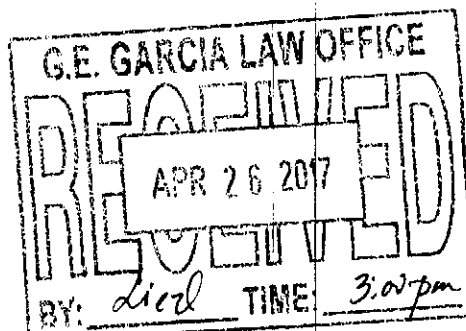




Republic of the Philippines  
 Presidential Electoral Tribunal  
 Baguio City



**NOTICE**

Sirs/Mesdames:

*Please take notice that the Tribunal issued a Resolution dated APRIL 25, 2017, 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**

In the Resolution dated March 21, 2017, the Tribunal required the parties to pay their respective cash deposits in two installments, as follows: (a) for the Protestant - ₱36,023,000.00 on or before April 14, 2017, and ₱30,000,000.00 on or before July 14, 2017; and (b) for the Protestee/Counter-Protestant - ₱8,000,000.00 on or before April 14, 2017, and ₱7,639,000.00 on or before July 14, 2017.

On April 12, 2017, Protestee filed a “Manifestation With Urgent Ex-Parte Omnibus Motion (1) For Clarification; and (2) Reconsideration of the Resolution dated 21 March 2017” (Manifestation with Urgent Omnibus Motion), praying that the Tribunal issue a Resolution (1) clarifying the cash deposit to be paid by the protestant in that he should not only be asked to make a cash deposit for the 39,221 clustered precincts but for the 92,509 clustered precincts covered by the Precautionary Protection Order (PPO); (2) directing the COMELEC to submit the itemized cost of the fees due to be paid to Smartmatic for the delay in the return of the 92,509 VCMs used in the May 2016 elections which are subject of the Protest and the PPO; and (3) holding in abeyance the payment of her cash deposit for the 8,402 counter-protested precincts until such time that the recount and revision of the protestant’s 36,465 contested clustered precincts have been terminated.

Protestee contends that since the PPO covers not just the 36,465 contested clustered precincts but all clustered precincts that functioned during the May 2016 elections; and considering further that the Protestant seeks the forensic and technical examination of the VCMs, CCS, SD cards

*Alfonso*

and other data storage devices, Protestant should be required to pay additional cash deposit for all the other clustered precincts covered by the PPO. As for her cash deposit, Protestee claims that payment thereof is premature because it is only after all the protested clustered precincts have been recounted and revised will the counter-protested clustered precincts be subjected to recount and revision. Protestee further avers that her Motion for Reconsideration of the Tribunal's Resolution finding the Protest sufficient in form and substance is still pending consideration and any favorable action on any of the reliefs prayed for therein will affect the total number of clustered precincts subject of the instant Protest.

On April 20, 2017, Protestant filed an "Omnibus Motion (i. to Dismiss the Counter-Protest and ii. to Reiterate the Immediate Setting of the Preliminary Conference)" of even date (Omnibus Motion). In his Omnibus Motion, Protestant cited Protestee's failure to pay the required deposit within the prescribed period as a ground for the dismissal of the Counter-Protest.

Protestee's Manifestation with Urgent Omnibus Motion is **PARTLY GRANTED** and the COMELEC is **DIRECTED** to comply with the Tribunal's Resolution dated November 8, 2016 on the itemized cost it may be required to pay under the Automated Election System (AES) Contract, and whether Smartmatic-TIM, Inc. (Smartmatic) has made any communication to it in enforcing Article 6.9 of the AES Contract.

However, Protestee's motion for reconsideration of the Tribunal's March 21, 2017 Resolution is **DENIED**.

The Tribunal's appreciation of the allegations in the Protest is that Protestant prays for the retrieval of the ballot boxes and election paraphernalia only from 39,221 clustered precincts and not from all the 92,509 clustered precincts. The computed cash deposit was therefore correctly based on 39,221 clustered precincts. While the PPO covered the ballot boxes and election paraphernalia from 92,509 clustered precincts, the Protest did not pray for the retrieval of all these. Thus, the Tribunal cannot require the payment of the cash deposit based on the 92,509 clustered precincts unless the Protestant prays for the retrieval of all these ballot boxes and election paraphernalia.

Further, Protestee should have paid the cash deposit as required under the Tribunal's March 21, 2017 Resolution. Rule 34 of the 2010 PET Rules states the effect of the failure to pay the required cash deposit, thus:

Rule 34. *Effect of failure to make a cash deposit.* - If a party fails to make the cash deposits or additional deposits herein required within the prescribed time limit, the Tribunal **may dismiss the protest, or counter-protest, or take such action as it may deem equitable under the circumstances.** (Emphasis supplied)

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The use of the word "may" in the foregoing implies that the dismissal of the Counter-Protest for failure to make the cash deposit is discretionary on the part of the Tribunal. To be sure, the same provision authorizes the Tribunal to take any action other than dismissal "as it may deem equitable under the circumstances." And considering Protestee's willingness to pay the cash deposit, Protestee is thus directed to **PAY** the first installment of the cash deposit as stated in the Resolution dated March 21, 2017 within a non-extendible period of **FIVE (5) DAYS** from notice. Otherwise, the Tribunal will be constrained to dismiss the Counter-Protest.

The cash deposit as computed in the Tribunal's March 21, 2017 Resolution was based on the allegations in the Protest and Counter-Protest. The amounts therein are mere deposits; they do not foreclose the fact that the Tribunal may require further cash deposits should circumstances warrant. In the same vein, should the deposits be not depleted, then any unutilized cash deposit would be returned.

Proceeding therefrom, the Tribunal deems it more equitable to defer action on the Protestant's motion to dismiss the Counter-Protest as stated in his Omnibus Motion while awaiting Protestee's compliance with this Resolution.

As to Protestant's motion for the immediate setting of the Preliminary Conference, the Tribunal **GRANTS** the motion, **WITHOUT PREJUDICE** to the Tribunal's resolution of all remaining pending incidents.

Under the 2010 PET Rules, a preliminary conference shall be set after the filing of the last pleading for purposes of simplifying the proceedings and ensuring the prompt disposition of the election protest.<sup>1</sup> The 2010 PET Rules also mandate, however, that the rules shall be liberally construed to achieve a just, expeditious, and inexpensive determination and disposition of every contest before the Tribunal.<sup>2</sup>

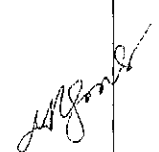
To such end, and in the interest of judicial efficiency, the Tribunal has likewise deemed it proper to conduct the preliminary conference of both protests jointly. It would be more in accord with the 2010 PET Rules that the preliminary conference should already include all the issues not only of the Protest, but of the Counter-Protest as well. To hold one preliminary conference for the Protest and the Counter-Protest will both be expeditious and inexpensive.

WHEREFORE, the Tribunal resolves to:

- (a) **DIRECT** COMELEC to comply with the Tribunal's Resolution dated November 8, 2016 on the itemized cost it may be

<sup>1</sup> Rule 29, 2010 PET Rules.

<sup>2</sup> Rule 3, 2010 PET Rules.



April 25, 2017

required to pay under the Automated Election System (AES) Contract, and whether Smartmatic-TIM, Inc. has made any communication to it in enforcing Article 6.9 of the AES Contract;


- (b) **DENY** Protestee's motion for reconsideration of the Resolution dated March 21, 2017;
- (c) **DIRECT** Protestee to **PAY** the first installment of the cash deposit as stated in the Resolution dated March 21, 2017 within a non-extendible period of **FIVE (5) DAYS** from notice;
- (d) **DEFER ACTION** on Protestant's motion to dismiss as stated in his "Omnibus Motion (i. to Dismiss the Counter-Protest and ii. to Reiterate the Immediate Setting of the Preliminary Conference)" dated April 19, 2017, until Protestee's compliance in (c); and,
- (e) **GRANT** Protestant's motion for the setting of the preliminary conference and **SET** the case for Preliminary Conference on June 21, 2017, at 2 p.m., **WITHOUT PREJUDICE** to the Tribunal's resolution of all remaining pending incidents.

The Tribunal further resolves to require both parties to file their respective Preliminary Conference Briefs, which shall contain the following:

- (1) the possibility of obtaining stipulations or admissions of facts and documents to avoid unnecessary proof;
- (2) the simplification of the issues;
- (3) the limitation of the number of witnesses;
- (4) the most expeditious manner for the retrieval of ballot boxes containing the ballots, election returns, certificates of canvass and other election documents involved in the election protest and counter-protest; and
- (5) such other matters as may aid in the prompt disposition of the election protest and counter-protest.

Both parties shall file their Preliminary Conference Briefs with the Tribunal and serve the same on the adverse party at least five (5) days before such date, pursuant to Rule 29 of the 2010 PET Rules.

The Tribunal further resolves to **NOTE** Protestant's Manifestation and Compliance dated April 18, 2017 stating that in compliance with the Tribunal's Resolution dated March 21, 2017, Protestant deposited on April 17, 2017 the amount of ₱36,023,000.00 in the form of cashier's check with



April 25, 2017

Check No. 4920007045 before the Cash Collection and Disbursement Division of the Tribunal.”

Very truly yours,

**FELIPA B. ANAMA**

Clerk of the Tribunal

By:

*Anna-Li R. Papa-Gombio*  
**ANNA-LI R. PAPA-GOMBIO**  
Deputy Clerk of the Tribunal *anel*

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Executive Director  
Commissioner Robert S. Lim (x)  
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