



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.

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RESOLUTION NO. 16-32

On 01 December 2016, the Tribunal issued Resolution No. 16-21, denying the *Motion to Admit Supplemental Protest* of Protestant Francis N. Tolentino dated 03 November 2016 and filed on 10 November 2016.

On 29 December 2016, Protestant Tolentino filed a *Motion for Reconsideration* of Resolution No. 16-21, praying that the aforesaid resolution be set aside, and another one issue, admitting the Supplemental Protest. Protestant Tolentino submitted the following arguments in support of his motion, to wit:

1. The Honorable Tribunal should apply the Rules of Court on newly-discovered evidence and on supplemental pleadings, as the grounds alleged in the supplemental protest are based on newly-discovered evidence, so as to avoid multiplicity of suits;
2. Being the "sole judge of all contests relating to the election, returns, and qualifications" of members of the Senate, the Senate Electoral Tribunal has the power to suspend its rules of procedure in the interest of justice; and
3. The Honorable Tribunal should check the use of drug money to corrupt the electoral process, and which may affect national security.

In support of his first argument, Protestant Tolentino averred that while the 2013 Rules of the SET do not provide for admission of supplemental pleadings, it does provide that the Rules of Court shall be applicable by analogy or suppletorily, so far as they are not inconsistent with the SET Rules or with decisions, resolutions and orders of the Tribunal.

Protestant Tolentino pointed out that under the Rules of Court, a party litigant may move to serve a supplemental pleading upon the adverse party, setting forth transactions, occurrences and events which have happened since the date of the pleading sought to be supplemented. In his case, the hearings of the House of Representatives, which unearthed newly discovered evidence on the use of tainted money by the Protestee, were conducted only in the months of September and October 2016, long after the original Protest was filed on 20 June 2016 and its Amended Protest on 27 July 2016. Thus, the grounds stated in the Supplemental Protest are based on newly-discovered evidence, which under the Rules of Court can be a valid ground for granting a new trial.

If, Protestant Tolentino argued, judicial tribunals could order a new trial after discovery of newly-discovered evidence, by analogy, the Tribunal, as quasi-judicial tribunal, could at least admit supplemental pleadings in an electoral protest like the present case. Such admission is necessary to protect the public interest and to insure the purity of the electoral process. Furthermore, admission of the Supplemental Protest would preclude multiplicity of suits.

With respect to his second argument, Protestant Tolentino stressed that this Tribunal, like the COMELEC, is essentially an administrative tribunal, with the power to liberally interpret or even suspend its rules of procedure in the interest of justice, as held by the Supreme Court in the case of *Hayudini v. Commission on Elections*, G.R. No. 207900, 22 April 2014, 723 SCRA 223.

Thus, Protestant urged the Tribunal to disregard technicalities and suspend its own rules, at least with respect to the distinction between an election protest and quo warranto, in the interest of justice, which in this case, is to obviate the corruption of the electoral process through the use of drug money extorted from

the drug lords.

With respect to his third argument, Protestant Tolentino argued that the instant protest is about election security as well as national security. The issues raised herein are even more alarming for it involves the use of drug money to win a seat in the Senate, which is one of the two chambers that makes policy decisions for the whole country. Thus, it is important that the Tribunal should do its part in preventing the corruption of the electoral process by disqualifying those candidates who are shown to have used drug money to win political power.

On 09 January 2017, the Tribunal issued Resolution No. 16-25 requiring counsel for Protestee Leila M. de Lima to comment thereon within five (5) days from receipt of said Resolution.

On 19 January 2017, Protestee de Lima filed her *Comment/Opposition (To: Protestant Tolentino's Motion for Reconsideration dated 29 December 2016)* praying that Protestant Tolentino's *Motion for Reconsideration* be denied for lack of merit.

In her *Comment/Opposition*, Protestee de Lima stated that contrary to Protestant Tolentino's argument, the Rules of Court cannot be applied by analogy to warrant the admission of his Supplemental Protest without violating the express prohibition of the 2013 SET Rules that "an election protest shall not include a petition for quo warranto, nor shall a petition for quo warranto include an election protest."

She stressed that Protestant Tolentino's Supplemental Protest is not a mere supplemental pleading that proffers new evidence in support of the same cause of action and/or theory of the case. A cursory perusal of the allegations in his Supplemental Protest would readily reveal that it is in the nature of a *quo warranto* petition.

Protestee de Lima pointed out that the allegations contained in the Supplemental Protest which pertain to the results of the inquiry of the House of

Representatives and Protestee De Lima's alleged involvement in drug trade have nothing to do with the alleged fraud, irregularities, casting and/or counting of votes during the May 2016 elections, which was the proper subject of Protestant Tolentino's election protest.

Moreover, Protestee de Lima expounded, in civil cases, supplemental pleadings only serve to bolster or add something to the primary pleading, although it may change the kind of relief. "As its very name denotes, a supplemental pleading only serves to bolster or add something to the primary pleading. A supplement exist side by side with the original. It does not replace that which it supplements. x x x It is but a continuation of the complaint."¹ In this case, Protestant Tolentino's Supplemental Protest invoked an entirely different ground to oust Protestee de Lima from her Office in the Senate. It entirely changed his cause of action. Although termed as "Supplemental Protest," it does not offer new evidence in support of his claims in his Amended Protest.

Protestee de Lima added that while it is true that statutes providing for election protest are to be liberally construed, such is only applicable when the rule sought to be relaxed and/or liberally construed is with respect to procedural matters. But what Protestant Tolentino seeks through the admission of his Supplemental Protest is substantial in nature and disregarding the Rules would set a dangerous precedent in election contests.

We find no cogent reason to apply the provisions of the Rules of Court on newly-discovered evidence and supplemental pleadings to the instant election protest in respect of the Supplemental Protest being sought to be admitted. Protestant Tolentino himself quoted the definition given by the Supreme Court to "newly discovered evidence" in the case of *Tadeja v. People*, G.R. No. 145336, February 20, 2013, thus:

"Newly discovered evidence refers to that which (a) is discovered after trial; (b) could not have been discovered and

¹ *Lilia B. Ada v. Florante Baylon*, G.R. No. 182435, August 13, 2012, citing *Young v. Spouses Sy*, 534 Phil. 246 (2006).

produced at the trial even with the exercise of reasonable diligence;
(c) is material, not merely cumulative, corroborative or impeaching;
and (d) is of such weight that it would probably change the judgment
if admitted.”

In a strict sense, the evidence being proffered by Protestant Tolentino, consisting of the findings of the House of Representatives from hearings conducted in the months of September and October 2016 cannot be considered as newly-discovered evidence. Newly-discovered evidence must have been discovered after trial and presented after a decision has been rendered by the trial court but within the period for taking an appeal.

Section 1 (b), Rule 37 of the Rules of Court states:

“SECTION 1. Grounds of and period for filing motion for new trial or reconsideration.- Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

xxx xxx xxx

- (b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.”²

Considering that in the instant case, Preliminary Conference has yet to be conducted and trial has not commenced, it is quite apparent that the evidence upon which the Supplemental Protest is based is not newly-discovered evidence in its strict legal sense.

And even as we consider the subject evidence of Protestant Tolentino as newly-discovered evidence in its generic or loose sense, the rules on Supplemental Pleadings would still not allow its admission into Protestant

² Underscoring supplied.

Tolentino's election protest. As aptly characterized by Protestee de Lima, "supplemental pleadings only serve to bolster or add something to the primary pleading, although it may change the kind of relief."³ The Supplemental Protest sought to be admitted does not merely serve to bolster the allegations of fraud and irregularities in the Amended Election Protest, but invokes an entirely different ground to oust Protestee de Lima from her office as Senator of the Philippines. It adds to and enlarges Protestant Tolentino's cause of action, a function proper to an amended pleading, which, however, is time-barred at this stage of the proceedings. It would thus appear that the Supplemental Protest invoking "newly-discovered evidence" as ground therefor is either too late or too early.

A greater obstacle to the admission of the Supplemental Protest is that the ground cited therein is proper to a *quo warranto* petition. To admit the Supplemental Protest would wreak havoc on settled jurisprudence differentiating and distinguishing the two types of election contests: election protest and *quo warranto* petition; not to mention the direct violation by the Tribunal of its rule prohibiting the inclusion of a *quo warranto* petition in an election protest and vice-versa, the blatant violation of its Rules on the application of suppletory rules of procedure as well as the complete disregard for the basic tenet that rules of procedures are formulated for the orderly administration of justice.

We cite the provisions of the 2013 Rules of the Senate Electoral Tribunal that Protestant Tolentino urges us to violate:

Rule 15. *How Initiated.*- An election contest is initiated by the filing of a verified election protest or a verified petition for *quo warranto* against a Member of the Senate. An election protest shall not include a petition for *quo warranto*, nor shall a petition for *quo warranto* include an election protest.⁴

Rule 87. *Applicability.*- The following shall be applicable by analogy or suppletorily, so far as they are not inconsistent with these Rules or with the decision, resolutions and orders of the Tribunal:

³ p. 4, Comment/Opposition (to Protestant Tolentino's Motion for Reconsideration dated 29 December 2016).

⁴ Underscoring supplied.

- a. The Rules of Court and Administrative Circulars issued by the Supreme Court;
- b. The Rules on Electronic Evidence;
- c. The Judicial Affidavit Rule; and
- d. Rules of Procedure of the Electoral Tribunals.⁵

Indeed, suspension of rules of procedure may be effected in the interest of the public. However, we find that no public interest would be served by admitting the Supplemental Protest; only Protestant Tolentino's interest would be served thereby, as it now becomes clear to the Tribunal that the insistence of the Protestant Tolentino to have his *Supplemental Protest* consolidated with the *Amended Protest* springs from the fact that if and when he succeeds in unseating Protestee de Lima based on the ground cited in the *Supplemental Protest*, he can then move to be installed Senator of the Philippines to replace Protestee de Lima, a relief that is not available to him in a petition for *quo warranto*. Besides, having the Supplemental Protest admitted instead of filing the proper petition, would spare Protestant Tolentino the financial obligation of paying the filing fees under Rule 35 and the cash deposit under Rule 36 of the 2013 Rules of the Tribunal.

On the other hand, public interest is not prejudiced by the denial of the *Motion to Admit Supplemental Protest*. It was made clear in SET Resolution No. 16-21 dated 01 December 2016 that “[C]onsidering the fundamental differences between an election protest and a petition for *quo warranto*, they may not be availed of jointly and in the same proceeding. However, they can be separately filed, with the second and later case suspended until the earlier one is resolved. An action for *quo warranto* cannot be converted into an election protest.”⁶ If minded, Protestant Tolentino can champion public interest, the integrity of the electoral process and national security by instituting the proper election contest.

⁵ Underscoring supplied.

⁶ Ruben Agpalo, *The Law on Public Officers*, First Edition, 1998, p. 54. Emphasis and underscoring supplied.

IN VIEW OF THE FOREGOING, the *Motion for Reconsideration* of Protestant Tolentino dated 29 December 2016 is hereby **DENIED** for lack of merit.

SO ORDERED.

26 January 2017.



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson



TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Member



LUCAS P. BERSAMIN
Associate Justice
Member



CYNTHIA A. VILLAR
Senator
Member



GRACE L. POE
Senator
Member



MA. LOURDES "NANCY" S. BINAY
Senator
Member



RICHARD J. GORDON
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Member



FRANKLIN M. DRILON
Senator
Member



ANTONIO "SONNY" F. TRILLANES IV
Senator
Member