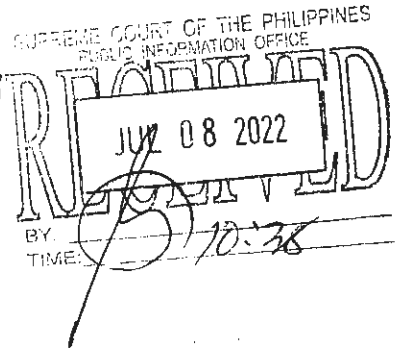




Republic of the Philippines
Supreme Court
Manila

EN BANC

NOTICE



Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated **JUNE 28, 2022**, which reads as follows:

“UDK 17572 (Efren Cadiz Belango, petitioner vs. Commission on Elections and Joel Gammad Alilam,¹ respondents). – This is a Petition for *Certiorari*² under Rule 64, in relation to Rule 65, of the Rules of Court with application for temporary restraining order and/or writ of preliminary injunction. The petition seeks the nullification of the December 3, 2021 Resolution³ of the Commission on Elections (*COMELEC*) *En Banc* which affirmed the September 26, 2018 Order⁴ of the *COMELEC* First Division dismissing the appeal filed by Efren Cadiz Belango (*petitioner*) due to the nonpayment of the *COMELEC* appeal fee of ₱3,200.00.

The petition must be dismissed. The *COMELEC En Banc* did not commit grave abuse of discretion in affirming the dismissal of petitioner’s appeal due to nonpayment of the appeal fee.

It must be emphasized that, “Grave abuse of discretion arises when there is a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, such as when the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. It occurs when a court or tribunal violates the Constitution, the law, or existing jurisprudence.”⁵

¹ Also referred to as “Joel Alilam Gammad” in some parts of the *rollo* (see *rollo*, p. 72).

² *Rollo*, pp. 8-26.

³ *Id.* at 32-35; issued by Chairman Sheriff M. Abas, Commissioners Ma. Rowena Amelia V. Guanzon, Socorro B. Inting, Marlon S. Casquejo, Antonio T. Kho, Jr. (now a Member of the Court), and Aimee P. Ferolino-Ampoloquio.

⁴ *Id.* at 29-30; issued by Presiding Commissioner Al A. Parreño, Commissioners Ma. Rowena Amelia V. Guanzon, and Marlon S. Casquejo.

⁵ *Sevilla v. Commission on Elections*, 843 Phil. 142, 156 (2018).

anc

A.M. No. 07-4-15-SC,⁶ that took effect on May 15, 2007, governs the “Rules of Procedure in Election Contests before the Courts Involving Elective Municipal and *Barangay* Officials.” Under Section 9, Rule 14 thereof, an appeal fee of ₱1,000.00 is imposed, separate and distinct from, but payable within the same period, as the appeal fee of ₱3,200.00, imposed by the COMELEC under Secs. 3 and 4, Rule 40 of the COMELEC Rules of Procedure, as amended by COMELEC Resolution No. 02-0130.

In *Divinagracia, Jr. v. Commission on Elections*⁷ (*Divinagracia*), the Court held that “for notices of appeal filed after the promulgation of this decision, errors in the matter of [nonpayment] or incomplete payment of the two appeal fees in election cases are no longer excusable.”⁸

Petitioner filed his Notice of Appeal with the Municipal Circuit Trial Court on July 17, 2018, paying the appeal fee of ₱1,000.00 on said date.⁹ However, petitioner failed to pay the COMELEC appeal fee of ₱3,200.00 within 15 days from the filing of his Notice of Appeal. He paid it only on October 22, 2018,¹⁰ after his receipt on October 17, 2018 of the COMELEC First Division Order outrightly dismissing his appeal due to nonpayment of said fee.

Hence, the COMELEC *En Banc* committed no grave abuse of discretion when it affirmed the outright dismissal of petitioner’s appeal. The COMELEC *En Banc* was merely applying the rules and prevailing jurisprudence on the matter. In *Divinagracia*, which had been around for nine years at the time of petitioner’s filing of the Notice of Appeal, the Court categorically stated that failure to pay the two appeal fees is no longer excusable.¹¹

To reiterate, the instant case involves an appeal filed in 2018, nine years after the promulgation of *Divinagracia*. Since then, the rule requiring the payment of two appeal fees has been well-established. Confusion arising from the twin requirements may no longer be used as a reason for liberality.

Considering the foregoing, the Court sees no need to discuss petitioner’s prayer for issuance of a temporary restraining order and/or writ of preliminary injunction.

WHEREFORE, the petition for *certiorari* under Rule 64, in relation to Rule 65, of the Rules of Court is **DISMISSED**.

⁶ It must be noted that election protests involving elective municipal officials is now covered by A.M. No. 10-4-1-SC, entitled “2010 Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal Officials” (April 27, 2010).

⁷ 611 Phil. 538 (2009).

⁸ *Id.* at 552.

⁹ *Rollo*, p. 12.

¹⁰ *Id.* at 17.

¹¹ See *Divinagracia, Jr. v. Commission on Elections*, *supra* at 547.

The case is hereby **REMANDED** to the Municipal Circuit Trial Court of Solana-Enrile, Solana, Cagayan for the **IMMEDIATE EXECUTION** of its Decision dated June 28, 2018 in Election Case No. 29, entitled '*Joel Gammad Alilam, protestant vs. Efren Cadiz Belango, protestee.*' Caguioa, J., on official leave. Inting, J., no part and on leave on official time. Kho, Jr., J., no part. (adv43)

By authority of the Court:



MARIFE M. LOMIBAO-CUEVAS
Clerk of Court

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THE PRESIDING JUDGE (reg)
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3503 Solana, Cagayan

