FRANCIS N. TOLENTINO,
Protestant,

-versus-   SET Case No. 001-16

LEILA M. DE LIMA,
Protestee.

x---x

RESOLUTION NO. 16-134

To complete the presentation of his documentary and testimonial evidence, Protestant Tolentino requested that he be furnished by the Commission on Elections (COMELEC) the *raw audit log* files of the Consolidation and Canvassing System (CCS) laptops covering his pilot protested precincts. Records show that the Protestant identified seven hundred fifty-one (751) clustered precincts as his pilot precincts. However, only six (6) CCS laptops used in the areas covered by his pilot precincts were retained by the COMELEC upon his request. These six CCS laptops are supposed to have Intel Core i5 processing units but no report was submitted to the Tribunal as to the areas where the said CCS laptops were deployed during the 2016 National and Local Elections.

In view of the foregoing discrepancy in number, and considering that the Tribunal is not in the position to dictate on the COMELEC the kind or format of CCS audit logs that should be provided to the Protestant, the Tribunal in Resolution No. 16-124, dated 05 September 2018, resolved to require the COMELEC to release to Protestant Tolentino the audit logs, in the format that is feasible and legally permissible, within fifteen (15) days from receipt of the resolution and to manifest to the Tribunal its compliance within three (3) days from the release of the audit logs to the Protestant.

In a *Manifestation with Motion* dated 24 September 2018, the COMELEC, through its Law Department, declared that it can provide the audit logs of the six CCS laptops that were retained by the COMELEC upon the request of the

Protestant, and prayed that the period of fifteen (15) days given to it by the Tribunal to comply with SET Resolution No. 16-124 be counted from its receipt of the approval by the Presidential Electoral Tribunal (PET) for the access and generation of the audit logs of the CCS laptops chosen by the Protestant. The COMELEC couched its assertions in this wise:

> "5. Notwithstanding the discretion given by the Honorable Tribunal to the COMELEC, as courtesy to the Protestant, we respectfully leave to him the choice of whether to access all of the six CCS Laptops or just a number thereof;
>
> 6. Upon determination by the Protestant of the CCS Laptops to be accessed, the COMELEC, in deference to the authority of the Honorable Presidential Electoral Tribunal (PET), has to inform and/or seek the latter's approval prior any access and generation of audit logs;"

The COMELEC's prayer for additional time to comply with the Tribunal resolution appears to be premised on the need to seek approval from the PET for it to access the CCS laptops. However, a closer look of the foregoing statements implies that Protestant must first identify his choice whether the six CCS laptops or just a number thereof has to be accessed before the COMELEC seeks authority from PET. The COMELEC seems to have added another requirement prior to its compliance and such additional requirement is made dependent on the action of the Protestant. If such interpretation is correct, the Protestant is being given control of the pace of the proceedings before this Tribunal. This should not be countenanced.

Thus, in order not to further delay the proceedings, the COMELEC is required to forthwith seek authority from the PET to access all the six CCS laptops which were retained in its custody upon the request of the Protestant. The COMELEC must identify the areas or municipalities/cities where the said laptops were deployed during the conduct of the 2016 National and Local Elections, and submit the same to the PET for its perusal, copy furnished this Tribunal.

Similarly, Protestant must communicate to the COMELEC immediately the number of CCS laptops that the latter has to access for the generation of the audit logs. Otherwise, the Tribunal, as well as the COMELEC, shall conclude that all the six CCS laptops must be accessed and their audit logs generated.

WHEREFORE, the Executive Committee of the Tribunal resolves to:

1. **REQUIRE** the Commission on Elections (COMELEC) to immediately seek authority from the Presidential Electoral Tribunal (PET) to access all the six CCS laptops which were retained in its custody upon the request of Protestant Tolentino, with proper listing of the areas or municipalities/cities where the said laptops were deployed during the conduct of the 2016 National and Local Elections, copy of the list furnished to the Tribunal, and manifest to the Tribunal its compliance within three (3) days from receipt of this Resolution;

2. **GRANT** the request of the COMELEC that the period of fifteen (15) days given to it by the Tribunal to comply with Resolution No. 16-124, dated 05 September 2018, be counted from its receipt of the PET approval for the access and generation of the audit logs of the CCS laptops; and

3. **DIRECT** Protestant Tolentino to inform the COMELEC as to the number of CCS laptops that the latter must access for the generation of the audit logs, copy furnished the Tribunal, within three (3) days from receipt of this Resolution.

SO ORDERED.
08 October 2018.

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

LUCAS P. BERSAMIN   **ESTELA M. PERLAS-BERNABE**
Associate Justice   Associate Justice
Member   Member

FRANKLIN M. DRILON
Senator
Member

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