

**REPUBLIC OF THE PHILIPPINES**  
**SENATE ELECTORAL TRIBUNAL**

COA-NCR 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 - 140**

For resolution by the Tribunal is a *Motion to Suspend Proceedings and/or Archive the Protest*, dated 11 October 2018, filed by Protestant Francis N. Tolentino. In his *Motion*, the Protestant declared that he has decided to run in the coming 2019 National and Local Elections as he was chosen as one of the senatorial candidates of the PDP-Laban. With the filing of his candidacy, he now moves for the suspension of the proceedings and/or the archiving of the protest.<sup>1</sup>

In her *Comment/Opposition with Motion to Dismiss Protest* dated 15 October 2018, Protestee Leila M. de Lima moved for the denial of Protestant's *Motion* and for the dismissal of the election protest. Protestee alleged, among others, that: It is a matter of public policy that election protests ought to be resolved with dispatch as an expeditious determination of the popular will of the electorate must be made;<sup>2</sup> Protestant Tolentino must not be allowed to dictate the pace at which the protest will be resolved as his rights are not the only ones affected;<sup>3</sup> To allow the Protestant to suspend the proceedings when there are no prejudicial questions or pending incidents, would prejudice the Protestee especially since her title to her public elective office would remain under cloud;<sup>4</sup> Protestant's prayer is without judicial precedent and mocks the very nature of an election protest.<sup>5</sup>

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<sup>1</sup> Protestant's Motion to Suspend Proceedings and/or Archive the Protest, par. 6.

<sup>2</sup> Protestee's Comment/Opposition with Motion to Dismiss Protest, par. 4.

<sup>3</sup> *Ibid.*, par. 5.

<sup>4</sup> *Ibid.*, par. 6.

<sup>5</sup> *Ibid.*, par. 7.

We rule to DENY the *Motion to Suspend Proceedings and/or Archive the Protest*.

The primordial policy to ascertain the will of the people is evident in the constitutional mandate that "Sovereignty resides in the people and all government authority emanates from them."<sup>6</sup> An election is the embodiment of the popular will, the expression of the sovereign power of the people.<sup>7</sup> Election contests, therefore, involve the adjudication not only of private and pecuniary interests of rival candidates, but also of paramount public interest considering the need to dispel uncertainty over the real choice of the electorate.<sup>8</sup> No doubt, the best way of removing any doubt as to who was the real candidate chosen by the electorate would be to allow the election protest to proceed.<sup>9</sup>

In a long list of decisions, the Supreme Court has always emphasized the special and expeditious nature of election cases, the early resolution of which should not be hampered by any unnecessary delays. In Resolution No. 16-111 dated 15 May 2018, the Tribunal reminded the Protestant that an election contest, unlike an ordinary action, is imbued with public interest and that it is neither fair nor just to keep in office for an uncertain period one whose right to it is under suspicion. It is, thus, imperative that his claim be immediately cleared not only for the benefit of the winner but for the sake of public interest.<sup>10</sup>

In her aforesaid *Comment/Opposition*, Protestee de Lima lamented that Tolentino had been enjoying too much leeway, pointing out that he commenced with the presentation of his evidence sometime in February 2018 and has not rested his case until now despite the provisions of Rule 64 of the 2013 Rules of the Senate Electoral Tribunal which gives him only a maximum period of thirty (30) working days to complete the presentation of his evidence.<sup>11</sup>

Indeed, the reception of evidence became intermittent due to the numerous motions filed by the Protestant which needed to be resolved before its continuance. At present, the hearings came to a halt in view of Protestant's request that he be

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<sup>6</sup> Loyola vs. HRET, G.R. No. 109026, January 4, 1994.

<sup>7</sup> Taule vs. Santos, G.R. No. 90336, August 12, 1991, citing Hontiveros v. Altavos, 24 Phil. 636 (1913).

<sup>8</sup> Batul vs. Bayron, G.R. Nos. 157687 and 158959, February 26, 2004.

<sup>9</sup> Saquilayan vs. Comelec, G.R. No. 157249, November 28, 2003.

<sup>10</sup> Citing Barroso vs. Ampig, Jr. G.R. No. 138218, March 17, 2000.

<sup>11</sup> Protestee's Comment/Opposition with Motion to Dismiss Protest, par. 5.

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.

Mindful that the Amended Preliminary Conference Order dated 09 May 2017 listed the system logs of the Municipal Board of Canvassers servers<sup>12</sup> as among the documentary evidence to be presented by the Protestant, the Tribunal, in Resolution No. 16-124, dated 05 September 2018, required 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 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 (6) 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 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. Thus, in Resolution No. 16-134, dated 08 October 2018, the Tribunal resolved 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.”

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<sup>12</sup> Resolution No. 16-45-A, p. 14.

In a *Manifestation* dated 08 November 2018, COMELEC informed the Tribunal that in view of the activities of its Law Department in relation to the forthcoming 2019 National and Local Elections, including the number of cases lodged with or filed against the Commission, it was only on 07 November 2018 that the required *Manifestation* and *Motion* was filed before the PET.

For his part, Protestant Tolentino filed a *Manifestation* dated 23 October 2018, reiterating his intention to obtain the audit logs of not just six (6) CCS laptops but of all the CCS laptops that operated in the areas covered by his pilot clustered precincts and that he will coordinate with the COMELEC relative thereto.

The Tribunal should not, therefore, be faulted for the alleged leeway being enjoyed by the Protestant. While election cases are mandated by law to be resolved expeditiously and promptly, jurisprudence, however, reminds us “not lose sight of the contending parties’ right to avail of every reasonable opportunity to support their claim to the office in question. It should be stressed that the prompt resolution of election cases must not be accomplished at the expense of determining the true choice of the electorate. Thus, the courts and other electoral bodies are enjoined, not only to maintain their sense of urgency in resolving election cases, but also to explore every reasonable and feasible means of ascertaining which candidate was duly elected because, in the final analysis, it is the will of the people that is the ultimate concern.”<sup>13</sup>

We concur with Protestee de Lima’s contention that the subject *Motion* is without judicial precedence. We agree with her observation that Tolentino is, in effect, praying that if he loses in his bid during the 2019 elections, he will ask the Tribunal to revive his protest. To borrow the words of Protestee de Lima, the *Motion* “mocks the very nature of an electoral protest.” It may sound repetitious, but we quote, nonetheless, the Supreme Court ruling in *Sahali vs. COMELEC*<sup>14</sup>:

“It should be stressed that one of the factors that should be considered in election protests is expediency. Proceedings in election protests are special and expeditious and the early resolution of such cases should not be hampered by any unnecessary observance of procedural rules. The proceedings should not be encumbered by delays. All of these are because the term of elective office is likewise short. There is the

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<sup>13</sup> *Alberto vs. COMELEC*, G.R. No. 132242, July 27, 1999, citing *San Juan vs. Abordo*. 50 Phil. 703 (1927).

<sup>14</sup> G.R. No. 201796, January 15, 2013, citing *Estrada vs. Sto. Domingo*, July 29, 1969, 28 SCRA 890.

personal stake of the contestants which generates feuds and discords. Above all is the public interest. Title to public elective office must not be left long under cloud. Efficiency of public administration should not be impaired. It is thus understandable that pitfalls which may retard the determination of election contests should be avoided.”

In the same case, the Supreme Court, citing the case of *Miguel vs. COMELEC*,<sup>15</sup> likewise declared:

“For in this specie of controversies involving the determination of the true will of the electorate, time indeed is of paramount importance second to none, perhaps, except for the genuine will of the majority. To be sure, an election controversy which by its very nature touches upon the ascertainment of the people’s choice, as gleaned from the medium of the ballot, should be resolved with utmost dispatch, precedence and regard to due process.”

In this jurisdiction, the suspension or archiving of cases is allowed only in criminal and civil cases as may be gleaned from Administrative Circular No. 7-A-92, dated 21 June 1993, issued by the Supreme Court. The said Circular was reiterated in Office of the Court Administrator (OCA) Circular No. 89-2004, Issue-04-10, October 2004. No such guidelines allowing the archiving of election protests exist for obvious reasons, i.e., that they should be resolved with dispatch.

Moreover, the subject *Motion* does not find any basis in the 2013 Rules of the Tribunal which has been designed in order to achieve expeditious proceedings. Under the Rules,<sup>16</sup> a mere *Motion for Postponement* is listed as among the prohibited motions purposely to avoid delay. With more reason that the *Motion to Suspend Proceedings and/or Archive the Protest* would come under the prohibition. In the same manner, Protestee de Lima’s *Motion to Dismiss Protest* as a result of the *Motion to Suspend Proceedings and/or Archive the Protest* should be DENIED for being a prohibited pleading, as well.

Thus, the proper action of the Tribunal is to direct the continuation of the proceedings in the instant case until its resolution on the merits, at least, in the pilot precincts, unless Protestant Tolentino files a motion to withdraw the protest. In this regard, the reception of evidence must resume within ten (10) days from receipt by the Protestant of the audit logs from the COMELEC, be it six (6) CCS

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<sup>15</sup> G.R. No. 136966, July 5, 2000.

<sup>16</sup> Rule 28, 2013 SET Rules.

laptops or all those covering the pilot protested precincts. COMELEC is requested to inform the Tribunal of the date of release to the Protestant.

Finally, the claim of Protestant that certain irregularities were found to have attended the 09 May 2016 National and Local Elections<sup>17</sup> has not escaped the Tribunal's attention. His assertions are premature and self-serving considering that the Tribunal has yet to decide the protest on its merits.

**IN VIEW OF ALL THE FOREGOING**, the Tribunal resolves to:

1. **DENY** Protestant Tolentino's *Motion to Suspend Proceedings and/or Archive the Protest* for lack of merit;
2. **NOTE** Protestee de Lima's *Comment/Opposition (To: Protestant's Motion to Suspend Proceedings and/or to Archive the Protest)* and **DENY** her *Motion to Dismiss Protest* for being a prohibited pleading under Rule 28 of the 2013 SET Rules;
3. **DIRECT** that the continuation of the reception of evidence must resume within ten (10) days from receipt by the Protestant of the audit logs from the Commission on Elections;
4. **NOTE** the *Manifestation* of the Commission on Elections dated 08 November 2018 and **REQUIRE** it to inform the Tribunal of the date the audit logs are released to the Protestant; and
5. **NOTE** the *Manifestation* of Protestant Tolentino dated 23 October 2018.

**SO ORDERED.**


22 November 2018.

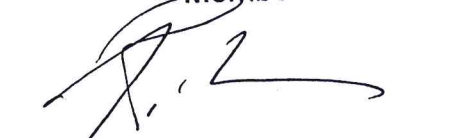


**ANTONIO T. CARPIO**  
Senior Associate Justice  
Chairperson

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<sup>17</sup> Protestant's Motion to Suspend Proceedings and/or Archive the Protest, par. 3.


  
**LUCAS P. BERSAMIN**  
Associate Justice  
Member

  
**RICHARD J. GORDON**  
Senator  
Member

  
**JOEL VILLANUEVA**  
Senator  
Member

**FRANKLIN M. DRILON**  
Senator  
Member

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice  
Member

  
**MARIA LOURDES "NANCY" S. BINAY**  
Senator  
Member

**EMMANUEL "MANNY" D. PACQUIAO**  
Senator  
Member

  
**ANTONIO "SONNY" F. TRILLANES IV**  
Senator  
Member