ballots there was no over-voting. 2 ballots were rejected by the PCOS	154	202

		machine but it was clear that the intent of the voters was to vote for Maliksi.		
03	33 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Saquilayan.	73	89
49	172 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	279	265
50	153 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 2 ballots were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for Maliksi.	313	275
34	155 ballots were declared	Upon examining the	210	164

	stray because both slots for Maliksi and Saquilayan were shaded. 1 ballot was declared stray because the slots for Maliksi and Dominguez were both shaded.	digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Saquilayan.		
35	215 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 2 ballots were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for Saquilayan.	286	288
146	216 ballots were declared stray because both slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Maliksi.	305	271
120	246 ballots were declared	Upon examining the	309	269

	stray because 2 slots for the mayoralty position were shaded.	digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Saquilayan.		
127	248 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Maliksi.	332	304
206	132 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 3 ballots (1 for Saquilayan, 2 for Maliksi) were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for the	136	116

		candidate of choice.		
76	253 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	329	251
202	122 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Maliksi.	140	158
67	203 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 2 ballots were rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Saquilayan.	246	180
209	168 ballots were declared stray because both slots for Maliksi and Saquilayan	Upon examining the digital images of the ballots, there was no over-voting.	220	171

	were shaded.			
81	181 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	329	194
87	107 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 2 ballots were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for the candidate of choice.	133	147
86	189 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 3 ballots (1 for Maliksi, 2 for Saquilayan) were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for the candidate of choice.	246	239
91	95 ballots were declared stray because	Upon examining the digital images	137	189

	2 slots for the mayoralty position were shaded.	of the ballots, there was no over-voting. 3 ballots (2 for Maliksi, 1 for Saquilayan) were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for the candidate of choice.		
88	75 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 2 ballots were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for Maliksi.	142	223
68	113 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Maliksi.	243	180

45	120 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Maliksi.	216	211
43	101 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 3 ballots (2 for Maliksi, 1 for Saquilayan) were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for the candidate of choice.	256	182
85	89 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	184	213
74	114 ballots were declared stray because 2 slots for the mayoralty	Upon examining the digital images of the ballots, there was no	179	161

	position were shaded.	over-voting. 7 ballots (2 for Maliksi, 5 for Saquilayan) were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for the candidate of choice.		
47	186 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Saquilayan.	250	226
128	105 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	272	223
107	77 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	127	178
97	220 ballots were declared stray because	Upon examining the digital images	280	299

	2 slots for the mayoralty position were shaded.	of the ballots, there was no over-voting. 2 ballots (1 for Maliksi, 1 for Saquilayan) were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for the candidate of choice.		
99	114 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Saquilayan.	243	354
208	154 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	200	163
204	119 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 2 ballots were rejected by	269	119

		the PCOS machine but it was clear that the intent of the voters was to vote for Saquilayan.		
201	108 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	143	131
207	338 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Maliksi.	419	117
109	136 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Saquilayan.	173	257
131	140 ballots	Upon	297	165

	were declared stray because 2 slots for the mayoralty position were shaded.	examining the digital images of the ballots, there was no over-voting.		
52	98 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Maliksi.	118	87
117	146 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	302	265
100	90 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 3 ballots (2 for Maliksi, 1 for Saquilayan) were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for the candidate of	370	228

		choice.		
95	215 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	288	270
98	103 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Saquilayan.	218	304
94	257 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 2 ballots were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for Maliksi.	270	150
93	105 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 2 ballots were	205	167

		rejected by the PCOS machine but it was clear that the intent of the voters was to vote for Maliksi.		
64	117 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	170	162
44	169 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	273	200
41	262 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	368	176
130	156 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 3 ballots (2 for Maliksi, 1 for Saquilayan) were rejected by the PCOS machine but it was clear that the intent of the voters was	314	170

		to vote for the candidate of choice.		
118	126 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 3 ballots (2 for Maliksi, 1 for Saquilayan) were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for the candidate of choice.	310	248
56	127 ballots were declared stray because 2 slots for the mayoralty position were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Saquilayan.	202	223
205	153 ballots were declared stray because 2 slots for the mayoralty position were	Upon examining the digital images of the ballots, there was no over-voting.	185	242

	shaded.	3 ballots (1 for Maliksi, 2 for Saquilayan) were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for the candidate of choice.		
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The COMELEC First Division found that Maliksi obtained a total of 40,092 votes, broken down as follows: (a) 29,170 votes in the clustered precincts not appealed as per statement of votes by precinct, and (b) 10,922 votes in the appealed clustered precincts. On the other hand, Saquilayan obtained a total of 48,521 votes, broken down as follows: (a) 35,908 votes in the clustered precincts not appealed as per statement of votes by precinct, and (b) 12,613 votes obtained in the appealed clustered precincts. Saquilayan won over Maliksi by 8,429 votes. Thus, in a Resolution promulgated on 15 August 2012, the COMELEC First Division nullified the trial court's decision and declared Saquilayan as the duly-elected Municipal Mayor of Imus, Cavite. The COMELEC First Division noted that Maliksi attached a photocopy of an official ballot to his election protest. The COMELEC First Division stated that unless one of the clustered precincts had a photocopying machine, it could only mean that an official ballot was taken out of the polling place to be photocopied, in violation of Section 30(a) of COMELEC Resolution No. 8786.<sup>7</sup> The dispositive portion of the 15 August 2012 Resolution reads:

WHEREFORE, premises considered, the Commission RESOLVED, as it hereby RESOLVES, to:

1. NULLIFY the pronouncement of the lower court that protestant-appellee EMMANUEL L. MALIKSI is the duly-elected Municipal Mayor of Imus, Cavite and HEREBY DECLARES HOMER T. SAQUILAYAN as the duly-elected Municipal Mayor of the above-mentioned municipality;
2. Further, the Law Department is hereby DIRECTED:
  - i. To conduct an investigation as to who were responsible for the tampering of the ballot boxes for

<sup>7</sup> Revised General Instructions for the Board of Election Inspectors (BEI) on the Voting, Counting, and Transmission of Results in Connection with the 10 May 2010 National and Local Elections.

purposes of filing the appropriate information for violation of election laws; and

ii. To conduct an investigation as to possible violation of election laws and Comelec Resolutions by herein protestant-appellee EMMANUEL L. MALIKSI as to how he was able to secure a photocopy of the official ballot which he attached in his Election Protest.

SO ORDERED.<sup>8</sup>

Maliksi filed a motion for reconsideration of the COMELEC First Division's Resolution and for the voluntary inhibition of Commissioners Sarmiento, Velasco, and Lim from further acting on the case.

### **The Resolution of the COMELEC En Banc**

In its 14 September 2012 Resolution, the COMELEC En Banc denied Maliksi's motion for reconsideration and affirmed the 15 August 2012 Resolution of the COMELEC First Division.

The COMELEC En Banc ruled that the COMELEC First Division did not err in ordering the decryption, printing, and examination of the ballot images in the CF cards instead of recounting the physical ballots. The COMELEC En Banc stated that when the case was elevated to it on appeal, it immediately noted an "unprecedented number of double-votes involving 8,387 ballots – exclusively affecting the position of Mayor and specifically affecting the ballots for Saquilayan."<sup>9</sup> The COMELEC En Banc further noted:

x x x. Worth noting also is that these 8,387 ballots all came from 53 clustered precincts specifically pinpointed by Maliksi as his pilot precincts (which is 20% of the total precincts he protested) – thereby affecting a total of 33.38% or more than one-third (1/3) of the total ballots cast in those precincts. We find this too massive to have not been detected on election day, too specific to be random and too precise to be accidental – which leaves a reasonable mind no other conclusion except that those 8,387 cases of double-shading were purposely machinated. These dubious and highly suspicious circumstances left us with no other option but to dispense with the physical ballots and resort to their digital images. To recount the tampered ballots will only yield us tampered results defeating the point of this appeal.<sup>10</sup>

The COMELEC En Banc also ruled that it is free to adopt procedures that will ensure the speedy disposition of its cases as long as the parties are

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<sup>8</sup> *Rollo*, pp. 125-126.

<sup>9</sup> *Id.* at 60.

<sup>10</sup> *Id.*

amply heard on their opposing claims. The COMELEC En Banc ruled that the decryption, printing, and examination of the ballot images in the CF cards are not without basis since a Division, through its Presiding Commissioner, may take such measures as he may deem proper to resolve cases pending before it. The COMELEC En Banc ruled that Maliksi was not denied due process because he never questioned the Order of decryption by the COMELEC First Division nor did he raise any objection in any of his pleadings. Further, the ballot images are not mere secondary images, as Maliksi claimed. The digital images of the physical ballots, which are instantaneously written in the CF cards by the PCOS<sup>11</sup> machines the moment the ballots are read and counted, are equivalent to the original for the purpose of the best evidence rule. The COMELEC En Banc accorded higher evidentiary value to the ballot images because their integrity are more secure for the following reasons:

- (1) the digital images are encrypted to prevent unauthorized alteration or access;
- (2) the ballot images cannot be decrypted or in anyway accessed without the necessary decryption key;
- (3) the ballot images may only be decrypted using a special system designed by the COMELEC and not by any ordinary operating system or computer;
- (4) the CF cards storing the digital images of all the ballots used in the 10 May 2010 elections are kept in a secured facility within the Commission to prevent unauthorized access.<sup>12</sup>

The COMELEC En Banc further ruled that the result of the revision proceedings in the trial court could not be admitted because of the finding by the COMELEC First Division that the recounted ballots were tampered. The COMELEC En Banc explained:

The allegation of post-election fraud of Saquilayan was in fact confirmed by the First Division when upon examination of the scanned digital images of all the double-shaded ballots, they were found to bear no traces of double-shading – instead they contain clear and unambiguous votes for Saquilayan. This finding of the First Division proves that double-votes did not exist when the PCOS machines counted them on election day, [w]hich in turn proves that the ballots recounted and admitted by the trial court were **tampered and were clear products of post-election fraud.** Under these circumstances, the doctrines in *Rosal v. COMELEC* and *Varias v. COMELEC* edict that **the tampered revision result which was the basis of the appealed decision cannot be admitted and cannot be used to overturn the the official count.**<sup>13</sup> (Emphasis in the original; citations omitted)

<sup>11</sup> Precinct Count Optical Scan.

<sup>12</sup> *Rollo*, p. 62.

<sup>13</sup> *Id.*

Finally, the COMELEC En Banc ruled that Maliksi had no basis to call for the inhibition of Commissioners Sarmiento and Velasco. Commissioner Lim voluntarily inhibited himself from the case.

The dispositive portion of the COMELEC En Banc's 14 September 2012 Resolution reads:

WHEREFORE, premises considered, the MOTION FOR RECONSIDERATION of *Protestant-Appellee* EMMANUEL L. MALIKSI is hereby DENIED for lack of merit. Consequently, we are AFFIRMING the August 15, 2012 Resolution of the First Division NULLIFYING the November 15, 2011 Decision of the Regional Trial Court, Branch 22 of Imus, Cavite.

SO ORDERED.<sup>14</sup>

Hence, Maliksi filed the present petition before this Court.

In a Resolution dated 11 October 2012, this Court issued a temporary restraining order directing the COMELEC En Banc to desist from implementing its 14 September 2012 Resolution.

### **The Issues**

The overriding issue in this petition for certiorari is whether the COMELEC En Banc committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its assailed Resolution dated 14 September 2012. In resolving this issue, we shall examine:

- (1) whether Maliksi was deprived of due process when the COMELEC First Division ordered on appeal the decryption, printing, and examination of the ballot images in the CF cards;
- (2) whether the ballot images in the CF cards are mere secondary evidence that should only be used when the physical ballots are not available;
- (3) whether the issue of tampering of ballots and ballot boxes was belatedly raised by Saquilayan; and
- (4) whether there were grounds for the inhibition of Commissioners Sarmiento and Velasco.

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<sup>14</sup> Id. at 63.

### **The Ruling of this Court**

We dismiss the petition.

#### ***The Alleged Violation of Due Process***

Maliksi alleged that he was denied due process when the COMELEC First Division directed the decryption, printing, and examination of the ballot images in the CF cards for the first time on appeal without notice to him, thus depriving him of his right to be present and observe the decryption proceedings.

The records point to the contrary.

In a Motion dated 21 March 2011 filed before the trial court,<sup>15</sup> Saquilayan moved for the printing of the images of the ballots in the CF cards of the contested clustered precincts. Thus, it cannot be said that Saquilayan asked for decryption of the ballot images for the first time only on appeal. Saquilayan had called the attention of the trial court to the unusually large number of double-shaded ballots affecting only the position of Mayor, giving rise to a strong suspicion of tampering of the ballots and ballot boxes. However, the trial court did not immediately act on his motion, as shown by Saquilayan's Omnibus Motion To Resolve and For Issuance of Order<sup>16</sup> dated 14 April 2011.

In an Omnibus Order<sup>17</sup> dated 3 May 2011, the trial court granted Saquilayan's motion for the printing of the ballot images in the CF cards. The trial court gave Saquilayan a period of 30 days within which to accomplish the printing of the ballot images. Saquilayan received a copy of the Omnibus Order on 10 May 2011. On 11 May 2011, he sent a letter to the COMELEC requesting it to forward at the soonest time the CF cards of the protested precincts to the COMELEC Election Records and Statistics Department (ERSD) to enable the decrypting and printing of the ballot images. It turned out that the CF cards were still with the trial court. Thus, in a Manifestation and Request<sup>18</sup> dated 20 May 2011, Saquilayan asked the trial court to forward the CF cards of the protested precincts to the ERSD to enable the COMELEC to decrypt and print the ballot images.

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<sup>15</sup> Id. at 283-285, Motion To Print Picture Images Of The Ballots Stored In The Memory Cards Of The Clustered Precincts.

<sup>16</sup> Id. at 286-292.

<sup>17</sup> Id. at 293-295.

<sup>18</sup> Id. at 298-300.

In an Order<sup>19</sup> dated 17 June 2011, the trial court noted that the ERSD already specified the main and back-up CF cards that were used in the 10 May 2010 National and Local Elections in Imus, Cavite and the decryption and copying of the ballot images was scheduled to start on 21 June 2011. The trial court then requested the ERSD to specify the procedure that the ERSD would undertake for the decryption of the ballot images. In a letter<sup>20</sup> dated 20 June 2011, Maliksi wrote the ERSD requesting that further proceedings be deferred and held in abeyance in deference to the 17 June 2011 Order of the trial court requiring the ERSD to specify the procedure it would undertake for the decryption.

Thereafter, Maliksi filed a Motion to Consider That Period Has Lapsed to Print Ballot's Picture Images,<sup>21</sup> alleging that Saquilayan was only given a maximum of 30 days within which to accomplish the printing of the ballot images. Maliksi alleged that the period, which was until 22 June 2011, had lapsed and Saquilayan should be considered barred from having access to the electronic data in the COMELEC's back-up server to print the ballot images in the CF cards. The trial court granted Maliksi's motion in its Order dated 3 August 2011.<sup>22</sup> The trial court stated that Saquilayan should have included in his motion to have access to the electronic data a request for the trial court to turn over to the COMELEC the CF cards in its possession. As it turned out, the delay in the turn over of the CF cards likewise delayed the printing of the ballot images in the CF cards.

It is clear from the foregoing events that the delay in the printing of the ballot images could not be attributed to Saquilayan alone. In its 17 June 2011 Order, the trial court set a conference on 27 June 2011 upon Maliksi's motion to request the ERSD to specify the procedure it would undertake in decrypting the CF cards. Maliksi then requested for the deferment of the printing of the ballot images in his 20 June 2011 letter to ERSD. However, during the 27 June 2011 hearing, Maliksi's counsel filed in open court his Motion to Consider That Period Has Lapsed to Print Ballot's Picture Images. The trial court acted on the motion by requiring Saquilayan's counsel to comment within five days. The original reason for the hearing, which was for ERSD to specify the procedure it would undertake in decrypting the CF cards, was not even taken up. The trial court eventually granted Maliksi's motion and declared that the period given to Saquilayan had lapsed. The failure of the trial court to turn over the CF cards to the ERSD, as well as the move of Maliksi for the ERSD to specify the procedure in decrypting the CF cards, contributed significantly to the delay in the printing of the ballot images.

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<sup>19</sup> Id. at 302-303.

<sup>20</sup> Id. at 304.

<sup>21</sup> Id. at 307-309.

<sup>22</sup> See *rollo*, p. 359. Omnibus Order dated 1 September 2011.

The records also showed that Maliksi was aware of the decryption, printing, and examination of the ballot images by the COMELEC First Division. The COMELEC First Division issued an Order<sup>23</sup> dated 28 March 2012 directing Saquilayan to deposit the required amount for expenses for the supplies, honoraria, and fee for the decryption of the CF cards, and a copy of the Order was personally delivered to Maliksi's counsel.<sup>24</sup> Maliksi's counsel was likewise given a copy of Saquilayan's Manifestation of Compliance with the 28 March 2012 Order.<sup>25</sup> In an Order<sup>26</sup> dated 17 April 2012, the COMELEC First Division directed Saquilayan to deposit an additional amount for expenses for the printing of additional ballot images from four clustered precincts, and a copy of the Order was again personally delivered to Maliksi's counsel.<sup>27</sup> The decryption took weeks to finish.

Clearly, Maliksi was not denied due process. He received notices of the decryption, printing, and examination of the ballot images by the COMELEC First Division. In addition, Maliksi raised his objections to the decryption in his motion for reconsideration before the COMELEC En Banc. The Court has ruled:

x x x. The essence of due process, we have consistently held, is simply the opportunity to be heard; as applied to administrative proceedings, due process is the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. A formal or trial-type hearing is not at all times and in all instances essential. The requirement is satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. x x x.<sup>28</sup>

There is no denial of due process where there is opportunity to be heard, either through oral arguments or pleadings.<sup>29</sup> It is settled that "opportunity to be heard" does not only mean oral arguments in court but also written arguments through pleadings.<sup>30</sup> Thus, the fact that a party was heard on his motion for reconsideration negates any violation of the right to due process.<sup>31</sup> The Court has ruled that denial of due process cannot be invoked where a party was given the chance to be heard on his motion for reconsideration.<sup>32</sup>

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<sup>23</sup> *Rollo*, p. 362.

<sup>24</sup> *Id.* at 361.

<sup>25</sup> *Id.* at 363.

<sup>26</sup> *Id.* at 366.

<sup>27</sup> *Id.* at 365.

<sup>28</sup> *Philippine Guardians Brotherhood, Inc. (PGBI) v. Commission on Elections*, G.R. No. 190529, 29 April 2010, 619 SCRA 585, 596.

<sup>29</sup> *Atty. Octava v. Commission on Elections*, 547 Phil. 647 (2007).

<sup>30</sup> *Salonga v. CA*, 336 Phil. 514 (1997).

<sup>31</sup> See *German Management & Services, Inc. v. Court of Appeals*, 258 Phil. 289 (1989).

<sup>32</sup> *Mendiola v. Civil Service Commission*, G.R. No. 100671, 7 April 1993, 221 SCRA 295.

### *Evidentiary Value of the Digital Ballot Images*

Maliksi assailed the use by the COMELEC First Division of the ballot images in the CF cards. He alleged that the best and most conclusive evidence are the physical ballots themselves, and when they cannot be produced or when they are not available, the election returns would be the best evidence of the votes cast.

We do not agree. We have already ruled that the ballot images in the CF cards, as well as the printouts of such images, are the functional equivalent of the official physical ballots filled up by the voters, and may be used in an election protest.

In the recent consolidated cases of *Vinzons-Chato v. House of Representatives Electoral Tribunal and Panotes* and *Panotes v. House of Representatives Electoral Tribunal and Vinzons-Chato*,<sup>33</sup> the Court ruled that “the picture images of the ballots, as scanned and recorded by the PCOS, are likewise ‘official ballots’ that faithfully capture in electronic form the votes cast by the voter, as defined by Section 2 (3) of R.A. No. 9369.”<sup>34</sup> The Court declared that the printouts of the ballot images in the CF cards “are the functional equivalent of the paper ballots filled out by the voters and, thus, may be used for purposes of revision of votes in an electoral protest.” In short, both the ballot images in the CF cards and the printouts of such images have the same evidentiary value as the official physical ballots filled up by the voters.

In *Vinzons-Chato* and *Panotes*, the Court explained in length:

Section 2 (3) of R.A. No. 9369 defines “official ballot” where AES is utilized as the “paper ballot, whether printed or generated by the technology applied, that faithfully captures or represents the votes cast by a voter recorded or to be recorded in electronic form.”

An automated election system, or AES, is a system using appropriate technology which has been demonstrated in the voting, counting, consolidating, canvassing, and transmission of election result, and other electoral process. There are two types of AES identified under R.A. No. 9369: (1) paper-based election system; and (2) direct recording electronic system. A *paper-based election system*, such as the one adopted during the May 10, 2010 elections, is the type of AES that “use paper ballots, records and counts

<sup>33</sup> G.R. Nos. 199149 and 201350, 22 January 2013.

<sup>34</sup> Republic Act No. 9369 refers to “AN ACT AMENDING REPUBLIC ACT NO. 8436, ENTITLED ‘AN ACT AUTHORIZING THE COMMISSION ON ELECTIONS TO USE AN AUTOMATED ELECTION SYSTEM IN THE MAY 11, 1998 NATIONAL OR LOCAL ELECTIONS AND IN SUBSEQUENT NATIONAL AND LOCAL ELECTORAL EXERCISES, TO ENCOURAGE TRANSPARENCY, CREDIBILITY, FAIRNESS AND ACCURACY OF ELECTIONS, AMENDING FOR THE PURPOSE BATAS PAMBANSA BLG. 881, AS AMENDED, REPUBLIC ACT NO. 7166 AND OTHER RELATED ELECTIONS LAWS, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES.’”

votes, tabulates, consolidates/canvasses and transmits electronically the results of the vote count. On the other hand, *direct recording electronic election system* “uses electronic ballots, records, votes by means of a ballot display provided with mechanical or electro-optical component that can be activated by the voter, processes data by means of computer programs, record voting data and ballot images, and transmits voting results electronically.

As earlier stated, the May 10, 2010 elections used a paper-based technology that allowed voters to fill out an official paper ballot by shading the oval opposite the names of their chosen candidates. Each voter was then required to personally feed his ballot into the Precinct Count Optical Scan (PCOS) machine which scanned both sides of the ballots simultaneously, meaning, in just one pass. As established during the required demo tests, the system captured the images of the ballots in encrypted format which, when decrypted for verification, were found to be digitized representations of the ballots cast.

We agree, therefore, with both the HRET and Panotes that the picture images of the ballots, as scanned and recorded by the PCOS, are likewise “official ballots” that faithfully captures (sic) in electronic form the votes cast by the voter, as defined by Section 2 (3) of R.A. No. 9369. As such, the printouts thereof are the functional equivalent of the paper ballots filled out by the voters and, thus, may be used for purposes of revision of votes in an electoral protest.

It bears stressing that the digital images of the ballots captured by the PCOS machine are stored in an encrypted format in the CF cards. “Encryption is the process of encoding messages (or information) in such a way that eavesdroppers or hackers cannot read it, but that authorized parties can. In an encryption scheme, the message or information (referred to as plaintext) is encrypted using an encryption algorithm, turning it into an unreadable ciphertext. This is usually done with the use of an encryption key, which specifies how the message is to be encoded. Any adversary that can see the ciphertext, should not be able to determine anything about the original message. An authorized party, however, is able to decode the ciphertext using a decryption algorithm, that usually requires a secret decryption key, that adversaries do not have access to.”<sup>35</sup> (Citations omitted)

Hence, the COMELEC First Division did not gravely abuse its discretion in using the ballot images in the CF cards.

Maliksi further alleged that the ballot images in the CF cards should merely be considered as secondary evidence and should be resorted to only when the physical ballots are not available or could not be produced.

Maliksi is mistaken.

Rule 4 of A.M. No. 01-7-01-SC<sup>36</sup> is clear on this issue. It states:

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<sup>35</sup> Supra note 33.

<sup>36</sup> Rules on Electronic Evidence.

SECTION 1. *Original of an Electronic Document.* - **An electronic document shall be regarded as the equivalent of an original document under the Best Evidence Rule if it is a printout or output readable by sight or other means, shown to reflect the data accurately.**

SECTION 2. *Copies as equivalent of the originals.* - **When a document is in two or more copies executed at or about the same time with identical contents, or is a counterpart produced by the same impression as the original, or from the same matrix, or by mechanical or electronic recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original, such copies or duplicates shall be regarded as the equivalent of the original.**

Notwithstanding the foregoing, copies or duplicates shall not be admissible to the same extent as the original if:

- (a) a genuine question is raised as to the authenticity of the original; or
- (b) in the circumstances it would be unjust or inequitable to admit the copy in lieu of the original. (Emphasis supplied)

The ballot images, which are digital, are electronically generated and written in the CF cards when the ballots are fed into the PCOS machine. The ballot images are the counterparts produced by electronic recording which accurately reproduce the original, and thus are the equivalent of the original. As pointed out by the COMELEC, “[t]he digital images of the physical ballots are electronically and instantaneously generated by the PCOS machines once the physical ballots are fed into and read by the machines.”<sup>37</sup> Hence, the ballot images are not secondary evidence. The official physical ballots and the ballot images in the CF cards are both original documents. The ballot images in the CF cards have the same evidentiary weight as the official physical ballots.

The Court notes that Maliksi did not raise any allegation that the use of the ballot images falls under any of the exceptions under Section 2, Rule 4 of A.M. No. 01-7-01-SC that would make their use inadmissible as original ballots.

### ***Tampering of Ballots and Ballot Boxes***

Maliksi alleged that there was no allegation of ballot and ballot box tampering before the trial court. He further alleged that the COMELEC First Division did not explain how it came to the conclusion that the integrity of the ballot boxes had been compromised or that there was ballot tampering.

The records reveal otherwise.

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<sup>37</sup> *Rollo*, p. 507.

Contrary to Maliksi's claim, Saquilayan questioned the integrity of the ballot boxes and election paraphernalia before the trial court. In an Urgent Manifestation of Concern and Objections<sup>38</sup> dated 8 June 2010, Saquilayan manifested his serious concern regarding the integrity of the ballot boxes and election paraphernalia which remained under the effective control of Maliksi. Saquilayan informed the trial court that his watchers were being limited to the outside of the building where the ballot boxes and election paraphernalia were kept, thus preventing them from looking over the security of the ballot boxes and election paraphernalia. In the same manifestation, Saquilayan categorically stated that he was "questioning the integrity of the ballot boxes and other election paraphernalia."<sup>39</sup> Saquilayan also alleged in the same manifestation that the trial court could have prescribed a procedure that would allow his watchers to view the ballot boxes and other election paraphernalia that "would have prevented to some degree the tampering of the boxes and election material[s]."<sup>40</sup> Clearly, Saquilayan raised before the trial court the issue of tampering of the ballots and ballot boxes.

Further, the COMELEC En Banc clarified in its Comment<sup>41</sup> that the COMELEC First Division ordered the decryption, printing, and examination of the digital images because the COMELEC First Division "discovered upon inspection that the integrity of the ballots themselves was compromised and that the ballot boxes were tampered."<sup>42</sup> The COMELEC First Division properly invoked Section 6(f), Rule 2 of the COMELEC Rules of Procedure which states:

Sec. 6. Powers and Duties of the Presiding Commissioner. - The powers and duties of the Presiding Commissioner of a Division when discharging its functions in cases pending before the Division shall be as follows:

x x x x

(f) To take such other measures as he may deem proper upon consultation with the other members of the Division.

In this case, the COMELEC En Banc categorically stated that the recounting of the physical ballots in the revision before the trial court yielded dubious results. The COMELEC En Banc stressed:

**x x x. Worth noting also is that these 8,387 ballots all came from 53 clustered precincts specifically pinpointed by Maliksi as his pilot precincts (which is 20% of the total precincts he protested) – thereby affecting a total of 33.38% or more than one-third (1/3) of the total**

<sup>38</sup> Id. at 261-265.

<sup>39</sup> Id. at 262.

<sup>40</sup> Id. at 264.

<sup>41</sup> Id. at 484-516.

<sup>42</sup> Id. at 500.

**ballots cast in those precincts. We find this too massive to have not been detected on election day, too specific to be random and too precise to be to be accidental – which leaves a reasonable mind no other conclusion except that those 8,387 cases of double-shading were purposely machinated. These dubious and highly suspicious circumstances left us with no other option but to dispense with the physical ballots and resort to their digital images. To recount the tampered ballots will only yield us tampered results defeating the point of this appeal.**<sup>43</sup> (Emphasis supplied)

The tampering of the ballots and ballot boxes had been fully established and it justified the decryption of the ballot images in the CF cards.

### *Inhibition of Commissioners Sarmiento and Velasco*

Maliksi alleged that the COMELEC En Banc gravely abused its discretion when it included in the body of its 14 September 2012 Resolution a discussion of his motion for the inhibition of Commissioners Sarmiento and Velasco instead of leaving it to their own discretion and prerogative.

We see nothing wrong with the inclusion of the matter of inhibition in the Resolution. Commissioners Sarmiento and Velasco signed the Resolution which means they concurred with the COMELEC En Banc's ruling that the motion for their inhibition had no basis. Maliksi himself pointed out that the matter of inhibition is better left to the Commissioner's discretion and thus, he could not impose the inhibition of Commissioners Sarmiento and Velasco just because Commissioner Lim inhibited himself from the case. Commissioners Sarmiento and Velasco are not even required, although they are neither prohibited, to individually explain their vote or to individually answer the motion for inhibition, like what Commissioner Lim did. In this case, the COMELEC En Banc ruled on the motion for inhibition. Moreover, the dissent of Commissioners Lim and Velasco in SPR (AE) No. 106-2011 is not a prejudgment of EAC (AE) No. A-22-2011. While the two cases involved the same parties, the only issue in SPR (AE) No. 106-2011 is the issuance of a temporary restraining order to stop the execution of the trial court's decision pending appeal. Contrary to Maliksi's allegation, the ruling in SPR (AE) No. 106-2011 on the temporary restraining order is not a confirmation of the validity of the decision subject of the appeal in EAC (AE) No. A-22-2011. In the same manner, the fact that Commissioner Elias R. Yusoph did not take part in SPR (AE) No. 106-2011 does not mean he should also take no part in EAC (AE) No. A-22-2011 considering that they involve different issues.

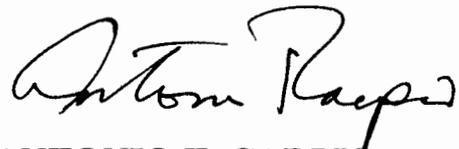
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<sup>43</sup> Id. at 60.

In sum, we find no grave abuse of discretion on the part of the COMELEC En Banc when it issued the assailed Resolution of 14 September 2012.

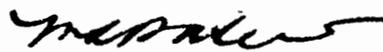
**WHEREFORE**, we **DISMISS** the petition. We **AFFIRM** the Resolution promulgated on 14 September 2012 by the Commission on Elections En Banc which affirmed the 15 August 2012 Resolution of the Commission on Elections First Division declaring **HOMER T. SAQUILAYAN** as the duly-elected Municipal Mayor of Imus, Cavite. We **LIFT** the temporary restraining order issued on 11 October 2012. This decision is **IMMEDIATELY EXECUTORY** considering that the remainder of Saquilayan's term of office is only less than five (5) months.

**SO ORDERED.**



**ANTONIO T. CARPIO**  
Associate Justice

**WE CONCUR:**



**MARIA LOURDES P. A. SERENO**  
Chief Justice



**PRESBITERO J. VELASCO, JR.**  
Associate Justice

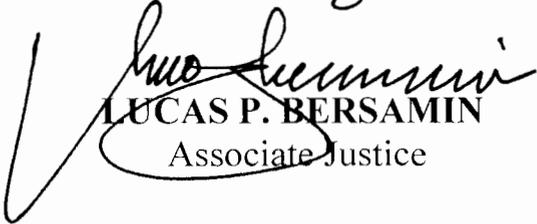
*I join the dissent of Justice  
Juan P. Benjamin*  
*Teresito Leonardo de Castro*  
**TERESITA J. LEONARDO-  
DE CASTRO**  
Associate Justice

*I join dissent of J. Bersamin*  


**ARTURO D. BRION**  
Associate Justice

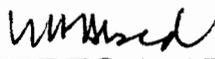
*I join the dissent of J. Bersamin*  

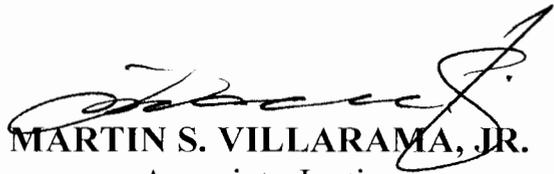

**DIOSDADO M. PERALTA**  
Associate Justice

*Please see my dissent*  


**LUCAS P. BERSAMIN**  
Associate Justice

  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**ROBERTO A. ABAD**  
Associate Justice

  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

I certify that J. Perez  
left his vote of concurrence  
with the ponencia of  
J. Carpio

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

*I join the position of  
J. Bersamin*  
  
**JOSE C. MENDOZA**  
Associate Justice

*I join the dissenting  
position of J. Bersamin*  
  
**BIENVENIDO L. REYES**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

  
**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice

## **CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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