



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,
X-----X

RESOLUTION NO. 16-20

In SET Resolution No. 16-12 dated 06 October 2016, Protestant Francis N. Tolentino was required to SHOW CAUSE within a non-extendible period of five (5) days from receipt of said Resolution why the instant election protest should not be dismissed for his failure to submit his Preliminary Conference Brief as required in SET Resolution No. 16-08 dated 08 September 2016. Protestee Leila M. de Lima was given three (3) days from receipt of Protestant Tolentino's compliance within which to comment thereon.

On 11 October 2016, Protestant Tolentino filed his Compliance to the Show Cause Order, alleging that:

1. Protestant Tolentino's non-filing of his Preliminary Conference Brief on 27 September 2016 is justified and proper;

2. The 2012 case of *Gravides vs. COMELEC*¹ calls for liberal application of the Rules governing preliminary conference. The 2008 case of *Cabrera vs. COMELEC*² is not on point;
3. In any case, Protestant Tolentino has already filed his Preliminary Conference Brief and jurisprudence requires that this case be allowed to proceed; and
4. This case is *SUI GENERIS*: The SET will for the first time encounter automated electoral fraud in the Philippines.

In support of his first argument, Tolentino alleged that there were still pending motions before the Tribunal which raised substantial and procedural issues that required prior resolution before this protest may proceed to preliminary conference. The pending motions were: (a) Protestant Tolentino's *Motion to Expunge (Protestee's Verified Answer to Amended Election Protest dated 14 August 2016)* dated 21 September 2016; (b) his *Urgent Motion to Cancel Preliminary Conference and Suspend Period for Filing Preliminary Conference Brief* dated 22 September 2016; and (c) Protestee de Lima's *Clarificatory Motion with Motion to Dismiss and/or to SET Case for Preliminary Hearing or Oral Argument* dated 15 September 2016.

He maintained that since the questions raised in these pending motions remained unanswered as of 27 September 2016, the due date for the filing of the Preliminary Conference Brief, he could not be faulted for waiting for direction from the Tribunal before filing his Preliminary Conference Brief. To do otherwise, would have been to abandon his position or at the very least estop him from questioning the propriety of the *Amended Answer*.

He added that a closer reading of the rulings in the cases of *Philippine American Life & General Insurance Company vs. Enario*³ and *Orosa, et. al. vs.*

¹ G.R. No. 199433, 13 November 2012.

² G.R. No. 182084, 06 October 2008.

³ G.R. No. 182075, 15 September 2010.

*Court of Appeals*⁴ showed that the rationale behind the said rulings does not apply to this case since there was no intent on his part to delay the proceedings.

Elaborating on his second argument, Protestant Tolentino stated that the case of *Cabrera vs. COMELEC*⁵ is not on point because in the *Cabrera* case: (a) what was involved was the failure of the protestant to allege and raise required matters in his Preliminary Conference Brief which resulted in the dismissal of his election protest affecting the mayoralty race in Taal, Batangas; (b) there was no pending motion which necessitated prior resolution before the parties could file their respective Preliminary Conference Briefs; and (c) the protestant therein admitted that he failed to include the required matters in his Preliminary Conference Brief without any justification.

In contrast, (a) no issue was raised on the contents of Protestant Tolentino's Preliminary Conference Brief; (b) the invalidity of Protestee de Lima's *Amended Answer* affected how the proceedings should continue; (c) Protestant had substantial reasons for holding in abeyance the filing of his Preliminary Conference Brief on 27 September 2016 and he had consistently maintained and never wavered from his position that Protestee De Lima's *Amended Answer* was a motion to dismiss, which must be expunged from the records.

Protestant Tolentino further pointed out that the pronouncements in the *Cabrera* case had never been applied blindly. In fact, in the case of *Gravides vs. COMELEC*, which was promulgated at least four (4) years after *Cabrera*, the Supreme Court upheld the COMELEC *En Banc*'s decision not to dismiss the protest, in view of: (a) the attendant circumstances of the protest, which warranted a more reasonable and liberal application of the rules; (b) the absence of any intent to unduly prolong the election protest, as in this case; and (c) the paramount interest of determining the true will of the electorate, which justifies a relaxation of procedural rules, as an election protest is imbued with public interest so much so that the need to dispel uncertainties which becloud the real choice of the people is imperative.

⁴ G.R. No. 118696, 03 September 1996.

⁵ *Supra*.

With respect to his third argument, Protestant Tolentino said that he never intended to maliciously delay the instant proceedings. His holding in abeyance the filing of his Preliminary Conference Brief until the resolution by this Tribunal of his pending motions did not and could not equate to any intent to delay. As further proof of the absence of any intent to delay, he immediately prepared and filed his Preliminary Conference Brief on the very next day that he received the Tribunal's denial of his pending motions. He took such action notwithstanding that he also filed a *Motion for Reconsideration* of the said denial which, if granted, would necessitate the substantial amendment of his Preliminary Conference Brief.

Protestant Tolentino submitted that since he already filed his Brief a day after his *Motion to Expunge* and *Motion to Cancel* were denied and despite the pendency of his *Motion for Reconsideration*, the liberal application of the rules is warranted and, consequently, there is no justifiable reason to dismiss the protest.

To support his contentions, he cited the case of *Pahilan vs. Tabalba*,⁶ wherein the Supreme Court was said to emphasize the greater importance of the public's interest in making sure that only the electorate's real choice occupies an elective office. Protestant Tolentino added that said pronouncements had been repeatedly upheld and cited in, among others, *Barroso vs. Honorable Ampig, Jr.*,⁷ *Pacanan, Jr. vs. Comelec*,⁸ *Violago, Sr. vs. Comelec*,⁹ *Tolentino vs. COMELEC*¹⁰, and *De Castro vs. COMELEC*¹¹.

Regarding his fourth argument, Protestant Tolentino stressed that the seriousness of the allegations raised by him in his protest "require nothing less from this Tribunal, (sic) if only to dispel any cloud of doubt as to who is the rightful winner in the recently concluded senatorial elections, and the integrity of the automated electoral system, which has not only been doubted several times but is

⁶ G.R. No. 110170, 21 February 1994.

⁷ G.R. No. 138218, 17 March 2000.

⁸ G.R. No. 18624, 25 August 2009.

⁹ G.R. No. 194143, 04 October 2011.

¹⁰ G.R. Nos. 187958, 187961, and 187962, 07 April 2010.

¹¹ G.R. No. 187966-68, 07 April 2000.

also a novel milestone in the exercise of the constitutional right of suffrage in the Philippines.”¹²

In her *Comment (to Protestant's Compliance dated 11 October 2016)* filed on 13 October 2016, Protestee de Lima asserted that by Protestant Tolentino's own admission, his failure to submit his Preliminary Conference Brief on 27 September 2016 was deliberate and intentional. To Protestee de Lima's mind, there was no justifiable reason for Protestant Tolentino not to submit his Preliminary Conference Brief. His *Motion for Reconsideration* filed on 06 October 2016, which was also the scheduled date of the Preliminary Conference, was clearly intended to delay the proceedings.

Protestee de Lima made it of record that she was furnished a copy of the Preliminary Conference Brief through counsel, only after the parties were excused during the Preliminary Conference proper to allow the Tribunal to deliberate on Protestant Tolentino's failure to file his Brief.

Protestee de Lima stated that in not filing his Preliminary Conference Brief, Protestant Tolentino readily assumed that his *Motion to Cancel* would be granted. As aptly cited by the Tribunal, “*the grant or denial of a motion for postponement is a matter addressed to the sound discretion of the court.*” Until the Protestant receives an Order from the Tribunal cancelling the scheduled Preliminary Conference, the Protestant has no right to assume that his *Motion to Cancel* would be granted.

Protestee de Lima likewise pointed out that neither should the pending resolution of her *Clarificatory Motion with Motion to Dismiss* be a ground for Protestant Tolentino's non-submission of his Preliminary Conference Brief. In said *Clarificatory Motion*, the only issue was who should shoulder the cost of the VCMS and the CCS laptops. It had no relevance to Protestant Tolentino's Preliminary Conference Brief. Protestee de Lima emphasized that, as between the parties, it was Protestant Tolentino who should in fact be more diligent in expediting the proceedings and not trifle with the rules of the Tribunal.

¹² Compliance of Protestant Tolentino dated 11 October 2016, pp. 10-11.

Protestee de Lima contended that the case of *Gravides vs. COMELEC* is inapplicable to the case at bar for the following reasons:

1. First, in the *Gravides* case, a Preliminary Conference Brief was filed. The reason for the dismissal of election protest was the protestant's failure to include essential manifestations/statements in his Preliminary Conference Brief. Whereas in this case, the protestant did not file his Preliminary Conference Brief when the conference was held.
2. Second, in the *Gravides* case, only two votes separated the winning candidate and the protestant. As such, the relaxation of the procedural rules and reversal of the order of dismissal of the electoral protest was warranted. Whereas in the case at bar, the difference of votes between the Protestant and the Protestee is over a million votes.

Protestee de Lima stressed that if, in the *Cabrera* case where a Preliminary Conference Brief was filed, the election protest was still dismissed because the Preliminary Conference Brief lacked essential statements required under the Rules, with more reason should an election protest be dismissed for failure to file a Preliminary Conference Brief, such as in the case at bar.

On 17 October 2016, Protestant Tolentino filed a *Motion for Leave to File and to Admit Reply*, attaching thereto his *Reply (To Comment dated 12 October 2016)*. In his Reply, Protestant Tolentino, in sum, alleged the following:

1. Protestee de Lima cannot demand strict application of the SET Rules against Protestant Tolentino considering that she herself violated Rule 41 thereof by failing to personally appear at the Preliminary Conference. Justice and fairness dictate that this Tribunal extend to Protestant Tolentino the same leniency that it accorded to Protestee de Lima; and
2. Applicable jurisprudence dictates that this Tribunal uphold the superiority of substantial justice over procedural rules and, accordingly, desist from dismissing this protest simply because Protestant Tolentino was unable to file his Preliminary Conference Brief on 27 September 2016.

Tolentino argued that Protestee de Lima did not appear at the scheduled Preliminary Conference on 06 October 2016. Rather, her counsel merely stated that she executed a Special Power of Attorney – a copy of which was not even shown to, much less served on, Protestant Tolentino – supposedly authorizing him to appear on her behalf. He therefore submitted that Protestee de Lima's failure to personally appear at the Preliminary Conference constituted a blatant violation of Rule 41 of the SET Rules which states, "*Rule 41. It shall be the duty of the parties and their respective counsel to appear before the Tribunal in person at the preliminary conference.*"

Protestant Tolentino likewise rebutted the claim of Protestee de Lima that the *Cabrera* case should apply in this case and not the later case of *Gravides*, which according to Protestant, relaxed the application of the very same rules considering the paramount interest of determining the true will of the electorate. He continued his discussion by citing the case of *Ramos vs. Spouses Alvendia, et. al.*,¹³ wherein the Supreme Court held:

"The phrase 'in the interest of substantial justice' is not, of course, a magic wand that would automatically compel the suspension of procedural rules. But exigencies and situations might occasionally demand flexibility in their application. Considering the circumstances attendant to the present case which are reflected above, substantial justice can be best served if both parties are given full opportunity to ventilate their respective claims in a full-blown trial."

Protestant Tolentino also mentioned the case of *Bank of the Philippine Islands vs. Dando*,¹⁴ wherein the Supreme Court said:

"xxx xxx xxx"

"Accordingly, the ends of justice and fairness would be best served if the parties to Civil Case No. 03-281 are given the full opportunity to thresh out the real issues and litigate their claims in a full-blown trial. Besides, Dando would not be prejudiced should the RTC proceed with the hearing of Civil Case No. 03-281, as he

¹³ G.R. No. 176706, 08 October 2008

¹⁴ G.R. No. 177456, 04 September 2009.

is not stripped of any affirmative defenses nor deprived of due process of law.”

As opposed to BPI, Protestant Tolentino claimed that he had presented valid reasons for not being able to timely file his Preliminary Conference Brief. Further, similar with BPI, Protestant did not commit any other procedural lapse and had not shown any intent to delay the disposition of this case. In addition, Protestee de Lima would not be prejudiced if this Honorable Tribunal should proceed with the hearing of this case.

Contrary to his claim, the Tribunal considers that the successive motions filed by counsel for Protestant Tolentino after the issuance of SET Resolution No. 16-08 dated 08 September 2016 and immediately before the deadline for the submission of Preliminary Conference Brief on 27 September 2016 were calculated moves and clear indications of his intent to delay the proceedings.

Records show that counsel for Protestant Tolentino filed on 21 September 2016 a *Motion to Expunge (Protestee's Verified Answer to the Amended Election Protest dated 14 August 2016)* and on the following day, 22 September 2016, an *Urgent Motion to Cancel Preliminary Conference and Suspend for Filing Preliminary Conference Brief*.

Protestee de Lima's *Verified Answer to the Amended Election Protest* was filed on 15 August 2016 and counsel for Protestant Tolentino received a copy of said pleading on the same day. If there were really an issue regarding Protestee de Lima's *Amended Answer*, counsel for Protestant Tolentino could have raised it at the soonest possible opportunity. Curiously, it took counsel for Protestant more than one month to file his *Motion to Expunge*, the filing thereof was made long after the issuance of SET Resolution No. 16-08 and a few days before the deadline for the filing of the parties' Preliminary Conference Briefs.

If it were really true that counsel for Protestant Tolentino did not have the slightest intention to delay the proceedings, he could have just filed his *Motion to Expunge*; proceeded with the filing of the required Brief on or before the 27

September 2016 deadline; and attended the Preliminary Conference on 06 October 2016.

SET Resolution 16-08 dated 08 September 2016 is a mandatory order for the parties to submit their respective Preliminary Conference Briefs not later than 27 September 2016 and to appear before the Tribunal during the scheduled Preliminary Conference on 06 October 2016. The mandatory nature of the said Order was made evident by the fact that it carried with it the penalty of dismissal of the protest in case of non-compliance by the protestant and the presentation of evidence *ex parte* by the protestant in case of non-compliance by the protestee.

As enunciated by the Supreme Court in the case of *Cabrera vs. COMELEC*:¹⁵

"These Rules were purposely adopted to provide an expeditious and inexpensive procedure for the just determination of election cases before the courts. Thus, we emphasize that the preliminary conference and its governing rules are not mere technicalities which the parties may blithely ignore or trifle with. They are tools meant to expedite the disposition of election cases and MUST, PERFORCE, BE OBEYED." (Emphasis and underlining supplied)

Granting for the sake of argument that Protestant indeed filed his Preliminary Conference Brief on 06 October 2016, which was the scheduled date of the Preliminary Conference, and that he was then ready for the conduct of the Preliminary Conference, still, Protestant failed to comply with the mandate of Rule 42 of the SET Rules, which requires the following:

"Rule 42. Preliminary Conference Brief. -- Not later than five (5) working days before the preliminary conference, the parties shall file with the Tribunal in fifteen (15) legible copies and serve on the adverse party or parties, both through personal service, a Preliminary Conference Brief, xxx" (emphasis supplied)

¹⁵ *Supra*.

