



REPUBLIC OF THE PHILIPPINES
SENATE ELECTORAL TRIBUNAL
COA-NCU Bldg., Batasan Road, Quezon City

FRANCIS N. TOLENTINO,
Protestant,

SET Case No. 001-16

-versus-

LEILA M. DE LIMA,
Protestee.

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RESOLUTION NO. 16-55

In Resolution No. 16-50 dated 25 May 2017, the Tribunal required Protestant Tolentino to deposit not later than 30 June 2017 the total amount of ₱2,440,328.39, 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 Tolentino filed an *Omnibus Motion* dated 07 June 2017, requesting a summary of the cost estimates for the return of the ballot boxes, election documents, and election paraphernalia and the holding in abeyance of the payment of the cost of return. The *Omnibus Motion* was denied by the Executive Committee of the Tribunal in Resolution No. 16-53 dated 28 June 2017. Protestant Tolentino was required to pay the said amount of ₱2,440,328.39 within ten (10) days from receipt of the Resolution.

Thereafter, on 04 July 2017, Protestant Tolentino was notified of the adjustment in the estimated cost of collection as well as the change in the collection dates in Mindanao, which were set after a series of meetings held by the SET Canvass Board Service (CBS) with officials of the Armed Forces of the Philippines (AFP) and Philippine National Police (PNP). On 06 July 2017, upon request of Protestant Tolentino, a conference with the CBS was held to discuss the details of the revised cost estimates for Tawi-Tawi, Basilan and Sulu. After

Protestant Tolentino had approved the adjusted cost estimates for the first three provinces, the CBS adopted the schedule proposed by the AFP, as follows:

Date	Area
July 17-20, 2017	Tawi-Tawi
July 24-28, 2017	Basilan
August 7-14, 2017	Sulu
August 14-16, 2017	Lanao Del Norte
August 14-21, 2017	Zamboanga del Norte
August 21 -26, 2017	Maguindanao; Pikit, North Cotabato; & 2 Municipalities of Lanao del Sur (Picong & Malabang)
To be determined later by the AFP	Lanao Del Sur

The cost estimates for the other areas in Mindanao are being revised to include the operational costs estimated to be incurred by the AFP and PNP. Additional cash deposits may, thereafter, be required from Protestant Tolentino.

Also on 06 July 2017, Protestee de Lima filed an *Urgent Motion for Reconsideration (Re: SET Resolution No. 16-53)*, praying for the dismissal of the instant election protest for failure of Protestant Tolentino to comply with SET Resolution No. 16-50 dated 25 May 2017. In the alternative, Protestee de Lima prayed that pending resolution of her present *Motion for Reconsideration* and of Protestant's full and complete compliance with SET Resolution No. 16-53, the Tribunal issue an Order immediately suspending the retrieval of ballot boxes and election documents and paraphernalia from Tolentino's pilot protested precincts.

For Protestee to De Lima, Protestant Tolentino's non-compliance with SET Resolution No. 16-50 and the filing an *Omnibus Motion* dated 07 June 2017, questioning the need to answer for the cost of return of the collected ballot boxes this early, was dilatory and had no other purpose than for Protestant Tolentino to evade his obligation with his protest.

Protestee de Lima asserted that the protest should have been dismissed pursuant to Rules 36 and 37 of the 2013 Rules of the Senate Electoral Tribunal and Protestant should not have merited additional time to comply with his obligation.

Meanwhile, on 10 July 2017, Protestant Tolentino deposited the amount of P2,440,328.39 required of him in Resolution No. 16-50 dated 25 May 2017, as reiterated in Resolution No. 16-53 dated 28 June 2017.

Upon being notified of the revised schedule of collection in Mindanao on 11 July 2017, Protestee De Lima filed the following day, 12 July 2017, an *Urgent Motion to Resolve (Re: Urgent Motion for Reconsideration dated 06 July 2017)*. She urged the Tribunal not to send people to Mindanao while there is a widespread unrest and terrorist activities.

Indeed, Rule 37 of the 2013 Rules of the Tribunal provides:

Rule 37. Effect of Failure to Make Cash Deposit. -- If a party fails to make cash deposits or additional deposits herein provided within the prescribed time limit, the Tribunal shall dismiss the protest, counter or cross protest or petition for which said deposits are required, or take such action as it may deem equitable under the circumstances.

But while the word "shall" underscores the mandatory character of the effect of non-compliance, the Tribunal, in recognition of its inherent power to "*control x x x its processes, and amend its decisions, resolutions and orders to make them conformable to law and justice*" [Rule 9 (f), 2013 SET Rules], deemed it wise to provide an alternate course of action in cases of non-payment of cash deposits or additional cash deposits, i.e. "*take such action as it may deem equitable under the circumstances.*"

The Tribunal does not consider the *Omnibus Motion* dated 07 June 2017 filed by Protestant Tolentino as an outright refusal to comply with Resolution No. 16-50 or merely dilatory with the purpose of evading his obligations under the protest. The request for a summary of the cost estimates was something that could be expected from any prudent person, considering the amount of money being required of him.

No undue delay was caused by the *Omnibus Motion* as Protestant Tolentino had at the time of its filing cash deposits sufficient to cover the collection from a number of provinces. The collection activity could proceed and continue until such time that the level of the cash deposit would be insufficient to cover the return of the ballot boxes and election documents and paraphernalia so far collected.

For the same reason, granting Protestant Tolentino additional time within which to make his additional cash deposit did not cause undue delay in the resolution of the instant protest.

It may well be worth to note that the 2013 Rules of the Tribunal prescribes a period within which a party may file objections to a pending motion. Failure to exercise such right within the said period shall render the pending motion deemed submitted for resolution. Rule 34 states:

RULE 34. No Hearing or Oral Argument on Motions. -- No hearing or oral argument on motions shall be allowed unless the Tribunal determines otherwise.

The adverse party may file comments or objections within three (3) days from receipt of the motion. If no comment or objection is filed, the motion shall be deemed submitted for resolution. (Underlining supplied)

In this case, Protestant Tolentino's *Omnibus Motion* requesting for 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 was filed on 07 June 2017. According to the Rules, it was incumbent upon Protestee De Lima to raise her opposition to Protestant's *Omnibus Motion* within three (3) days from service, upon the expiration of which such motion is deemed submitted for resolution.

In view of her failure to raise any objection within the three (3) day period required by the Rules, Protestee De Lima in effect waived her right to oppose Protestant Tolentino's *Omnibus Motion*. With the issuance of Resolution No. 16-53 dated 28 June 2017, Protestee De Lima's concern which related back to Protestant Tolentino's failure to deposit the required amount within the time limit

set by Resolution No. 16-50 dated 25 May 2017 already became moot and academic. Besides, the Protestant had complied with the obligation to deposit within the time limit set in Resolution No. 16-53 dated 28 June 2017.

One last word. The Tribunal is not unmindful of the risks involved in pursuing the collection of ballot boxes in Mindanao during this period of unrest and reported terrorist activities. However, the Tribunal is firm in its resolve to process the instant protest with dispatch. As aforementioned, the revised collection schedule in Mindanao was arrived at after a series of meetings with the Armed Forces of the Philippines and the Philippine National Police, which started as early as April 2017. Protestant Tolentino having complied on 10 July 2017 with the directive to augment his cash deposit, there is no cogent reason to suspend the retrieval of ballot boxes. To put on hold the collection activity at this point will unduly delay the proceedings.

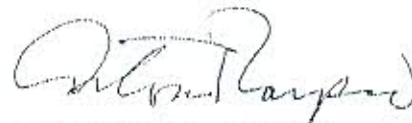
IN VIEW OF THE FOREGOING, the Executive Committee of the Tribunal Resolves to:

- a. DENY Protestee De Lima's *Urgent Motion for Reconsideration* dated 06 July 2017 and *Urgent Motion to Resolve (Re: Urgent Motion for Reconsideration Dated 06 July 2017)* dated 12 July 2017 for being moot and academic;
- b. DIRECT the Canvass Board to continue with the collection of ballot boxes and election documents in Mindanao in accordance with the schedule proposed by the Armed Forces of the Philippines;
- c. NOTE the *Manifestation* filed by Protestee De Lima on 22 June 2017 identifying her representatives in the collection of the ballot boxes and election documents and paraphernalia from the designated pilot precincts of Protestant Tolentino in the Provinces of Iloilo and Cebu;
- d. NOTE the *Manifestation* filed by Protestant Tolentino on 28 June 2017 identifying his representatives in the collection of ballot boxes and election documents and paraphernalia from his designated pilot precincts in the Provinces of Cebu and Iloilo;

- e. NOTE the *Manifestation* filed by Protestee De Lima on 29 June 2017 identifying her representatives in the collection of the ballot boxes and election documents and paraphernalia from the designated pilot precincts of Protestant Tolentino in the Province of Western Samar;
- f. NOTE the *Manifestation* filed by Protestant Tolentino on 04 July 2017 identifying Emmanuel G. Causaren and John Lord Mendoza as his new representatives in the collection of ballot boxes and election documents and paraphernalia from his designated pilot precincts in the Province of Western Samar; and
- g. NOTE the additional deposit of Protestant Tolentino in the amount of Two Million Four Hundred Forty Thousand Three Hundred Twenty-Eight Pesos and Thirty-Nine Centavos (P2,240,328.39) as evidenced by Official Receipt No. 2183449 dated 10 July 2017.

SO ORDERED.

19 July 2017.



ANTONIO T. CARIPIO
Senior Associate Justice
Chairperson



TÉRÉSITA J. LEONARDO-DE CASTRO
Associate Justice
Member



LUCAS P. BERSAMIN
Associate Justice
Member