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REPUBLIC OF THE PHILIPPINES  
**SUPREME COURT**  
MANILA

EN BANC

**KHADAFEH  
MANGUDADATU,**

**GAGUIL**

*Petitioner,*

-versus-

**G.R. No. 266443**

**COMMISSION ON ELECTIONS,  
OFFICE OF THE SOLICITOR  
GENERAL, HON. ANNABELLE  
D.P. PIANG, JUDGE OF  
REGIONAL TRIAL COURT 12<sup>th</sup>  
JUDICIAL REGION, BRANCH 15,  
SHARIFF AGUAK,  
MAGUINDANAO (Holding Office  
at Cotabato City) and  
MOHAJERAN K. BALAYMAN,  
*Respondents.***

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**COMMENT**

[on the **(1)** Petition for *Certiorari*, Prohibition, and Injunction with prayer for Preliminary Injunction, Issuance of TRO/*Status Quo Ante* Order dated 19 April 2023, and **(2)** Supplemental Petition for *Certiorari* (with Extremely Urgent Prayer for Writ of Preliminary Injunction and for Very Urgent Issuance of Temporary Restraining Order and/or *Status Quo Ante* Order) dated 24 May 2023]

Public Respondent **COMMISSION ON ELECTIONS ("COMELEC")**, through the **OFFICE OF THE SOLICITOR GENERAL**, unto this Honorable Court, respectfully states:

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**I.**  
**STATEMENT OF THE CASE**

1. This case is a *Petition for Certiorari and Prohibition* under Rule 64 in relation to Rule 65 of the Revised Rules of Court with an application for Temporary Restraining Order ("TRO"), Writ of Preliminary Injunction ("WPI"), and a *Status Quo Ante* Order. Petitioner Khadafeh G. Mangudadatu ("Mangudadatu") assails the Resolution dated 04 April 2023 of the COMELEC *En Banc* ("*Assailed Resolution*") for allegedly being issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

2. The COMELEC *En Banc*, in the *Assailed Resolution*, granted Private Respondent Mohajeran Balayman's ("Balayman") Motion for Reconsideration,<sup>1</sup> and reversed and set aside the COMELEC Special First Division's Resolution dated 17 January 2023 ("*First Division Resolution*"). The *First Division Resolution* annulled the *Order* dated 2 June 2022 of respondent Hon. Annabelle D.P. Piang ("Judge Piang"), Presiding Judge of the Regional Trial Court (RTC), 12th Judicial Region, Branch 15, Shariff Aguak, Maguindanao, who declared Mangudadatu in default for his failure to timely file his *Answer* to Balayman's *Petition* for election protest.

**II.**  
**TIMELINESS**

3. On 11 October 2023, the COMELEC received the Honorable Court's Resolution of 08 August 2023 requiring it to file a Comment on the *Petition for Certiorari and Prohibition* and prayer for issuance of TRO, WPI and *Status Quo Ante* Order within ten (10) days from notice or until 21 October 2023.

4. On 19 October 2023, the COMELEC filed a Motion for Extension praying for an extension of thirty (30) days from

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<sup>1</sup> Motion for Reconsideration dated 19 January 2023, attached to the *Petition for Certiorari* dated 18 April 2023 as Annex "V."

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21 October 2023, or until 20 November 2023, to file its Comment.

5. Hence, this Comment is timely filed.

**III.**

**RELEVANT FACTS AND ANTECEDENTS**

6. Mangudadatu and Balayman were candidates for Mayor of Pandag, Maguindanao in the 09 May 2022 National and Local elections.<sup>2</sup> After the votes were cast and canvassed, Mangudadatu was declared to have received 4,307 votes, while Balayman received 2,445 votes.<sup>3</sup> Hence, the Municipal Board of Canvassers proclaimed Mangudadatu as the Mayor of Pandag, Maguindanao on 10 May 2022.<sup>4</sup>

7. On 11 May 2022, Balayman filed a *Petition to Declare Failure of Election in Pandag, Maguindanao (with Prayer for Cease and Desist)* with the COMELEC *En Banc*.<sup>5</sup>

8. On 23 May 2022, Balayman also filed a *Petition*<sup>6</sup> for election protest before the Regional Trial Court of Shariff Aguak, Maguindanao to challenge the results of the mayoral elections.<sup>7</sup> The Petition was docketed as Election Case No. EP SA 16 and raffled to the sala of respondent Hon. Piang, Presiding Judge of RTC in Shariff Aguak, Maguindanao, Branch 15.<sup>8</sup>

9. On the same date, the RTC issued Summons<sup>9</sup> to Mangudadatu requiring him to file his Verified Answer. Mangudadatu filed his *Answer with Affirmative/Special Defenses and Verified Counter-Protest with Prayer for Damages and Attorney's Fees*<sup>10</sup> ("*Answer with Counter*

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<sup>2</sup> Resolution dated 04 April 2023, p. 2, attached to the Petition for *Certiorari* dated 18 April 2023 as Annex "A."

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> *Id.* p. 6.

<sup>6</sup> Petition dated 19 May 2022, attached to the Petition for *Certiorari* dated 18 April 2023 as Annex "D."

<sup>7</sup> *Id.* Annex "A."

<sup>8</sup> *Id.* Annex "D."

<sup>9</sup> *Id.* Annex "E."

<sup>10</sup> *Id.* Annex "F."

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*Protest*") through registered mail on 30 May 2022 and through electronic mail on 31 May 2022.<sup>11</sup>

10. Mangudadatu, in his *Answer with Counter Protest*, argued that the *Petition* filed by Balayman should be dismissed outright because it was filed out of time.<sup>12</sup> Mangudadatu cited A.M. No. 10-4-1-SC, or the 2022 Interim Amendments to the 2010 Rules of Procedure for Municipal Election Contests ("A.M. No. 10-4-1-SC"), which provides that the filing of a Protest is for a non-extendible period of ten (10) calendar days counted from the date of proclamation of 10 May 2022, or until 20 May 2023.<sup>13</sup> Balayman filed the Protest on 23 May 2022 or thirteen days after 10 May 2022.

11. Balayman, on the other hand, filed a *Motion [1] to Declare Respondent In Default; (2) Strike Out Submitted Answer*<sup>14</sup> dated 31 May 2022 ("*Motion to Declare Respondent in Default*") on the premise that the *Answer with Counter Protest* was belatedly filed.<sup>15</sup>

12. Judge Piang granted Balayman's *Motion to Declare Respondent in Default* in an *Order*<sup>16</sup> dated 02 June 2022 ("*02 June 2022 Order*").

13. Mangudadatu filed a *Motion for Reconsideration or to Lift Order of Default*.<sup>17</sup> The motion was denied by Judge Piang in open court for being a prohibited pleading.<sup>18</sup> She reduced and further explained her denial in the *Order* dated 13 July 2022.<sup>19</sup>

14. In the meantime, on 20 June 2022, Mangudadatu filed with the COMELEC a *Petition for Certiorari and Prohibition/Injunction (with prayer for Writ of Preliminary Injunction and for Very Urgent Issuance of Temporary*

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<sup>11</sup> *Id.* Annex "A," p. 2.

<sup>12</sup> *Id.* Annex "A," p. 2 and Annex "F."

<sup>13</sup> *Ibid.*

<sup>14</sup> *Id.* Annex "A," p. 3 and Annex "H."

<sup>15</sup> *Ibid.*

<sup>16</sup> *Id.* Annex "J."

<sup>17</sup> *Id.* Annex "K."

<sup>18</sup> *Id.* Annex "A," p. 3.

<sup>19</sup> *Ibid.*

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*Restraining Order (TRO) and/or Status Quo Ante Order*).<sup>20</sup> The action was raffled before the Special First Division and was docketed as SPR No. 001-2022. In this *Petition for Certiorari and Prohibition*, Mangudadatu assailed the *02 June 2022 Order* declaring him in default and the then verbal denial of his *Motion for Reconsideration or to Lift Order of Default*.

15. On 19 July 2022, the COMELEC Special First Division issued a *Status Quo Ante Order*, which enjoined the parties to maintain the status prevailing prior to the issuance of the *02 June 2022 Order* for a period of sixty (60) days, effective immediately.<sup>21</sup>

16. After the lapse of the 60-day period, Judge Piang proceeded with the *Petition* for election protest. On 14 October 2022, Judge Piang issued a *Judgement*<sup>22</sup> which resolved Balayman's *Petition* for election protest against Mangudadatu. In the *Judgment*, Judge Piang found that Balayman received a total of 2,470 valid votes as opposed to Mangudadatu's 2,070 valid votes. Thus, she declared Balayman as the duly elected Mayor of the Municipality of Pandag, Maguindanao.<sup>23</sup>

17. Subsequently, on 19 October 2022, the COMELEC Special First Division released an *Order* which directed Judge Piang to cease and desist from implementing its *02 June 2022 Order* as well as performing other acts/incidents related to the foregoing case until further orders from the Commission.<sup>24</sup> Consequently, on 20 October 2022, a Writ of Injunction<sup>25</sup> was issued by the COMELEC Special First Division.

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<sup>20</sup> *Id.* Annex "R".

<sup>21</sup> Order dated 19 July 2022, attached to the Motion for Leave of Court to Submit and/or Admit Supplemental Petition for *Certiorari* with the attached Supplemental Petition for *Certiorari* dated 24 May 2023 as Annex "Z."

<sup>22</sup> *Id.* Annex "DD."

<sup>23</sup> *Id.* pp. 210 – 211.

<sup>24</sup> Resolution dated 04 April 2023, p. 4, attached to the Petition for *Certiorari* dated 18 April 2023 as Annex "A."

<sup>25</sup> Writ of Injunction dated 20 October 2022, attached to the Motion for Leave of Court to Submit and/or Admit Supplemental Petition for *Certiorari* with the attached Supplemental Petition for *Certiorari* dated 24 May 2023 as Annex "JJ."

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18. On 17 January 2023, the COMELEC Special First Division issued a *Resolution*<sup>26</sup> ("*First Division Resolution*") that granted the *Petition for Certiorari and Prohibition* and declared as null and void the assailed *02 June 2022 Order*.<sup>27</sup> Specifically, it was ruled that: **(a)** Balayman's *Petition* for election protest was filed out of time; **(b)** Mangudadatu's *Answer with Counter Protest* was filed on time; and **(c)** Mangudadatu's *Motion for Reconsideration or to Lift Order of Default* is not a prohibited pleading.

19. On 19 January 2023, Balayman filed a *Motion for Reconsideration* of the *First Division Resolution* before the COMELEC *En Banc*.<sup>28</sup> On 23 January 2023, Balayman filed a *Motion to Admit the Herein Incorporated Memorandum*.<sup>29</sup> Mangudadatu, on the other hand, filed on 01 February 2023 a *Comment/Opposition to the Motion to Admit the Herein Incorporated Memorandum and Manifestation adopting Petitioner's Comment and Opposition dated January 24, 2023 for the Petitioner*.<sup>30</sup>

20. On 04 April 2023, the COMELEC *En Banc* released the *Assailed Resolution* granting Balayman's *Motion for Reconsideration* and reversing the *First Division Resolution*. The COMELEC *En Banc* ruled that: **(a)** Balayman's *Petition* for election protest against Mangudadatu was filed on time; **(b)** and while Mangudadatu timely filed his *Answer with Counter Protest*, the *02 June 2022 Order* declaring Mangudadatu in default was issued by Judge Piang in error of judgment and not in grave abuse of discretion.

21. Hence, this *Petition for Certiorari and Prohibition*.

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<sup>26</sup> Resolution dated 04 April 2023, p. 5, attached to the *Petition for Certiorari* dated 18 April 2023 as Annex "A."

<sup>27</sup> *Ibid.*

<sup>28</sup> *Id.* Annex "V."

<sup>29</sup> Motion to Admit the Herein Incorporated Memorandum dated 23 January 2023, attached to the Motion for Leave of Court to Submit and/or Admit Supplemental Petition for *Certiorari* with the attached Supplemental Petition for *Certiorari* dated 24 May 2023 as Annex "SS."

<sup>30</sup> Resolution dated 17 January 2023, attached to the *Petition for Certiorari* dated 18 April 2023 as Annex "B."

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**IV.**  
**ISSUES**

**WHETHER THE COMELEC *EN BANC* COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED RESOLUTION.**

**WHETHER BALAYMAN'S PETITION TO DECLARE A FAILURE OF ELECTION IS A PRE-PROCLAMATION CONTROVERSY THAT SUSPENDS THE PERIOD TO FILE ELECTION PROTESTS.**

**WHETHER JUDGE PIANG COMMITTED AN ERROR OF JUDGEMENT OR GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN SHE ISSUED THE 02 JUNE 2022 ORDER.**

**WHETHER MANGUDADATU IS ENTITLED TO A WRIT OF PROHIBITION, A TEMPORARY RESTRAINING ORDER AND/OR *STATUS QUO ANTE* ORDER, AND A WRIT OF PRELIMINARY INJUNCTION.**

**WHETHER THE OFFICE OF THE SOLICITOR GENERAL WAS PROPERLY IMPLEADED.**

**V.**  
**ARGUMENTS**

**I. THE ELECTION PROTEST WAS TIMELY FILED. THE PERIOD TO FILE THE SAME WAS SUSPENDED BY THE PENDENCY OF A PRE-PROCLAMATION CONTROVERSY BEFORE THE COMELEC *EN BANC*.**

**II. THE COMELEC DID NOT ERR IN HOLDING THAT JUDGE PIANG COMMITTED A MERE ERROR OF JUDGMENT AND NOT OF JURISDICTION, SO AS TO AMOUNT TO GRAVE ABUSE OF DISCRETION.**

**III. MANGUDADATU IS NOT ENTITLED TO A WRIT OF PROHIBITION AND TO THE INJUNCTIVE RELIEFS PRAYED FOR.**

**IV. THE OFFICE OF THE SOLICITOR GENERAL WAS IMPROPERLY IMPLEADED.**

**VI.**  
**DISCUSSION**

**I. THE ELECTION PROTEST WAS TIMELY FILED. THE PERIOD TO FILE THE SAME WAS SUSPENDED BY THE PENDENCY OF A PRE-PROCLAMATION CONTROVERSY BEFORE THE COMELEC *EN BANC*.**  
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22. Petitioner Mangudadatu alleges that Balayman's election protest was filed out of time, which should have warranted its dismissal.

23. Although the COMELEC Special First Division agreed with Mangudadatu's position that the protest was filed out of time, the COMELEC *En Banc* overturned this ruling. The reversal was based on the suspension of the filing period for the election protest due to a pending pre-proclamation controversy — specifically, Balayman's *Petition to Declare Failure of Election in Pandag, Maguindanao* before the COMELEC *En Banc*. Section 8 of A.M. No. 10-4-1-SC explicitly states that the period for filing an election protest is suspended during the pendency of a pre-proclamation controversy.



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24. This is supported by Section 248 of the Omnibus Election Code, which provides:

SECTION 248. Effect of filing petition to annul or to suspend the proclamation. — The filing with the Commission of a petition to annul or to suspend the proclamation of any candidate shall suspend the running of the period within which to file an election protest or *quo warranto* proceedings.

25. The COMELEC *En Banc* found that the allegations in Balayman's *Petition* regarding coercion and intimidation during the election process classify the matter as a pre-proclamation controversy. Section 243 of the Omnibus Election Code provides that this includes instances where "[t]he election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic."<sup>31</sup>

26. As defined by Section 241 of the Omnibus Election Code, a pre-proclamation controversy refers to "any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the Commission, or any matter raised under Sections 233, 234, 235 and 236 in relation to the preparation, transmission, receipt, custody and appreciation of the election returns."

27. As asserted by Balayman, the *Petition to Declare Failure of Elections* raised the same threats, massive fraud, and acts of terrorism that were the subject of the election protest.<sup>32</sup> Therefore, as aptly determined by the COMELEC *En Banc*, a thorough review of the *Petition to Declare Failure of Elections* reveals that it adequately alleged that the election returns were prepared under duress, threats, coercion, or intimidation. This supports the assertion that no genuine and proper voting occurred at the voting centers. Additionally, Balayman claimed that the election results had been manipulated beforehand.

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<sup>31</sup> Resolution dated 04 April 2023, pp. 6-11, attached to the Petition for *Certiorari* dated 18 April 2023 as Annex "A."

<sup>32</sup> Petition for *Certiorari* dated 18 April 2023, Annex "S," p. 10.

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28. Mangudadatu attempts, however, to challenge the COMELEC *En Banc*'s evaluation of the allegations in Balayman's *Petition to Declare Failure of Elections*. He insists that the *Petition* does not properly allege grounds for a pre-proclamation controversy, *i.e.*, that the election returns were prepared under duress, threats, coercion, or intimidation.

29. Mangudadatu's argument does not hold water.

30. At the outset, it bears emphasis that actions undertaken by the COMELEC are presumed to be regular. As held in ***Montesclaros v. Commission on Elections***:<sup>33</sup>

The Comelec exercised its power and duty to "enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall" and to "recommend to Congress effective measures to minimize election spending." The Comelec's acts enjoy the presumption of regularity in the performance of official duties. These acts cannot constitute proof, as claimed by petitioners, that there "exists a connivance and conspiracy (among) respondents in contravention of the present law." As the Court held in *Pangkat Laguna v. Comelec*, the "Comelec, as the government agency tasked with the enforcement and administration of elections laws, is entitled to the presumption of regularity of official acts with respect to the elections."

31. This is particularly relevant in this case, which is a petition for *certiorari* alleging grave abuse of discretion. Mangudadatu carries a substantial burden in demonstrating that the COMELEC acted in a manner that constitutes a capricious or whimsical exercise of judgment tantamount to a lack of jurisdiction. The abuse of discretion must be so glaring and extreme as to be equivalent to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of the law.<sup>34</sup>

32. Mangudadatu failed to overcome this burden.

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<sup>33</sup> G.R. No. 152295, 09 July 2002.

<sup>34</sup> *Yokohama Tire Philippines v. Reyes*, G.R. No. 236686, 05 February 2020.

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33. Indeed, an examination of the allegations in Balayman's *Petition to Declare Failure of Elections*<sup>35</sup> provide a detailed picture of the conditions under which the Board of Election Inspectors (BEIs) operated, inevitably tainting the integrity of the election returns they generated and printed.

34. Firstly, the presence of Barangay Peacekeeping Action Teams (BPATs) during the Final Testing and Sealing, and their continued dominance on the election day itself, created an atmosphere of fear and intimidation. The very essence of a free election is the unimpeded exercise of voting rights. However, the presence of BPATs, which allegedly were aligned with Mangudadatu, effectively barred entry to polling stations for Balayman's supporters and poll watchers. This alone raises serious concerns about the free will of the BEIs, whose members were surrounded by these intimidating forces.<sup>36</sup> As alleged in the *Petition*,<sup>37</sup> a BEI member, who was requested by Balayman's lawyers and paralegals to record the irregularities on the minutes of the elections, refused and did not do so.

35. Furthermore, the alleged forceful removal of a poll watcher by Mangudadatu and his men is a manifestation of the hostile environment in which the BEIs performed their duties. One cannot reasonably expect the BEIs to remain unaffected by such blatant displays of power, especially when they are responsible for the facilitation of the voting process and the generation of the election returns in such a hostile atmosphere.

36. These incidents allegedly culminated in a brazen act of violence - shooting upon Balayman's men.<sup>38</sup> Such alleged acts of aggression at the area of the polling precincts would have undoubtedly exerted psychological pressure on the BEIs, impacting their ability to function impartially and without fear.

37. The alleged continuous control of the polling precincts by Mangudadatu's men, as described, further

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<sup>35</sup> Attached to the Supplemental Petition for Certiorari dated 24 May 2023 as Annex "CCC."

<sup>36</sup> *Id.*, par. 12-13, p. 3.

<sup>37</sup> *Id.*, par. 15, p. 3.

<sup>38</sup> *Id.*, par. 16, p. 3.

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exacerbates the situation. The BEIs, witnessing the supposed unlawful barring of voters and poll watchers, and the blackening of voter names,<sup>39</sup> were operating under an undeniable shadow of coercion. This environment is antithetical to the principles of a free and fair election, where election officials should operate independently and without fear or favor.

38. The affidavits attached to the *Petition to Declare Failure of Elections*, including those of the various voters and supporters, corroborate these incidents of violence and intimidation. They collectively paint a picture of an election process hijacked by fear and coercion. In such circumstances, it is impossible to conceive that the BEIs could have facilitated the voting process and generated the election returns without being influenced by these events. Their independence, partiality, and decision-making process, critical to the integrity of the election returns, were compromised.

39. All told, the *Petition* properly asserts that the election returns were prepared under conditions that were antithetical to the principles of a democratic and free election. The presence of armed and intimidating forces, the direct interference with the election process, and the violent acts that occurred, all contribute to a conclusion that the BEIs were operating under duress, threats, coercion, or intimidation. This casts a significant doubt over the authenticity and legitimacy of the election returns that they prepared.

40. Consequently, the *Petition to Declare Failure of Elections*, despite its title, unmistakably qualifies as a pre-proclamation controversy. It is well-established that the allegations in a pleading, rather than its caption or title, hold sway.<sup>40</sup>

41. In light of the foregoing discussion, coupled with the jurisprudence favoring the liberal interpretation of electoral laws to honor the electorate's choice, the instant *Petition* falls short of proving the alleged grave abuse of discretion on the part of the COMELEC *En Banc* in issuing the

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<sup>39</sup> *Id.*, par. 15, p. 3.

<sup>40</sup> Please see *Munsalud v. National Housing Authority*, G.R. No. 167181, 23 December 2008.

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*Assailed Resolution.* Consequently, the *Assailed Resolution* must be upheld, allowing the election protest to proceed in view of the suspension of the period for its filing, and in the interest of transparency and democracy.

42. As aptly articulated in the Dissenting Opinion of Commissioner Ferolino in the *First Division Resolution*:

Relevant in this case is the ruling of the Supreme Court in *Violago Sr. v. Commission on Elections*, where the Court emphasized the need to liberally construe the rules for election contests for the purpose of ascertaining the choice of the electorate, in this wise:

It has been frequently decided, and it may be stated as a general rule recognized by all courts, that all statutes providing for election contests are to be liberally construed to the end that the will of the people (*sic*) in the choice of public officers may not be defeated by mere technical objections. An election contest, unlike an ordinary action, is imbued with public interest as it involves not only the adjudication of the private interests of rival candidates but also the paramount need of dispelling the uncertainty which beclouds the real choice of the electorate with respect to who shall discharge the prerogatives of the office within their gift. Moreover, it is neither fair nor just to keep in office for an uncertain period one whose right to it is under suspicion. It is imperative that his claim be immediately cleared not only for the benefit of the winner for the sake of public interest, which can only be achieved by brushing aside technicalities of procedure which protract and delay the trial of an ordinary action.

Additionally, the Supreme Court held in *Gravides v. Commission on Elections*:

Blind adherence to a technicality, with the inevitable result of frustrating and nullifying the constitutionally guaranteed right of suffrage, cannot be countenanced. Likewise, it has been held that "on more than one occasion, this Court has recognized the emerging trend towards a liberal construction of procedural rules to serve

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a substantial justice. Courts have the prerogative to relax rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily end litigation and the parties' right to due process." While procedural rules are intended for the expeditious disposition of election cases, this should not impede this Commission from compliance with the established principles of fairness and justice and adjudication of cases not on technicality but on their substantive merits.

Likewise, in *Panlilio v. Commission on Elections*, the Supreme Court ruled:

In an election case, the election tribunal has an imperative duty to ascertain, by all means within its command, who is the real candidate elected by the electorate. Indeed, the Court frowns upon any interpretation of the law or the rules that would hinder in any way not only the free and intelligent casting of votes in an election, but also the correct ascertainment of the results.

In *Saquilayan v. Commission on Elections*, it was held that election contests involve public interest, and technicalities and procedural barriers should not be allowed to stand if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. Laws governing election contests must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections. In an election case, the court has an imperative duty to ascertain by all means within its command who is the real candidate elected by the electorate. The Supreme Court frowns upon any interpretation of the law or the rules that would hinder in any way not only the free and intelligent casting of the votes in an election but also the correct ascertainment of the results.

It is apparent that allowing the election protest to proceed would be the best way of removing any doubt as to who was the real candidate chosen by the electorate. Barring the proceedings due to technicalities and procedures accomplishes nothing except possibly to suppress the will of the majority. In deciding to pursue the Election Protest, Public Respondent merely complied with her duty to ascertain, by all means within her disposal, who was the real

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candidate chosen by the electorate, even if it meant a liberal construction of the procedural rules governing the protest.

With respect to the defect in the protest's verification, relevant is the ruling of the Supreme Court in the case of *Lucy Torres-Gomez v. Codilla*, where the Court ruled that it has been consistently held that the verification of a pleading is only a formal, not a jurisdictional requirement. The purpose of requiring a verification is to secure an assurance that the allegations in the petition are true and correct, and not merely speculative.

In the case at bar, there is no showing that Public Respondent, in merely acting in accordance with her duty to ascertain the true will of the electorate, went beyond the powers provided under the law that would amount to a lack of or in excess of jurisdiction. Petitioner's claims are unsubstantiated and, as such, merit no finding of grave abuse of discretion.

Lastly, the Petitioner carries the burden of proving before this Commission (Special First Division) that Public Respondent acted in a capricious and despotic manner that is tantamount to a grave abuse of discretion. Unfortunately, I am not convinced with the Petitioner's allegations that Public Respondent acted in such a manner, which would justify the issuance of a special writ of certiorari.

In *Gravides v. Commission on Elections*, the Supreme Court held that in a special civil action for certiorari, the petitioner carries the burden of proving not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction, on the part of the public respondent for the issuance of the impugned order. Grave abuse of discretion is present "when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in the contemplation of law." In other words, the tribunal or administrative body must have issued the assailed decision, order or resolution in a capricious or despotic manner.

Moreover, grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility which must be so patent and gross as to amount to an invasion of positive duty or to a virtual refusal

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to perform the duty enjoined or to act at all in contemplation of law. Mere abuse of discretion is not enough.

In consideration of the foregoing, I do not agree with the Petitioner that there was grave abuse of discretion when the RTC issued the assailed Order. After evaluating the facts and evidence of this case, I do not find any reason to believe that Public Respondent acted in an arbitrary or despotic manner in refusing to dismiss the Election Protest, and for subsequently declaring Petitioner in default. Moreover, it is my stance that Petitioner failed to provide this Commission (Special First Division) with sufficient proof that Private Respondent's actions were without any legal basis or that there was a gross evasion of a positive duty.

**II. THE COMELEC *EN BANC* DID NOT ERR IN HOLDING THAT JUDGE PIANG COMMITTED A MERE ERROR OF JUDGMENT AND NOT OF JURISDICTION, SO AS TO AMOUNT TO GRAVE ABUSE OF DISCRETION.**

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43. Mangudadatu argues that the COMELEC *En Banc* grievously erred in holding that Judge Piang committed an error of judgment, not of jurisdiction, when it declared him in default. He grounds his argument on two main points. *First*, he claims that the COMELEC *En Banc* "hand-pick[ed] only one aspect"<sup>41</sup> of the trial court proceedings, and intentionally ignored the rest. This was purportedly so that the "capricious and despotic actions of [Judge Piang]"<sup>42</sup> would be devalued. *Second*, he argues that the declaration of default itself is tainted with grave abuse of discretion.

44. As will be discussed, the COMELEC *En Banc* was well within its powers to rule only on the issue of default, considering that the RTC, at the time, had not yet decided or acted upon the other issues raised. Furthermore, the COMELEC *En Banc* was correct in ruling that the order of

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<sup>41</sup> Par. 85, Petition for *Certiorari* dated 18 April 2023, pp. 33-34.

<sup>42</sup> *Ibid.*



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default was a mere error of judgement, having been based on facts and law, albeit a misappreciation of the same.

45. As to the claim that the COMELEC *En Banc* isolated the issue of default and ignored the other substantial issues raised, this is an incorrect and misleading interpretation of the *Assailed Resolution* of the COMELEC *En Banc*. A review of Mangudadatu's original *Petition for Certiorari and Prohibition/Injunction* with the COMELEC would easily show that he was specifically assailing the *02 June 2022 Order* issued by Judge Piang. This fact is not at issue.

46. In turn, the *02 June 2022 Order* merely resolved the question of whether Mangudadatu's *Answer with Counter Protest* was filed on time, and the applicable law thereto. Judge Piang understandably did not rule on the other matters raised by Mangudadatu, as these were affirmative defenses that were or should have been contained in the Answer. It was only logical for Judge Piang to determine first whether an Answer was timely filed before considering any of the affirmative defenses alleged therein.

47. The *02 June 2022 Order* ruled that the *Answer with Counter Protest* was filed out of time, and that therefore, the case should proceed under Rule 4, Section 4 (c) of A.M. No. 10-4-1-SC. This was the *Order* that Mangudadatu elevated via *Certiorari* and Prohibition to the COMELEC. Naturally, the COMELEC was only bound to resolve the matters the *02 June 2022 Order* decided on. Even the 17 January 2023 *Resolution* of the COMELEC Special First Division, which presumably Mangudadatu does not take issue with, did not rule on the issues he identifies now before this Honorable Court as having been maliciously excluded. Specifically, these are: **(a)** that the Election Protest contained a defective Verification and Certification of Non-Forum Shopping; **(b)** that the Election Protest failed to comply with Section 10 (c) (iv), Rule 2 of A.M. No. 10-4-1-SC; **(c)** the failure to specifically allege and prove the acts complained of; and **(d)** the failure to show that by reason of the Protest, Balayman would obtain the plurality of votes.

48. Both the COMELEC in Division and *En Banc* ruled only on, *first*, whether the protest itself was filed on time,

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thus, giving the RTC jurisdiction, and, *second*, the matters involving the default (whether the answer was filed on time, and whether the denial of the Motion for Reconsideration was in order). The first is a jurisdictional matter, and the second was the subject of the *02 June 2022 Order* that was being assailed in the *Petition for Certiorari and Prohibition*. It was neither error nor malicious posturing which led the COMELEC to rule only on these issues.

49. As explained by this Honorable Court in the case of ***Marvin Cruz v. People of the Philippines***:<sup>43</sup>

**The writ of certiorari is not issued to correct every error that may have been committed by lower courts and tribunals.** It is a remedy specifically to keep lower courts and tribunals within the bounds of their jurisdiction. In our judicial system, the writ is issued to prevent lower courts and tribunals from committing grave abuse of discretion in excess of their jurisdiction. ...

We remind that the writ of certiorari - being a remedy narrow in scope and inflexible in character, whose purpose is to keep an inferior court within the bounds of its jurisdiction, or to prevent an inferior court from committing such grave abuse of discretion amounting to excess of jurisdiction, or to relieve parties from arbitrary acts of courts (i.e., acts that courts have no power or authority in law to perform) - is **not a general utility tool in the legal workshop**, and cannot be issued to correct every error committed by a lower court.<sup>44</sup>

50. The same rule applies whether the case for *Certiorari* is before the courts or, in this case, the COMELEC. "[C]ertiorari may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. **Such cannot be used for any other purpose**, as its function is limited to keeping the inferior court within the bounds of its jurisdiction."<sup>45</sup> It is not the vehicle through which all of Petitioner's affirmative defenses should be litigated and resolved. There was thus no error on the part of COMELEC *En Banc*, and certainly no malicious nor arbitrary actuations, when it limited its resolution to select

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<sup>43</sup> G.R. No. 224974, 03 July 2017.

<sup>44</sup> *Id.* (Emphases supplied).

<sup>45</sup> *Alfredo Tagle v. Equitable PCI Bank*, G.R. No.172299, 22 April 2008.

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issues. This is even more so for the COMELEC *En Banc*, which was only resolving a Motion for Reconsideration of the *First Division Resolution* where the issues were limited.

51. Anent the issue of whether the order of default itself was an error of judgment or one of jurisdiction, it is submitted that the COMELEC *En Banc* was correct when it ruled that Judge Piang's *02 June 2022 Order* finding Mangudadatu in default was merely an error of judgment and not of jurisdiction, her conclusions therein involving only errors in the appreciation of the facts and of the applicable law.

52. In understanding grave abuse of discretion, this Honorable Court's prior rulings are enlightening. Thus,

The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a 'capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction.' **The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law,** as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.' Furthermore, the use of a petition for certiorari is restricted only to '**truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void.**' From the foregoing definition, it is clear that the special civil action of certiorari under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross[.]<sup>46</sup>

53. Furthermore, the extraordinary writs of *Certiorari* and Prohibition are available only for errors of jurisdiction, and not of judgment. As explained by this Court,

Corollary thereto, the alleged misapplication of facts and evidence, and whatever flawed conclusions of the Sandiganbayan, is an error in judgment, not of jurisdiction, and therefore not within the province of a special civil action for certiorari. **Erroneous conclusions based on evidence**

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<sup>46</sup> *Yokohama Tire Philippines Inc. v. Sandra Reyes and Jocelyn Reyes*, G.R. No. 236686, 05 February 2020.

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**do not, by the mere fact that errors were committed, rise to the level of grave abuse of discretion.** For as long as a court acts within its jurisdiction, any supposed error committed in the exercise thereof will amount to nothing more than an error of judgment reviewable and may be corrected by a timely appeal. The rationale of this rule is that, **when a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed.** Otherwise, every mistake made by a court will deprive it of its jurisdiction and every erroneous judgment will be a void judgment.

Necessarily, **certiorari will not lie for the purpose of "reviewing the intrinsic correctness of a judgment of the lower court — on the basis either of the law or the facts of the case, or of the wisdom or legal soundness of the decision."**<sup>47</sup>

54. As explained by the COMELEC *En Banc*, Judge Piang's ruling, while erroneous, is not an error of jurisdiction. There is no question that the RTC has exclusive jurisdiction over all election contests involving municipal officials. Furthermore, even as it was erroneous, the decision in the *02 June 2022 Order* was based on an appraisal of available facts as well as existing law, rules, and regulations. It was thus not arbitrary nor whimsical which would merit the issuance of the extraordinary writs of Certiorari and Prohibition.

55. *First*, as to the facts: Mangudadatu claims to have filed his *Answer with Counter Protest* on 30 May 2022 via registered mail. However, the Affidavit of Filing and Service the Petitioner submitted as proof of the same did not even show that it was filed with the RTC. Rather, it states that it was filed with the COMELEC *En Banc*. Furthermore, as observed by the COMELEC *En Banc*, the RTC had yet to receive a copy of the *Answer with Counter Protest* by the time it issued its *02 June 2022 Order*. There were thus substantial grounds for Judge Piang to believe that the same had not been filed on 30 May 2022.

56. Additionally, Mangudadatu admits that he only sent an electronic copy to the official e-mail address of the RTC on

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<sup>47</sup> *People of the Philippines v. Hon. Sandiganbayan*, G.R. No. 228281, 14 June 2021. (Emphases supplied, citations omitted).

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31 May 2022, one day after the deadline. Despite an alleged transmittal to a Gmail address the night before, both the RTC and the COMELEC *En Banc* recognize that the filing of the electronic copy would be considered done on 31 May 2022, when it was sent to the court's official e-mail address.

57. In sum, based on the established facts, the RTC had reasonable basis to believe, at the time of the issuance of the 02 June 2022 *Order*, that Mangudadatu had in fact failed to file his *Answer with Counter Protest* on time. This conclusion, even assuming it is wrong, was neither arbitrary nor capricious, but grounded on the facts available at the time.

58. *Second*, as to the law: The COMELEC *En Banc* aptly observed that Judge Piang based her 02 June 2022 *Order* on the applicable procedural provisions, specifically Section 4, Rule 4 of A.M. No. 10-4-1-SC, which provides the procedure in cases where the respondent fails to answer within the time allowed. To wit —

(c) *Effect of failure to answer.* -If the protestee or the respondent fails to answer within the time allowed in an election protest that does not involve ballot revision or in a petition for quo warranto, the court -upon motion of the protestant or the petitioner, with notice to the protestee or the respondent, and upon proof of such failure -shall proceed to render judgment granting the relief prayed for on the basis of the allegations of the verified protest or petition, unless the court in its discretion opts to require the protestant or the petitioner to submit evidence ex parte.

Where the election protest involves revision or examination of ballots or the verification or re-tabulation of the election returns, the court shall issue the appropriate order and shall proceed to render judgment based on the results of the revision, examination, verification or re-tabulation. During these proceedings, only the protestant's revisors may participate. The protestee, or his or her duly authorized representative, has the right to be present and to observe the proceedings, without the right to object and to lay claim to ballots and election returns.<sup>48</sup>

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<sup>48</sup> 2022 Interim Amendments to the 2010 Rules of Procedure for Municipal Election Contests, A.M. No. 10-4-1-SC, 05 May 2022, Rule 4, § 4 (c).

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59. Judge Piang, in her *02 June 2022 Order*, proceeded according to the rules set out by this Honorable Court based on the factual situation determined in the case. This is evident from the dispositive portion of the *Order* directing the retrieval of the ballot boxes and other paraphernalia from the clustered precincts. Even the discussion regarding the participation of each party's representatives was lifted almost verbatim from the rules:

Upon retrieval and transfer of custody of the above-mentioned election paraphernalia, the revision of ballots shall commence subject to the receipt from the Chairman of the COMELEC of the security markings and vital information relative to ballots and election documents. The request relative to the same had been made on May 31, 2022.

**During the conduct of the revision of ballots, only the protestant's revisors may participate. The protestee, or his or her duly authorized representative, has the right to be present and to observe the proceedings, without the right to object and to lay claim to ballots and election returns.**<sup>49</sup>

60. Thus, while the court issuances of Judge Piang and the submissions of Mangudadatu used the term "default," in reality, the former was simply applying the rules applicable to municipal contests where a protestee or respondent has failed to answer an election protest. This situation is **specifically provided for** by the applicable rules. It is not default *per se*, and Judge Piang and the parties to the case treating it that way does not make Rule 4, Section 4(c) suddenly inoperable.

61. Finally, neither can it be said that the denial of Mangudadatu's Motion for Reconsideration of the *02 June 2022 Order* on the basis of it being a prohibited pleading is an error of jurisdiction. Rule 6 on Prohibited Pleadings explicitly provides under Section 1(d) that a Motion for new trial, or **for the reconsideration of a judgment**, or for reopening of trial is a prohibited pleading. Assuming that it was error on the part of Judge Piang to consider her *02 June 2022 Order* a judgment as to Mangudadatu, again, this was merely an error of judgment and application of the law, not of jurisdiction.

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<sup>49</sup> Order dated 02 Jun 2022, pp. 6-7, attached to the Petition for Certiorari dated 18 April 2023 as Annex "J."

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This was not a baseless act but one which had ostensible legal basis, thus excluding it from the scope of grave abuse of discretion amounting to lack or excess of jurisdiction.

62. All told, the COMELEC *En Banc* did not err when it ruled only on select issues — the same issues decided on by the COMELEC in Division — and found that Judge Piang committed only errors of judgment and not of jurisdiction. Accordingly, there were no ground to hold that Mangudadatu was entitled to the extraordinary writs of Certiorari and Prohibition.

**III. MANGUDADATU IS NOT ENTITLED TO A WRIT OF PROHIBITION AND THE INJUNCTIVE RELIEFS PRAYED FOR.**

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63. Mangudadatu prays that this Honorable Court issue a Writ of Prohibition enjoining Judge Piang to “perform other acts”<sup>50</sup> in the election protest and “outrightly dismiss the Election Protest in accordance with the provisions of A.M. No. 10-4-1-SC.”<sup>51</sup>

64. Mangudadatu argues that the Honorable Court should grant him the injunctive reliefs of TRO/WPI and *Status Quo Ante* Order, because the *Assailed Resolution*, insofar as it did not invalidate the proceedings before Judge Piang, violates his alleged right *in esse* to the Mayoral seat of Pandag, Maguindanao, and to participate in the proceedings before the trial court. He posits that such violation disenfranchises and irreparably injures the people of Pandag, who allegedly truly voted him in office. He also argues that there is no other ordinary, speedy, and adequate remedy for him, and that the absence of available recourse gives rise to an urgent need to grant the injunctive reliefs prayed for.

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<sup>50</sup> Prayer 4(e), Supplemental Petition for *Certiorari* dated 24 May 2023, p. 44.

<sup>51</sup> Prayer 4(e), Petition for *Certiorari* dated 18 April 2023, p. 46

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- (i) *On the applications for a Prohibition, TRO, WPI, and Status Quo Ante Order.*

65. As to the merits of a Writ of Prohibition, Mangudadatu prays that the Honorable Court order Judge Piang to dismiss, and enjoin her from performing further acts on the election protest. However, as will be explained below, both are outside of the function of a writ of Prohibition.

66. As earlier discussed, the *Assailed Resolution* of the COMELEC *En Banc* is not tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. The COMELEC *En Banc* correctly found that Judge Piang did not exceed her jurisdiction when she issued the *02 June 2022 Order*. The issuance was grounded on facts, law, and evidence. Thus, it was merely an error of law that was corrected by the COMELEC *En Banc* in the *Assailed Resolution*.

67. The function of a Prohibition is to keep a lower court "within the limits of its jurisdiction" and "afford relief against any usurpation of jurisdiction."<sup>52</sup> Since it has been amply explained that no transgression by Judge Piang was made and her actions were all within her court's jurisdiction, obviously then no grave abuse of discretion was committed to justify the remedy of Prohibition.

68. Moreover, unlike a special civil action of *Certiorari* which is corrective,<sup>53</sup> a Prohibition is a preventive remedy.<sup>54</sup> Although both take root from actions that are grave abuse of discretion and exercises outside or in excess of jurisdiction, a *Certiorari* is different from a Prohibition in that it is a "corrective remedy" used to re-examine the action of an inferior tribunal, and is directed to the cause or proceeding in the lower court and not the court itself, while Prohibition is a "preventive remedy issued to restrain future action, and is directed to the court itself."<sup>55</sup>

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<sup>52</sup> Kilusang Mayo Uno v. Aquino, III, G.R. No. 210500, 02 April 2019.

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*



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69. Here, Mangudadatu beseeches the Honorable Court to direct Judge Piang to “outrightly dismiss the Election Protest...”<sup>56</sup> A Prohibition restrains future action, and not to correct past ones.<sup>57</sup> To dismiss the case, assuming it is justified, is to invalidate past proceedings, thus, to correct past acts. Clearly then, the action sought by Petitioner here is not to stop Judge Piang from doing an act. Rather, Mangudadatu seeks that the Honorable Court direct the trial court to perform the positive act of dismissing an action. This is not the function of a Prohibition.

70. Further, Mangudadatu himself admits that the election protest has been concluded<sup>58</sup> with Balayman declared as the mayor elect.<sup>59</sup> Mangudadatu then is not only asking for this Honorable Court to direct Judge Piang to perform a positive act, but also to reopen proceedings that are now already outside of her jurisdiction. Such a situation is also not the purpose of a special civil action of Prohibition. In fact, to reopen proceedings and to assume jurisdiction when there is already none is not the purpose of any special civil action. On this reason alone, the prayer for Prohibition should be denied outright.

71. As to the merits of applications for the injunctive reliefs of TRO, WPI and *Status Quo Ante* Order: A *Status Quo Ante* Order reverts a controversy to “...the last actual, peaceful and uncontested status that precedes the actual controversy, that which is existing at the time of the filing of the case.”<sup>60</sup> It has been described to be in the “the nature of a temporary restraining order.”<sup>61</sup> This Honorable Court has been guided by the following factors when issuing a *Status Quo Ante* Order: justice and equity considerations, when conservation of *status quo* is desirable or essential, the prevention of any serious damage, and when constitutional reasons are raised.<sup>62</sup> None of these considerations are present

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<sup>56</sup> Prayer 4(e), Petition for *Certiorari* dated 18 April 2023, p. 46

<sup>57</sup> *Kilusang Mayo Uno v. Aquino, III*, G.R. No. 210500, 02 April 2019.

<sup>58</sup> Motion for Leave of Court to Submit and/or Admit Supplemental Petition for *Certiorari* with the attached Supplemental Petition for *Certiorari* dated 24 May 2023 as Annex “DD.”

<sup>59</sup> *Id.* Annex “II.”

<sup>60</sup> *Cortez-Estrada v. Heirs of Domingo Samut & Antonio Samut*, G.R. No. 154407, 14 February 2005.

<sup>61</sup> *Nilo Dojillo v. Commission on Elections*, G.R. No. 166542, 25 July 2006

<sup>62</sup> *J. Leonen, Separate Concurring Opinion, ABS-CBN Corporation v. National Telecommunications Commission*, G.R. No. 252119, 25 August 2019.

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in this case. *First*, Mangudadatu does not allege that his constitutional right was violated by the Public Respondents. *Second*, Mangudadatu claims that the town of Pandag is in "chaos and confusion"<sup>63</sup> because of the assumption of Balayman. To assume that the town is indeed in this state and that this is a consequence of the results of the election protest is mere speculation. Mangudadatu's assertions are mere opinions which cannot serve as basis for the remedies he seeks. It may be well to note that people, in order to persuade others of the worth of his view, would sometimes resort to exaggeration and vilification.

72. More importantly, to assert that a *Status Quo Ante* Order can be issued against a presumed validly issued decision or resolution of a tribunal because an applicant perceives the existence of chaos and confusion, is to assert that it can be issued without legal or factual basis. This is improper. As to Petitioner's allegations of damage and the need to maintain *status quo*, this will be addressed below with other related arguments.

73. A TRO and WPI are provisional remedies, adjunct to the main case subject to the latter's outcome. The objective of a TRO and WPI, like a *Status Quo Ante* Order, is to preserve the *status quo* until the court has heard the merits of the case. In ***Cayabyab v. Dimson***,<sup>64</sup> the Honorable Court identified the cardinal requisites for the issuance of injunctive reliefs of TRO and WPI as follows:

"A **writ of preliminary injunction and a TRO** are **injunctive reliefs** and preservative remedies for the protection of substantive rights and interests." **To be entitled to the injunctive writ**, the applicant must show that: (a) there exists a clear and unmistakable right to be protected; (b) this right is directly threatened by an act sought to be enjoined; (c) the invasion of the right is material and substantial; and (d) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.<sup>65</sup>

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<sup>63</sup> Par. 127, Supplemental Petition for Certiorari dated 24 May 2023, p. 39.

<sup>64</sup> G.R. No. 223862, 10 July 2017.

<sup>65</sup> Emphasis and underscoring supplied.

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74. It is only upon the concurrence of all these requisites that the grant of a TRO or a WPI is justified. Here, however, Mangudadatu failed to satisfy all the requisites for the grant of injunctive reliefs.

75. *First*, Mangudadatu failed to prove that there is a right *in esse* or a clear and unmistakable right of his to be protected. In ***Pahila-Garrdio v. Tortogo***,<sup>66</sup> this Honorable Court explained the concept of a right *in esse*:

A writ of preliminary injunction is an extraordinary event and is the strong arm of equity or a transcendent remedy. **It is granted only to protect actual and existing substantial rights. Without actual and existing rights on the part of the applicant, and in the absence of facts bringing the matter within the conditions for its issuance, the ancillary writ must be struck down for being issued in grave abuse of discretion.** Thus, injunction will not issue to protect a right not *in esse*, which is merely contingent, and which may never arise, or to restrain an act which does not give rise to a cause of action.<sup>67</sup>

76. Settled is the rule that there is no vested right to a public office.<sup>68</sup> Therefore, Mangudadatu cannot assert a right *in esse* to assume a position or remain in public office. He must establish a right *in esse*, other than his alleged right to office, that is clearly founded or granted by law or enforceable as a matter of law that was violated by the Public Respondents.

77. Mangudadatu raises that he has a right to be allowed to answer the election protest before Judge Piang. The COMELEC *En Banc* in the *Assailed Resolution* agreed with Mangudadatu that his *Answer with Counter Protest* was timely filed and reversed his declaration of default in the *02 June 2022 Order*. Therefore, the *Assailed Resolution*, as an act of COMELEC *En Banc*, did not violate Mangudadatu's alleged right *in esse* to answer, because it did recognize his *Answer with Counter Protest* as validly filed.

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<sup>66</sup> G.R. No. 156358, 17 August 2011, Emphasis supplied.

<sup>67</sup> Emphasis supplied.

<sup>68</sup> *Lee v. Sales*, G.R. No. 205294, 04 July 2018.

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78. While the COMELEC *En Banc* refused to invalidate the proceedings of the trial court, this is not a violation of Mangudadatu's right *in esse*. Judge Piang had jurisdiction over the election protest, which was found to have been filed on time. Also, the *02 June 2022 Order* was issued with factual and legal bases. There is, thus, nothing from the proceedings below that supports the position that it is void. Mangudadatu certainly disagrees with this specific finding of the COMELEC *En Banc*, but his disagreement with the ruling cannot be considered as a right *in esse* that merits the issuance of a TRO or WPI.

79. *Second*, Mangudadatu likewise failed to assert that he will suffer irreparable damage or injury. Primarily, the lack of any right *in esse* or an invasion of his alleged rights forecloses any discussion on the issue of damage, irreparable or not. The possibility of irreparable damage without proof of an existing right is not a ground for injunction.<sup>69</sup> Assuming *arguendo* that this was the case, Mangudadatu's claim of damage is still without merit.

80. To be entitled to an injunctive relief, proof not only of damage but also its irreparability must be shown. Damages are irreparable where there is no standard by which their amount can be measured with reasonable accuracy.<sup>70</sup>

81. Here, Mangudadatu argues that the people of Pandag will be disenfranchised should the Honorable Court not issue the injunctive writs. However, this is not the irreparable injury or damage contemplated by jurisprudence. The alleged disenfranchisement of the people of Pandag is, *first*, an injury that is not personal to Petitioner, and, *second*, is not true and, at the most, speculative.

82. Irreparable injury is damage to the person or property of the applicant.<sup>71</sup> It is not damage to another person or to public interest. Relatedly, whether the people of Pandag indeed feel disenfranchised by the results of the proceedings is factually untrue or at best a mere speculative argument.

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<sup>69</sup> *Bicol Medical Center, et. al. v. Noe B. Botor, et. al.*, G.R. No. 214073, 04 October 2017.

<sup>70</sup> *SSS v. Bayona*, G.R. No. L-13555, 30 May 1962.

<sup>71</sup> *Heirs of Melencio Yu v. Honorable Court of Appeals*, G.R. No. 182371, 04 September 2013.

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Exactly at issue in the election protest is who between Mangudadatu and Balayman is the true mayor-elect of the Municipality of Pandag. It was resolved that Balayman had the plurality of votes. Therefore, that Mangudadatu was the chosen elect of the people of Pandag is not true. The mere possibility that Mangudadatu's allegation might be true and that it might irreparably damage the people of Pandag are insufficient to justify the issuance of the injunctive relief. Mangudadatu cannot speak for the will of people of Pandag nor can he claim their perceived damage as his own.

(ii) *On whether the acts are fait accompli*

83. At any rate, the acts Mangudadatu seek to restrain have been accomplished or are *fait accompli*. Notably, in this *Petition*, Mangudadatu prays that this Honorable Court restrain Judge Piang from executing her *Judgment*, and the COMELEC *En Banc* from executing the *Assailed Resolution*.<sup>72</sup>

84. However, both the *Judgment* of Judge Piang and the *Assailed Resolution* of the COMELEC *En Banc* have attained finality and have been executed. In his *Supplemental Petition for Certiorari*, Petitioner admits that Judge Piang issued her *Judgment*<sup>73</sup> on 14 October 2022 and an Order of Execution<sup>74</sup> on 19 October 2022<sup>75</sup>; whereas, the COMELEC *En Banc* issued a Certificate of Finality<sup>76</sup> of the *Assailed Resolution* on 12 May 2023.<sup>77</sup> It is a settled rule that once a decision has been declared final and executory "it is removed from the power and jurisdiction of the court which rendered it to further alter or amend it, much less revoke it."<sup>78</sup>

85. It has been explained that a Prohibition is a preventive remedy that seeks to stop the doing of some act which is about to be done. Therefore, it is not intended to

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<sup>72</sup> Prayer 1, *Petition for Certiorari* dated 18 April 2023, p. 45.

<sup>73</sup> Motion for Leave of Court to Submit and/or Admit Supplemental Petition for Certiorari with the attached Supplemental Petition for Certiorari dated 24 May 2023 as Annex "DD."

<sup>74</sup> *Id.* Annex "HH."

<sup>75</sup> *Id.* Pars. 8 and 13, pp 2-3.

<sup>76</sup> *Id.* Annex "TT".

<sup>77</sup> *Id.* Par. 31, p. 7.

<sup>78</sup> *Young v. Court of Appeals*, G.R. No. 81239, 04 December 1991.

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restrain acts already accomplished.<sup>79</sup> Thus, in ***Montes v. Court of Appeals***:<sup>80</sup>

As the present petition is one for prohibition which is a preventive remedy, worthy of note is the fact, as manifested by the petitioner himself, that the suspension order has already been implemented on 17 July 2000. The act sought to be enjoined having taken place already, there is nothing more to restrain. Thus, the instant petition has been unmade as a mere subject matter of purely theoretical interest. Prohibition, as a rule, does not lie to restrain an act that is already *fait accompli*.

86. An injunctive writ is a preventive remedy that seeks to stop the doing of some act which is about to be done. It is not intended to restrain acts already accomplished.<sup>81</sup> Mangudadatu himself informs the Honorable Court that both the *Assailed Resolution* and the assailed *Order* of Judge Piang have not only been implemented but have also attained finality, and consequently have been removed from the jurisdiction of both tribunals. As such, there is nothing left for the Honorable Court to injunct. The consummation of the acts sought to be restrained had rendered Mangudadatu's application as moot and altogether improper.<sup>82</sup>

87. In conclusion, Mangudadatu's application for Prohibition and for injunctive reliefs does not satisfy the requirements set by the rules. As to the action for Prohibition, the COMELEC *En Banc* correctly ruled that no grave abuse of discretion amounting to lack or excess of jurisdiction occurred in the issuance of the *02 June 2022 Order*. Consequently, its *Assailed Resolution* affirming the same is also valid and is not tainted with grave abuse of discretion.

88. As to the injunctive reliefs, there is no clear right *in esse* in favor of Mangudadatu that is to be protected, much less any violation of an existing right. Moreover, the irreparable injury and damage claimed by Mangudadatu is neither a personal damage nor irreparable.

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<sup>79</sup> *Sps. Guerrero v. Hon. Lorna Domingo Navarro and Pilar Development Corporation*, G.R. No. 156142, 23 March 2011.

<sup>80</sup> G.R. No. 143797, 04 May 2006.

<sup>81</sup> *Spouses Marquez v. Spouses Alindog*, G.R. No. 184045, 22 January 2014.

<sup>82</sup> *Ibid.*

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89. Lastly, the acts Mangudadatu seeks to restrain have been both accomplished and consummated, which rendered his applications for Prohibition, TRO, WPI and *Status Quo Ante* Order moot and academic.

#### **IV. THE OFFICE OF THE SOLICITOR GENERAL WAS IMPROPERLY IMPEADED.**

90. Finally, a perusal of the subject Petition reveals that the OSG was erroneously impleaded therein as one of the respondents.

91. At the outset, it must be pointed out that there is neither a law nor an Administrative Circular of this Honorable Court that requires the OSG or the Solicitor General to be impleaded as a party-respondent in special civil actions. As will be shown hereunder, the sole participation of the OSG or the Solicitor General in such proceedings is to simply act as the statutory lawyer of the Republic or of the concerned government agencies impleaded.

92. Here, the COMELEC, the concerned government agency impleaded in the instant case, needs a counsel to defend its interests. On this point, the Administrative Code of 1987, particularly under Book IV, Title III, Chapter 12, Section 35, must be noted. It states, thus:

***Section 35. Powers and Functions.*** — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of a lawyer. [...] <sup>83</sup>

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<sup>83</sup> Underscoring supplied.

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93. Applying the foregoing, the OSG's participation in the case at bar should be limited to its duty to represent the Republic and the concerned government agency that is impleaded in the case.

94. Pertinently, the Honorable Court's ruling in *Chavez vs. Sandiganbayan*<sup>84</sup> is instructive, as the Court stated, thus:

A lawyer owes his client entire devotion to his genuine interest, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability. [...] **A lawyer cannot properly attend to his duties towards his client if, in the same case, he is kept busy defending himself.**<sup>85</sup>

95. Accordingly, the OSG cannot fulfill its mandate to defend the interests of the COMELEC, the concerned government agency impleaded in this case, if, in the first place, it must defend itself in the same case as well.

96. Verily, it is necessary that the instant Petition be also dismissed insofar as the OSG is concerned.

### **PRAYER**

**WHEREFORE**, the above premises considered, respondent COMELEC respectfully prays that the Honorable Court **DISMISS** Petitioner's Petition for *Certiorari* and Prohibition and **DENY** his applications for TRO, WPI and *Status Quo Ante* Order, both for lack of merit.

Respondent COMELEC prays for other just and equitable forms of relief.

Makati City for Manila City, 10 November 2023.

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<sup>84</sup> 193 SCRA 282 (1991).

<sup>85</sup> At pp. 291–292; Emphasis supplied; Citations omitted.



**COMMENT**

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MCLE Exemption No. VIII-OSG003064 /27 July 2023



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**COMMENT**

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**HON. ANNABELLE D.P. PIANG**

*Presiding Judge*

REGIONAL TRIAL COURT, Branch 15

Shariff Aguak, Maguindanao

Hall of Justice, BARMM Compound, Cotabato City

**KHADAFEH GAGUIL MANGUDADATU**

*Petitioner*

Sitio Bakutoy, Brgy. Pandag, Pandag, Maguindanao, 9616

**MOHAJERAN K. BALAYMAN**

*Private Respondent*

Brgy. Upper D'lag, Pandag, Maguindanao

**COMMENT**

*Mangudadatu v. COMELEC, et. al.*

**G.R. No. 266443**

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**VERIFIED DECLARATION**

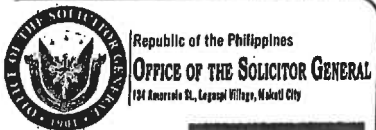
I, **EMMALLAINE LEONILLE V. LORETO**, hereby declares that the document hereto submitted electronically in accordance with the Efficient Use of Paper Rule is a complete and true copy of the document filed with the Supreme Court.

  
**EMMALLAINE LEONILLE V. LORETO**  
*State Solicitor*

Date: 20 November 2023

SUBSCRIBED AND SWORN TO before me on 20 November 2023, in Makati City, Philippines, affiant exhibiting competent evidence of identity, to wit, Office ID No. 2016-01004.

  
**JOHN DALE A. BALLINAN**  
*Senior State Solicitor*



Republic of the Philippines  
**OFFICE OF THE SOLICITOR GENERAL**  
 194 Amorsolo St., Legaspi Village, Makati City




2016-01004  
 ID Number



Signature

**LORETO, EMMALLAINE LEONILLE V.**  
 STATE SOLICITOR I

*M. Guevarra*  
**MENARDO T. GUEVARRA**  
 Solicitor General

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Date of Birth:	03 Mar 1987
Sex:	Female
Other ID Info: 	
PERSON TO NOTIFY IN CASE OF EMERGENCY	
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Contact Nos.: <b>09189041174</b>	

REPUBLIC OF THE PHILIPPINES

AFFIDAVIT OF SERVICE

(Revised as of April 1992)

JOCAS M. NAIDAS, AO I  
GSIS UMID #011-1049-0735-4

I, \_\_\_\_\_, \_\_\_\_\_ OFFICE OF THE SOLICITOR GENERAL,  
with Office address at 134 Amorsolo St., Legaspi Village Makati City, after being sworn to depose and say:

NOV 20 2023

That on 11/20/2023, I caused to be served a copy of the following pleading/paper:

NATURE OF THE PLEADING

Comment

In case No. G.R. No. 266443, entitled KHADAFEH GAGUIL MANGUDADATU,  
VS. COMELEC, OSG, HON. ANNABELLE D.P. PIANG, JUDGE OF RTC, 12TH JUDICIAL REGION, BRANCH

pursuant to Section 3,4,5 and 10, Rule 13 of the Rules of Court, as follows:

By Personal Service To:

- By depositing a copy to the party or his/her attorney on \_\_\_\_\_ as shown on p \_\_\_\_\_.
- By leaving a copy in his/her clerk or with a person having charge of the \_\_\_\_\_ as shown on p \_\_\_\_\_.
- By delivering a copy to the Court/Tribunal Office on \_\_\_\_\_ as shown on p \_\_\_\_\_.

By Registered Mail To:

- By depositing copy on \_\_\_\_\_ in the Post Office at \_\_\_\_\_ as evidenced by Registry Receipt(s) No.(s) \_\_\_\_\_ hereto attached and indicated after the name (s) of the addressee(s), and with instruction to the postmaster to return the mail to the sender after (10) days if undelivered.

THE LAW FIRM OF TORREON AND  
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HON. ANNABELLE D.P. PIANG  
Presiding Judge, REGIONAL TRIAL COURT,  
Branch 15, Shariff Aguak, Maguindanao, Hall of  
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**JOGAS M. NAIDAS, AO**  
GSIS UMID #011-1049-0733-4

NOV 20 2023 (Affiant)

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ of \_\_\_\_\_ at Makati  
City, Philippines. Affiant exhibiting to me his \_\_\_\_\_ issued at Pasay City.



23-003648-0014

**JOHN DOMINIC S. OBLAS**

Solicitor, Officer Administering the Oath  
Office of the Solicitor General