

Republic of the Philippines  
Presidential Electoral Tribunal  
Manila

NOTICE

Sirs/Mesdames:

Please take notice that the Tribunal issued a Resolution dated **JULY 2, 2019**, which reads as follows:

**“PET Case No. 005 - FERDINAND “BONGBONG” R. MARCOS, JR., protestant, versus MARIA LEONOR “LENI DAANG MATUWID” G. ROBREDO, protestee.**

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RESOLUTION

For the Tribunal’s resolution are protestant’s *Extremely Urgent Manifestation of Grave Concern with Omnibus Motion*<sup>1</sup> (Omnibus Motion) dated December 10, 2018, *Consolidated Reply with Urgent Motion to Resolve Protestant’s Omnibus Motion*<sup>2</sup> dated March 22, 2019 (Reply with Motion) and protestee’s *Urgent Motion to Immediately Resolve all Pending Incidents*<sup>3</sup> dated June 11, 2019 (protestee’s Motion).

***Protestant’s Omnibus Motion and Reply with Motion***

In his Omnibus Motion, protestant alleges that an election protest was filed by Abdusakur M. Tan (Tan) against Mujiv S. Hataman before the Commission on Elections (COMELEC) docketed as EPC Case No. 2016-37. Protestant avers that Tan informed him that the Voter’s Identification Division (VID) of the COMELEC-Election Records and Statistics Department (ERSD) conducted a technical examination of the signatures and thumbprints appearing in the Voter’s Registration Records (VRRs) and compared them to those in the Election Day Computerized Voter’s Lists (EDCVLs) of five hundred eight (508) established precincts in Lanao del Sur, Basilan, and Maguindanao, the same provinces in protestant’s third cause of action.<sup>4</sup>

Purportedly, the technical examination revealed that forty thousand five hundred twenty-eight (40,528) signatures and three thousand two

<sup>1</sup> Rollo (Vol. XLV), pp. 36231-36239.

<sup>2</sup> Rollo (Vol. XLVII), no pagination.

<sup>3</sup> Id., no pagination.

<sup>4</sup> Rollo (Vol. XLV), pp. 36232-36234.



hundred ninety-five (3,295) thumbprints in the five hundred eight (508) established precincts did not match the original and genuine signatures and thumbprints in the VRRs in the three provinces. Consequently, the VID of the COMELEC-ERSD concluded that the “2016 National, Local, and ARMM [e]lections [were] marked with different forms of election fraud such as massive substituted voting.”<sup>5</sup>

Thus, the Omnibus Motion seeks the following reliefs from the Tribunal:

[1.] To issue a *subpoena duces tecum* to the [VID] of the COMELEC-ERSD to produce and submit the Dactyloscopic and Questioned Document Reports dated [June 5, 2018] and such other relevant documents involving the technical examination conducted on the [VRRs] as against the EDCVLs of *Five Hundred Eight (508)* established precincts in the provinces of Lanao Del Sur, Maguindanao, and Basilan during the last [May 9, 2016] National and Local elections;

[2.] To investigate all the concerned Chairman and Members of the [Board of Election Inspectors] who served in the provinces of Lanao Del Sur, Maguindanao, and Basilan during the last [May 9, 2016] National and Local elections to determine their involvement and participation concerning the incidence of substituted-voting in said provinces; and

[3.] To immediately direct the [VID] of the COMELEC-ERSD to conduct a technical examination on the signatures and/or thumbprints appearing on the VRRs and EDCVLs of the entire *Two Thousand Seven Hundred Fifty-Six (2,756)* protested clustered precincts of Lanao Del Sur, Maguindanao, and Basilan in connection with the last [May 9, 2016] National and Local elections.<sup>6</sup>

In a Resolution<sup>7</sup> dated January 8, 2019, the Tribunal directed the protestee and the COMELEC to comment on protestant’s Omnibus Motion.

Protestee filed a *Counter-Manifestation with Comment and Opposition (on the Extremely Urgent Manifestation of Grave Concern with Omnibus Motion dated 10 December 2018)*<sup>8</sup> dated January 14, 2019. Protestee avers that the technical examination cannot proceed as Lanao del Sur, Basilan, and Maguindanao are not included in protestant’s pilot provinces which are Camarines Sur, Negros Oriental, and Iloilo. According to protestee, to grant the technical examination would be tantamount to allowing protestant to expand his pilot provinces in contravention of Rule 65 of the 2010 Rules of the Presidential Electoral Tribunal (2010 PET Rules). As protestant has yet to prove any substantial recovery in the pilot provinces, it would be premature to proceed with the technical examination.<sup>9</sup>

<sup>5</sup> Id. at 36233. Emphasis and underscoring omitted.

<sup>6</sup> Id. at 36234.

<sup>7</sup> *Rollo* (Vol. XLVI), p. 36844.

<sup>8</sup> Id. at 36879-36898.

<sup>9</sup> Id. at 36885-36889.



For its part, the COMELEC, through its Law Department, filed a *Manifestation (In lieu of a Comment on Protestant Marcos' Extremely Urgent Manifestation of Grave Concern with Omnibus Motion)*<sup>10</sup> dated February 9, 2019. The COMELEC confirmed that EPC Case No. 2016-37 is pending before the Commission's Second Division; thus, the same is covered by the *sub judice* rule which restricts disclosures pertaining to ongoing judicial proceedings.<sup>11</sup>

In his Reply with Motion, protestant countered that protestee's argument is misleading because the former's second and third causes of action are separate, distinct, and independent from one another. The second cause of action is for judicial revision and recount of ballots, while the third cause of action is for the annulment of election results for Vice President in the provinces of Lanao del Sur, Basilan, and Maguindanao. Protestant argues that the foregoing provinces are necessarily excluded from the coverage of the pilot protested provinces as mandated by Rule 65 of the 2010 PET Rules because they do not involve judicial revision, recount, or correction of manifest errors.<sup>12</sup>

On the matter of the *sub judice* rule raised by the COMELEC, protestant assails the application of the rule as he claims that the disclosure will be limited to the Tribunal and the parties in the instant election protest.<sup>13</sup>

The Tribunal believes, and so holds, that protestant's motions with respect to the conduct of technical examination on his third cause of action are premature because the proceedings under Rule 65 of the 2010 PET Rules have not been concluded. To recall, protestant chose three pilot provinces and prayed for the judicial recount and revision of the ballots. As both protestant and protestee are aware, the Tribunal is currently in the process of appreciation of more than two million revised ballots, which includes ruling on the objections and claims thereto.

Rule 65 of the 2010 PET Rules refers to the initial determination of the grounds for an election protest before the Tribunal. The rule states:

#### INITIAL DETERMINATION OF THE GROUNDS FOR PROTEST

**RULE 65.** *Dismissal; when proper.* — The Tribunal may require the protestant or counter-protestant to indicate, within a fixed period, the province or provinces numbering not more than three, best exemplifying the frauds or irregularities alleged in his petition; and the revision of ballots and reception of evidence will begin with

<sup>10</sup> *Rollo* (Vol. XLVII), pp. 37676-37682.

<sup>11</sup> *Id.* at 37677-37678.

<sup>12</sup> Consolidated Reply, pp. 4-5; *rollo* (Vol. XLVII), no pagination.

<sup>13</sup> *Id.* at 7; *id.*



such provinces. If upon examination of such ballots and proof, and after making reasonable allowances, the Tribunal is convinced that, taking all circumstances into account, the protestant or counter-protestant will most probably fail to make out his case, the protest may forthwith be dismissed, without further consideration of the other provinces mentioned in the protest.

The preceding paragraph shall also apply when the election protest involves correction of manifest errors.

Protestant designated Camarines Sur, Negros Oriental, and Iloilo as his pilot provinces which, under the language of Rule 65, best exemplify the frauds or irregularities alleged in the election protest. As it stands, therefore, it would be premature to conduct a technical examination of voters' records and election documents from provinces other than those designated as pilot provinces in the Protest.

The Tribunal reiterates its previous ruling in its Resolution dated August 29, 2017<sup>14</sup> on the deferment of the technical examination. Rule 65 allows the Tribunal to conduct revision of ballots and reception of evidence on the designated pilot provinces first, and on such basis, dismiss the protest if it finds that the protestant will most probably fail to make out his case.<sup>15</sup> Practical and logistical considerations also restrict the Tribunal in proceeding with the technical examination due to its limited resources and manpower, as the Tribunal is faced with the gargantuan task of determining the validity of the votes in more than two million ballots from the pilot provinces.

Given the foregoing, the Court resolves to defer action on the matter of technical examination until such time that an initial determination has been made on the protest, based on the explicit mandate of Rule 65 of the 2010 PET Rules. On that note, there is no need to discuss at this time the issue of the application of the *sub judice* rule to this case.

### ***Protestee's Motion***

In protestee's Motion, she prays that the Tribunal immediately resolve all pending incidents after the revision and recount of the ballots. Protestee presented her own computation of the total national votes for protestant and protestee after "revision, recount, and re-appreciation," claiming that her victory as Vice President has been confirmed. In effect, what protestee seeks is the immediate resolution of the instant protest.

Protestee's Motion is likewise premature.

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<sup>14</sup> *Rollo* (Vol. XLVI), pp. 36991-37024.

<sup>15</sup> 2010 PET RULES, Rule 65.



As mentioned above, the Tribunal has yet to complete the proceedings following Rule 65 of the 2010 PET Rules, which entail judicial recount, revision, and appreciation of the votes cast in protestant's pilot provinces. The figures submitted by protestee are merely speculative. In arriving at the figures, protestee presumes that all her claims will be admitted by the Tribunal. This premise is fundamentally flawed as the Tribunal is still in the process of appreciation of the revised ballots and ruling on the respective objections and claims made by the parties thereon. The Tribunal's final tally of votes after recount and appreciation has yet to be completed and released. Thus, the Court resolves to deny protestee's Motion on the ground of prematurity.

### *Other pending incidents*

#### *Lack of ballot images*

In a Resolution<sup>16</sup> dated February 12, 2019, the Tribunal directed the COMELEC to explain why there were no ballot images for Clustered Precinct No. (CP) 34, in Barangay Niño Jesus, Bato, Camarines Sur, CP 13, Barangay Haring, Canaman, Camarines Sur, and CP 27, Barangay Cubay, San Joaquin, Iloilo.<sup>17</sup>

The COMELEC submitted its Compliance<sup>18</sup> dated March 13, 2019 and appended thereto a Memorandum<sup>19</sup> dated March 11, 2019 from ERSD Director Ester L. Villaflor-Roxas, explaining that the Board of Election Inspectors (BEI) of the said CPs had performed the "REZERO" function of the Vote Counting Machines (VCMs) which erased all the reports and ballots therein, except for the audit logs.

Notably, however, the COMELEC failed to explain why the concerned BEI performed the REZERO function of the VCMs and if this is in accordance with standard procedure. More importantly, COMELEC failed to inform the Tribunal if the subject ballot images were deleted permanently and whether they may still be recovered and if not so, if there are accurate and reliable substitutes which the Tribunal may use in their stead in connection with the instant Protest.

In the course of the appreciation process, the Tribunal also discovered that there were no ballot images in CP 118, Tabuco, Naga City, Camarines Sur and CP 68, Santiago, Iriga City, Camarines Sur.

Hence, the Tribunal hereby directs the COMELEC and the BEI of the

<sup>16</sup> *Rollo* (Vol. XLVII), pp. 37777-37783.

<sup>17</sup> *Id.* at 37777-37778.

<sup>18</sup> *Id.* at 37901-37905.

<sup>19</sup> *Id.* at 37906.



concerned CPs to explain further the circumstances surrounding the lack of ballot images.

***Protestant's allegations on the sequencing of the ballot images***

Protestant filed a *Manifestation of Appreciation for Sustaining Rule 43(L) of the 2010 [PET] Rules with Omnibus Motion for Partial Reconsideration and/or Clarification of PET Resolution dated 18 September 2018 x x x and for Partial Reconsideration of the Denial of Protestant's Strong Opposition (on the Use of Decrypted Ballot Images for the Judicial Revision and Recount of Ballots for the Pilot Protested Precincts x x x)*<sup>20</sup> dated October 5, 2018. Protestee filed her *Comment and Opposition*<sup>21</sup> dated November 16, 2018 and the COMELEC filed its *Comment*<sup>22</sup> dated November 27, 2018. Protestant filed a *Consolidated Reply*<sup>23</sup> dated December 20, 2018.

In his *Consolidated Reply*, protestant reiterates his opposition to the use of ballot images in the revision proceedings as they are allegedly not faithful images of the original paper ballots due to the presence of squares on the shaded ovals. Additionally, protestant alleges that the sequencing of the decrypted ballot images is erroneous as they are not in chronological order. Protestant further avers that in CP 19 of Gata, Caramoan, Camarines Sur, there are excess ballot images (pars. 39-68 of the *Consolidated Reply*). Protestant thus suggests that the non-chronological sequencing of the ballot images is an indication that pre-shaded ballots were fed into the VCMs.<sup>24</sup>

This matter raised by the protestant did not affect the revision proceedings as the same was primarily for the purpose of segregation of the ballots, and for the parties to register their claims and objections. As the Tribunal is currently in the process of appreciation of the ballots, starting with the paper ballots, and ending with the decrypted ballot images — following the order during the revision proceedings — then it is now time for the Tribunal to be clarified on the matters that protestant raised in his *Consolidated Reply*. Accordingly, the COMELEC is ordered to file a *Comment* on protestant's *Consolidated Reply*, particularly on the issue of the non-chronological sequencing of the ballot images raised by protestant as well as the purported excess ballot images in CP 19 of Gata, Caramoan, Camarines Sur.

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<sup>20</sup> *Rollo* (Vol. XLII), pp. 33056-33071.

<sup>21</sup> *Rollo* (Vol. XLIII), pp. 33819-33834.

<sup>22</sup> *Rollo* (Vol. XLV), pp. 35887-35894.

<sup>23</sup> *Rollo* (Vol. XLVI), pp. 36247-36275.

<sup>24</sup> *Id.* at 36254-36271.



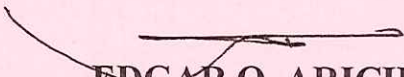
July 2, 2019

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

- a. **DEFER ACTION** on protestant's *Extremely Urgent Manifestation of Grave Concern with Omnibus Motion* dated December 10, 2018 and *Consolidated Reply with Urgent Motion to Resolve Protestant's Omnibus Motion* dated March 22, 2019 until after the Tribunal's initial determination of the grounds for the Protest under Rule 65 of the 2010 PET Rules;
- b. **DENY** protestee's *Urgent Motion to Immediately Resolve all Pending Incidents* dated June 11, 2019;
- c. **DIRECT** the COMELEC and the Board of Election Inspectors of Clustered Precinct No. 34, in Barangay Niño Jesus, Bato, Camarines Sur, Clustered Precinct No. 13, Barangay Haring, Canaman, Camarines Sur, Clustered Precinct No. 27, Barangay Cubay, San Joaquin, Iloilo, Clustered Precinct No. 118, Tabuco, Naga City, Camarines Sur and Clustered Precinct No. 68, Santiago, Iriga City, Camarines Sur to explain and clarify, within a non-extendible period of ten (10) days from notice, the circumstances regarding the absence of ballot images in the clustered precincts in accordance with this *Resolution*; and
- d. **DIRECT** the COMELEC to submit a **COMMENT** on protestant's *Consolidated Reply*, particularly, on the non-chronological sequencing of the ballot images and the alleged excess ballot images within a non-extendible period of ten (10) days from notice."

Gesmundo, J., on official leave. (1)

Very truly yours,

  
**EDGAR O. ARICHETA**  
Clerk of the Tribunal *mehmc*

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**Board of Election Inspectors of CP No. 27, in Brgy. Cubay, San Joaquin, Iloilo** (reg)  
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San Joaquin, Iloilo

**Board of Election Inspectors of CP No. 118, in Tabuco, Naga City, Camarines Sur** (reg)  
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**Board of Election Inspectors of CP No. 68, in Santiago, Iriga City, Camarines Sur** (reg)  
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