



COMMISSION ON ELECTIONS  
OF THE PHILIPPINES  
CONSTITUTIONAL TRIBUNAL  
12th Floor Bldg., Dasmar Road, Quezon City

FRANCIS N. TOLENTINO,  
Protestant,

-versus-

SET Case No. 001-16

LEILA M. DE LIMA,  
Protestee,

X-----X

**RESOLUTION NO. 16 - 53**

The Tribunal, in Resolution No. 16-49 dated 25 May 2017, directed Protestant Tolentino to deposit within ten (10) days from notice the amount of P2,201,662.40 to cover the cost of retention by the Commission on Elections of the 106 Vote Counting Machines enumerated in his Motion dated 18 November 2016.

In Resolution No. 16-50 also dated 25 May 2017, the Tribunal likewise required Protestant to deposit not later than 30 June 2017 the total amount of P2,440,328.39, which represents the difference between the estimated cost for the collection and return of ballot boxes, election documents and paraphernalia from his pilot precincts, and the total amount which he had already paid in compliance with Resolution No. 16-33 dated 06 February 2017.

On 08 June 2017, Protestant Francis N. Tolentino filed an *Omnibus Motion* dated 07 June 2017, seeking clarification as to the ownership of the Vote Counting Machines (VCMs), Consolidated Canvassing System (CCS) laptops, and other paraphernalia specified in his Motion dated 18 November 2016; requesting the issuance of a summary of cost estimates for the return of the

ballot boxes, election documents, and election paraphernalia, and the holding in abeyance of his payment of the amount of P2,440,328.39 pending resolution of the instant case, or until such time as the necessity of the return becomes imminent.

On the issue of ownership of the VCMs, CCS laptops, and other paraphernalia, Protestant submits that since the COMELEC required him to shoulder the corresponding price of the option to purchase, he is deemed the owner thereof. He anchors his position on the provision of the Contract of Lease with Option to Purchase between the COMELEC and Smartmatic-TIM Corporation which states that *"all goods still in the possession of COMELEC as of 01 December 2016 because of any election protest or audit requirement shall be considered sold to the COMELEC pursuant to its option to purchase and the COMELEC shall pay the corresponding price...without prejudice to COMELEC requiring the protestant to shoulder such costs."*

On the second issue relating to the cost of return of the ballot boxes, election documents and other election paraphernalia, Protestant Tolentino submits that he was under the impression that the cost estimates included both costs for collection and return, as these were never distinguished during his meetings and correspondences with the Tribunal. He added that there was no mention of any cost of return, or even any indication that protestant would pay double the specified amount of P3,899,830.00 and that the subject "cost of return" was first raised only in Resolution No. 16-50.

Protestant also believes that the return of ballot boxes, election documents and paraphernalia to the pilot precincts may not entail the same operational costs as those for their collection, as it may cost less. He likewise maintains that the ballot boxes, election documents and paraphernalia to be collected may not be immediately returned pending resolution of the instant case.

On the issue of ownership, it is well to note that the Tribunal was fully aware that such issue would eventually arise. Thus, in its Resolution No. 16-37 dated 02 March 2017, the Tribunal declared in pertinent part:

- d. Require Protestant Tolentino to deposit with the Tribunal within fifteen (15) days from receipt of this Resolution the amount of Two Million Two Hundred One Thousand Six Hundred Sixty Two and 40/100 Pesos (Php2,201,662.40), representing the cost of the retention by the Commission on Elections of the 106 Vote Counting Machines enumerated in his Motion dated 18 November 2016. Any right, if any, of Protestant Tolentino arising from his payment of the said amount shall be threshed out between Protestant Tolentino and COMELEC. (Emphasis and underlining supplied)

As correctly alleged by the Protestant, the Contract relative to the Vote Counting Machines (VCMs), Consolidated Canvassing System (CCS) laptops, and other paraphernalia was between the COMELEC and Smartmatic-TIM Corporation. As such, concerns relative thereto, particularly the issue of ownership, should be properly addressed to the Commission on Elections.

Anent the second issue, a revisit to the correspondences between the Tribunal and the Protestant would clearly show that the subject matter discussed pertained only to the cost of collection of the ballot boxes, election documents and other election paraphernalia. In Resolution No. 16-33 dated 06 February 2017, the Tribunal agreed to reduce the estimated cost of collection in view of the considerable reduction of the number of ballot boxes to be collected. Again, in a letter dated 26 April 2017, the revised cost estimates for the collection of ballot boxes, election documents and other election paraphernalia from Protestant's pilot precincts were submitted for his approval. These could not have created the impression that the estimated cost also covered the cost of return.

Indeed, the previous correspondences did not mention the cost of return. This is due to the fact that the cost of collection must be approved first as this will serve as the basis for the cost of return. Protestant's counsel, having approved the estimated cost of collection on 08 May 2017, in the total amount of Three Million Eight Hundred Ninety Nine Thousand Eight Hundred Thirty Pesos (Php3,899,830.00), the Tribunal included the cost of return in Resolution No. 16-50 dated 25 May 2017, in this wise:

But even as the Tribunal directs the commencement of the collection activity, it is prudent and wise at this point to likewise direct Protestant Tolentino to deposit the cost of return of the ballot boxes, election documents and paraphernalia to their places of origin. x x x

Although the transport rates at the time of the return may considerably vary from the present rates, it has been the practice of the Tribunal to simplify matters by allotting as the estimated cost of return the same amount estimated as collection cost. x x x (Underlining supplied)

Protestant's assertion that the return of ballot boxes, election documents and paraphernalia may cost less than the cost for their collection is based on the assumption that the return will be undertaken within or near the same period that the collection activity was conducted. Protestant himself recognizes the fact that the return would come at a later date, i.e., upon the final resolution of the protest. Thus, the cost of return may approximately be equal to, or even more expensive than the cost of collection because of the changes in transport rates.

At this point, the Tribunal is not in the position to grant Protestant's request for a summary of the estimated cost for the return of the ballot boxes, election documents and paraphernalia to their places of origin. This will be prepared at the time the case is concluded with finality as it is only then that the transportation rates may be properly determined.

The amount representing the cost of return being required from Protestant Tolentino only serves as guaranty that no public funds will be used for the benefit of any private entity. This was clearly stated in Resolution No. 16-50:

x x x This is to obviate the possibility of the Tribunal disbursing agency funds to cover the cost of return after the termination of the protest. It is well to emphasize that the cost of transporting the ballot boxes, election documents and paraphernalia involved in an electoral protest from and to their places of origin is not programmed into or provided in the very lean budget of the Tribunal. Such expenses are shouldered by the party requesting the collection and revision of ballots and election documents.

Thus, the request of Protestant to hold in abeyance his payment of the amount of P2,440,328.39 pending the resolution of this case cannot be granted.

IN VIEW OF THE FOREGOING, the Executive Committee of the Tribunal Resolves to:

- a. **DIRECT** Protestant Tolentino to thresh out the issue of ownership of the Vote Counting Machines (VCMs), Consolidated Canvassing System (CCS) laptops, and other paraphernalia specified in his Motion dated 18 November 2016 with the Commission on Elections;
- b. **DENY** Protestant Tolentino's request for a summary of cost estimates for the return of the ballot boxes, election documents, and election paraphernalia;
- c. **DENY** Protestant Tolentino's request to hold in abeyance the payment of P2,440,328.39; and **REQUIRE** him to pay the said amount within a period of ten(10) days from notice of this Resolution;
- d. **NOTE** the additional deposit of Protestant Tolentino in the amount of Two Million Two Hundred One Thousand Six Hundred Sixty-Two Pesos and Forty Centavos (P2,201,662.40) as evidenced by Official Receipt No. 2183442 dated 13 June 2017;
- e. **NOTE** Protestant Tolentino's Manifestations dated 08 June 2017 and 13 June 2017, as well as his Manifestation *Ad Cautelam* dated 13 June 2017;
- f. **NOTE** the Manifestation filed by Protestant Tolentino on 15 June 2017 containing the list of his representatives in the collection of ballot boxes, election documents and election paraphernalia, their specific areas of assignment and specimen signatures; and
- g. **NOTE** the Manifestation filed by Protestee de Lima on 15 June 2017 identifying her representatives in the collection of ballot boxes, election

documents and paraphernalia in the Province of Quezon.

SO ORDERED.

28 June 2017.

*Teresito Leonardo de Castro*  
TERESITA J. LEONARDO-DE CASTRO  
Associate Justice  
Acting Chairperson

*Lucas P. Bersamin*  
LUCAS P. BERSAMIN  
Associate Justice  
Member

*Richard J. Gordon*  
RICHARD J. GORDON  
Senator  
Member