



REPUBLIC OF THE PHILIPPINES
SENATE ELECTORAL TRIBUNAL

COA-NCR Bldg., Batasan Road, Quezon City

FRANCIS N. TOLENTINO,
Protestant,

- versus -

SET CASE No. 001-16

LEILA M. DE LIMA,
Protestee.

X- - - - - X

RESOLUTION NO. 16-13

Protestant Francis N. Tolentino, through counsel, seeks a reconsideration of SET Resolution No. 16-10 dated 29 September 2016, which, among others, denied his *Motion to Expunge Protestee's Verified Answer to the Amended Election Protest* as well as his *Urgent Motion to Cancel Preliminary Conference and to Suspend Period for Filing Preliminary Conference Brief*.

*Motion to Expunge Protestee's Verified Answer
to the Amended Election Protest*

Protestant posits that Protestee de Lima's *Verified Answer to the Amended Election Protest* ("Verified Answer") should have been expunged from the records as it is a thinly disguised Motion to Dismiss, having prayed for the outright dismissal of Protestant's Amended Protest. Being a prohibited motion, Protestant asserts that the Tribunal has the authority to *motu proprio* expunge the same from the records.

He adds that his *Motion to Expunge* could not possibly be considered to be in the nature of a Motion to Declare Protestee in Default because he merely prayed in his motion that the Verified Answer be expunged from the records. He did not ask that Protestee be prevented from participating in the proceedings as a motion

to declare a party in default would normally pray for. In the event that his *Motion to Expunge* is granted and as a result, Protestee is no longer allowed to participate in the proceeding, such is just a logical and necessary consequence of Protestee's violation of the Rules of the Tribunal and should certainly not be taken against Protestant. After all, the Rules of the Tribunal contemplate a situation wherein a protestee, who is unable to file a valid answer to the protest is deemed to have entered a general denial and as a consequence, the protestant is allowed to submit evidence *ex parte*. To Protestant's mind, this is exactly what happened in this case.

We disagree. Contrary to Protestant Tolentino's characterization thereof, the Verified Answer filed by Protestee de Lima does not violate, but in fact, complies with the requirements of the 2013 Rules of the Tribunal. Rule 26, paragraph 2 of the 2013 Rules of the Tribunal states:

"x x x An answer to an election protest shall include all available grounds for dismissal, special and affirmative defenses and counterclaims, as well as counter or cross protests against the protestant and other protestees, if any. No counter or cross protest shall be filed except as part of an answer." (Underscoring supplied.)

Rule 28, paragraph 2 of the Rules restates the rule with respect to grounds for dismissal in this wise:

"Grounds for a motion to dismiss shall be alleged as affirmative defenses in the appropriate responsive pleading allowed under Rules 26 and 27, and the Tribunal may in its discretion hold a preliminary hearing on any of the grounds so pleaded."

It is clear from the above-quoted provisions that the 2013 Rules of the Tribunal do not prohibit the allegation of grounds for the dismissal of the protest. To do so would be violative of the substantive rights of a party. What the Rules do is to prescribe the manner by which such grounds for dismissal may be pleaded before the Tribunal. The Rules simply state that the said grounds should not be presented to the Tribunal in a motion to dismiss, but should be included in the answer to the protest under Rule 26 or the answer to a counter-protest or cross-protest under Rule 27. Thus, what is proscribed is the filing of a motion to dismiss in lieu of an answer, as the resolution of the motion to dismiss would necessarily take some time, thereby causing delay in the resolution of the electoral case.

Protestee de Lima did not file a motion to dismiss. What she filed was a Verified Answer to the Amended Protest, wherein she admitted some allegations of Protestant and specifically denied the grounds relied upon by him for his protest. Protestee de Lima then presented her Affirmative and Special Defenses, incorporating therein all her grounds for dismissing the protest. All of these are in accord with the requirements of the Rules of the Tribunal.

Every answer to a protest would naturally pray for the dismissal of the protest, in the same manner that an answer to a complaint in an ordinary civil action would naturally and logically pray for the dismissal of the complaint. Indeed, it is difficult to imagine what else could an answer's main prayer be. But harder still to comprehend is how a verified answer seeking the outright dismissal of the protest is automatically converted, as Protestant postulates, into a motion to dismiss, when as earlier stated, it is to be expected that an answer would pray for the dismissal, whether outright or eventual, of the protest.

Urgent Motion to Cancel Preliminary Conference and to Suspend Period for Filing Preliminary Conference Brief

Protestant Tolentino respectfully disagrees with the Tribunal's ruling that his *Urgent Motion to Cancel Preliminary Conference and to Suspend Period for Filing Preliminary Conference Brief* ("Urgent Motion") is a motion for postponement which is a prohibited pleading. He submits that what is prohibited by the Rules of the Tribunal are motions which delay the proceedings. He insists that his Urgent Motion shall actually expedite the proceedings rather than delay it, because there are genuine issues that have yet to be resolved by the Tribunal before a preliminary conference could be conducted.

According to Protestant, with the filing of the *Motion to Expunge* as well as the instant *Motion for Reconsideration*, the question of whether Protestee should even be allowed to participate in the pre-trial conference, much less in the trial proper, is very much in issue. Indeed, a preliminary conference presupposes that the protestee has filed an answer to the protest and both parties will participate in the presentation of evidence and revision/correction proceedings.

Protestant also adverts to Protestee's pending motion for a hearing on her affirmative defenses, saying that the resolution thereof is also a pre-condition to the conduct of any pre-trial conference because should Protestee's motion be granted, such hearing must certainly take place before any pre-trial conference could be conducted.

Control of the proceedings in an electoral protest rests with the Tribunal and never with the parties. Whether or not the resolution of pending issues is a pre-condition to the conduct of a particular proceeding, in this case, the preliminary conference, is a matter that should be determined by the Tribunal. The parties cannot and must not arrogate unto themselves a prerogative belonging solely to the Tribunal. This, sad to say, is what Protestant Tolentino attempted to do in insisting that the Tribunal rule upon his and the Protestee's respective motions before it conducts a preliminary conference or before he could be made to file his preliminary conference brief.

Similarly, it is within the Tribunal's discretion to determine whether or not a motion is conducive of delay. To our mind, the grant of Protestant's Urgent Motion would be a cause for delay because it was the intention of the Tribunal to take up during the Preliminary Conference itself the so-called genuine issues relating to a Protestee's motion for a preliminary hearing on her special and affirmative defenses. Thus, the directive in Resolution No. 16-10 to Protestee to include in her Preliminary Conference Brief her intention to set for hearing or oral arguments before the Tribunal the Special and Affirmative Defenses raised in her answer.

WHEREFORE, the Motion for Reconsideration of Resolution No. 16-10 dated 29 September 2016 filed by Protestant Tolentino on 06 October 2016 is **DENIED**.

SO ORDERED.

08 November 2016.



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Member

Arturo D. Brion
ARTURO D. BRION
Associate Justice
Member