

Republic of the Philippines
SUPREME COURT OF THE PHILIPPINES
Padre Faura, Malate Manila

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**KHADAFEH
MANGUDADATU**

GAGUIL

Petitioner.

266443

**GR No. _____
SPR CASE. 001-2022
(Election Case No. EP
SA-16)**

-versus-

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

*For: Petition for Certiorari,
Prohibition and Injunction
with Prayer for Preliminary
Injunction, Issuance of
TRO / Status Quo Ante
Order*

Respondents.

X-----X

PETITION FOR CERTIORARRI

***(with Extremely Urgent Prayer for
Writ of Preliminary Injunction,
and for Very Urgent Issuance of
Temporary Restraining Order (TRO)
and/or Status Quo Ante Order)***

COMES NOW, Petitioner **KHADAFEH GAGUIL
MANGUDADATU,** through the undersigned counsels, unto this
Honorable Supreme Court, most respectfully avers that:

PREFATORY STATEMENT

While the Special First Division of the COMELEC has demonstrated its unquestionable competence via its Resolution dated January 17, 2023, as its displayed its profound appreciation on **elementary** postulates on election matters, Petitioner herein is utterly dismayed with its *En Banc* Resolution dated April 04, 2023 when it desperately employed far-fetched ratiocinations to justify reversal.

It will be discussed below that the Public Respondent COMELEC purposely did not consider the other important serious violations of the Public Respondent Judge in order to downplay the seriousness of her actions and be able to take it out of the context of grave abuse of discretion amounting to lack or excess of jurisdiction.

It will likewise be shown below that Respondent COMELEC overstretched the meanings of the statements of the Private Respondent in his pleading in order to make it sound like the Petition for Declaration of Failure of Election he filed may be considered as a Pre-proclamation controversy which has stopped the running of the period to file an election protest. COMELEC put distinct meanings or interpretations where there is none. The petition for *Failure of Election* filed by the Private Respondent can never be converted to a pre-proclamation controversy since the recitals and intentions in the pleading are definitely not one to contest the election returns or composition of the Board.

Thus, the election protest of the Private Respondent had clearly been filed out of time, as discussed accurately by the Special First Division.

THE PARTIES

1. Petitioner **KHADAFEH GAGUIL MANGUDADATU** ("**Petitioner**" for brevity) is of legal, Filipino, married, with residence at Sitio Bakutoy, Brgy. Pandag, Pandag, Maguindanao. Petitioner was the proclaimed winner of the mayoralty election in the Municipality of

Pandag, Maguindanao in the recently concluded 2022 National and Local Elections and still holds said position even to date.

For purposes of the instant Petition, Petitioner may be served with notices, decisions, orders, resolutions, and other processes of the Honorable Supreme Court through his counsel at:

PERDIGON DUCLAN LUMBOS & ASSOCIATES

Unit 3B, 3rd Flr. Corinthian Plaza Bldg.

121 Paseo De Roxas cor. Legaspi St.

Legaspi Village, Makati City

Telefax: (02) 8822-0461

www.perdigon-duclan-lumbos.com

and

THE LAW FIRM OF TORREON AND PARTNERS

2nd Floor, Davao Lounge Bldg. (near ATU Plaza),

Gov. Duterte St., Brgy. 3-A Davao City, 8000

e.TorreonLaw@gmail.com

2. Public Respondent **COMMISSION ON ELECTIONS En Banc** (**COMELEC** for brevity) is the constitutional body that issued the assailed Resolution dated April 4, 2023 in the exercise of its quasi-judicial function. It may be served with summons, orders, notices, and other processes of the Honorable Commission at its holding office address: Palacio del Gobernador Bldg., Gen. Luna St., Intramuros, Manila.

It is noted though that the First Special Division of the COMELEC favored the Petitioner. Its resolution was reversed by COMELEC En Banc.

3. Public Respondent **HON. ANNABELLE D.P. PIANG** (Respondent **Judge or Court** for brevity) is impleaded in her capacity as Presiding Judge of Shariff Aguak, Maguindanao Regional Trial Court Branch 15, for issuing the assailed *Order* dated 02 June 2022 and the verbal order of denial thereof on 06 June 2022, and excessive judicial actions against Petitioner in the case entitled "*Mohajeran K. Balayman vs. Khadafeh Mangudadatu*" docketed as Election Case No. EP SA-16.

For purposes of this Petition, the Public Respondent may be served with summons, orders, notices, and other processes of the

Honorable Commission at its holding office address: Hall of Justice, BARMM Compound, Cotabato City.

4. Public Respondent **OFFICE OF THE SOLICITOR GENERAL** is herein impleaded being the lawyer for the government. It may be served with summons, orders, notices, and other processes of the Honorable Supreme Court at its office address at the Office of the Solicitor General Bldg., 134 Amorsolo St., Legaspi Village, Makati City 1229, Philippines.

5. Private Respondent **MOHAJERAN K. BALAYMAN** ("**Private Respondent**" for brevity) is also of legal age, Filipino, with residence at Brgy. Upper D'lag, Pandag, Maguindanao, where he may be served with summons, orders, notices, and other processes of the Honorable Commission.

Private respondent is the losing candidate in the mayoralty election in Pandag, Maguindanao, who initiated the Election Protest before the Public Respondent from which this petition arose.

NATURE OF THE CASE

6. This is a special civil action for certiorari under Rule 64 in relation to Rule 65 of the Rules of Court which seeks to annul the Resolution dated April 4, 2023 of the Public Respondent COMELEC En Banc for having been issued with grave abuse of discretion amounting to lack of excess of jurisdiction. The dispositive portion reads as follows:

WHEREFORE, premises considered, the Commission (*En Banc*) RESOLVED, as it hereby RESOLVES, to GRANT the *Motion for Reconsideration*, and accordingly, REVERSE, NULLIFY and SET ASIDE the *Resolution* of the Commission (*Special First Division*).

SO ORDERED.

A Certified True Copy (CTC) of the said decision is herein attached as **Annex "A"** and made an integral part hereof.

7. This case originated as an election protest before the *sala* of Hon. Respondent Judge Piang. Thereafter, a petition with the

COMELEC for **Special Reliefs** was sought via a Petition for Certiorari and Prohibition with Prayer for Writ of Preliminary Injunction, Issuance of TRO, or Status Quo Ante Order in aid of the Commission's appellate jurisdiction under **Rule 28, Sec. 2 of the Comelec Rules of Procedures**.

8. The petition was granted by the Special First Division of the COMELEC in its Resolution dated January 17, 2023. The dispositive portion reads:

WHEREFORE, premises considered, the instant Petition is hereby GRANTED. The assailed Order dated 02 June 2022 is hereby declared NULL and VOID for being issued with grave abuse of discretion amounting to lack of jurisdiction. Accordingly, the proceedings and all issuances subsequent thereto are likewise VOID.

A Certified True Copy of the Resolution dated January 17, 2023 of the Special First Division of the COMELEC is herein attached as **Annex "B"** and made an integral part hereof.

9. A Motion for Reconsideration was filed by the Private Respondent which was resolved in his favor by the Public Respondent COMELEC En Banc in its assailed Resolution dated April 4, 2023.

TIMELINESS OF THE PETITION

10. On **24 May 2022**, Petitioner received the Summons as well as a copy of the Petition/Election Protest subject of the instant case. The Order dated 02 June 2022 of the Public Respondent was received by Petitioner, through electronic email, on the same date (**02 June 2022**).

11. A motion for reconsideration was timely filed on 03 June 2022 by the Petitioner. Thereafter, the same was denied verbally in open Court by the Public Respondent on **06 June 2022**. Public Respondent Judge did not put the same in the order of the Court for that day. Worse, serious judicial actions were continuously taken to justify immediate revision/recount of ballots, thus ignoring established elementary rules in the conduct of election protest cases.

12. The ***Comelec Rules of Procedure*** did not put a reglementary period for the filing of Special Reliefs remedies but applying supplementarily the Rules of Court, an aggrieved party may file a petition for certiorari or prohibition under its Rule 65, within 60 days from receipt of the assailed order. The 60th day to file the special relief remedy counted from 06 June 2022 is on 07 August 2022. The Petition for Certiorari was timely filed by the Petitioner.

13. The resolution dated January 17, 2023 was issued by the COMELEC First Division granting the petition. The Private Respondent then filed a Motion for Reconsideration. The motion was granted by the Public Respondent COMELEC through its resolution dated April 4, 2023, which was received on April 11, 2023 by the Petitioner. Under the rules, a party may appeal to the Honorable Supreme Court within thirty (30) days from receipt of the resolution. **The Petitioner has until May 11, 2023 to complete his action, hence, this petition is timely filed.**

STATEMENTS OF FACTS

14. During the 2022 National and Local Elections, Petitioner ran for mayor in the Municipality of Pandag, Maguindanao. His main contender for the same office was herein Private Respondent.

15. After the canvassing of votes was done by the Municipal Board of Canvassers (MBOC) over the twenty-three (23) precincts in the eight barangays of Pandag, Maguindanao, Petitioner garnered 4307 votes while Private Respondent got only 2445. Petitioner won by a margin of 1862.

16. On 10 May 2022 at 7:45:05 PM, Petitioner was proclaimed as the duly elected Municipal Mayor of Pandag, Maguindanao. Hereto attached as **Annex "C"** is the Certificate of Canvass of Votes and Proclamation of Winning Candidate for Municipal Mayor.

17. Private Respondent filed an **Election Protest** (docketed as EP SA-16), the subject of this Petition, alleging the occurrence of violence, threats, or terrorism, which are not even among the accepted grounds for a recount or election protest. The Summons as well as a copy of the Election Protest were received by the Petitioner on **24 May 2022**. A copy of the Protest and the Summons is hereto attached and marked as **Annexes "D and E"** respectively.

18. In the said Summons, it is categorically stated therein that the Election Protest was filed only on **23 May 2022**, to quote:

X X X

SUMMONS

To: KHADAFEH MANGUDADATU
Respondent
Poblacion
Buluan, Maguindanao

GREETINGS:

You are hereby notified that an Election Protest has been filed against you with this Court. Copy of **the Protest with its annexes** which was filed on **May 23, 2022** are attached herein for your reference and guidance.

X X X

19. In order to respond to the said Election Protest, the office of Petitioner's counsel's office was swamped with people from Pandag, Maguindanao for several days for the purpose of interviewing witnesses, executing their Affidavits, and gathering evidence to be used for the Election Protest and the Failure of Election case.

20. After the marshaling of evidence was finally done, the drafting of the two (2) pleadings was concluded on the very same day as the deadline was on May 30, 2022.

21. On 30 May 2022, Petitioner and Counsel were reviewing and finalizing the two (2) election-related pleadings for submission, on top of the other court-bound pleadings. These two election-related pleadings are: 1) *Answer with Affirmative/Special Defenses and Verified Counter-Protest (Answer to the Election Protest)*; and 2) *Comment/Answer (Answer to the Petition to Declare Failure of Election)*.

22. In the afternoon of 30 May 2022, Petitioner was able to serve and file his Answer to the Election Protest, **via registered mail** specifically at around 3PM in Gaisano Mall Post Office Davao City. In order to ensure that the Public Respondent Judge will have an advance copy of the Answer, the counsel for Petitioner instructed his office

staff-Danilo Camacho and Shaira Joy Maturan-Dimanahan to send also via **electronic mail** the soft copy of the Answer, despite being superfluous, if only to aid the public respondent.

23. Since they also had other responsibilities in other cases, they were able to scan the Answer and its annexes after office hours and send the same by email. It turned out that they sent it to rtc15shariffaguak@gmail.com which is actually the secondary email of the Public Respondent. A copy of the Answer to the Election Protest filed via registered mail is hereto attached as **Annex "F"**, while proof that said Answer was filed via electronic mail is marked as **Annex "F-1"**, to form part of the records of the Petition. Likewise, the Answer/Comment to the Failure of Election case was also filed with the Comelec *En banc* via registered mail and electronic mail on the same day. Proof that the Answer/Comment¹ was filed with the Comelec *En Banc* via registered mail is hereto attached and marked as **Annex "F-2"**;

24. In both election cases, herein Private Respondent Mohajeran K. Balayman is being represented by the same counsel, Atty. George Lyndon T. Cordero. As such, all pleadings, motions, and other submissions in relation to either case were served to the same counsel.

25. In his Answer to the Election Protest, Petitioner raised, among others, the affirmative defense that the Election Protest was filed out of time considering that Petitioner was proclaimed on 10 May 2022 while the Protest was filed only on 23 May 2022 or thirteen (13) days after.

26. It was also raised in the Answer that the Verification and Certificate of Non-Forum Shopping executed by the Protestant (herein Private Respondent) was **defective and does not conform to the Rules** which is a ground for the dismissal of the Protest as per Section 6, Rule 2 of AM No. 10-41-SC. A copy of the Verification and Certificate of Non-Forum Shopping of the Protestant (herein Private Respondent) is hereto attached and marked as **Annex "G"**².

27. Furthermore, as explained by Petitioner in its Answer to the Protest, Private Respondent failed to follow Section 10 (c) (iv), Rule

¹ The Petitioner did not attach the Answer/Comment to the Petition for Declaration of Failure of Election, filed with the Comelec En Banc (docketed as SPA No. 22-087 FE) considering that it is voluminous.

² For easy reference and PERUSAL, attached hereto is a copy of the said Verification/Certification; which is actually an integral part of the Protest Petition, also attached hereto as "A".

2 of A.M. No. 10-4-1-SC which requires the following to be stated in the Protest:

(iv) the precinct number and location of the pilot clustered protested precincts, which shall not be less than and nearest to twenty percent (20%) of the total number of protested precincts that will best illustrate the merits of the protest and which shall be subject to the initial revision of ballots;

28. Aside from jurisdictional and procedural defects, Petitioner also raised substantial issues in the Protest, more particularly on the insufficient allegations of Private Respondent's cause of action; lack of specificity of the allegations in the Petition to prove the acts complained of, plus the absence of proof to prove such complained acts; inadequate, if not total absence, of basis in law to support the Protest; and failure to demonstrate with proof that by reason of the Election Protest, Private Respondent will obtain a plurality of votes.

29. Since Public Respondent Court never acknowledged the email that Petitioner sent through rtc15shariffaguak@gmail.com, Petitioner's counsel instructed his staff to search the internet if Public Respondent Court has another email address. When his staff discovered that it does have another email address rtc2sfk015@judiciary.gov.ph, they resent the email again to the primary email of the Public Respondent.

30. On 31 May 2022, the Petitioner received, through electronic mail, a *Motion (1) To Declare Respondent In Default (2) Strike Out Submitted Answer* filed by Private Respondent, through counsel, despite it being a **Prohibited Pleading** pursuant to Rule 6, Section 1(h) of **AM No. 10-41-SC**. The only ground raised by the Private Respondent's counsel was the alleged fact that Petitioner served the Answer via electronic mail beyond office hours. He failed to notice that the Answer itself contained an Affidavit of Service stating that the same had already been timely sent previously via registered mail on 30 May 2022. A copy of the said Motion is hereto attached and marked as **Annex "H"**.

31. On the same day, Petitioner filed his response³ to the said Motion. He clarified that the Answer was filed not only via electronic

³ Captioned: Vehement Opposition to the Motion to Declare Respondent in Default and Strike Out Submitted Answer.

mail, but also via registered mail, duly supported by the Affidavit of Filing and Service and the Registry Receipt. The Answer was filed through registered mail (Post Office) on 30 May 2022 during office hours. A copy of the Vehement Opposition is hereto attached and marked as **Annex "I"**.

32. Also, the Answer filed via electronic mail already contained the proof of mailing via registered mail such as Registry Receipt Number and Affidavit of Filing and Service.

33. Petitioner further explained that the filing of the Answer through electronic mail was merely to ensure that the Public Respondent Judge Piang, as well as the Private Respondent, has an advance copy of the Answer to expedite the proceedings of the Electoral Protest case and to avoid contributing further delay (by waiting for the registered mail to arrive) in the resolution of the case.

34. On 02 June 2022, Petitioner received the assailed 02 June 2022 Order of the Public Respondent which ruled, among others, that the Answer of the Protestee (herein Petitioner) was filed out of time, a copy of which is attached and marked as **Annex "J"**. The dispositive portion of the same reads as follows:

WHEREFORE, by reason of failure of Protestee to file his verified answer to the herein Election Protest, Section (4c) of Rule 4 as cited above shall govern the proceedings in this Election Protest.

Consequently, an Order is hereby issued directing the retrieval of the ballot boxes with their keys the VCMs and consolidation machines, the electronic data storage devices, the lists of voters and voting records, the books of voters, and other documents or paraphernalia involved in the protested clustered precincts in the barangays of Barangay Pandag Clustered Precincts: a.0001A, 00018, 0001C, and 0002A b. 00028, 0002C, 0003A and 00038 c. 0003C, 0004A, and 00048; Barangay Malangit Clustered Precincts: a. 00031A, 00018, and 00032A b. 00033A, 000338, and 00033C; and Barangay Kayaga

Clustered Precincts: a. 0009A, 00098, 0009C, and 00010A b. 000108, 00010C, and 00011A, all in the Municipality of Pandag, Maguindanao in relation to the May 9, 2022 National and Local Elections to be brought before this Court.

The Municipal Treasurer of Pandag, Maguindanao, the Election Officer of Pandag, Maguindanao and the Director of Election Records and Statistics Division COMELEC, Intramuros, Manila City who were previously served with a Precautionary Protection Order are NOTIFIED hereof for the efficient retrieval and transport of the subject election paraphernalia above-mentioned.

Parallel to this, the Clerk of Court and the Sheriff of this Court shall lead the conduct of the retrieval and Protestant and Protestee may send in their respective representatives during the retrieval. The absence, however, of a representative of a party shall not be reason to postpone or delay the retrieval or transfer of the above-mentioned equipment, devices and election documents.

When the obtaining circumstance at the time of retrieval so requires, the assistance of the Philippine National Police (PNP) or the Armed Forces of the Philippines shall be engaged in ensuring the safe delivery of the ballot boxes and the election equipment, devices and documents to the custody of this Court.

The expenses necessary and incidental to the transport in court of the ballot boxes and election documents and the production, storage and maintenance of VCMs, data storage devices, and automated election paraphernalia and

documents shall be shouldered and promptly paid by the protestant in proportion to the precincts covered by the protests.

The expenses necessary and incidental to the return of the materials and documents produced in court to their original custodians or to the proper tribunal after the termination of the case shall likewise be by the protestant.

Prior to the date of retrieval herein specified, the Clerk of Court and the Sheriff shall make proper coordination with the Custodian of the above-mentioned election paraphernalia, the parties for their representatives and prepare a matrix of expenses and an itinerary of the said retrieval.

Let the retrieval and transfer of custody be undertaken on June 6, 2022 of te the ballot boxes with their keys the VCMS and consolidation machines, the electronic data storage devices, the lists of voters and voting records, the books of voters, and other documents or paraphernalia involved in the protested clustered precincts in the barangays of Barangay Pandag Clustered Precincts: 0.0001A, 00018, 0001C, and 0002A b. 00028, 00020, 0003A and 00038 c. 0003C, 0004A, and 00048; Barangay Malangit Clustered Precincts: a. 00031A, 000318, and 00032A b. 00033A, 000338, and 00033C; and Barangay Kayaga Clustered Precincts: a. 0009A, 00098, 0009C, and 00010A b. 000108, 00010C, and 00011A, all in the Municipality of Pandag, Maguindanao in relation to the May 9, 2022 National and Local Elections to be bought before this Court.

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 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.

Protestant is directed to submit the names of his revisors who shall be part of the Revision Committee. Protestee is likewise directed to send his authorized representative to observe the revision proceedings. The procedure for revision of ballots shall be governed, as far as applicable by provisions of Rule 10 of A.M. No. 10-4-1-SC.

All parties are enjoined to abide by the foregoing.

SO ORDERED.

Done in Cotabato City this 2 day of June, 2022.

35. In its Order, the Public Respondent Judge Piang observed that the *Affidavit of Filing and Service* attached to the Answer was intended for COMELEC *En Banc*, and not to her Court. The said Affidavit states that, to quote:

"xxx

1. I filed copies of the Answer before the COMELEC En Banc and copy furnished the following parties at their respective addresses and on the dates indicated below: x x x"

36. For this reason, the Public Respondent Judge ruled that the Answer was not deemed filed by registered mail on May 30, 2022. Further, Public Respondent Judge Piang held that the filing of the Answer through electronic mail was likewise made out of time because it was received at the official email address (rtc2sfk015@judiciary.gov.ph) of the Honorable Court only on May 31, 2022, at 12:25 AM.

37. On 03 June 2022, Petitioner personally filed his *Motion for Reconsideration or To Lift Order of Default* explaining that the inaccuracy in the *Affidavit of Filing and Service* is merely an oversight or inadvertence and not intentional, and that the Protestee (herein Petitioner) never had any intention to delay the proceedings of the case nor did such oversight or inadvertence cause any prejudice or damage to the Protestant. A copy of the Motion for Reconsideration is hereto attached and marked as **Annex "K"**.

38. Nonetheless, Petitioner argued that despite the inaccuracy in the *Affidavit of Filing and Service*, the Answer was filed via registered mail on 30 May 2022 and the same was addressed to the Public Respondent, copy furnished to the Private Respondent.

39. Petitioner also pleaded for the relaxation of the Rules citing the equity jurisdiction of the Public Respondent considering that the inadvertence in the *Affidavit of Filing and Service* was of little to no importance and that the Defenses and Objections raised in the Answer are meritorious and therefore, should outweigh the minor technicality for after all "Rules of procedure should promote, not defeat, substantial justice and that cases shall be determined on the merits, after giving full opportunity to all parties for ventilation of their causes and defense, rather than on technicality or some procedural imperfections. In so doing, the ends of justice would be better served⁴".

⁴ Durban Apartments vs. Catacutan, 514 Phil. 187 (2005).

40. On 03 June 2022, Public Respondent required the parties as per its Order dated 02 June 2022 to submit the list of their respective representatives for the retrieval and transfer of custody of the election documents and paraphernalia to be undertaken on 06 June 2022, at the address of the Public Respondent. Thereafter, the revision of ballots shall follow.

41. On 06 June 2022, Petitioner's counsel (Atty. Torreon) attended the proceedings before the Public Respondent Judge for the delivery and turn-over of the ballot boxes and other election paraphernalia and documents as per the assailed Order dated 02 June 2022. While the ballot boxes were being delivered, the Public Respondent Judge verbally declared to the Petitioner's counsel that a Motion for Reconsideration is a prohibited pleading hence she will no longer entertain the same even if counsel explained to her that what she penned on June 2, 2022, was an Order and not a Judgment. She retorted that even if the title of the document is an "Order", it was allegedly a judgment of default already.

42. Public Respondent Judge Piang also stuck to her position despite being told by Petitioner's counsel that the Motion was likewise entitled *Motion to Lift Order of Default*, not only *Motion for Reconsideration*. The Public Respondent Judge, however, did not respond when Petitioner's counsel raised the issue that the election protest was filed out of time, instead, she stated that she will really proceed with dispatch the revision of ballots and pointed to counsel the well-arranged tables and chairs where the revision is to be made. In fact, the Public Respondent told Petitioner's counsel that she might conduct an orientation for the revisors on 08 June 2022 so that they will accordingly be properly guided via-a-vis the conduct of the revision proceedings.

43. After the turnover proceedings, the ballot boxes, election paraphernalia, and other documents were already in the custody of the Public Respondent Judge. The Public Respondent Judge then declared that once the security markings and vital information relative to ballots and election documents, which was already requested by her through a *Request for Disclosure* dated 31 May 2022, are delivered by the Comelec *En Banc* to the Public Respondent, the revision of the ballots will commence. A copy of the said *Request* is hereto attached and marked as **Annex "L"**.

44. On 08 June 2022, the orientation for revisors was conducted by the Public Respondent Judge without, however, prior formal Notice served upon the Petitioner. Petitioner's counsel was able to attend the said orientation. The Public Respondent Judge reiterated

her intention to proceed with the revision of ballots. Despite this, Petitioner still filed his *Motion to Set Aside or Lift Order of Default* (this time, without the words *Motion for Reconsideration*) in order to erase any confusion or question as to the propriety of the filing of the earlier *Motion for Reconsideration or to Lift Order of Default*. But the same *Motion* remains not acted up to this day. Copy of the *Motion to Set Aside or Lift Order of Default* is herein attached as **Annex "M"**.

45. All these obviously indicate that the *Motion for Reconsideration / Motion To Lift Order of Default* or the subsequent *Motion to Set Aside or Lift Order of Default* **will no longer be entertained nor granted by the Public Respondent Judge as she, in fact, conducted the orientation of revisors** on June 8, 2022, and is determined to continue with the regular proceedings of the Election Protest, thus warranting the immediate filing of the Petition for Certiorari as special relief before the Commission on Elections.

46. It is well to note that by virtue of the assailed Order dated 02 June 2022 issued by the Public Respondent Judge, Petitioner or his revisors are also not allowed to participate in the revision proceedings. They can only be present and observe without the right to object and lay claim to the ballots and election returns. As a matter of fact, Petitioner's representatives are not called as **"revisors" but mere "observers"** as can be seen in the assigned seats in her posh and brand new courtroom while the representatives of the Private Respondents are labeled as "revisors".

47. Further, to show the Court's resolve to pursue court proceedings despite prescription, attached are the following documents she issued: Precautionary Protection Order – issued to The Election Officer and Request for Disclosure of Security Markings and Vital Information Relative to Ballots and Election Documents for the May 9, 2022 National and Local Elections. These are herein attached as **Annexes "N, O, and P"** respectively.

48. Meanwhile, Petitioner submitted the list of his representatives through *Compliance Ad Cautelam* to emphasize that the Public Respondent Judge no longer has jurisdiction to proceed with the case on the ground that the Election Protest filed by the Private Respondent was filed beyond the reglementary period. A copy of the *Compliance Ad Cautelam* is hereto attached and marked as **Annex "Q"**.

49. With all judicial prep-works executed with the obvious end of conducting revision/recount in a haste, with the protestant, herein private respondent enjoying full and exclusive advantage despite the rules as cited above, and lately, breach in the integrity of election documents and office of the local Election Officer, there is no other recourse but for herein Petitioner to avail of the Special Reliefs allowed by law. Copy of Petition for Certiorari is herein attached as **Annex "R"** and made an integral part hereof.

50. The Private Respondent filed his Answer on 29 July 2022 copy of which is herein attached as **Annex "S"** and made an integral part hereof. Thereafter, both Parties filed their respective Memoranda copies of which are herein attached as **Annexes "T"** (for the Petitioner) **and "U"** (for the Private Respondent) and made integral parts hereof.

51. The prayer for TRO of the Petitioner was granted by the First Division of the COMELEC but when it expired on 19 July 2022, the Public Respondent Judge continued with the proceedings. Judgment was thereafter issued on 14 October 2022. On 19 October 2022, the COMELEC Special First Division released an Order issuing an Injunction Order directing the Public Respondent to cease and desist from implementing the Order issued on 02 June 2022 as well as performing other acts/ incidents relating to the foregoing case until further orders from the Commission.

52. As above-recited, the COMELEC Special First Division granted the Petition in its resolution dated January 17, 2023. It declared null and void the challenged 02 June 2022 Order of the Public Respondent Judge.

53. A Motion for Reconsideration was filed by the Private Respondent, copy of which is herein attached as **Annex "V"** and made an integral part hereof.

54. Thereafter, the Public Respondent COMELEC issued the assailed Resolution dated April 4, 2023 reversing and setting aside the ruling of the Special First Division.

55. Hence, this Petition.

ISSUES

- I. PUBLIC RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ADJUDGED THAT THE PETITION TO DECLARE FAILURE OF ELECTION FILED BY THE PRIVATE RESPONDENT MAY BE CONSIDERED A PRE-PROCLAMATION CONTROVERSY WHICH WARRANTED THE SUSPENSION OF THE RUNNING OF THE 10-DAY PERIOD TO FILE THE SUBJECT ELECTION PROTEST.**

- II. PUBLIC RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ADJUDGED THAT THE ACTION OF RESPONDENT JUDGE PIANG OF DECLARING HEREIN PETITIONER IN DEFAULT WAS JUST A MERE ERROR IN JUDGMENT.**

- III. PUBLIC RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ADJUDGED THAT THERE WAS NO SUFFICIENT EVIDENCE OF GRAVE ABUSE OF DISCRETION OF THE PUBLIC RESPONDENT JUDGE PIANG.**

ARGUMENTS

The Petitioner will fit its arguments to the discussion made by the Public Respondent COMELEC to make the presentation systematic, to wit:

- A. The Petition to Declare Failure of Election raised issues that are not proper to be considered a Pre- Proclamation controversy. Thus, it was wrong for the Public Respondent COMELEC to rule that the period to file the election protest was suspended.

- B. The Election Protest was obviously filed out of time hence, the Respondent Court was ousted of its jurisdiction to give it due course.

- C. The Public Respondent COMELEC purposely did not consider the other serious faults of the Public Respondent Judge and selected only one to diminish its seriousness and be able to simply state that the same is just a simple error in judgment and not a grave abuse of discretion amounting to lack or excess of jurisdiction. Public Respondent COMELEC deliberately did not mind the other grave errors of Respondent Judge Piang which are:
 - i. The Election Protest contains defective Verification and Certificate of Non-Forum Shopping hence, should have been dismissed.

 - ii. The Election Protest failed to comply with Section 10 (c) (iv), Rule 2 of A.M. No. 10-4-1-SC and hence should have been dismissed.

 - iii. For failure to specifically allege and prove the acts complained of.

 - iv. For failure to show that by reason of the Protest, the Private Respondent would obtain the plurality of votes.

 - v. The Motion for Reconsideration of the 02 June 2022 Order of the Court is not a prohibited pleading.

DISCUSSIONS

THE SPECIAL REMEDIES OF CERTIORARI AND PROHIBITION ARE PROPER UNDER THE CIRCUMSTANCES.

56. It is settled from the resolution of the Public Respondent COMELEC that the special remedies under Sections 2 of Part V, Rule 28 of the COMELEC Rules of Procedure may be availed of when the following requisites are present: **(1)** the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; **(2)** such tribunal, board or officer has **acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction;** and **(3)** there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law⁵.

57. **The problem, in this case, lies in the ruling of the Public Respondent COMELEC that what the Public Respondent Judge Piang committed is only an error in judgment and thus not a proper subject of a petition for certiorari.**

THE PETITION FOR DECLARATION OF FAILURE OF ELECTIONS IS DEFINITELY NOT A PRE-PROCLAMATION CONTROVERSY AND SO DID NOT STOP THE RUNNING OF THE PERIOD TO FILE AN ELECTION PROTEST.

58. The major flaw in the Public Respondent COMELEC's assailed resolution is its recognition that the Petition to Declare Failure of Elections filed by the Private Respondent is a pre-proclamation controversy, hence, has suspended the running of the period for filing an election protest. It then said that when the Private Respondent filed the election protest on 23 May 2022, the period for filing the protest had not yet expired.

⁵ Tagle vs. Equitable PCI Bank, GR No. 172299, April 22, 2008 and Montes vs. Court of Appeal, GR No. 143797, May 4, 2006.

59. This is the Public Respondent COMELEC's way of circumventing rules and jurisprudence that clearly establish the list of pre-proclamation contests that will stop the running of the period to file an election protest. Such as *Abayon v. COMELEC and Daza*⁶ where it was explained that:

In *Dagloc v. Commission on Elections*, this Court clarified that the "**petition to annul or to suspend the proclamation,**" which Section 248 refers to, **and which suspends the running of the period within which to file the election protest or quo warranto proceedings, must be a pre-proclamation controversy.** The Court, thus, decreed in the same case that a petition for the declaration of failure of election was not a pre-proclamation controversy and, therefore, did not suspend the running of the reglementary period within which to file an election protest or quo warranto proceedings.

X X X

Jurisprudence makes it clear that **the mere filing of a petition denominated as a pre-proclamation case or one seeking the annulment of a proclamation will not suspend the ten-day period for filing an election protest. It is required that the issues raised in such a petition be restricted to those that may be properly included therein.**

The Court pronounced in *Dagloc*, and quoted in *Villamor v. Commission on Elections*, that:

Not all actions seeking the annulment of proclamation suspend the running of the period for filing an election protest or a petition for quo warranto. For it is not the relief prayed for which distinguishes actions under [Section] 248 from an election protest or quo warranto

⁶ G.R. No. 181295, April 2, 2009

proceedings, but the grounds on which they are based. (Emphasis supplied.)

The grounds that must support a pre-proclamation controversy are limited by the Omnibus Election Code to the following:

Section 243. Issues that may be raised in pre-proclamation controversy.—The following shall be proper issues that may be raised in a pre-proclamation controversy:

(a) Illegal composition or proceedings of the board of canvassers;

(b) The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Sections 233, 234, 235 and 236 of this Code;

(c) The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and

(d) When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates.

The enumeration is restrictive and exclusive. Thus, in the absence of any clear showing or proof that the election returns canvassed are incomplete or contain material defects; appear to have been tampered with, falsified or prepared under duress; and/or contain discrepancies in the votes credited to any candidate, which would affect the result of the election, a petition cannot be properly considered as a pre-proclamation controversy.

The purpose of a pre-proclamation controversy is to ascertain the winner or winners in the election on the basis of the

election returns duly authenticated by the board of inspectors and admitted by the board of canvassers. It is a well-entrenched rule that the Board of Canvassers and the COMELEC are not to look beyond or behind electoral returns. A pre-proclamation controversy is summary in nature. It is the policy of the election law that pre-proclamation controversies be summarily decided, consistent with the law's desire that the canvass and proclamation be delayed as little as possible. There is no room for the presentation of evidence aliunde, the inspection of voluminous documents, and for meticulous technical examination. That is why such questions as those involving the appreciation of votes and the conduct of the campaign and balloting, which require more deliberate and necessarily longer consideration, are left for examination in the corresponding election protest.

The COMELEC First Division herein found, and Abayon never disputed before the COMELEC or this Court, that **SPC No. 07-037**, his petition for exclusion from canvass of the COCs from three municipalities in Northern Samar, was based on the grounds quoted hereunder:

[T]he petition for annulment of proclamation was based on an unresolved petition for exclusion from the canvass of three certificates of canvass on the ground that they were allegedly prepared under duress, threats, coercion or intimidation as shown by the following circumstances:

1. a voter was forcibly taken by members of the Philippine Army;
2. a political leader was killed;
3. threats which prevented the holding of campaign sorties or rallies;
4. vote buying; threats and intimidation on voters;
5. alleged missing certificate of canvass; and

6. a wife of a BEI member was seen going in and out of the polling precinct under suspicious circumstances.

None of the aforementioned circumstances fall under the enumeration of issues that may be raised in a pre-proclamation controversy. Abayon acknowledges that SPC No. 07-037 does not involve the illegal composition of the board of canvassers. Not any of these circumstances involves defects or irregularities apparent from the physical examination of the election returns. **The alleged abduction of a voter, the killing of a political leader, the threats which prevented the holding of the campaign sorties, and the intimidation of voters, are acts of terrorism which are properly the subject of an election protest, but not of a pre-proclamation controversy. Precisely, in *Dipatuan v. Commission on Elections*, the Court held that massive vote-buying, like the allegation of bribery evidenced by the suspicious presence of the wife of a Board of Election Inspectors (BEI) member, was a proper ground for an election protest, but not for a pre-proclamation controversy.**

Since SPC No. 07-037 did not qualify as a pre-proclamation controversy, it could not have suspended the ten-day statutory period for the filing of an election protest.

Bereft of any legal basis, SPC No. 07-070, Abayon's petition to annul the proclamation of Daza, likewise, could not have suspended the period for the filing of an election protest. In SPC No. 07-070, Abayon questioned the validity of "the proclamation of [Daza] despite the pendency of a pre-proclamation controversy, SPC No. 07-037, which questioned the inclusion of three municipal certificates of canvass. (Emphasis supplied)

60. Based on the case of *Abayon*, it is clear that the explanation given by the Public Respondent COMELEC was quite a stretch. It is a continuation of the mental acrobatics performed by the Private Respondent in his *motion for reconsideration*. In order to justify its seriously erroneous action, the Public Respondent COMELEC put words or meanings that were not in the Declaration of Failure of Elections filed by the Private Respondent. It said:

A very careful analysis of the Petition to Declare Failure of Elections revealed that Private Respondent has indeed alleged that Petitioner's supporters employed massive violence, fraud, terrorist acts and similar incidents prior to and during election day. Hence, no true and proper voting actually took place in the voting centers. Private Respondent likewise alleged that results have been rigged beforehand. It, therefore, necessarily follows that the election returns were prepared under the same circumstances – under the threat of violence, hence, in duress and threat, coercion and intimidation. These allegations consequently characterize the Petition to Declare Failure of Elections as a pre-proclamation controversy.

61. In this explanation, the Respondent COMELEC En Banc **clearly put distinct meanings on the allegations of the Private Respondent in his petition even where there is none, in order to create a conclusion that will fit its intention to categorize those under "*The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic;*" (Sec. 243 (c) of the Omnibus Election Code) which is among the exclusive and restrictive grounds for pre-proclamation controversy. This is obviously to justify its ruling that the Petition to Declare Failure of Elections filed by the Private Respondent had indeed **suspended the ten-day period for filing an election protest. The Petitioner cannot overemphasize that this is obviously an over-expanded and inflated interpretation of words that have plain meanings.****

62. The words in the petition interpreted by the COMELEC En Banc have ordinary meanings and definitely not "that the election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic." **If indeed the**

Private Respondent intended his assertions to mean that way, then he could have just said so. In making the baseless interpretation, the Public Respondent COMELEC was already lawyering for the Private Respondent, trying to belatedly supplement his statements in the pleading with something it can use to make the petition sound like it is a pre-proclamation case.

63. Again, massive violence, fraud, and terrorist acts do not necessarily follow that the **election returns** were prepared under duress, threats, coercion, or intimidation. This is especially so since election returns have a specific meaning that the Public Respondent COMELEC ought to know which is, "a document in electronic and printed form directly produced by the counting or voting machine, showing the date of the election, the province, municipality and the precinct in which it is held and the votes in figures for each candidate in a precinct in areas where AES is utilized." (*Section 2 (4) of R.A. 9369*) **Therefore, the Private Respondent never meant to dwell on election returns when he filed the Petition for Declaration of Failure of Elections and it is a grave error and an abuse of discretion for the Respondent COMELEC to make it or interpret it that way.**

64. It is most respectfully asserted that what the Private Respondent filed was for *Declaration of Failure of Elections* docketed as SPA 22-087 and the grounds he raised are not grounds for pre-proclamation controversies. These two (2) legal actions are separate and distinct from each other. A Petition for Declaration of Failure of Election is sanctioned under Section 6, Article 1 of the Omnibus Election Code, whereas, a Pre-Proclamation Controversy is defined and allowed under Sections 241 and 243, Article 20 of the same Code, as amended by Section 1, Rule 3 of COMELEC Resolution No. 8804.

65. In *Marcos, Jr. v. Robredo*⁷, the Court had the occasion to differentiate the different election remedies. The Court stated:

The results of an election may be challenged through different legal vehicles: first, failure of election cases; second, pre-proclamation petitions; and third, election contests. **These have substantive and procedural differences with varying remedies, but what remains consistent across all modalities is the requirement of**

⁷ P.E.T. Case No. 005, February 16, 2021

specificity. Particularity on one's allegations, grounds, and bases cuts across all mechanisms for challenging election outcomes and must be present in all actions, regardless of the mode.

Under Batas Pambansa Blg. 881, or the Omnibus Election Code, a **failure of election** may be declared if, "on account of force majeure, violence, terrorism, fraud, or other analogous causes the election in any polling place has **not been held** on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or . . . such election results in a failure to elect, [or] in any of such cases the failure or suspension of election would affect the result of the election[.]" For its declaration, the alleged illegality must have affected more than 50% of the votes cast.

A **pre-proclamation controversy** concerns questions affecting the proceedings of the board of canvassers or "any matter raised under Sections 233, 234, 235, and 236 [of the Omnibus Election Code] in relation to the preparation, transmission, receipt, custody, and appreciation of the election returns." Further, only the issues provided in Section 243 of the Omnibus Election Code may be raised in a pre-proclamation controversy. Xxx

Under the Automated Election System, pre-proclamation controversies cover only two issues, both concerning the Board of Canvassers: (a) its illegal composition; and (b) its illegal proceedings.

66. And so it is humbly emphasized that there are restrictive and exclusive grounds for a pre-proclamation controversy under the Automated Election System, specifically (1) illegal composition of the Board of Canvassers; and (2) illegal proceedings of the Board of Canvassers. Nothing else, nothing more.

67. The words used by the Private Respondent in his Petition for Declaration of Failure of Election clearly do not refer to issues of election returns that are defective. And as strictly ruled in the case of

Abayon, "In the absence of any clear showing or proof that the election returns canvassed are incomplete or contain material defects; appear to have been tampered with, falsified or prepared under duress; and/or contain discrepancies in the votes credited to any candidate, which would affect the result of the election, a petition cannot be properly considered as a pre-proclamation controversy." The Private Respondent's petition did not show or had proof of any of these subjects of pre-proclamation controversy.

68. Also, it is emphasized humbly that in *Sison v. COMELEC*⁸, the Supreme Court declared that the scope of pre-proclamation controversy is only limited to the issues enumerated under Section 243 of the OEC, and the enumeration there is restrictive and exclusive. And later in the case of *Ampatuan v. COMELEC*⁹, **it was pronounced that a pre-proclamation controversy is not the same as an action to declare a failure of elections.**

69. Clearly therefore, the failure of election case grounded on Private Respondent's alleged violence, terrorism, and threat, which he filed with the Honorable Commission and docketed as SPA No. 22-087, is not a pre-proclamation controversy that can suspend the running of the prescriptive period under Section 248 of the Omnibus Election as well as under Section 8¹⁰, Rule 2 of the *A.M. No. 10-4-1-SC*. A reading of the petition of the Private Respondent will show that he never attacked the proceedings of the board of canvassers or even the election returns. **It is only the Public Respondent COMELEC that made such drastic interpretations to give justification for its findings.**

THE ELECTION PROTEST HAS CLEARLY PRESCRIBED.

70. Given therefore that the case filed by Private Respondent is one to declare a failure of elections, **it did not stop the running of the ten (10)-calendar day period to file the Election Protest** as stated under Section 7, Rule 2 of A.M. No. 10-4-1-SC otherwise known as the "2022 INTERIM AMENDMENTS TO THE 2010 RULES OF PROCEDURE FOR MUNICIPAL ELECTION CONTESTS". **Thus, the**

⁸ G.R. No. 134096, March 3, 1999

⁹ G.R. No. 149803, January 31, 2002

¹⁰ **Section 8. Pendency of Pre-proclamation Controversy.** – The pendency of a pre-proclamation controversy before the COMELEC, involving the validity of the proclamation as defined by law, shall suspend the running of the period for the filing of an election protest or petition for *quo warranto*.

Public Respondent COMELEC's decision is an absolutely erroneous use of our existing laws and jurisprudence.

71. It is clear that the assailed rulings, (Orders dated 02 June 2022 and verbal denial of MR on 06 June 2022 of the Public Respondent Judge Piang and the Resolution dated 4 April 2023 of the Commission En Banc) of the Public Respondents are patent nullities for the reason that the Public Respondent Court no longer had jurisdiction over the Election Protest since it was already filed out of time.

72. This is the ruling of the Supreme Court in *Abayon vs Comelec*¹¹, to wit:

It bears enucleation that the rule prescribing the ten-day period for the filing of an election protest is mandatory and jurisdictional; and the filing of an election protest beyond the period deprives the court of jurisdiction over the protest. Violation of this rule should not be taken lightly, nor should it be brushed aside as a mere procedural lapse that can be overlooked. **This is not a mere technicality but an essential requirement, the non-compliance with which would oust the court of jurisdiction over the case.** (emphasis ours)

73. The same ruling was reaffirmed in the more recent case of *Garcia vs. Comelec*¹², thus:

“Jurisprudence teaches that the rule prescribing the 10-day reglementary period is mandatory and jurisdictional, and that **the filing of an election protest beyond the period deprives the court of jurisdiction over the protest.** Violation of this rule should neither be taken lightly nor brushed

¹¹ Supra, note 2.

¹² Garcia vs. Comelec, GR No. 216691, July 21, 2015.

aside as a mere procedural lapse that can be overlooked. **The rule is not a mere technicality but an essential requirement, the non-compliance of which would oust the court of jurisdiction over the case.**"

74. There being no jurisdiction, the Public Respondent COMELEC should have affirmed the findings of the Comelec First Division that the Public Respondent Judge should have dismissed the same as mandatorily instructed by Section 12, Rule 2 of A.M. No. 10-4-1-SC. Said rule enumerates prescription and absence of jurisdiction as among the grounds for the summary dismissal of an Election Protest, to wit:

Section 12. Summary dismissal of election contests. – The court shall summarily dismiss, *motu proprio*, an election protest, counter-protest or petition for quo warranto on any of the following grounds:

(a) The court has no jurisdiction over the subject matter;

(b) The petition is insufficient in form and content as required under Section 10;

(c) The petition is filed beyond the period prescribed in these Rules;

(d) The filing fee is not paid within the period for filing the election protest or petition for quo warranto; and

(e) In a protest case where cash deposit is required, the deposit is not paid within five (5) days from the filing of the protest.

75. **It is well to emphasize that even the Public Respondent COMELEC agreed that the Election Protest was filed beyond the supposed 10-day reglementary period. It**

only had to make the outrageous misinterpretation that the petition to declare failure of election is one of a pre-proclamation case for it to have a way of saying that the Protest was filed still on time since the running of the 10-day prescriptive period was stopped because of the petition which it adjudged as pre-proclamation.

76. And yet, the Public Respondent Judge refused to dismiss the Election Protest despite the clear and glaring evidence of its late filing. Based on the above pronouncements by the Supreme Court, filing of the Election Protest thirteen (13) days after the proclamation of the Petitioner already deprived the Public Respondent Judge of acquiring jurisdiction over the case. Thus, it is not only a procedural lapse by the Private Respondent Judge but also a jurisdictional limitation on her part.

77. This adamant refusal of the Public Respondent Judge to dismiss the case despite the obvious lapse of time to file the Protest is clear grave abuse of discretion amounting to lack or excess of jurisdiction especially so when she had to be reminded **repeatedly** of it. **This grave abuse has been repeated or sustained by the Public Respondent COMELEC with its assailed resolution in clear and grave violation of the rules and jurisprudence.**

78. **This is not a mere error in judgment since insisting on ruling on a case that had already prescribe is patently whimsical. Especially when the same is reached by making an overstretched interpretation of statements that have plain meanings.**

79. The Honorable Supreme Court had emphatically pronounced that the **disregard of the Rules of Court or any law** for that matter **constitutes grave abuse of discretion**, thus:

Non-compliance with the Rules of Court is not, as the Office of the Solicitor General asserts, a mere error of judgment. It constitutes grave abuse of discretion.

In Crisologo v. JEWM Agro-Industrial Corporation:

This manifest disregard of the basic rules and procedures constitutes a grave abuse of discretion.

In *State Prosecutors II Comilang and Lagman v. Judge Medel Belen*, the Court held as inexcusable abuse of authority the trial judge's "obstinate disregard of basic and established rule of law or procedure." Such level of ignorance is not a mere error of judgment. It amounts to "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," or in essence, grave abuse of discretion amounting to lack of jurisdiction.

Needless to say, judges are expected to exhibit more than just a cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in good faith as judicial competence requires no less. *(emphasis supplied)*

80. **Based on the foregoing, a Writ of Certiorari is imperative in order to prohibit or enjoin the Public Respondent COMELEC from enforcing its clearly despotic and erroneous resolution and the Public Respondent Judge from further proceeding with the case or implementing any order or judgment resulting from it on the ground that it has lost jurisdiction over such Election Protest when the Private Complainant belatedly filed the same. It is a waste of the government's resources and even of the Parties to continue with the proceedings given that at the end of the day, the petition should not have been given due course as it was filed beyond the prescribed period.**

81. There is an urgent necessity for the resolution of the question raised in this Certiorari since any delay would prejudice not only the Petitioner but also the electorates of Pandag, Maguindanao, who voted for him to office.

IT WAS ERRONEOUS FOR THE PUBLIC RESPONDENT JUDGE TO ISSUE AN ORDER IN DEFAULT.

82. The Petitioner has raised several actions or matters to show that the Public Respondent Judge had performed the complained actions in a whimsical and capricious manner **and yet**, the Public Respondent COMELEC chose to address only one issue which is the issuance of an Order of Default. The Public Respondent COMELEC ruled that such issuance by the Public Respondent Judge was merely an error of judgment and not grave abuse of discretion amounting to lack of excess of jurisdiction. It captioned the discussion in this manner:

“The declaration of Petitioner in default is a mere error of judgment not a grave abuse of discretion.”

83. Based on the wordings, the Public Respondent COMELEC recognized that the action of the Public Respondent Judge is flawed as it is indeed wrong to issue an order of default in an election protest. But obviously, to downplay the enormity and seriousness of the grave abuse committed by the Public Respondent Judge in the hope of removing it from the picture of lack or excess of jurisdiction, the Public Respondent COMELEC only picked on one of the whimsical wrongs pointed out. It kept mum on the other capricious actions committed by the Respondent Judge.

84. With this, the Petitioner will jointly discuss the last portion of the Public Respondent COMELEC’s ruling that the Public Respondent RTC did not commit grave abuse of discretion for insufficiency of evidence.

THERE IS OVERWHELMING EVIDENCE TO SHOW THE PUBLIC RESPONDENT JUDGE’S GRAVE ABUSE OF DISCRETION.

85. The Public Respondent COMELEC disregarded the litany of assertions on the Public Respondent Judge’s important faults. Separately, those are enough to show grave abuse of discretion on the part of the Public Respondent Judge, more so when those are

considered together. Those exhibit overwhelming evidence of the Public Respondent Judge's grave abuse of discretion. For the Public Respondent COMELEC to hand-pick only one aspect (the issuance of a default order) is totally uncanny and erroneous. **But the intention is very clear; it is to detach the same from the rest of the actions and to devalue the capricious and despotic actions of the Public Respondent Judge.**

86. Having seen this intention of the Public Respondent COMELEC, herein Petitioner humbly brings to the discussion some of the grave abuse of discretion committed by the Public Respondent RTC that was pointed out, these are:

- a. Knowingly issuing an unwarranted order of default.
- b. Knowingly allowing a defective Verification and Certification Non-Forum Shopping by the petitioner (herein Private Respondent) therein.
- c. Knowingly allowing the petition of the Private Respondent despite the failure to state the pilot clustered precinct which shall not be less than and nearest to twenty percent (20%) of the total number of protested precincts.
- d. The Public Respondent Judge gave due course to Private respondent's Motion to Declare in Default, despite being a prohibited pleading.
- e. The Public Respondent intimated that a Motion for Reconsideration on the said interlocutory order is a prohibited pleading. She refused however to issue a formal ruling therefore as she pursues the Protest proceeding at the exclusive advantage of the Protestant.
- f. She has scheduled the immediate conduct of revision/recount despite breach in the integrity of the election documents as per report of the Election Officer of Pandag.

**THE PUBLIC RESPONDENT
JUDGE KNEW IT WAS AN ERROR
TO ISSUE AN ORDER OF
DEFAULT.**

87. All the foregoing show that since the start, the Public Respondent Judge already had one intention since the start- to expedite the recount and make a favorable resolution in favor of the Private Respondent. To do this, it was imperative for her to exclude

herein Petitioner from participating in the proceedings. And so, despite a motion to declare a respondent in default is a prohibited pleading, the Public Respondent Judge took cognizance of such motion filed by the Private Respondent and granted it even if a default is not allowed in an election protest. She then considered unfiled the Answer of the Petitioner, and despite motions from the latter to have his standing in Court reconsidered, Respondent Judge ignored him. She even refused to issue an order in writing for the reason that she does not want to acknowledge the participation of the Petitioner. She probably allowed any representative to be around but they were only made observers. They are not allowed to take part as the facts and evidence have established.

88. What validates the bias exuded by the Public Respondent Judge is the fact that she was on the other hand very lenient with the Private Respondent to the prejudice of the Petitioner. As earlier stated, she allowed a motion from the Private Respondent that is prohibited. She also allowed a petition from the Private Respondent that has a seriously flawed verification and certification of non-forum shopping. Thereafter, she refused to dismiss the petition of the Private Respondent for his failure to state the pilot clustered precinct which shall not be less than and nearest to twenty percent (20%) of the total number of protested precincts even if such requirement is jurisdictional.

89. Then, based on the circumstances that transpired, it is very clear that Public Respondent Judge expedited the proceedings at the expense of justice and fair play. The proceedings were obviously rigged to suit the Private Respondent.

90. Worse, the Public Respondent COMELEC is taking part in these whimsical and capricious acts as shown by how it desperately tried to fit the petition for declaration of failure of election into one of pre-proclamation case despite the obvious that it is not.

91. The Public Respondent COMELEC already affirmed that it was wrong for the Public Respondent Judge to issue an order of default. **Contrary though to the finding of the Public Respondent COMELEC, it is clear that it was not a mere error in judgment but a grave abuse of discretion.** This is shown by the fact that the attention of the Public Respondent Judge had already been called on the falsity of her actions and yet she stayed adamant on it. And her succeeding actions tell us why she insisted on this falseness despite the ruling of the Honorable Supreme Court in a case¹³

¹³ Moraleja vs. Relova, GRNo. L-30828, October 22, 1971.

that once the Court acquires jurisdiction in an election protest, there can be no default. It said that "**once the court has acquired jurisdiction over an election contest**, the public interest involved demands that the true winner be known without regard to the wishes or acts of the parties, **so much so that there can be no default**, compromise nor stipulation of facts in this kind of cases."

92. It is interesting that the Public Respondent COMELEC simply decided to downplay the grave abuse of the Public Respondent Judge. It also refused to recognize the enormous effects of those actions. Given that the Public Respondent COMELEC already found that indeed it was wrong for the Public Respondent Judge (albeit the ruling that it is just an error of judgment is contested) to declare herein Petitioner in default, it should have declared too as null and void the entire proceedings before the Court due to the unlawful prohibition of the Petitioner from actively participating in the case. It is clear bias not to annul the entire proceedings and recognize this right of the Petitioner.

THE PUBLIC RESPONDENT JUDGE ALSO COMMITTED GRAVE ABUSE WHEN SHE REFUSED TO RULE ON THE MOTION FOR RECONSIDERATION (MR) OF THE PETITIONER.

93. There is nothing wrong with ruling a motion verbally since that is already allowed by the rules. What is peculiarly wrong in this case is, as attested to by Petitioner's counsel in that proceeding, Public Respondent Judge refused to recognize the motion of the Petitioner allegedly due to the default order she erroneously issued.

94. This too exemplifies bias and prejudice because the Public Respondent Judge had been too strict with the Petitioner and yet accommodated so many serious errors of the Private Respondent.

THE PUBLIC RESPONDENT JUDGE KNOWINGLY ALLOWED THE PETITION FOR ELECTION PROTEST DESPITE HAVING DEFECTIVE VERIFICATION AND CERTIFICATE OF NON-FORUM SHOPPING.

95. Such as knowingly allowing the petition despite the defective verification and certification on non-forum shopping of the election protest. Section 6, Rule 2 of AM No 10-4-1-SC provides for the proper Verification and Certificate of Non-Forum Shopping, to wit:

Section 6. Petition Must Be Verified And Accompanied By A Certificate Of Non-Forum Shopping. – an election protest or a petition for quo warranto shall be verified by an affidavit of an affiant alleging the following attestations:

a. The allegations in the pleading are true and correct based on his or her personal knowledge, or based on authentic documents; and

b. The factual allegations therein have evidentiary support or if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.

96. However, in the Verification executed by the Private Respondent, the aforesaid allegations are not present, particularly paragraph (b) above which was not mentioned in the Verification of the Private Respondent.

97. Also, Section 6 further requires that a Certificate of Non-Forum Shopping must allege the following:

a. He or she has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency, and to the best of his or her knowledge, no such other action or claim is pending therein;

b. If there is such other pending action or claim, a complete statement of the present status thereof; and

c. If he or she should thereafter learn that the same or similar action or claim has been filed or is pending, he or she shall report that fact within five (5) calendar days therefrom to the court wherein his or her aforesaid protest or petition or other initiatory pleading has been filed.

98. In the "Certification as to non-forum shopping" executed by the Private Respondent, the aforesaid allegations mentioned in Section 6 are not stated, thus, warranting the immediate dismissal of the Election Protest. This is provided by Section 6 of the aforesaid Rule which states that:

X X X

Failure to comply with the foregoing requirements (referring to Verification and Certificate of Non-Forum Shopping) **shall not be curable by mere amendment of the protest or petition but shall be cause for the dismissal of the case without prejudice** X X X. **Such dismissal without prejudice shall not toll the running of the non-extendible ten (10) calendar day period to file the protest or petition** X X X.

99. With that, the dismissal of the Protest/Petition based on defective allegations in the Verification and Certificate of Non-Forum Shopping cannot be remedied by mere amendment. In fact, the factual circumstances of this case would leave the Private Respondent with no more remedy under the law considering that re-filing would no longer be allowed since, in the first place, the Protest was filed out of time as already discussed earlier.

THE PUBLIC RESPONDENT JUDGE KNOWINGLY ALLOWED THE PETITION OF THE PRIVATE RESPONDENT DESPITE FAILURE TO STATE THE PILOT CLUSTERED PROTESTED PRECINCT WHICH SHALL NOT BE LESS THAN AND NEAREST TO TWENTY PERCENT (20%) OF THE TOTAL NUMBER OF PROTESTED PRECINCTS.

100. Then, Section 10 (c) (iv), Rule 2 of A.M. No. 10-4-1-SC requires too that the following be stated in the Election Protest:

xxx

(iv) the precinct number and location of the pilot clustered protested precincts, which shall not be less than and nearest to twenty percent (20%) of the total number of protested precincts that will best illustrate the merits of the protest and which shall be subject to the initial revision of ballots; and

101. A plain reading of the Election Protest would reveal that Private Respondent failed to point out the pilot clustered protested precincts which shall not be less than and nearest to twenty percent (20%) of the total number of protested precincts which will be the subject of initial revision of ballots, assuming the Protest/Petition will be given due course and not dismissed outright.

102. It must be remembered that Private Respondent is contesting the three (3) Barangays only, namely: Pandag, Malangit, and Kayaga. Hence, he cannot pray in his Protest/Petition, as he did in paragraph 22 thereof, that all the clustered precincts in the three Barangays be opened by the Public Respondent Judge for an initial recount of the ballots. This is waste of time and would unduly hamper the proclamation of the Petitioner. It could be used as a tool to prevent or delay the Petitioner from assuming his office.

103. The foregoing shows the whimsical and capricious display of judgment and bias of the Public Respondent Judge which justified

the decision of the COMELEC First Division granting the petition for writ of certiorari to correct the error in the jurisdiction of the Court and the writ of injunction to compel it to desist from further proceeding with the protest case.

**THERE IS CLEARLY GRAVE ABUSE OF
DISCRETION AMOUNTING
TO LACK OR EXCESS OF JURISDICTION**

104. The Petitioner agrees with the Public Respondent COMELEC that a writ of *certiorari* may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction.¹⁴ The requisites for the issuance of the said writ are extant in this case as shown by the discussions above. That includes the fact that there was no appeal or any other plain, speedy and adequate remedy in the ordinary course of law.¹⁵

105. Humbly, the continuing violations of the Public Respondent Judge's actions as sustained by the Public Respondent COMELEC through its assailed resolution are both proper subjects of this Petition for Certiorari. This is especially so since both arose from the Court's absence of jurisdiction over the subject election protest and which prejudices the Petitioner, this Honorable Supreme Court, and the government.

106. Thus, the affirmation of the findings of the COMELEC **First Division** that the issuance of a writ of certiorari was proper to require the Public Respondent Judge to dismiss instead the protest for the reasons above-discussed or to consider the entire proceedings of the case as null and void is warranted. The writ is also warranted to annul the assailed resolution of the Public Respondent COMELEC that was reached with grave abuse of discretion amounting to lack of excess of jurisdiction as discussed above.

¹⁴ Tagle vs. Equitable PCI Bank, et. al., GR No. 172299, April 22, 2008.

¹⁵ Delfin vs. Court of Appeals, et. al., GR No. L-21022, February 27, 1965.

ALLEGATIONS IN SUPPORT OF THE URGENT MOTION FOR ISSUANCE OF TEMPORARY RESTRAINING ORDER (TRO), AND/OR STATUS QUO ANTE ORDER, WRIT OF PRELIMINARY INJUNCTION, AND WRIT OF PERMANENT INJUNCTION.

107. Petitioner hereby re-pleads and adopts the foregoing facts in support of his application for the issuance of a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction.

108. A writ of preliminary injunction is granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency, or a person to refrain from a particular act or acts.

109. Jurisprudence has likewise established that the following requisites must be proven first before a writ of preliminary injunction, whether mandatory or prohibitory, may be issued:

- (1) The applicant must have a clear and unmistakable right to be protected, that is a right in esse;
- (2) There is a material and substantial invasion of such right;
- (3) There is an urgent need for the writ to prevent irreparable injury to the applicant; and
- (4) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.¹⁶

110. In addition, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, a Temporary Restraining Order may be issued.

111. Here, the Petitioner has a clear and unmistakable right to be protected (right to *esse*), to wit: Petitioner has the clear and unmistakable right not to be burdened and harassed by a prescribed action (Election Protest) especially that it was the people of Pandag who decided to elect Petitioner to office; and that Petitioner has the right to file an Answer in order to refute any and all accusations against him.

¹⁶ Bicol Medical Center vs. Noe B. Botor, G.R. No. 214073, October 4, 2017.

112. There is a material and substantial invasion of the aforesaid rights by the Public Respondents Judge and COMELEC En Banc considering that the latter, through its assailed resolution, will allow the Election Protest to proceed even if filed beyond the prescriptive period. It also consents to the Public Respondent Judge's refusal without justification to perform its duty under Sections 6, 10, 12, Rule 2 of AM No 10-4-1-SC.

113. Also, it is an injustice for the Public Respondent COMELEC to find that there was an unwarranted declaration of Default that caused material and substantial invasion of Petitioner's right to confront his accusers and examine the evidence presented against him **and yet, did not declare the entire proceedings before the Public Respondent Judge as null and void for having been conducted in violation of the rights of the Petitioner.** It is therefore imperative that the Public Respondent Judge be enjoined from setting into motion again her faulty actions after the erroneous resolution of the Public Respondent COMELEC.

114. There is an **urgent** need for the writ to prevent irreparable injury to the herein applicant since the Public Respondent Judge already issued a judgment on the protest which was reached too fast without the participation of the Petitioner to protect his rights. Without the TRO, Petitioner would surely suffer grave injustice and irreparable injury.

115. The only remedy which the Petitioner may avail of under the circumstances is through this appeal to this Honorable Supreme Court and prayer for the immediate issuance of the writ of preliminary injunction and thereafter, permanent injunction, with an appeal for a status quo ante order and temporary restraining order, in order to put a stop to the proceedings of the case (e.g. execution of the judgment) and thereafter, enjoin the Public Respondent Judge to observe and comply with its ministerial duty under the law to dismiss the Protest outright on the basis of several violations of the provisions of AM No 10-4-1-SC by the Public and Private Respondents; and to permanently prohibit and restrain the public respondent from further exercising jurisdiction over the Election Protest case.

116. It is without a doubt that with the unlawful actions of **all the Respondents**, Petitioner is suffering an irreparable injury. *Damages are irreparable within the meaning of the rule relative to the issuance of injunction where there is no standard by which their amount can be measured with reasonable accuracy. An irreparable injury which a court of equity will enjoin includes that degree of wrong of a repeated*

and continuing kind which produce hurt, inconvenience, or damage that can be estimated only by conjecture, and not by any accurate standard of measurement. Concretely, if the damage is quantifiable it cannot be considered a grave and irreparable injury.¹⁷

117. Admitting a belatedly filed defective election protest and giving due course to a prohibited pleading are acts that are devoid of any legality and result in unquantifiable injury to the duly elected mayor of Pandag, Maguindanao. The unlawful proceedings place a cloud on Petitioner's right to the office.

118. More importantly, it is the height of injustice that Petitioner has been excluded from participating in the proceedings the basis of which are doubtful, and do not conform to any of the established rules of election. We posit that the proceedings in the Honorable Court show utter disregard for Petitioner's rights. In fact, no discussion as to substantial issues was presented to allow the revision of ballots – it is as if the failure of the Petitioner to file his answer automatically grants the Private Respondent's prayers for revision.

119. Petitioner had been elected by the people of Pandag, Maguindanao. To be sure, it would be to betray the mandate of the people of Pandag, Maguindanao if he were to be distracted by these proceedings. The judgment of the Public Respondent Judge purportedly shows that the results of the election favored the Private Respondent however, such result cannot be trusted after she purposely excluded herein Petitioner from participating and protecting his rights. The multitude of violations committed shows that there is nothing regular in the proceedings. **The unbelievable speed it took for the Respondent Judge to do the recount coupled with the obvious efforts to exclude herein Petitioner speaks volumes of the irregularities and the unfairness of the proceedings made.**

120. There is no other ordinary, speedy, and adequate remedy to prevent the infliction of irreparable injury since the summary dismissal of the Election Protest on the grounds mentioned above seems unlikely to be ordered by the Public Respondent.

121. To further prove the matters to warrant the issuance of a writ of preliminary injunction and/or temporary restraining order and for establishing Petitioner's cause of action, attached herewith is the Joint Affidavit of witnesses marked as **Annex "W"**. **The witnesses fear that with the recent unjustifiable action of the Public Respondent COMELEC, the peace in the community will be**

¹⁷ Heirs of Yu vs. Court of Appeals, GR No. 182371, 04 September 2013.

disturbed especially when the Public Respondent RTC will again proceed with her proceedings without regard to the rights of herein Petitioner and the voters of Pandag.

122. Petitioner is willing to post a bond, if there is any fixed by the Honorable Supreme Court, under the present circumstances.

**THE HONORABLE SUPREME COURT
CAN ISSUE THE TRO BASED ON
"OSTENSIBLE RIGHT TO RELIEF."**

123. Insofar as the TRO application is concerned, Petitioner needs only to prove "*ostensible right to the final relief.*" It means that for the Honorable Supreme Court to issue the TRO, the evidence to be submitted need not be conclusive. As held in the case of *Saulog v. Court of Appeals* (G.R. No. 119769, 18 September 1996) it is sufficient that:

*... for the court to act, there must be an existing basis of facts affording a present right which is directly threatened by an act sought to be enjoined. And while a clear showing of the right claimed is necessary, its existence need not be conclusively established. In fact, the evidence to be submitted to justify preliminary injunction at the hearing thereon need not be conclusive or complete but **need only be a sampling intended merely to give the court an idea of the justification for the preliminary injunction pending the decision of the case on the merits.** This should really be so since our concern here involves only the propriety of the preliminary injunction and not the merits of the case still pending with the trial court.*

Thus, be entitled to the writ of preliminary injunction, the private respondent needs only to show that it has the ostensible right to the final relief prayed for in its complaint. [Emphasis supplied.]

124. Petitioner respectfully begs that the Honorable Supreme Court will uphold the rule of law and exercise review to prevent the Honorable Court from running amok and ruining the result of the election.

125. From the foregoing, it is clear that there is strong and meritorious ground for the Honorable Supreme Court to give an equitable relief to Petitioner who had been unduly deprived of his constitutional right to due process of law because of the grave abuse of discretion amounting to lack or in excess of jurisdiction of the Honorable Court and the COMELEC En Banc. **Justice dictates that Petitioner be now relieved of the effect of such lack of jurisdiction.**

126. It is also humbly prayed that a Status Quo Ante Order be issued instructing parties to maintain the status of the parties prior to the filing of the protest.

127. After trial, may the writ of preliminary injunction issued be made permanent.

PRAYER

WHEREFORE, premises considered, it is most **RESPECTFULLY PRAYED** of the Honorable Supreme Court that:

1. Upon the filing of the Petition, to issue a **TEMPORARY RESTRAINING ORDER (TRO)** restraining Public Respondent Judge Piang from executing her Judgment in the Election Protest Case (docketed as EP SA-16) and for the Public Respondent COMELEC to refrain from executing its assailed Resolution dated April 4, 2023;

2. Upon the filing of the Petitioner, to issue Status Quo Ante Order for the parties to maintain the situation prior to the filing of the Protest Case;
3. After hearing, **ISSUE A WRIT OF PRELIMINARY INJUNCTION** enjoining the parties to observe status-quo ante which is the situation prior to the filing of the Protest Case;
4. After trial on the merits and/or submission of memoranda, as the case may be:
 - a. To issue a **WRIT OF CERTIORARI** declaring as null and void the proceedings before the Public Respondent Judge as the same had been conducted even after the apparent absence of jurisdiction due to prescription.
 - b. To **REVERSE AND SET ASIDE** the Resolution dated April 4, 2023 of the Respondent COMELEC En Banc and **AFFIRM** the Resolution dated January 17, 2023 of the COMELEC Special First Division.
 - c. To **DECLARE AS NULL AND VOID** the written Order dated 02 June 2022 and verbal Order 06 June 2022 of the Public Respondent Judge declaring the Answer of the Petitioner as filed out of time;
 - d. To **DECLARE AS NULL AND VOID** the proceedings before the Court as the same had been conducted after Petitioner was barred from actively participating therein;
 - e. To issue a **WRIT OF PROHIBITION enjoining** the Public Respondent Judge to perform or comply with her duty to outrightly dismiss the Election Protest in accordance with the provisions of A.M. No. 10-4-1-SC;
 - f. **PERMANENTLY PROHIBIT** the Public Respondent Judge from implementing whatever Decision or Orders she issued or will issue that may have meted or will impose

against Petitioner arising out of the Election Protest case docketed as EP SA-16; and

- g. To **ISSUE** a **WRIT OF PERMANENT MANDATORY INJUNCTION** directing the public respondent to DISMISS election protest, EP SA-16, at once, based on prescription.

Other just and equitable reliefs are likewise prayed for.

Respectfully submitted. This 18th day of April 2023, Makati City for Manila, Philippines.

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