

REPUBLIC OF THE PHILIPPINES
PRESIDENTIAL ELECTORAL TRIBUNAL
Manila

FERDINAND "BONGBONG" R.
MARCOS,

Protestant,

-versus -

PET Case No. 005
For: Election Protest
Vice-President

MARIA LEONOR "LENI DAANG
MATUWID" G. ROBREDO,

Protestee.

X -----X

COMPLIANCE
(TO THE RESOLUTION DATED 29 SEPTEMBER 2020)

COMES NOW, the Commission on Elections (COMELEC), through the undersigned counsel of its Law Department, and unto this Honorable Tribunal, most respectfully states:

1. On 05 October 2020, the COMELEC, through the Office of the Clerk of the Commission, received the Notice of Resolution dated 29 September 2020 of the Honorable Presidential Electoral Tribunal (PET).
2. Said Notice directed the COMELEC as follows:

*"The Commission on Elections is directed to **REPORT** to this Tribunal where petitions for failure of elections were filed in the provinces of Maguindanao, Lanao del Sur, and Basilan during the 2016 National and Local Elections. The Commission on Elections is ordered to provide this Tribunal what its corresponding resolution was - that is, whether these petitions were granted or denied. If failure of elections was declared and special elections conducted, the Commission on Elections is further ordered to provide the results of the special elections.*

*The Commission on Elections is directed to **COMMENT** within a non-extendible period of twenty (20) working days from receipt of a copy of this Resolution:*

On the following issues related to the Third Cause of Action of annulment of elections on the ground of terrorism, intimidation, harassment of voters, and pre-shading of ballots in the provinces of Maguindanao, Lanao del Sur, and Basilan, specifically:

- A. Whether or not there is merit to the allegation that the Voters Identification Division of the COMELEC-ERSD concluded that the "2016 National, Local and ARMM Elections has (sic) been marked with different forms of election fraud such as massive substituted voting"
- B. Whether or not the results in the revision and appreciation of votes with respect to the Protestant's second cause of action moots or renders unnecessary the consideration of the Protestant's Third Cause of Action;
- C. Whether or not the Presidential Electoral Tribunal has the competence to resolve the Third Cause of Action;
- D. Assuming that the Presidential Electoral Tribunal has the competence to resolve the Third Cause of Action which is not mooted by the results of its findings with respect to the Second Cause of Action:
 - i. What are the filing rules and requirements that a party must observe if he or she seeks the relief of annulment of elections before the Presidential Electoral Tribunal?
 - ii. What is the threshold of evidence that is required to prove failure or annulment of elections?
 - iii. What percentage of votes/precincts needs to be proven as having been affected by the grounds for failure or annulment of elections?
 - iv. Will the threshold apply per province or to all three (3) provinces? Can there be failure or annulment in some but not all three (3) provinces?
 - v. Should a similar pilot testing rule be equally applied in annulment of elections cases?
- E. Assuming that the Presidential Electoral Tribunal is convinced that there is basis to find for the Protestant in the Third Cause of Action:
 - i. Will this mean that the elections for all the elective positions in the ballot be nullified with all its attendant legal consequences?
 - ii. Can our declaration as the Presidential Electoral Tribunal or the Supreme Court be a bar for any question relative to any present and future electoral protest involving the same area and for any position?
 - iii. Will it be necessary to call for special elections for the position of Vice President? If so, who has the competence to call for such elections?
 - iv. Will this mean "recovery" for the Protestant under Rule 65, which will, in turn, mean revision of all his contested precincts nationwide?
 - v. What will be the effect of the Tribunal's ruling on Protestant's Third Cause of Action on protestee's counter protest?

The Commission on Elections and the Office of the Solicitor General are also directed to **COMMENT** within a non-extendible period of twenty (20) working days on the following issues:

I. *Whether or not the Presidential Electoral Tribunal is empowered by the Constitution to declare:*

- a) annulment of elections without special elections; and*
- b) failure of elections and then order the conduct of special elections.*

II. *Whether or not the Presidential Electoral Tribunal's declaration of failure of elections and then ordering of special elections, will infringe upon the Commission on Election's mandate and powers provided for in Article IX (C) (Sec. 2) of the Constitution, which reads:*

Sec. 2. The Commission on Elections shall exercise the following powers and functions:

- (1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.*
- (2) Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city official, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.*

Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable.

- (3) Decide, except those involving the right to vote, all questions affecting elections, including determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters.*
- (4) Deputize, with the concurrence of the President, law enforcement agencies and instrumentalities of the Government, including the Armed Forces of the Philippines, for the exclusive purpose of ensuring free, orderly, honest, peaceful, and credible elections.*
- (5) Register, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government; and accredit citizens' arms of the Commission on Elections. Religious denominations and sects shall not be registered. Those which seek to achieve their goals through violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration.*

Financial contributions from foreign governments and their agencies to political parties, organizations, coalitions, or candidates related to elections, constitute interference in national affairs, and, when accepted, shall be an additional ground for the cancellation of

their registration with the Commission, in addition to other penalties that may be prescribed by law.

- (6) File, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices.*
- (7) Recommend to the Congress effective measures to minimize election spending, including limitation of places where propaganda materials shall be posted, and to prevent and penalize all forms of election frauds, offenses, malpractices, and nuisance candidates.*
- (8) Recommend to the President the removal of any officer or employee it has deputed, or the imposition of any other disciplinary action, for violation or disregard of, or disobedience to, its directive, order, or decision.*
- (9) Submit to the President and the Congress, a comprehensive report on the conduct of each election, plebiscite, initiative, referendum, or recall."*

3. This Compliance was due on 02 November 2020. However, considering that 02 November 2020 was declared as non-working holiday, the submission is due on the next working day, 03 November 2020.

4. Hence, this Compliance is filed on time.

**I. REPORT REGARDING
PETITIONS FOR FAILURE OF
ELECTIONS IN THE
PROVINCES OF
MAGUINDANAO, LANA DEL
SUR, AND BASILAN FILED
BEFORE THE COMMISSION
ON ELECTIONS RELATIVE TO
THE 2016 NATIONAL AND
LOCAL ELECTIONS (2016 NLE)
AND THE CORRESPONDING
RESOLUTIONS THEREOF**

5. Based on records of the Office of the Clerk of the Commission¹, the following are the Cases for Petitions for Declaration of Failure of

¹Memorandum No. 20-163 dated 06 October 2020 of the Office of the Clerk of the Commission to the Law Department is hereto attached as Annex "A" and made an integral part hereof.

Elections filed relative to the Provinces of Lanao del Sur, Basilan, and Maguindanao in connection with the 2016 NLE:

MUN/ CITY/ PROVINCE	CASE/ DOCKET NOS.	CASE TITLE	POSITION AND DATE RECEIVED	CASE STATUS/ RESOLUTION
Marawi City	SPA 16- 111 (FE) <i>En Banc</i>	In the matter of the Petition to Declare Failure of Elections in Marawi City	M.R. No. 16-0379 dated May 16, 2016	DISMISSED. August 16, 2016 With Certificate of Finality issued by the COMELEC En Banc on February 15, 2017
Northern Kabuntalan, Maguindanao	SPA 16- 114 (FE) <i>En Banc</i>	Magdon U. Dingalen vs. Mohidin S. Lauban and The MBOC, Northern Kabuntalan, Maguindanao For Annulment of Elections and/or Declaration of Failure of Elections and Annulment of Proclamation	Vice Mayor May 20, 2016	DISMISSED. January 15, 2018
Pagalungan, Maguindanao	SPA 16- 122 (FE) <i>En Banc</i>	Guimid P. Matalam and Arkan M. Matalam vs. Salik Mamasabulod, Abdillah Mamasabulod and Municipal Board of Canvasers (MBOC) of Pagalungan, Maguindanao For Annulment of Elections and/or Declaration of Failure of Elections and Annulment of Proclamation	Mayor and Vice Mayor May 23, 2016	DISMISSED. October 30, 2017 With Certificate of Finality issued by the COMELEC En Banc on December 8, 2017

Sultan Kudarat, Maguindanao	SPA 16-125 (FE) <i>En Banc</i>	In the matter of Petition for Annulment of Election Results and/or Declaration of Failure of Elections Ibrahim K. Ibrahim vs. Shameem B. Mastura	Mayor May 24, 2016	DISMISSED. November 17, 2016 With Certificate of Finality issued by the COMELEC En Banc on March 6, 2017
Marantao, Lanao del Sur	SPA 16-130 (FE) <i>En Banc</i>	In the matter of Declaring Failure of Elections in Barangays Bacong, Daana Ingud, Matampay, Poona Marantao, Kialdan, Lubo 1 and 2, Lumbac Kialdan, Mantapoli, Pantiamas, TucaKialdan and Punud Proper of the Municipality of Marantao, Lanao del Sur and to hold Special Elections or to Annul/Exclude Election Returns therein Samson U. Adiong	Municipal Mayor	DISMISSED. May 26, 2017 MR DENIED, August 8, 2017 With Certificate of Finality issued by the COMELEC En Banc on August 29, 2017
Marantao, Lanao del Sur	SPA 16-131 (FE) <i>En Banc</i>	In the matter of the Petition to Declare a Failure of Election in Clustered Precinct No. 0043A, 0044A, 0045A, 0045B, 0045C of Brgy. Lubo, 0047A, 0047B, 0048A, 0048B, of Brgy. Lumbac Kialdan, 0049A, 0050A, 0051A, 0052A, Brgy. Mantapoli, 0079A, 0080A, 0081A, 0082A, 0083A of Brgy. Tuca Kialdan; 0069A, 0070A, 0071A, 0071B of Brgy. Pantaimas; 0040A, 0041A, 0042A, 0042B of Brgy. Kialdan in the	June 20, 2016 Vice Mayor	DISMISSED. May 26, 2017 MR DENIED. August 8, 2017 With Certificate of Finality issued by the COMELEC En Banc on August 29, 2017

		<p>Municipality of Marantao, Province of Lanao del Sur</p> <p>Alimoden Guro Cornell</p> <p>vs.</p> <p>The Members of the BEI of Clustered Precinct Nos. Of Brgys. Mantapoli, Pantaimas, Lubo, Kialdan, Tuka Kialdan, Lumbac Kialdan; The MBOC of the Municipality of Marantao, Province of Lanao del Sur, Alahoding Maruhom, as the Vice Mayor, Proclaimed in the recently concluded May 09, 2016 National, Local and ARMM Elections</p>		
Datu Unsay, Maguindanao	<p>SPA 16-132 (FE)</p> <p>Formerly SPC 16-016</p> <p><i>En Banc</i></p>	<p>Monawara Ampatuan, Kamarudin Ibrahim, Abdul Hamid Lumena, Tato G. Abdulradzak, Macmod Ebrahim, Norodin Datuali, Mulba Ampakay, Zacaria Saway, Mohammad Unggala and Rocky Nacio, in their capacities as local candidates for the May 9, 2016 elections in Datu Unsay, Maguindanao</p> <p>vs.</p> <p>Reshal Ampatuan, Janine Mamalapat, Salahudin Tagadaya, Zuhari Guiapal, Wanay Dukay, Tho Pasawilan,</p>	<p>May 19, 2016</p> <p>August 2, 2016</p>	<p>DISMISSED for LACK OF MERIT.</p> <p>February 1, 2018</p> <p>With Certificate of Finality issued by the COMELEC En Banc on April 3, 2018</p>

		<p>Abdulrahim Abdullah, Ging Amman, Mohammad Shamron Sapalon, and Dor Engkel, in their capacities as proclaimed winning local candidates for the May 9, 2016 elections, and the MBOC, all for the Municipality of Datu Unsay, Maguindanao</p> <p>Petition for Annulment of Proclamation and/or Declaration of Failure of Elections</p>		
Sultan Sa Barongis, Maguindanao	SPA 16-135 (FE) <i>En Banc</i>	<p>Abubakar Katambak and Sukarno Badal</p> <p>vs.</p> <p>The MBOC of Sultan sa Barongis, Maguindanao, Ramdatu Angas, and Al-Fizzar Allandatu Angas</p> <p>Petition for Declaration of Nullity and/or Annulment of Proclamation and/or Declaration of Failure of Elections</p> <p>Formerly SPC 16-017</p>	May 9, 2016	<p>DISMISSED. November 8, 2016</p> <p>MR DENIED. May 17, 2017</p> <p>With Certificate of Finality issued by the COMELEC En Banc on June 22, 2017</p>

6. All the aforementioned cases were **DISMISSED** by the COMELEC *En Banc*; and except for SPA 16-114 (FE), all cases were issued their respective Certificates of Finality. Accordingly, **no special elections were held or conducted in the Provinces of Basilan, Lanao del Sur, and Maguindanao in connection with the 2016 NLE.**

II. ISSUES RELATED TO THE THIRD CAUSE OF ACTION OF ANNULMENT OF ELECTIONS ON THE GROUND OF

**TERRORISM, INTIMIDATION,
HARASSMENT OF VOTERS,
AND PRE-SHADING OF
BALLOTS IN THE PROVINCES
OF MAGUINADANA, LANA
DEL SUR, AND BASILAN**

7. A thorough reading of this Honorable Tribunal's Resolution dated 29 September 29, 2020 boils down to two (2) focal issues for COMELEC to comment, namely:

1. Whether or not the Presidential Electoral Tribunal is vested with jurisdiction to annul the results of the elections in an election protest case pending before it. This includes the following sub-issues:

A. Whether or not there is merit to the allegation that the Voters Identification Division of the COMELEC-ERSD concluded that the "2016 National, Local and ARMM Elections has (sic) been marked with different forms of election fraud such as massive substituted voting";

B. Whether or not the results in the revision and appreciation of votes with respect to the Protestant's second cause of action moots or renders unnecessary the consideration of the Protestant's Third Cause of Action;

C. Whether or not the Presidential Electoral Tribunal (P.E.T.) has the competence to resolve the Third Cause of Action;

D. Assuming that the Presidential Electoral Tribunal has the competence to resolve the Third Cause of Action which is not mooted by the results of its findings with respect to the Second Cause of Action:

i. What are the filing rules and requirements that a party must observe if he or she seeks the relief of annulment of elections before the Presidential Electoral Tribunal?

ii. What is the threshold of evidence that is required to prove failure or annulment of elections?

iii. What percentage of votes/precincts needs to be proven as having been affected by the grounds for failure or annulment of elections?

- iv. Will the threshold apply per province or to all three (3) provinces? Can there be failure or annulment in some but not all three (3) provinces?
 - v. Should a similar pilot testing rule be equally applied in annulment of elections cases?
- E. Assuming that the Presidential Electoral Tribunal is convinced that there is basis to find for the Protestant in the Third Cause of Action:
- i. Will this mean that the elections for all the elective positions in the ballot be nullified with all its attendant legal consequences?
 - ii. Can our declaration as the Presidential Electoral Tribunal or the Supreme Court be a bar for any question relative to any present and future electoral protest involving the same area and for any position?
 - iii. Will it be necessary to call for special elections for the position of Vice President? If so, who has the competence to call for such elections?
 - iv. Will this mean "recovery" for the Protestant under Rule 65, which will, in turn, mean revision of all his contested precincts nationwide?
 - v. What will be the effect of the Tribunal's ruling on Protestant's Third Cause of Action on protestee's counter protest?

And

2. Whether or not this Honorable Tribunal is empowered by the Constitution to declare annulment of elections without special elections and/or failure of elections and then order the conduct of special elections. This includes:

- A. Whether or not the Presidential Electoral Tribunal's declaration of failure of elections and then ordering of special elections, will infringe upon the Commission on Election's mandate and powers provided for in Article IX (C) (Sec. 2) of the Constitution.

III. JURISDICTION OF PET TO ANNUL THE RESULTS OF THE ELECTIONS IN AN ELECTION

**PROTEST CASE PENDING
BEFORE IT**

8. The powers and functions of the PET are expressly provided under the 1987 Constitution and under the 2010 Rules of Presidential Electoral Tribunal (A.M. No. 10-04-29-SC), to wit:

Article VII, Section 4 of the 1987 Constitution:

“The Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate rules for the purpose.”

2010 Rules of Presidential Electoral Tribunal (A.M. No. 10-04-29-SC):

“**Rule 7.***Express and implied powers.* – The Tribunal shall exercise all powers expressly vested in it by the Constitution or by law, and such other powers as may be inherent, necessary or incidental thereto for the accomplishment of its purposes and functions.”

Rule 8.*Inherent Powers.* – The Tribunal shall have the following inherent powers:

- (a) Preserve and enforce order in proceedings before it or before any of its Divisions or officials acting under its authority;
- (b) Administer or cause to be administered oaths in any contest before it, and in any other matter where it may be necessary in the exercise of its powers;
- (c) Compel the attendance of witnesses and the production of evidence in any contest before it;
- (d) Compel obedience to its decisions, resolutions, orders and processes;
- (e) Control its processes and amend its decisions, resolutions or orders to make them conformable to law and justice;
- (f) Authorize a copy of a lost or destroyed pleading or other paper to be filed and used instead of the original copy thereof, and to restore and supply deficiencies in its records and proceedings; and

(g) Promulgate its own rules of procedure and amend or revise the same"

Rule 13. Jurisdiction. The Tribunal shall be the sole judge of all contests relating to the election, returns and qualifications of the President or Vice-President of the Philippines.

9. We respectfully submit that the **FIRST ISSUE** has been comprehensively expounded by the Supreme Court in the case of *Harlin C. Abayon vs. House of Representatives Electoral Tribunal (HRET) and Raul A. Daza* (G.R. Nos. 222236 and 223032 promulgated on May 3, 2016) when it affirmed the power of the HRET to annul the results of an election as an **indispensable consequence or concomitant** to its constitutional mandate to decide all election contests involving the members of the House of Representatives. Thus, in that case, the Highest Tribunal lengthily explained:

"An Election Protest proposes to oust the winning candidate from office. It is strictly a contest between the defeated and the winning candidates, based on the grounds of electoral frauds or irregularities. It aims to determine who between them has actually obtained the majority of the legal votes cast and, therefore, entitled to hold the office.

The Court agrees that the power of the HRET to annul elections differ from the power granted to the COMELEC to declare failure of elections. The Constitution no less, grants the HRET with exclusive jurisdiction to decide all election contests involving the members of the House of Representatives, which necessarily includes those which raise the issue of fraud, terrorism or other irregularities committed before, during or after the elections. To deprive the HRET the prerogative to annul elections would undermine its constitutional fiat to decide election contests. The phrase "election, returns and qualifications" should be interpreted in its totality as referring to all matters affecting the validity of the contestee's title. Consequently, the annulment of election results is but a power concomitant to the HRET's constitutional mandate to determine the validity of the contestee's title.

The power granted to the HRET by the Constitution is intended to be as complete and unimpaired as if it had

remained originally in the legislature. Thus, the HRET, as the sole judge of all contests relating to the election, returns and qualifications of members of the House of Representatives, may annul election results if in its determination, fraud, terrorism or other electoral irregularities existed to warrant the annulment. Because in doing so, it is merely exercising its constitutional duty to ascertain who among the candidates received the majority of the valid votes cast.

To the Court's mind, the HRET had jurisdiction to determine whether there was terrorism in the contested precincts. In the event that the HRET would conclude that terrorism indeed existed in the said precincts, then it could annul the election results in the said precincts to the extent of deducting the votes received by Daza and Abayon in order to remain faithful to its constitutional mandate to determine who among the candidates received the majority of the valid votes cast.²(Emphasis Supplied)

10. **By way of analogy**, it can be inferred from the foregoing pronouncements that this Honorable Tribunal, as the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President also has the attendant power to annul the election results in order to give full effect to its constitutional duty to determine the winning candidate in the contested position. However, **as to give highest importance to the thousands of votes cast in the elections, the strictest standards and procedures of law must be set in place if the PET becomes strongly and positively convinced to annul the results of the elections.** In fact, in the same case, the Supreme Court, citing the Dissenting Opinion of then Associate Justice and now Chief Justice Diosdado M. Peralta, has unequivocally enumerated the requisites for the “drastic” action of nullifying the election, to wit:

There are two (2) indispensable requisites that must concur in order to justify the drastic action of nullifying the election:

- (1) The illegality of the ballots must affect more than fifty percent (50%) of the votes cast on the specific precinct or precincts sought to be annulled, or in case of the**

² G.R. Nos. 222236 and 223032 promulgated on May 3, 2016.

entire municipality, more than fifty percent (50%) of its total precincts and the votes cast therein; and,

(2) It is impossible to distinguish with reasonable certainty between the lawful and unlawful ballots.³(Emphasis Supplied)

11. The Supreme Court likewise specified as an additional requisite for the annulment of election that there must be clear, convincing and strong evidence showing that the protestee is the one responsible for the unlawful acts complained of. It is thus elucidated:

It is worthy to note that no evidence was presented which will directly point to protestee as the one responsible for the incidents, which allegedly happened before and during the elections. Absent anything that would concretely and directly establish protestee as the one who had induced or actually perpetrated the commission of terroristic acts and demonstrate that those incidents were part of a scheme to frustrate the free expression of the will of the electorate, the alluded handing of material considerations, including guns, to the NDF-EV officials, and the garnering of votes higher than those of the protestant in the protested clustered precincts, do not per se make him, responsible for the charges of terrorism.⁴(Emphasis Supplied)

12. Summarizing the points given by the Highest Tribunal, it is respectfully submitted that three (3) elements must concur to justify the extreme act of annulling the results of the elections, namely: (1) evidence that more than fifty percent (50%) of the votes were cast illegally; (2) impossibility of differentiating the lawful and unlawful ballots; and, (3) clear, convincing, and strong evidence that the protestee is the one accountable for the illegal acts. In the end, even the Supreme Court is mindful that "*annulment of elections (must) be judiciously exercised with utmost caution and resorted only in exceptional circumstances.*"⁵ Likewise, it has been consistently held that, "*the nullification of elections or declaration of failure of elections is an extraordinary remedy. The party who seeks the nullification of an election has the burden of proving entitlement to this remedy. It is not enough that a verified petition is filed. The allegations in the petition must make out*

³ Ibid.

⁴ Ibid.

⁵ Ibid.

a prima facie case for the declaration of failure of election, and convincing evidence must substantiate the allegations.”⁶

**A. WHETHER OR NOT THERE
IS MERIT TO THE
ALLEGATION THAT THE
VOTERS IDENTIFICATION
DIVISION OF THE COMELEC-
ERSD CONCLUDED THAT THE
“2016 NATIONAL, LOCAL AND
ARMM ELECTIONS HAS (SIC)
BEEN MARKED WITH
DIFFERENT FORMS OF
ELECTION FRAUD SUCH AS
MASSIVE SUBSTITUTED
VOTING”**

13. We would like to stress that every election protest case tried before the COMELEC has always been resolved by the COMELEC based on the evidence and the circumstances surrounding them and COMELEC has always been steadfast in ensuring that all elections conducted are free, honest, and credible as well as free from undue influence and corruption.
14. The subject document from the COMELEC-ERSD was submitted and became part of the records in the election protest case raffled before the COMELEC Second Division, docketed as EPC No. 2016-37 entitled “*Abdusakur M. Tan vs. Mujiv S. Hataman*”, seeking the nullification of the proclamation of Mujiv S. Hataman as the Regional Governor of the Autonomous Region in Muslim Mindanao (ARMM) in the 2016 NLE was not discussed nor resolved on the merits. In its Order dated 05 December 2019, considering that during the pendency of the case, Republic Act No. 11054⁷ was signed into law, and the term of office of the Regional Governor of ARMM has expired on 30 June 2019, the case was dismissed due to mootness and is now final and executory.

⁶ G.R. No. 150312 dated July 18, 2002.

⁷ An Act Providing for the Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, Repealing for the Purpose Republic Act No. 6734, Entitled “An Act Providing for An Organic Act for the Autonomous Region in Muslim Mindanao,” As Amended by Republic Act No. 9054, Entitled “An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao”.

15. Accordingly, the Commission, be it with any of its Division or *En Banc*, did not have the opportunity to rule upon such findings or otherwise pass upon its validity, merit and probative value.

B. WHETHER OR NOT THE RESULTS IN THE REVISION AND APPRECIATION OF VOTES WITH RESPECT TO THE PROTESTANT'S SECOND CAUSE OF ACTION MOOTS OR RENDERS UNNECESSARY THE CONSIDERATION OF THE PROTESTANT'S THIRD CAUSE OF ACTION

C. WHETHER OR NOT PET HAS THE COMPETENCE TO RESOLVE THE THIRD CAUSE OF ACTION

16. Rule 65 of the 2010 Rules of PET states:

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 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 preceeding paragraph shall also apply when the election protest involves correction of manifest errors.
(R63)

17. It is clearly provided under Rule 65 of the 2010 Rules of PET that if, upon examination of the ballots and proof in the chosen pilot provinces 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.

18. However, in the case of *Abayon*, the Supreme Court ruled that the annulment of election results is but a power **concomitant** to the HRET's constitutional mandate to determine the validity of the contestee's title, provided the following requisites must concur:

(1) The illegality of the ballots must affect more than fifty percent (50%) of the votes cast on the specific precinct or precincts sought to be annulled, or in case of the entire municipality, more than fifty percent (50%) of its total precincts and the votes cast therein;

(2) It is impossible to distinguish with reasonable certainty between the lawful and unlawful ballots;

(3). There must be clear, convincing and strong evidence showing that the protestee is the one responsible for the unlawful acts complained of.

19. This, we believe, applies in this case.

20. Moreover, as expressly provided under the Constitution, the PET or the Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President. Being as such, it has the competence to resolve all questions relating to the election, returns, and qualifications of the President or Vice President.

**D. ASSUMING THAT THE
PRESIDENTIAL ELECTORAL
TRIBUNAL HAS THE
COMPETENCE TO RESOLVE
THE THIRD CAUSE OF
ACTION WHICH IS NOT
MOOTED BY THE RESULTS OF
ITS FINDINGS WITH RESPECT
TO THE SECOND CAUSE OF
ACTION:**

**i. FILING RULES AND
REQUIREMENTS THAT A
PARTY MUST OBSERVE IF HE
OR SHE SEEKS THE RELIEF OF
ANNULMENT OF ELECTIONS
BEFORE THE PET**

21. Rule 73 of the 2010 Rules of PET provides for supplementary rules whenever applicable:

Rule 73. *Applicability.* - The following shall be applicable by analogy or in suppletory character and effect in so far as they may be applicable and are not inconsistent with these Rules and with the decisions, resolutions and orders of the Tribunal, namely:

- (a) The Revised Rules of Court;
- (b) Decisions of the Supreme Court; and
- (c) Decisions of the Electoral Tribunal. (R71)

22. Further, Rule 74 of the 2010 Rules of PET explicitly states that this Honorable Tribunal, may, at any time, amend its Rules.

23. Thus, we respectfully submit that unless the rules are amended or revised by PET pursuant to its inherent power to promulgate, amend, or revise its rules, it is the prevailing filing rules and requirements for the institution of election protest which shall govern as we believe, it also covers the cause of action for the annulment of elections as an indispensable consequence of the protest.

**ii. THRESHOLD OF EVIDENCE
THAT IS REQUIRED TO
PROVE FAILURE OR
ANNULMENT OF ELECTIONS**

**iii. PERCENTAGE OF
VOTES/PRECINCTS THAT
NEEDS TO BE PROVEN AS
HAVING BEEN AFFECTED BY**

THE GROUNDS FOR FAILURE OR ANNULMENT OF ELECTIONS

24. As to the threshold of evidence required to prove failure or annulment of elections, and the percentage of votes or precincts that needs to be proven as having been affected by the grounds for failure or annulment of elections, again we believe that the ruling in the case of *Abayon* is instructive, thus:

- (1) The illegality of the ballots must affect more than fifty percent (50%) of the votes cast on the specific precinct or precincts sought to be annulled, or in case of the entire municipality, more than fifty percent (50%) of its total precincts and the votes cast therein;
- (2) It is impossible to distinguish with reasonable certainty between the lawful and unlawful ballots; and
- (3) There must be clear, convincing and strong evidence showing that the protestee is the one responsible for the unlawful acts complained of.

iv. WILL THE THRESHOLD APPLY PER PROVINCE OR TO ALL THREE (3) PROVINCES? CAN THERE BE FAILURE OR ANNULMENT IN SOME BUT NOT ALL THREE (3) PROVINCES?

25. As to whether the threshold applies per province and whether there can be failure or annulment in some but not all the three provinces, the 2010 Rules of PET is silent.

26. Nonetheless, it can be inferred from the case of *Abayon* that if the annulment of the election results involves an entire province, the illegality of the ballots must affect more than 50 percent (50%) of the total precincts of the municipality or province concerned. Thus, failure or annulment will depend on the compliance with the threshold evidence required for each province involved.

v. SHOULD A SIMILAR PILOT TESTING RULE BE EQUALLY APPLIED IN ANNULMENT OF ELECTIONS CASES?

27. As to whether similar pilot testing rule be equally applied in annulment of election cases, again, the 2010 Rules of PET is silent. We submit, however, that it does not, because we believe the pilot testing rule applies only in the cause of action involving judicial revision and recount of ballots.

E. ASSUMING THAT THE PET IS CONVINCED THAT THERE IS BASIS TO FIND FOR THE PROTESTANT IN THE THIRD CAUSE OF ACTION:

i. WILL THIS MEAN THAT THE ELECTIONS FOR ALL THE ELECTIVE POSITIONS IN THE BALLOT BE NULLIFIED WITH ALL ITS ATTENDANT LEGAL CONSEQUENCES?

28. The case of *Abayon* is again applicable, viz:

Consequently, the difference between the annulment of elections by electoral tribunals and the declaration of failure of elections by the COMELEC cannot be gainsaid. *First*, the former is an incident of the judicial function of electoral tribunals while the latter is in the exercise of the COMELEC's administrative function. *Second*, **electoral tribunals only annul the election results connected with the election contest before it** whereas the declaration of failure of elections by the COMELEC relates to the entire election in the concerned precinct or political unit. As such, in annulling elections, the HRET does so only to determine who among the candidates garnered a majority of the legal votes cast. The COMELEC, on the other hand, declares a failure of elections with the objective of holding or continuing the elections, which were not held or were suspended, or if there was one, resulted in a failure to elect. When

COMELEC declares a failure of elections, special elections will have to be conducted. (Emphasis Supplied)

**ii. CAN THE DECLARATION
OF THE PET OR THE SUPREME
COURT BE A BAR FOR ANY
QUESTION RELATIVE TO ANY
PRESENT AND FUTURE
ELECTORAL PROTEST
INVOLVING THE SAME AREA
AND FOR ANY POSITION?**

29. As to whether or not the declaration of the Honorable Tribunal be a bar for any question relative to any present and future electoral protest involving the same area and for any position, we submit that it is on a case-to-case basis. The factual antecedents and causes of action shall be considered whether or not the case of *Abayon* or this case is similar to the case to be resolved.

**iii. WILL IT BE NECESSARY TO
CALL FOR SPECIAL
ELECTIONS FOR THE
POSITION OF VICE
PRESIDENT? IF SO, WHO HAS
THE COMPETENCE TO CALL
FOR SUCH ELECTIONS?**

30. As to whether or not it is necessary to call for special elections for the position of the Vice President, the case of *Abayon* is again in point:

“Xxx electoral tribunals only annul the election results connected with the election contest before it whereas the declaration of failure of elections by the COMELEC relates to the entire election in the concerned precinct or political unit. **As such, in annulling elections, the HRET does so only to determine who among the candidates garnered a majority of the legal votes cast.** The COMELEC, on the other hand, declares a failure of elections with the objective of holding or continuing the elections, which were not held or were suspended, or if there was one, resulted in a failure to elect. When COMELEC declares a failure of elections, special elections will have to be conducted.” (Emphasis Supplied)

iv. WILL THIS MEAN
"RECOVERY" FOR THE
PROTESTANT UNDER RULE
65, WHICH WILL, IN TURN,
MEAN REVISION OF ALL HIS
CONTESTED PRECINCTS
NATIONWIDE?

v. WHAT WILL BE THE EFFECT
OF THE TRIBUNAL'S RULING
ON PROTESTANT'S THIRD
CAUSE OF ACTION ON
PROTESTEE'S COUNTER
PROTEST?

31. As to whether this will mean "recovery" for the Protestant under Rule 65, which will, in turn, mean revision of all his contested precincts nationwide, we submit that it will not considering that the annulment of the elections results is separate and distinct from the judicial revision, recount and re-appreciation of ballots under Rule 65 of the 2010 Rules of PET.
32. As to the effect of the Honorable Tribunal's ruling on Protestant's Third Cause of Action on the Counter-Protest of Protestee, it is submitted that the same will not affect the counter-protest considering that it is a separate and distinct cause of action.
33. It cannot be overemphasized that as discussed in the case of *Abayon*, in annulling elections, the Tribunal does so only to determine who among the candidates garnered a majority of the legal votes cast.

IV. WHETHER OR NOT PET IS
EMPOWERED BY THE
CONSTITUTION TO DECLARE
ANNULMENT OF ELECTIONS
WITHOUT SPECIAL
ELECTIONS; AND FAILURE OF
ELECTIONS AND THEN
ORDER THE CONDUCT OF
SPECIAL ELECTIONS

WHETHER OR NOT THE PET'S
DECLARATION OF FAILURE

OF ELECTIONS AND THEN
ORDERING OF SPECIAL
ELECTIONS, WILL INFRINGE
UPON THE COMMISSION ON
ELECTION'S MANDATE AND
POWERS PROVIDED FOR IN
ARTICLE IX (C) (SEC. 2) OF THE
CONSTITUTION

34. To iterate, the powers and functions of the PET are expressly provided under the 1987 Constitution and under the 2010 Rules of Presidential Electoral Tribunal (A.M. No. 10-04-29-SC), to wit:

Article VII, Section 4 of the 1987 Constitution:

"The Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate rules for the purpose."

2010 Rules of Presidential Electoral Tribunal (A.M. No. 10-04-29-SC):

"Rule 7.*Express and implied powers.* – The Tribunal shall exercise all powers expressly vested in it by the Constitution or by law, and such other powers as may be inherent, necessary or incidental thereto for the accomplishment of its purposes and functions."

Rule 8.*Inherent Powers.* – The Tribunal shall have the following inherent powers:

- (h) Preserve and enforce order in proceedings before it or before any of its Divisions or officials acting under its authority;
- (i) Administer or cause to be administered oaths in any contest before it, and in any other matter where it may be necessary in the exercise of its powers;
- (j) Compel the attendance of witnesses and the production of evidence in any contest before it;
- (k) Compel obedience to its decisions, resolutions, orders and processes;

(l) Control its processes and amend its decisions, resolutions or orders to make them conformable to law and justice;

(m) Authorize a copy of a lost or destroyed pleading or other paper to be filed and used instead of the original copy thereof, and to restore and supply deficiencies in its records and proceedings; and

(n) Promulgate its own rules of procedure and amend or revise the same”

Rule 13. Jurisdiction. The Tribunal shall be the sole judge of all contests relating to the election, returns and qualifications of the President or Vice-President of the Philippines.

35. While the COMELEC, has the following powers and functions, among others:

Article IX-C, 1987 Constitution

“Section 2. The Commission on Elections shall exercise the following powers and functions:

(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.”

Section 6 of the Omnibus Election Code

“Sec. 6. Failure of election. - If, on account of force majeure, violence, terrorism, fraud, or other analogous causes the election in any polling place has not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect, and in any of such cases the failure or suspension of election would affect the result of the election, the Commission shall, on the basis of a verified petition by any interested party and after due notice and hearing, call for the holding or continuation of the election not held, suspended or which resulted in a failure to elect on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of

such postponement or suspension of the election or failure to elect.”

Section 4 of Republic Act No. 7166⁸

“Section 4. Postponement, Failure of Election and Special Elections. – The postponement, declaration of failure of elections and the calling of special elections as provided in Sections 5, 6 and 7 of the Omnibus Election Code shall be decided by the Commission En Banc by a majority vote of its members. The causes for the declaration of a failure of election may occur before or after casting of votes or on the day of the election.”

36. Again, in the *Abayon* case, the Supreme Court explained the difference between the annulment of elections by electoral tribunals and the declaration of failure of elections by the COMELEC, hence, there is no overlapping of jurisdiction. To illustrate:

ANNULMENT OF ELECTIONS	DECLARATION OF FAILURE OF ELECTIONS
1. Incident of the judicial function of electoral tribunals	1. Exercise of the COMELEC’s administrative function
2. Electoral tribunals only annul the election results connected with the election contest before it	2. The declaration of failure of elections by the COMELEC relates to the entire election in the concerned precinct or political unit.
3. In annulling elections, the Tribunal does so only to determine who among the candidates garnered a majority of the legal votes cast.	3. COMELEC declares a failure of elections with the objective of holding or continuing the elections, which were not held or were suspended, or if there was one, resulted in a failure to elect.
4. No special elections to be conducted	4. When COMELEC declares a failure of elections, special elections will have to be conducted.

37. It is crystal clear that PET is empowered by the Constitution to declare annulment of elections without special elections. It cannot,

⁸AN ACT PROVIDING FOR SYNCHRONIZED NATIONAL AND LOCAL ELECTIONS AND FOR ELECTORAL REFORMS, AUTHORIZING APPROPRIATIONS THERFOR, AND FOR OTHER PURPOSES.

however, declare failure of elections and conduct special elections, the latter, being within the exclusive jurisdiction of the COMELEC.

38. In a long line of cases, the Court has confirmed and recognized the power of COMELEC to declare failure of elections. In the cases of *Zaipal D. Benito vs. Commission on Elections, Ibrahim Pagayawan and the Municipal Board of Canvassers of Calanogas, Lanao del Sur* (G.R. No. 134913 promulgated on January 19, 2001) and *Hadji Rasul Batabor vs. Commission on Elections, Barangay Board of Canvassers, Board of Election Inspectors of Precinct Nos. 3A, 4A and 5A, Barangay Maidan, Tugaya, Lanao del Sur and Mocasim Abangon Batondiang* (G.R. No. 160428 promulgated on July 21 2004), the Supreme Court consistently ruled that it is the COMELEC *en banc* which has the exclusive power to postpone, to declare a failure of election, or to call a special election.
39. Significant to the case is the decision of the Supreme Court in *Jose Emmanuel L. Carlos vs. Hon. Adoracion G. Angeles, in her capacity as the Acting Presiding Judge of the Regional Trial Court in Caloocan City (Branch 125) and Antonio M. Serapio* (G.R. No. 142907 promulgated on November 29, 2000), wherein the trial court in its decision in an election protest case actually pronounced a failure of elections by disregarding the result of the elections and set aside the final tally of votes because of what it perceived to be "significant badges of fraud" attributable to the protestee. The Supreme Court extensively discussed that:

Assuming for the nonce that the trial court was correct in holding that the final tally of valid votes as per revision report may be set aside because of the "significant badges of fraud", the same would be tantamount to a ruling that there were no valid votes cast at all for the candidates, and, thus, *no winner could be declared in the election protest case*. In short, there was failure of election.

In such case, the proper remedy is an action before the Commission on Elections *en banc* to declare a failure of election or to annul the election. However, the case below was an election protest case involving an elective municipal position which, under Section 251 of the Election Code, falls within the exclusive original jurisdiction of the appropriate regional trial court.

Nonetheless, the annulment of an election on the ground of fraud, irregularities and violations of election laws may be

raised as *an incident to an election contest*. Such grounds for annulment of an election may be invoked in an election protest case. However, an election must not be nullified and the voters disenfranchised whenever it is possible to determine a winner on the basis of valid votes cast, and discard the illegally cast ballots. In this case, the petitioner admittedly received 17,007 valid votes more than the protestee, and therefore the nullification of the election would not lie. The power to nullify an election must be exercised with the greatest care with a view not to disenfranchise the voters, and only under circumstances that clearly call for such drastic remedial measure.

As heretofore stated, in this jurisdiction, elections are won on the basis of a majority or plurality of votes cast and received by the candidates. "The right to hold an elective office is rooted on electoral mandate, not perceived entitlement to the office."

More importantly, the trial court has no jurisdiction to declare a failure of election.

V. SUBMISSION TO REVISIT THE CASE OF ABAYON AND THE 2010 RULES OF THE PET

40. As a final note, with all due respect to this Honorable Tribunal, it is our humble suggestion that the PET which has the **inherent** power, among others, to promulgate its own rules of procedure and amend or revise the same, revisit its rules and the case of *Abayon* to fill in the gaps in order to preserve the true will of the electorate in every protest case lodged before it.
41. As pointed in the case of *Jose Emmanuel L. Carlos vs. Hon. Adoracion G. Angeles, in her capacity as the Acting Presiding Judge of the Regional Trial Court in Caloocan City (Branch 125) and Antonio M. Serapio, G.R. No. 142907, November 29, 2000*, the power to nullify an election must be exercised with the greatest care with a view not to disenfranchise the voters, and only under circumstances that clearly call for such drastic remedial measure.

PRAYER

WHEREFORE, premises considered, the Commission on Elections prays that this **SUBMISSION BE NOTED** and **DEEMED SATISFACTORY COMPLIANCE** with the Order / Resolution of the Honorable Presidential Electoral Tribunal.

Other reliefs just and equitable under the premises are likewise most respectfully prayed for.

Intramuros, Manila, Philippines, 03 November 2020.

COMMISSION ON ELECTIONS:

Law Department


8th Floor, Palacio del Gobernador

Intramuros, Manila

Tel. Nos. (02) 527-2768; (02) 527-0843

Email: law@comelec.gov.ph

By:


ATTY. MARIA NORINA S. TANGARO-CASINGAL
Director IV, Law Department
Roll of Attorneys No. 41476
IBP Receipt No. 110224- 01/16/2020
MCLE Compliance No. VI-0004921, 12/18/2017


ATTY. JOHN REX C. LAUDIANGCO

Director III, Law Department

Roll of Attorneys No. 49597

IBP Lifetime Member No. LRN 07078

MCLE Compliance No. VI-0004922, 12/18/2017

Copy furnished:

ATTY. GEORGE ERWIN M. GARCIA

ATTY. JOAN M. PADILLA

Lead Counsel for the Protestant

G.E. Garcia Law Office

Ground Floor, LAIKO Building

372 Cabildo St., Intramuros, Manila 1002

ATTY. ROMULO B. MACALINTAL

Lead Counsel for Protestee

SardilloSardilloSalom Law Office

Unit 802, Taipan Place

F. Ortigas Avenue

Ortigas Center Pasig City

THE SOLICITOR GENERAL

134 Amorsolo St., Legaspi Village

1229 Makati City

PUBLIC INFORMATION OFFICE

Supreme Court, Manila

NOTICE

CLERK OF TRIBUNAL

Presidential Electoral Tribunal

Padre Faura, Manila

Greetings:

Please submit the foregoing *Compliance* for the consideration of the Honorable Tribunal.

Manila, 03 November 2020.


MARIA NORINA S. TANGARO-CASINGAL
Director IV 

EXPLANATION OF SERVICE

A copy of this *Compliance* was furnished the parties by personal service.

Maria Norina S. Tangaro-Casingal
MARIA NORINA S. TANGARO-CASINGAL
Director IV

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SUBMISSION OF DIGITAL COPIES

Pursuant to the Efficient Use of Paper Rule, soft copy of this *Compliance*, saved in a compact disc is being filed simultaneously with its Tribunal-bound paper.

Maria Norina S. Tangaro-Casingal
MARIA NORINA S. TANGARO-CASINGAL
Director IV

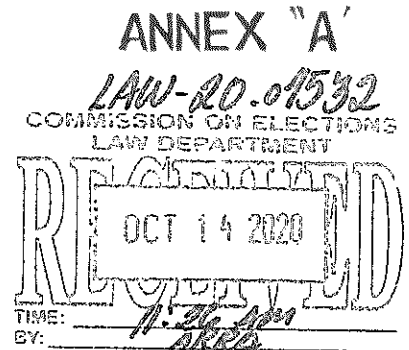
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Republic of the Philippines
COMMISSION ON ELECTIONS
Intramuros, Manila

OFFICE OF THE CLERK OF THE COMMISSION



MEMORANDUM NO. 20-163

FOR : ATTY. NORIE TANGARO-CASINGAL
Director IV, Law Department

SUBJECT : List and Resolutions for Failure of Election Cases filed
in the Provinces of Lanao Del Sur, Basilan and
Maguindanao

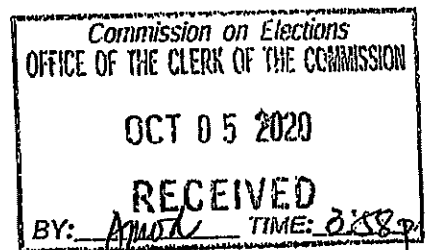
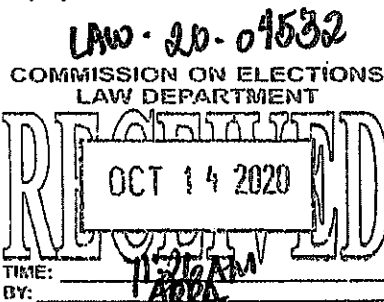
DATE : 06 October 2020

Forwarded herewith are the List and Resolutions issued by the Commission (*En Banc*) pursuant to Presidential Electoral Tribunal (P.E.T.) Resolution dated 29 September 2020, relative to P.E.T. Case No. 005 entitled Ferdinand "Bongbong" R. Marcos, Jr. *vs.* Maria Leonor "Leni Daang Matuwid" G. Robredo, directing the Commission to report where Petitions for Failure of Elections were filed in the provinces of Maguindanao, Lanao del Sur and Basilan and whether these petitions were granted or denied, in connection with the 09 May 2016 National and Local Elections.

For your appropriate action, please.

Thank you very much.


ATTY. GENESIS M. GATDULA
Clerk of the Commission



Republic of the Philippines
Presidential Electoral Tribunal
Manila

NOTICE

Sirs/Mesdames:

Please take notice that the Tribunal issued a Resolution dated SEPTEMBER 29, 2020, which reads as follows:

"P.E.T. Case No. 005

FERDINAND "BONGBONG" R. MARCOS, JR., *protestant*, vs. MARIA LEONOR "LENI DAANG MATUWID" G. ROBREDO, *protestee*.

RESOLUTION

In order to arrive at a full, fair, and efficient resolution, the Presidential Electoral Tribunal, voting unanimously, resolves to furnish the Commission on Elections and the Office of the Solicitor General with a copy of its October 15, 2019 Resolution and copies of the parties' respective memoranda on the Resolution.

The Commission on Elections is directed to **REPORT** to this Tribunal where petitions for failure of elections were filed in the provinces of Maguindanao, Lanao del Sur, and Basilan during the 2016 National and Local Elections. The Commission on Elections is ordered to provide this Tribunal what its corresponding resolution was – that is, whether these petitions were granted or denied. If failure of elections was declared and special elections conducted, the Commission on Elections is further ordered to provide the results of the special elections.

The Commission on Elections is directed to **COMMENT** within a non-extendible period of twenty (20) working days from receipt of a copy of this Resolution:

On the following issues related to the Third Cause of Action of annulment of elections on the ground of terrorism, intimidation,

harassment of voters, and pre-shading of ballots in the provinces of Maguindanao, Lanao del Sur, and Basilan, specifically:

- A. Whether or not there is merit to the allegation that the Voters Identification Division of the COMELEC-ERSD concluded that the "2016 National, Local and ARMM Elections has (sic) been marked with different forms of election fraud such as massive substituted voting"¹
- B. Whether or not the results in the revision and appreciation of votes with respect to the Protestant's second cause of action moots or renders unnecessary the consideration of the Protestant's Third Cause of Action;
- C. Whether or not the Presidential Electoral Tribunal has the competence to resolve the Third Cause of Action;
- D. Assuming that the Presidential Electoral Tribunal has the competence to resolve the Third Cause of Action which is not mooted by the results of its findings with respect to the Second Cause of Action:
- i. What are the filing rules and requirements that a party must observe if he or she seeks the relief of annulment of elections before the Presidential Electoral Tribunal?
 - ii. What is the threshold of evidence that is required to prove failure or annulment of elections?
 - iii. What percentage of votes/precincts needs to be proven as having been affected by the grounds for failure or annulment of elections?
 - iv. Will the threshold apply per province or to all three (3) provinces? Can there be failure or annulment in some but not all three (3) provinces?
 - v. Should a similar pilot testing rule be equally applied in annulment of elections cases?
- E. Assuming that the Presidential Electoral Tribunal is convinced that there is basis to find for the Protestant in the Third Cause of Action:
- i. Will this mean that the elections for all the elective positions in the ballot be nullified with all its attendant legal consequences?
 - ii. Can our declaration as the Presidential Electoral Tribunal or the Supreme Court be a bar for any question relative to any present and future electoral protest involving the same area and for any position?
 - iii. Will it be necessary to call for special elections for the position of Vice President? If so, who has the competence to call for such elections?

¹ Protestant's Memorandum, p. 565.

- iv. Will this mean "recovery" for the Protestant under Rule 65, which will, in turn, mean revision of all his contested precincts nationwide?
- v. What will be the effect of the Tribunal's ruling on Protestant's Third Cause of Action on protestee's counter protest?

The Commission on Elections and the Office of the Solicitor General are also directed to **COMMENT** within a non-extendible period of twenty (20) working days on the following issues:

- I. Whether or not the Presidential Electoral Tribunal is empowered by the Constitution to declare:
 - a) annulment of elections without special elections; and
 - b) failure of elections and then order the conduct of special elections.
- II. Whether or not the Presidential Electoral Tribunal's declaration of failure of elections and then ordering of special elections, will infringe upon the Commission on Election's mandate and powers provided for in Article IX (C) (Sec. 2) of the Constitution, which reads:

Sec. 2. The Commission on Elections shall exercise the following powers and functions:

- (1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.
- (2) Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.

Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable.

- (3) Decide, except those involving the right to vote, all questions affecting elections, including determination of the number and location of polling

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places, appointment of election officials and inspectors, and registration of voters.

- (4) Deputize, with the concurrence of the President, law enforcement agencies and instrumentalities of the Government, including the Armed Forces of the Philippines, for the exclusive purpose of ensuring free, orderly, honest, peaceful, and credible elections.
- (5) Register, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government; and accredit citizens' arms of the Commission on Elections. Religious denominations and sects shall not be registered. Those which seek to achieve their goals through violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration.

Financial contributions from foreign governments and their agencies to political parties, organizations, coalitions, or candidates related to elections, constitute interference in national affairs, and, when accepted, shall be an additional ground for the cancellation of their registration with the Commission, in addition to other penalties that may be prescribed by law.

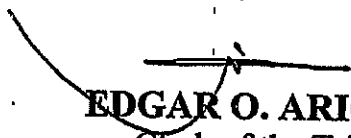
- (6) File, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices.
- (7) Recommend to the Congress effective measures to minimize election spending, including limitation of places where propaganda materials shall be posted, and to prevent and penalize all forms of election frauds, offenses, malpractices, and nuisance candidates.
- (8) Recommend to the President the removal of any officer or employee it has deputized, or the imposition of any other disciplinary action, for violation or disregard of, or disobedience to, its directive, order, or decision.
- (9) Submit to the President and the Congress, a comprehensive report on the conduct of each election, plebiscite, initiative, referendum, or recall.

The Commission on Elections and the Office of the Solicitor General are directed to **FURNISH**, through personal service, the parties with copies of their comments. The parties, in turn, are directed to **SUBMIT** their replies within a non-extendible period of fifteen (15) working days from receipt of the copies of the respective comments from the Commission on Elections and the Office of the Solicitor General.

Let this Resolution be served to the parties by personal service.

Caguioa, J., on official leave but left a vote in favor of the resolution; Delos Santos, J., on official leave. Baltazar-Padilla, J., on leave. (1)

By authority of the Tribunal:


EDGAR O. ARICHETA
Clerk of the Tribunal

**Atty. George Erwin M. Garcia and
Atty. Joan M. Padilla (x)**
G.E. Garcia Law Office
Ground Floor Laiko Building
372 Cabildo Street
Intramuros, 1002 Manila

Justice Jose C. Vitug (ret.) (Reg.)
373 Matienzo Street, San Miguel, Manila

Atty. Angelito C. Imperio (Reg.)
17 Third Street, Saint Ignatius Village
Quezon City

Atty. Irene Ragodon-Guevarra (Reg.)
Lot 12, Blk 25 Carnation Street
Primrose Hills Subdivision
Mahabang Parang, Angono, Rizal

Atty. Romulo B. Macalintal (x)
Sardillo Sardillo Salom Law Office
Unit 802, Taipan Place
F. Ortigas Avenue
Ortigas Center, Pasig City

Chairperson Sherliff M. Abas (x)
Commission on Elections
Intramuros, Manila

Office of the Solicitor General (x)
134 Amorsolo Street
Legaspi Village, 1229 Makati City

Failure of Election Cases Filed in the Provinces of Lanao del Sur, Basilan and Maguindanao

In connection with the May 9, 2016 National and Local Elections

<i>MUN./CITY /PROV.</i>	<i>SPA 2015</i>	<i>TITLE OF THE CASE</i>	<i>Position and Date Received</i>	<i>RESOLUTION</i>
Marawi City	16-111 (FE)	In the matter of the Petition to Declare Failure of Elections in Marawi City	M.R. No. 16- 0379 dated May 16, 2016	DISMISSED: August 16, 2016 w/ COF issued by EB on February 15, 2017
Northern Kabuntalan, Maguindanao En Banc	16-114 (FE)	Magdon U. Dilangalen Vs. Mohidin S. Lauban and The MBOC, Northern Kabuntalan, Maguindanao For: Annulment of Elections and/or Declaration of Failure of Elections and Annulment of Proclamation	Vice Mayor May 20, 2016	Petition DISMISSED: January 15, 2018
Pagalungan, Maguindanao En Banc	16-122 (FE)	Guimid P. Matalam and Arkan M. Matalam Vs. Salik Mamasabulod, Abdillah Mamasabulod and Municipal Board of Canvassers (MBOC) of Pagalungan, Maguindanao For: Annulment of Elections and/or Declaration of Failure of Elections and Annulment of Proclamation	Mayor & V Mayor May 23, 2016	DISMISSED: Oct. 30, 2017 w/ Certificate of Finality issued by the EB on Dec. 08, 2017
Sultan Kudarat, Maguindanao En Banc	16-125 (FE)	In the matter of Petition for Annulment of Election Results and/or Declaration of Failure of Elections Ibrahim K, Ibrahim Vs. Shameem B. Mastura	Mayor May 24, 2016	DISMISSED: 17 Nov. 2016 w/ COF issued by EB on March 06, 2017
Marantao, Lanao del Sur	16-130 (FE)	In the matter of Declaring Failure of Elections in Barangays Bacong, Daana Ingud, Matampay, Poona Marantao, Kialdan, Lubo 1 and 2, Lumbac Kialdan, Mantapoli, Pantiamas, Tuca Kialdan and Punud Proper of the Municipality of Marantao, Lanao del Sur and to hold Special Elecitons or to Annul/ Exclude Election Returns therein Samson U. Adiong	Municipal Mayor	DISMISSED: May 26, 2017 MR DENIED: August 08, 2017 w/ Certificate of Finality issued by the EB on Aug. 29, 2017
Marantao, Lanao del Sur	16-131 (FE)	In the matter of the Petition to Declare a Failure of Election in Clustered	June 20, 2016 Vice Mayor	DISMISSED: May 26, 2017

<i>MUN./CITY /PROV.</i>	<i>SPA 2015</i>	<i>TITLE OF THE CASE</i>	<i>Position and Date Received</i>	<i>RESOLUTION</i>
		<p>Precinct No. 0043A, 0044A, 0045A, 0045B, 0045C of Brgy. Lubo, 0047A, 0047B, 0048A, 0048B, of Brgy. Lumbac Kialdan; 0049A, 0050A, 0051A, 0052A, Brgy. Mantapoli, 0079A, 0080A, 0081A, 0082A, 0083A of Brgy. Tuca Kialdan; 0069A, 0070A, 0071A, 0071B of Brgy. Pantaimas; 0040A, 0041A, 0042A, 0042B of Brgy. Kialdan in the Municipality of Marantao, Province of Lanao del Sur</p> <p>Alimoden Guro Cornell</p> <p>Vs.</p> <p>The Members of the BEI of Clustered Precinct Nos. of Brgys. Mantapoli, Pantairnas, Lubo, Kialdan, Tuka Kialdan, Lumbac Kialdan; The MBOC of the Municipality of Marantao, Province of Lanao del Sur; Alahoding Maruhom, as the Vice Mayor, Proclaimed in the recently concluded May 09, 2016 National, Local and ARMM Elections</p>		<p>MR DENIED: August 08, 2017</p> <p>w/ Certificate of Finality issued by the EB on Aug. 29, 2017</p>
<p>Datu Unsay, Maguindanao</p> <p>En Banc</p>	<p>16-132 (FE)</p> <p>Formerly SPC 16-016</p>	<p>Monawara Ampatuan, Kamarudin Ibrahim, Abdul Hamid Lumena, Tato G. ABDulradzak, Macmod Ebrahim, Norodin Datuali, Mulba Ampakay, Zacaria Saway, Mohammad Unggala and Rocky Nacio, in their capacities as local candidates for the May 9, 2016 elections in Datu Unsay, Maguindanao</p> <p>Vs.</p> <p>Reshal Ampatuan, Janine Mamalapat, Salahudin Tagadaya, Zuhari Guiapal, Wanay Dukay, Tho Pasawilan, Abdulrahim Abdullah, Ging Amman, Mohammad Shamron Sapalon, and Dor Engkel, in their capacities as proclaimed winning local candidates for the May 9, 2016 elections, and the MBOC, all for the Municipality of Datu Unsay, Maguindanao</p> <p>Petiton for Annulment of Proclamation and/or Declaration of Failure of Elections</p>	<p>May 19, 2016</p> <p>August 02, 2016</p>	<p>DISMISSED for LACK OF MERIT - February 01, 2018</p> <p>w/ Certificate of Finality issued by EB on April 03, 2018</p>
<p>Sultan Sa Barongis, Maguindanao</p> <p>En Banc</p>	<p>SPA 16-135 (FE)</p>	<p>Abubakar Katambak and Sukarno Badal</p> <p>Vs.</p> <p>The MBOC of Sultan sa Barongis,</p>	<p>May 19, 2016</p>	<p>DISMISSED: November 08, 2016</p> <p>MR DENIED: May 17, 2017</p> <p>w/ Certificate of Finality issued</p>

<i>MUN./CITY /PROV.</i>	<i>SPA 2015</i>	<i>TITLE OF THE CASE</i>	<i>Position and Date Received</i>	<i>RESOLUTION</i>
		Maguindanao, Ramdatu Angas, and Al-Fizzar Allandatu Angas Petition for Declaration of Nullity and/or Annulment of Proclamation and/or Declaration of Failure of Elections Formerly SPC 16-017		by the EB on June 22, 2017



Republic of the Philippines
COMMISSION ON ELECTIONS
Intramuros, Manila

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EN BANC

SPA 16-111 (FE)

IN THE MATTER OF THE
PETITION TO DECLARE
FAILURE OF ELECTIONS IN
MARAWI CITY

Present:

Bautista, J.A.D., Chairman

Lim, C.R.S., Commissioner

Parreño, A.A., Commissioner

Guia, L.T.F., Commissioner

Lim, A.D., Commissioner

Guanzon, M.R.A.V.G., Commissioner

Abas, S.M., Commissioner

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Promulgated

AUG 16 2016

RESOLUTION

This resolves the "Petition to declare failure of elections in Marawi City" subject of Minute Resolution No. 16-0363 dated 12 May 2016. Said resolution referred the matter to Atty. Bartolome J. Sinocruz, Jr., Deputy Executive Director for Operations, for his study/recommendation.

In compliance with such directive, Atty. Sinocruz, in his Memorandum dated 14 May 2016, submitted the following report/recommendation:

"On May 12, 2016, the Commission en banc promulgated Minute Resolution No. 16-363 entitled '*In the Matter of the Petition to Declare a Failure of Election in MSU, Marawi City, Lanao del Sur, in connection with the May 9, 2016 National and Local Elections*', wherein the Commission resolved to refer to the undersigned the said petition for study and recommendation.

This memorandum is submitted in compliance to the en banc's resolution.

Via memorandum dated May 13, 2016, Dir. Teopisto E. Elnas, Jr. of Election and Barangay Affairs Department, directed Atty. Roberto dela Peña, Acting Provincial Election Supervisor of Lanao del Sur, to investigate whether or not winning candidates were already proclaimed by the City Board of Canvassers (CBOC).

Quoted hereunder is the result of the investigation of PES Dela Pena:

'The conduct of elections in the city was at onset marred by violence, wherein watchers of a mayoralty candidate accompanying the VCMs and other election paraphernalia enroute to the polling centers in MSU Campus, were ambushed and killed around 3:00 A.M.

As a result thereof, it was only about 8:00 A.M., after the BEIs were able to set up the VCMs and other election paraphernalia at the polling centers in Barangays Cabingan and Bangon, that voting started and ended at 6:00 p.m. on May 9, 2016 at the polling centers.

In Barangay Cabinga, which has total number of 2,944 registered voters 2,902 voters were able to cast their votes, whereas, in Barangay Bangon, with a total number of 614 registered voters, 528 voters were able to cast their votes.

xxx xxx xxx

A copy of PES Dela Peña's report is hereto attached for your Honors' reference.

Considering the report of PES Roberto dela Peña, the undersigned recommends the matter of declaring the failure of elections in MSU, Marawi City, be referred to the Clerk of Court of the Commission for hearing."

Acting on Atty. Sinocruz's Memorandum, the Commission *En Banc*, in Minute Resolution 16-0379,¹ directed the Clerk of the Commission to docket and set the matter for hearing.

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The case was set for hearing on 21 June 2016.² Despite notice, there was no appearance by PES Dela Peña during the scheduled hearing.³

We now rule.

Section 6 of the Omnibus Election Code ("OEC") provides for the instances when the COMELEC may declare failure of election:

"Sec. 6. Failure of election. - If, on account of force majeure, violence, terrorism, fraud, or other analogous causes the election in any polling place has not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect, and in any of such cases the failure or suspension of election would affect the result of the election, the Commission shall, on the basis of a verified petition by any interested party and after due notice and hearing, call for the holding or continuation of the election not held, suspended or which resulted in a failure to elect on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or failure to elect."

In the case of *Banaga v. COMELEC*⁴, the Supreme Court enumerated three (3) instances when the Commission may declare failure of elections:

(a) the election in any polling place has not been held on the date fixed on account of *force majeure*, violence, terrorism, fraud or other analogous causes;

¹ 16 May 2016.
² Records, at page 14.
³ Records, at page 15.
⁴ G.R. No. 134596, 31 July 2000.

(b) the election in any polling place has been suspended before the hour fixed by law for the closing of the voting on account of *force majeure*, violence, terrorism, fraud or other analogous causes; or

(c) after the voting and during the preparation and transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect on account of *force majeure*, violence, terrorism, fraud or other analogous causes.

Before the COMELEC can declare a failure of election two conditions must concur, namely (1) no voting took place in the precinct or precincts on the date fixed by law, or even if there was voting, the election resulted in a failure to elect; and (2) the votes not cast would have affected the result of the election.⁵ The cause of such failure of election could only be any of the following: *force majeure*, violence, terrorism, fraud or other analogous causes.⁶ The phrase "resulted in failure to elect," in turn, must be understood in its literal sense, which is "nobody was elected."⁷

A careful review of the circumstances surrounding the subject elections in Marawi City would disprove any claim of failure of elections therein.

The mere fact that the winning candidates in Marawi City have been proclaimed belies the argument that no voting took place in the precincts on the date fixed by law, or that the election resulted in the failure to elect. In fact, PES Dela Peña failed to appear during the scheduled hearing to present evidence that there was indeed failure of election in Marawi City. There is nothing in the records that will show that (a) elections were not conducted in the designated polling places; (b) elections were suspended in the said city or barangays; and (c) after the voting and during the transmission of the election returns or in the custody or canvass thereof, such results in failure to elect on account of *force majeure*, violence, terrorism, fraud and other analogous causes.

Clearly, the present Petition does not have a leg to stand on.

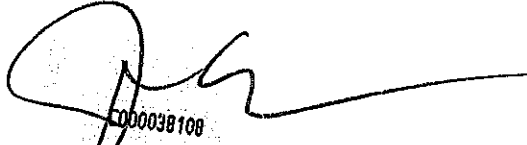
⁵ *Id.*

⁶ *Id.*

⁷ *Borja vs. Commission on Elections*, 260 SCRA 604, at 609 [1996].

WHEREFORE, premises considered, the Commission *En Banc*
RESOLVED, as it hereby RESOLVES, to DISMISS the instant case
for LACK OF MERIT.

SO ORDERED.



J. ANDRES D. BAUTISTA
Chairman



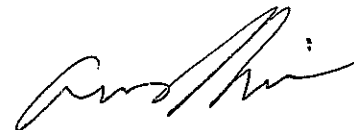
CHRISTIAN ROBERT S. LIM
Commissioner



AL A. PARRENO
Commissioner



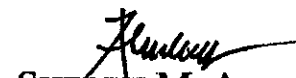
LUÉ TITO F. GUIA
Commissioner



ARTHUR D. LIM
Commissioner



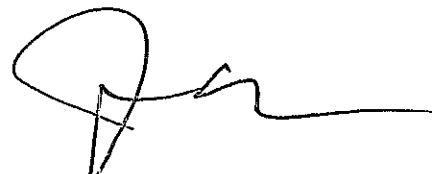
MA. ROWENA AMELIA V. GUANZON
Commissioner



SHERIFF M. ABAS
Commissioner

CERTIFICATION

I hereby certify that the conclusions in the above resolution
were reached in consultation among the members of the Commission
before the case was assigned to the writer of the opinion of the
Commission (*En Banc*).



J. ANDRES D. BAUTISTA
Chairman



Republic of the Philippines
COMMISSION ON ELECTIONS
Manila

EN BANC

MAGDON U. DILANGALEN,
Petitioner,

SPA No. 16-114 (FE)

-versus-

MOHIDIN S. LAUBAN and THE
MUNICIPAL BOARD OF
CANVASSERS (MBOC),
NORTHERN KABUNTALAN,
MAGUINDANAO,

Respondents.

Bautista, J.A.D. *Chairman*
Lim, C.R.S. *Commissioner*
Parreño, A.A. *Commissioner*
Guia, L.T.F. *Commissioner*
Lim, A.D. *Commissioner*
Guanzon, M.R.A.V. *Commissioner*
Abas, S.M. *Commissioner*

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Promulgated:

JAN 15 2019

RESOLUTION

This resolves the *Petition*¹ filed by Magdon U. Dilangalen praying for the declaration of failure of elections in Barangay Indatuan and Barangay Kapimpilan, Northern Kabuntalan, Maguindanao, and the annulment of proclamation of Mohidin S. Lauban as the winning candidate for Vice-Mayor of Northern Kabuntalan relative to the May 9, 2016 National and Local Elections (NLE).²

On 20 May 2016, Dilangalen filed the petition alleging the following relevant facts:

xxx xxx xxx

7. xxx the instant petition seek to annul the votes cast, counted, and canvassed for the clustered precincts of Barangay Indatuan and Kapimpilan of said municipality and/or to declare a failure of elections in said barangays because the votes cast in the said precincts were in fact not freely and voluntarily cast by the named registered voters and most of it were cast by other persons other than the registered voter because there was in fact intimidation of voters by known supporters of rival candidates particularly on the side of respondent Lauban. More so, many voters were not able to cast their votes due to fear because of the

¹ Records 1-220.

² *Id.* at 7.

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presence of armed men and violence in the precincts;³

8. Thus, the casting of votes on the day of elections in the clustered precincts of said barangays were marred with threats, intimidation, and undue interference of known local personalities in the choice of the voters in said precincts. This is manifest in the votes garnered by petitioner and respondent Lauban in the said barangays and clustered precincts xxx⁴


9. As a matter of fact, poll watcher Marco Akmad for the Liberal Party assigned at the clustered precincts in Brghy.(sic) Indatuan personally witnessed the presence of Bob Pananggalan and his son Punong Brgy. Nasser Pananggalan, who are known supporters of respondent Lauban, outside of the polling precincts openly campaigning for Mayor Baliwan and Vice-Mayor respondent Lauban and were convincing voters to vote for the said candidates. Armed men were also seen roaming around the perimeter of the polling place. Same witness or watcher also witnessed the sudden commotion outside of the polling precincts in the said barangay that prompted many voters to go home and not cast their votes. xxx⁵

10. Norman Dilangalen Pedtimbang, who is an elected barangay kagawad of the same Brgy. Indatuan, was not able to vote because according to him, he heard news from around his neighborhood that Bob Pananggalan and his group was looking for him because he was rooting for his uncle, herein petitioner and according to him Pananggalan's group want him dead thus he was forced to stay at his house for the rest of the day of May 9, 2016 and not cast his vote. xxx⁶

xxx xxx xxx

12. Based on the number of votes actually cast and counted for petitioner and respondent Lauban in Brgy. Indatuan it would appear that only 537 voters were able to cast their votes hence 404 voters were not able to vote or more or less 40% of the total number of registered voters in said barangay;⁷

13. It is noticeable in the list of voters that while the signatures of the voters who actually cast their votes are signed on the space provided, yet the number of official ballot allegedly given by the BEI to the voter is not reflected or indicated in most of the space provided in the voter's list. Hence, there is indeed badges or irregularity during the casting of votes;⁸

14. Similar to the situation in Brgy. Indatuan, there were also presence of armed men outside of the polling precincts during the casting of votes in Brgy. Kapimpilan which intimidated the voters and prevented them from casting their votes thus resulting to a low 

³ *Id.* at 2-3.

⁴ *Id.* at 3.

⁵ *Id.* at 3-4.

⁶ *Id.* at 4.

⁷ *Id.* at 5.

⁸ *Id.*

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voter turnout in the clustered precincts of the said Brgy. Kapimpilan which is composed of five (5) precincts with corresponding number of registered voters xxx⁹

15. Based on the votes counted and canvassed for the two (2) clustered precinct of Kapimpilan, the total number of votes cast is only 387 out of the 814 total number of registered voters. Thus, 427 voters were not able to cast their votes mainly due to their fear in going to the polling precincts because of the presence of armed men within the vicinity or perimeter of the polling place. While there are policemen and army soldiers within the perimeter of the polling place as Northern Kabuntalan is under COMELEC control, yet their presence did not prevent or deter these armed men from intimidating voters;¹⁰

16. In fact during the casting of votes at Brgy. Kapimpilan, armed guards of Punong Brgy. Fatima Baliwan, who is the wife of the incumbent mayor, entered the polling precinct and intimidated the voters and watchers of other candidates. Watcher Abdulmanan Sulaik of the Maguindanao Reform Party was even held at gun point by the guards of said punong barangay while his companion and co-watcher Datukon M. Mamadra in the other precinct in Kapimpilan also suffered the same fate as him and was in fact forced to leave the precinct when Punong Brgy. Baliwan and her armed escorts entered the polling precinct. xxx¹¹

17. Furthermore, it is also noticeable in the said voter's list that all of the spaces provided for the serial number of the ballots supposed to be given by the BEI to the voters is(sic) not filled-up. It is also apparent that some of the voters who allegedly or has presumably cast their vote has neither signed the voter's list or granting that it was signed, yet it would appear that the signature is different from what facsimile of the voter's signature as seen on the voter's list;¹²

Among the documents attached to the petition to prove the allegations therein are: 1) *Affidavit*¹³ of Marco Akmad, Poll Watcher of the Liberal Party at Barangay Indatuan; 2) *Affidavit*¹⁴ of Norman D. Pedtimbacan, nephew of Dilangalen; 3) *Affidavit*¹⁵ of Abdulmanan Sulaik, Poll Watcher for the Maguindanao Reform Party in Barangay Kapimpilan; 4) *Affidavit*¹⁶ of Datukon M. Mamadra, Poll Watcher for the Maguindanao Reform Party in Barangay Kapimpilan; and 6) photocopies of the *List of Voters*¹⁷ for Barangay Indatuan and

⁹ *Id.*

¹⁰ *Id.* at 6.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 21.

¹⁴ *Id.* at 23.

¹⁵ *Id.* at 217.

¹⁶ *Id.* at 219.

¹⁷ *Id.* at 25-126 for Barangay Indatuan; 127-216 for Barangay Kapimpilan.

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Barangay Kapimpilan.

On 13 June 2016, the Commission (*En Banc*) issued an *Order*¹⁸ directing Lauban and the Municipal Board of Canvassers of Northern Kabuntalan, Maguindanao (MBOC - Northern Kabuntalan) to file their comment/answer within 5 days from receipt of the order and setting the case for hearing on 28 June 2016.

On 27 June 2016, Lauban filed his *Comment/Answer*¹⁹ arguing that there are no factual and legal bases to justify Dilangalen's prayer for the declaration of failure of elections.²⁰

The hearing for the case was held on 28 June 2016.²¹ The parties were given 10 days to submit their respective memoranda.²²

On 12 July 2016, the MBOC - Northern Kabuntalan filed their *Comment/Answer*²³ claiming that the precincts in Barangays Indatuan and Kapimpilan duly functioned, the votes cast therein were duly counted, and the election returns were duly canvassed in the usual course of the elections.²⁴ Further, the MBOC - Northern Kabuntalan asserts that petitioner's counsel, Atty. Adil, Jr. was present during the canvassing proceedings.²⁵

On 21 July 2016, Dilangalen filed his *Memorandum*²⁶ substantially reiterating the allegations and arguments raised in his petition.

Is a declaration of failure of elections in Barangays Indatuan and Kapimpilan, Northern Kabuntalan, Maguindanao warranted?

The Commission (*En Banc*) finds that it is not.

The law states:

Sec. 6. Failure of election. - If, on account of force majeure, violence, terrorism, fraud, or other analogous causes the election in any polling place has not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect, and in any of such

¹⁸ *Id.* at 222.

¹⁹ *Id.* at 242-251.

²⁰ *Id.* at 246.

²¹ *Id.* at 256.

²² *Id.*

²³ *Id.* at 261-266.

²⁴ *Id.* at 262.

²⁵ *Id.*

²⁶ *Id.* at 269-278.

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cases the failure or suspension of election would affect the result of the election, the Commission shall, on the basis of a verified petition by any interested party and after due notice and hearing, call for the holding or continuation of the election not held, suspended or which resulted in a failure to elect on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or failure to elect.²⁷

The Supreme Court, in the case of *Tan, et al. v. Comelec, et al.*, interpreted the above-cited provision of law as follows:

From the above-cited proviso, three (3) instances justify the declaration of failure of election, to wit:

(a) the election in any polling place has not been held on the date fixed on account of force majeure, violence, terrorism, fraud, or other analogous causes;

(b) the election in any polling place had been suspended before the hour fixed by law for the closing of the voting on account of force majeure, violence, terrorism, fraud, or other analogous causes; or

(c) after the voting and during the preparation and transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect on account of force majeure, violence, terrorism, fraud, or other analogous causes.

In these three (3) instances, there must be a resulting failure to elect. As stated in *Banaga, Jr. v. Commission on Elections*, this is obvious in the first two scenarios, where the election was not held and where the election was suspended. As to the third scenario, where the preparation and the transmission of the election returns give rise to the consequence of failure to elect must, as mentioned earlier, be interpreted to mean that nobody emerged as a winner.

In *Banaga*, we held that:

Before the COMELEC can act on a verified petition seeking to declare a failure of election two conditions must concur, namely (1) no voting took place in the precinct or precincts on the date fixed by law, or even if there was voting, the election resulted in a failure to elect; and (2) the votes not cast would have affected the result of the election. Note that the cause of such failure of election could only be any of the following: force majeure, violence, terrorism, fraud or other analogous causes.²⁸ [citations omitted]

A review of Dilangalen's allegations in his petition and the *gmd*

²⁷ ELECT. CODE, §6.

²⁸ *Tan, et al. v. Comelec, et al.*, G.R. No. 166143-47, 20 November 2006.

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pieces of evidence he submitted shows that none of the three instances which justify the declaration of failure of elections occurred in Barangays Indatuan and Kapimpilan. There was no claim that the elections in these 2 barangays were *not held nor suspended on account of force majeure, violence, terrorism, fraud, or other analogous causes*. The affidavits Dilangalen submitted merely reiterate the allegations in his petition. Thus, it is clear that the elections in both barangays were conducted and resulted to Lauban's election as Vice-Mayor of Northern Kabuntalan.

Finally, the Commission (*En Banc*) quotes the following declarations of the Supreme Court in *Pasandalan v. Comelec, et al.*²⁹ on the power of the Commission to nullify elections or to declare a failure of elections, *viz*:

The nullification of elections or declaration of failure of elections is an extraordinary remedy. The party who seeks the nullification of an election has the burden of proving entitlement to this remedy. It is not enough that a verified petition is filed. The allegations in the petition must make out a *prima facie* case for the declaration of failure of election, and convincing evidence must substantiate the allegations.³⁰

The facts pertaining to this case do not support the exercise of the extraordinary remedy of a declaration of failure of elections in Barangays Indatuan and Kapimpilan.

WHEREFORE, premises considered, the Commission (*En Banc*) **RESOLVED**, as it hereby **RESOLVES**, to **DISMISS** the instant petition.

SO ORDERED.

resigned at the time of signing

J. ANDRES D. BAUTISTA

Chairman

CHRISTIAN ROBERT S. LIM

Commissioner

AL A. PARREÑO

Commissioner

²⁹ G.R. No. 150312, 18 July 2002.

³⁰ *Id.* citing *Mitmug v. Comelec*, 230 SCRA 54 (1994) and *Banaga, Jr., v. Comelec*, 336 SCRA 701 (2000).


LUIE TITO F. GUIA
Commissioner

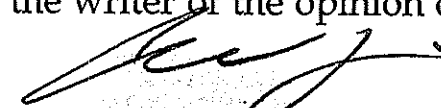

ARTHUR D. LIM
Commissioner


**MA. ROWENA AMELIA V.
GUANZON**
Commissioner


SHERIFF M. ABAS
Commissioner

CERTIFICATION

I hereby certify that the conclusions in the above resolution were reached in consultation among the members of the Commission (*En Banc*) before the case was assigned to the writer of the opinion of the Commission. *good*


CHRISTIAN ROBERT S. LIM
J. ANDRES D. BAUTISTA
Chairman



Republic of the Philippines
COMMISSION ON ELECTIONS
Intramuros, Manila

EN BANC

GUIMID P. MATALAM, SR. SPA Case No. 16 - 122 (FE)
and ARKAN M. MATALAM,

Petitioners, **Present:**

-versus-

SALIK MAMASABULOD,
ABDILLAH MAMASABULOD
and the MUNICIPAL BOARD
OF CANVASSERS OF
PAGALUNGAN,
MAGUINDANAO

Respondents.

Bautista, J.A.D., Chairman
Lim, C.R.S., Commissioner
Parreño, A.A., Commissioner
Guia, L.T.F., Commissioner
Lim, A.D., Commissioner
Guanzon, M.R.A.V., Commissioner
Abas, S.M., Commissioner

Promulgated:

x ----- x

OCT 30 2017

RESOLUTION

For resolution before this Honorable Commission is the *Petition dated 20 May 2016* by petitioners Guimid P. Matalam, Sr. and Arkan M. Matalam praying that the Commission "annul the elections on May 9, 2016 in Barangays Bagoenged, Buliok, Dalgan, Damasalak, Inug-ug, Kalbugan, Kudal, and Layog of the Municipality of Pagalungan, Maguindanao, Philippines" and the "proclamation of the private respondents."¹

Petitioners claim that "(s)everal irregularities occurred and tainted the May 9, 2016 election which would warrant the annulment of the said election based on the ground that no election was held in

¹ *Instant Petition, Records, at pages 01 to 100; and Petitioners' Memorandum dated 07 July 2016, Records, at pages 214 to 324.*

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numerous polling precincts on account of terrorism, fraud and other analogous circumstances.”² Petitioners add that,³

“What transpired in the questioned precincts of Pagalungan, Maguindanao, was not an election. It was a showcase of greed and manipulation where the moneyed and the influential resorted to evil and revolting schemes just to ensure their perpetuity in power. Respondents, who are the incumbents and backed up by the equally malevolent Liberal Party, displayed all their might and influence to make sure that they would not be unseated and their cohorts would remain in power. Intimidation, threat and coercion was(sic) everywhere in Pagalungan, Maguindanao during the May 9, 2016 exercise.”

Private respondents, on the other hand, is of the position that, “the cause of action of the Petitioners is characterized by **FRAUD** and **ILLEGALITY** as it is based on erroneous recitation of facts and circumstances, and unsupported by sufficient evidence, the only documents in support thereto are the affidavits of the watchers of the petitioners which are unreliable and questionable evidence, thus, this Petition should be **DISMISSED**.”⁴

The *Instant Petition* fails to sway this Commission.

Section 6 of the Omnibus Election Code provides for the instances when this Commission may declare failure of elections, as follows:⁵

Section 6. *Failure of Election* – If, on account of *force majeure*, violence, terrorism, fraud, or other analogous causes the election in any polling place has not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or after the

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² *Instant Petition*, Records, at page 12.

³ *Petitioners’ Memorandum*, Records, at page 230.

⁴ *Respondents’ Answer* dated 20 June 2016, Records, pages 116 to 141; and *Respondents’ Memorandum* date 04 July 2016, Records, pages 145 to 212.

⁵ Batas Pambansa blg. 881, “*Omnibus Election Code of the Philippines*,” enacted 03 December 1985; see also Section 2, Rule 26 of the 1993 COMELEC Rules of Procedure.

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voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect, and in any of such cases the failure or suspension of election would affect the result of the election, the Commission shall, on the basis of a verified petition by any interested party and after due notice and hearing, call for the holding or continuation of the election not held, suspended or which resulted in a failure to elect on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or failure to elect.

In *Mutlan vs. Commission on Elections*,⁶ the Supreme Court had the occasion to elaborate on the aforementioned provision,

“There are three instances where a failure of elections may be declared, thus:

- (a) the election in any polling place has not been held on the date fixed on account of *force majeure*, violence, terrorism, fraud or other analogous causes;
- (b) the election in any polling place has been suspended before the hour fixed by law for the closing of the voting on account of *force majeure*, violence, terrorism, fraud or other analogous causes; or
- (c) after the voting and during the preparation and transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect on account of *force majeure*, violence, terrorism, fraud or other analogous causes.

In all three instances, there is a resulting failure to elect. In the first instance, the election has not been held. In the second instance, the election has been suspended. In

⁶ G.R. No. 171248, 02 April 2007; citing *Banaga vs. Commission on Elections*, G.R. No. 134696, 31 July 2000. See also *Pasandalan vs. Commission on Elections*, G.R. No. 150312, 18 July 2002.

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the third instance, the preparation and the transmission of the election returns give rise to the consequent failure to elect; the third instance is interpreted to mean that nobody emerged as a winner."

This Commission can only act on a verified petition seeking to declare a failure of elections when two conditions concur: (1) no voting took place in the precinct or precincts on the date fixed by law, or even if there was voting, the election resulted in a failure to elect; and (2) the votes not cast would have affected the result of the elections. The cause of such failure of election could only be any of the following: *force majeure*, violence, terrorism, fraud or other analogous causes. Time and again, the Supreme Court has held that the term failure to elect means nobody emerged as a winner.

Juxtaposing the above jurisprudence with the circumstances of this case, there was no failure to elect as petitioners suggest. Petitioners even submitted copies of the Municipal Certificates of Canvass and the Statements of Votes by Precinct for Mayor and Vice-Mayor of Pagalungan, Maguindanao;⁷ these documents show that private respondent Salik Mamasabulod garnered a clear majority over petitioner Guimid Matalam with a lead of three thousand sixty (3,060) votes while Arkan Matalam trailed Abdillah Mamasabulod by two thousand nine hundred forty (2,940) votes, thereby negating any claim that there was a failure to elect. Respondents garnered the most votes in their respective electoral races and were proclaimed as winners thereof.

Assuming *arguendo* that petitioners' claims are true and that the aforementioned results are fruits of a vitiated process, this is not the function of the prayed remedy nor would the same prove appropriate. Thus, to consent thereto is to open the gates to losing candidates with dire hopes and to questions of grave abuse of discretion on the part of this Commission.⁸

/s/

⁷ Annexes "C," "D," "E," "F" and "G" to the *Instant Petition*, Records, at pages 28 to 45.

⁸ In *Mutillan vs Commission on Elections* (Supra Note 6.), the Supreme Court, through the writing of Justice Carpio, had once explained,

"To warrant a declaration of failure of election on the ground of fraud, the fraud must prevent or suspend the holding of an election, or mar

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In parting, the Supreme Court has once ruled,⁹

"The nullification of elections or declaration of failure of elections is an extraordinary remedy. The party who seeks the nullification of an election has the burden of proving entitlement to this remedy. It is not enough that a verified petition is filed. The allegations in the petition must make out a *prima facie* case for the declaration of failure of election, and convincing evidence must substantiate the allegations."

Other issues deserve scant consideration.

WHEREFORE, premises considered, the Honorable Commission **RESOLVED**, as it hereby **RESOLVES**, to **DISMISS** the *Instant Petition*.

SO ORDERED.

Resigned.
J. ANDRES D. BAUTISTA
Chairman


CHRISTIAN ROBERT S. LIM
Commissioner


AL A. PARREÑO
Commissioner

fatally the preparation, transmission, custody and canvass of the election returns. The conditions for the declaration of failure of election are stringent. Otherwise, elections will never end for losers will always cry fraud and terrorism.

⁹ *Pasandalan vs. Commission on Elections*, Supra Note 6; citing *Mitnug vs. Commission on Elections*, G.R. No. 106270-73, 10 February 1994; and *Banaga vs. Commission on Elections*, Supra Note 6.


LUIE TITO F. GUIA
Commissioner

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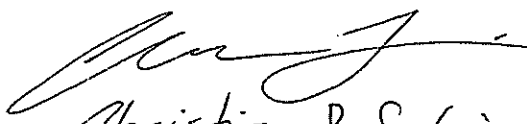
ARTHUR D. LIM
Commissioner


MA. ROWENA AMELIA V. GUANZON
Commissioner


SHERIFF M. ABAS
Commissioner

CERTIFICATION

I hereby certify that the conclusions in the above resolution were reached in consultation among the members of the Commission before the case was assigned to the writer of the opinion of the Commission (*En Banc*).


Christian R. S. Lin
J. ANDRES D. BAUTISTA
Acting Chairman



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Republic of the Philippines
COMMISSION ON ELECTIONS
Intramuros, Manila

EN BANC

IN THE MATTER OF PETITION
FOR ANNULMENT OF
ELECTION RESULTS AND/OR
DECLARATION OF FAILURE OF
ELECTIONS

IBRAHIM K. IBRAHIM,
Petitioner,

-versus-

SPA No. 16-125 (FE)

SHAMEEM B. MASTURA,
Respondent. Promulgated:

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NOV 17 2016

RESOLUTION

Three instances justify a declaration of failure of election. These are: (a) the election in any polling place has not been held on the date fixed on account of *force majeure*, violence, terrorism, fraud or other analogous causes; (b) the election in any polling place has been suspended before the hour fixed by law for the closing of the voting on account of *force majeure*, violence, terrorism, fraud or other analogous causes; or (c) after the voting and during the preparation and transmission of the election returns or in the custody or canvass

by

thereof, such election results in a failure to elect on account of force majeure, violence, terrorism, fraud or other analogous causes.¹

The Case

For resolution is the Petition for Annulment of Election Results and/or Declaration of Failure of Elections² ("Petition") filed by Ibrahim K. Ibrahim ("Petitioner") against Shameem B. Mastura ("Respondent") pursuant to Section 6 of the Omnibus Election Code (OEC).

The Facts

Petitioner and Respondent were candidates for Mayor of Sultan Kudarat, Maguindanao ("Sultan Kudarat"), in the May 9, 2016 National and Local Elections (NLE). On May 11, 2016, Respondent was proclaimed as the duly elected Mayor of Sultan Kudarat based on the Certificate of Canvass of Votes and Proclamation of Winning Candidate.³

On May 24, 2016, Petitioner filed the instant petition anchored on the alleged electoral fraud committed by Respondent thru the following acts:

- a) Respondent's personnel shaded in advance the official ballots;
- b) Respondent's personnel threatened to kill the legitimate voters who were supporting Petitioner;
- c) Barangay officials were tolerating elements engaged in the advance shading of ballots;
- d) Letting Respondent's personnel man the polling places or precincts;
- e) Excluding Petitioner's poll watchers from their assigned precincts;
- f) Closing the precincts without just cause;
- g) Allowing Respondent's voters to vote repetitively;

¹ *Pasandalan vs. COMELEC & Asum*, G.R. No. 150312, July 18, 2002, citing *Banaga, Jr. vs. COMELEC & Bernabe, Jr.*, G.R. No. 134696, July 31, 2000. mr

² Records, at 1 to 5.

³ *Id.*, at 86.

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- h) Not inking voters;
- i) Allowing persons not on COMELEC's master list of voters to vote; and,
- j) Feeding the ballots and the pre-shaded ballots to the VCM (PCOS) Machines.⁴

According to Petitioner, the above incidents are sufficient to establish that failure of elections be declared on the ground that the will of the electorate has been denigrated.⁵ Petitioner rationalized that since the election in Sultan Kudarat was a sham; there was failure of election in Sultan Kudarat on account of violence, intimidation and fraud of Respondent and his personnel.

In an Order⁶ dated June 13, 2016, the Commission (*En Banc*) required Respondent to file his Comment/ Answer and thereafter set the case for hearing on June 28, 2016.

During the hearing set on June 28, 2016, counsels for both parties appeared on behalf of their respective clients. The Commission issued an Order⁷ giving Petitioner and Respondent ten (10) days to submit a Memorandum and Answer *cum* Memorandum, respectively.

On July 18, 2016, Petitioner filed his Memorandum,⁸ reiterating all the material allegations in his Petition.

On July 25, 2016, Respondent filed his Answer *Cum* Memorandum⁹ denying the averments of Petitioner for being baseless and malicious. Respondent claimed that on election day, all precincts functioned save for one (1), Clustered Precinct No. 0074A, 0075A, 0076A, 0077A in Barangay Katuli, because the members of the Board of Election Inspectors failed to report during election hours.¹⁰
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⁴ *Id.*, at 2 to 3.

⁵ *Id.*, at 4.

⁶ *Id.*, at 24.

⁷ *Id.*, at 31.

⁸ *Id.*, at 37 to 49.

⁹ *Id.*, at 72 to 82.

¹⁰ *Id.*, at 73.

Respondent argued that the grounds raised in the petition are not the conditions set forth in Section 6 of the OEC for the Commission to declare failure of elections. There is no allegation in the Petition that no election ever took place in Sultan Kudarat on the date, time and place set by law. Its allegations of alleged fraud, intrinsic and extrinsic, only prove the contrary, that in fact, there was election in the precincts, albeit marred by anomalies.¹¹

The issues having been joined, the case is now submitted for Resolution.

Issue

The sole issue for resolution is whether there was failure of election in Sultan Kudarat during the scheduled May 9, 2016 NLE.

The Ruling

The Petition must be denied.

Section 6 of the Omnibus Election Code lays down the conditions for Failure of Election to prosper, thus:

Sec. 6. Failure of election. - If, on account of force majeure, violence, terrorism, fraud, or other analogous causes the election in any polling place has not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect, and in any of such cases the failure or suspension of election would affect the result of the election, the Commission shall, on the basis of a verified petition by any interested party and after due notice and hearing, call for the holding or continuation of the election not held, suspended or which resulted in a failure to elect on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or failure to elect. *my*

¹¹ *Id.*, at 76.

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Based on the foregoing provision, three instances justify a declaration of failure of election. These are:

- a) the election in any polling place has not been held on the date fixed on account of *force majeure*, violence, terrorism, fraud or other analogous causes;
- b) the election in any polling place has been suspended before the hour fixed by law for the closing of the voting on account of *force majeure*, violence, terrorism, fraud or other analogous causes; or
- c) after the voting and during the preparation and transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect on account of *force majeure*, violence, terrorism, fraud or other analogous causes.¹²

The Supreme Court elucidates that what is common in these three instances is the resulting failure to elect. In the first instance, no election is held while in the second, the election is suspended. In the third instance, circumstances attending the preparation, transmission, custody or canvas of the election returns cause a failure to elect. The term failure to elect means nobody emerged as a winner.¹³ Absent any showing that these conditions were not met, the Commission can deny the Petition.

A close perusal of the allegations in the Petition shows that Petitioner does not contend that elections were not held or suspended. Neither does he allege that although there was voting, nobody was elected. Petitioner simply posits that there was failure of elections on account of violence, intimidation and fraud committed by Respondent. These allegations do not fall under any of the conditions that would justify the declaration of failure of election.

In *Borja vs. COMELEC*,¹⁴ the Supreme Court defined "failure to elect" in its literal sense, meaning that "nobody was elected" or that "nobody emerged as a winner."

¹² *Supra*, note 1.

¹³ *Ibid.*

¹⁴ G.R. No. 133495, September 3, 1998.

In the instant case, it is undisputed that the voters of Sultan Kudarat were able to cast their votes on May 9, 2016 that resulted in the proclamation of Respondent as the duly elected Municipal Mayor of Sultan Kudarat. This leads the Commission to the indisputable conclusion that elections were indeed conducted where Respondent emerged as the winner, as evidenced by the *Certificate of Canvass of Votes and Proclamation of Winning Candidate for Mayor*.¹⁵ This fact alone militates against Petitioner's cause. Thus, there is no factual basis to conclude that elections were not held or suspended or that there was failure to elect.

Petitioner averred that there was failure of election for the reason that no actual election was held since no actual voting was done by the real and legitimate voters of Sultan Kudarat on account of violence, intimidation, and fraud of Respondent and his personnel.

We are not persuaded.

No less than the Supreme Court in *Pasandalan vs. COMELEC & Asum*¹⁶ ruled that to warrant a declaration of failure of election on the ground of fraud, the fraud must prevent or suspend the holding of an election, or mar fatally the preparation, transmission, custody and canvass of the election returns. The conditions for the declaration of failure of election are stringent. Otherwise, elections will never end for losers will always cry fraud and terrorism.

As earlier discussed, the conditions set forth by law were not met in the instant case to declare failure of elections. Elections were held followed by the declaration of the winning candidate. Considering that there is no concurrence of the conditions seeking to declare failure of election, there is no longer need to receive evidence on alleged election irregularities.¹⁷

Moreover, the nullification of elections or declaration of failure of elections is an extraordinary remedy. The party who seeks the nullification of an election has the burden of proving entitlement to this remedy. It is not enough that a verified petition is filed. The allegations in the petition must make out a *prima facie case* for the

¹⁵ Record, at 86.

¹⁶ *Supra*, note 1.

¹⁷ *Mitnug vs. COMELEC*, G.R. Nos. 106270-73, February 10, 1994.

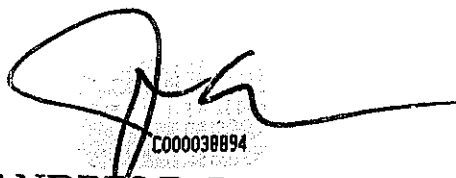
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declaration of failure of election, and convincing evidence must substantiate the allegations.¹⁸

In fine, a petition to declare failure of election or to annul election results must show on its face that the conditions necessary to declare failure to elect are present.

WHEREFORE, the Petition is **DISMISSED** for lack of merit.

SO ORDERED.



C000038894
J. ANDRES D. BAUTISTA
Chairman




CHRISTIAN ROBERT S. LIM
Commissioner



AL A. PARREÑO
Commissioner



LUIE TITO F. GUIA
Commissioner



ARTHUR D. LIM
Commissioner
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MA. ROWENA AMELIA V. GUANZON
Commissioner

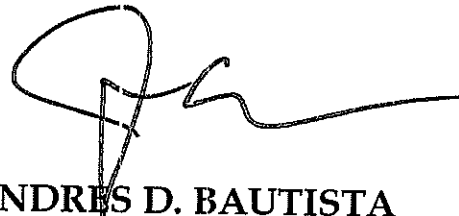


SHERIFF M. ABAS
Commissioner

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CERTIFICATION

I hereby certify that the conclusions in the foregoing resolution were reached in consultation among the members of the Commission before the case was assigned to the writer of the opinion of the Commission (*En Banc*).



J. ANDRES D. BAUTISTA
Chairman



Republic of the Philippines
COMMISSION ON ELECTIONS
Intramuros, Manila

EN BANC

IN THE MATTER OF SPA NO. 16-130 (FE)
DECLARING FAILURE OF
ELECTIONS IN BARANGAYS
BACONG, DAANA INGUD,
MATAMPAY, POONA
MARANTAO, KIALDAN,
LUBO 1 AND 2, LUMBAC,
KIALDAN, MANTAPOLI,
PANTIAMAS, TUCA
KIALDAN AND PUNUD
PROPER OF THE
MUNICIPALITY OF
MARANTAO, LANA DEL
SUR AND TO HOLD SPECIAL
ELECTIONS OR TO
ANNUL/EXCLUDE ELECTION
RETURNS THEREIN,

SAMSON U. ADIONG,
Petitioner.

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IN THE MATTER OF THE SPA NO. 16-131 (FE)
PETITION TO DECLARE A
FAILURE OF ELECTION IN
CLUSTERED PRECINCT NOS.
0043A, 0044A, 0045A, 0045B,
0045C OF BARANGAY LUBO,
0047A, 0047B, 0048A, 0048B OF
BARANGAY LUMBAC
KIALDAN; 0049A, 0050A,
0051A, 0052A, BARANGAY
MANTAPOLI, 0079, 0080A,
0081A, 0082A, 0083A OF
BARANGAY TUCA KIALDAN;
0069A, 0070A, 0071A, 0071B OF
BARANGAY PANTAIMAS;
0040A, 0041A, 0042A, 0042B OF
BARANGAY KIALDAN IN
THE MUNICIPALITY OF
MARANTAO, PROVINCE OF
LANAO DEL SUR,

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ALIMODEN GURO CORNELL,
Petitioner,

-versus-

THE MEMBERS OF THE
BOARD OF ELECTION
INSPECTORS (BEI) OF
CLUSTERED PRECINCT NOS.
OF BARANGAYS
MANTAPOLI, PANTAIMAS,
LUBO, KIALDAN, TUKA
KIALDAN, LUMBAC
KIALDAN; THE MUNICIPAL
BOARD OF CANVASSERS
(MBOC) OF THE
MUNICIPALITY OF
MARANTAO, PROVINCE OF
LANAO DEL SUR;
ALAHODING MARUHOM,
AS THE VICE MAYOR,
PROCLAIMED IN THE
RECENTLY CONCLUDED
MAY 09, 2016 NATIONAL,
LOCAL AND ARMM
ELECTIONS,

Respondents.

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Present:

Bautista, J.A.D., *Chairman*
Lim, C.R.S., *Commissioner*
Parreño, A.A., *Commissioner*
Guia, L.T.F., *Commissioner*
Lim, A.D., *Commissioner*
Guanzon, M.R.A.V., *Commissioner*
Abas, S.M., *Commissioner*

[Signature]

MAY 26 2017

Promulgated: _____

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RESOLUTION

To warrant a declaration of failure of election on the ground of fraud, the fraud must prevent or suspend the holding of an election, or mar fatally the preparation, transmission, custody and canvass of the election returns. The conditions for the declaration of failure of election are stringent. Otherwise, elections will never end for losers who will always cry fraud and terrorism.¹

The consolidated Petitions for Declaration of Failure of Elections call upon the Commission *En Banc* to exercise its authority to declare a failure of election in certain barangays the Municipality of Marantao, Province of Lanao del Sur in connection with the 09 May 2016 National and Local Elections under Section 6 of the Omnibus Election Code (OEC)² in relation to Section 4 of Republic Act (R.A.) 7166.³

I. FACTUAL ANTECEDENTS IN SPA 16-130 (FE)

Petitioner Samson A. Adiong was a candidate for the position of Mayor of the Municipality of Marantao in the 09 May 2016 National and Local Elections (NLE). He was nominated and endorsed by the National People's Coalition (NPC).⁴

He alleges that he was the second leading mayoralty candidate in the canvassed and consolidated returns. Out of the 39 clustered precincts in the Municipality of Marantao, Petitioner claims that there was a failure of election in 12 precincts. And if the latter are excluded, he would have been the leading candidate for Municipal Mayor and should have been duly proclaimed as such.⁵

The polling centers which Petitioner in SPA 16-130 (FE) claims to have been marred by terrorism and violence are as follows:

- a) **Marantao Municipal Gymnasium**, which is the polling center of seven (7) clustered precincts of Barangays Kialdan, Lubo 1, Lubo 2, Lumbac Kialdan, Mantapoli, Pantiamas, and Tuca Kialdan;

¹ *Pasandalan v. COMELEC*, G.R. No. 150312 (18 July 2002).

² The provision reads:

³ Otherwise known as "An Act Providing for Synchronized National and Local Elections and For Electoral Reforms, Authorizing Appropriations Therefor, and For Other Purposes."

⁴ SPA 16-130 (FE) Records, pp. 10-11.

⁵ *Id.*, p. 3. *PAV*

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- b) **Daana Ingud Bacong Elementary School**, which is the polling center for the clustered precincts of Barangays Bacong, Daanda Ingud, Matampay, and Poona Marantao; and
- c) **Sultan Disomimba Central Elementary School**, which is the polling center for the clustered precinct of Barangay Punud Proper.⁶

Insofar as the voting center of *Marantao Municipal Gymnasium* is concerned, Petitioner alleges that on or about six o'clock in the morning (6:00 a.m.) of Election Day, supporters of Petitioner's rival candidate, Racma Kudarat Abinal (Abinal), who won as the Municipal Mayor of the Municipality of Marantao in the 2016 NLE, arrived at the Gymnasium. The said group, allegedly including her brothers, namely, Cairoding Kudarat, Jamael Kudarat, Saifuddin Kudarat, and Hadji Said Kudarat (collectively, the Kudarat Brothers), took the official ballots from the members of the Board of Election Inspectors (BEI) to fill up the ballots themselves.

Petitioner's watchers objected to the presence of Abinal's supporters. The Kudarat Brothers responded by pulling out their handguns and started firing at Petitioner's watchers. As a result, Petitioner alleges that two of his watchers—Saidamen Ampay and Malik Ampay—were instantly killed, while another watcher, Abubacar Malawi (Malawi), was hit on the right thigh and escaped the scene by limping away.⁷ Malawi attests that he heard Abinal giving orders to her brothers in the Maranao dialect to "get the big guns from her house which was near the polling precinct and to kill them all." The military personnel and policemen who were supposed to secure the voting centers allegedly did not intervene and merely watched as the violent incident transpired.⁸

To substantiate his claims of the violent encounter, Petitioner attached Malawi's criminal complaint as well as that of other witnesses, charging Abinal and the Kudarat Brothers with murder and frustrated murder before the Office of the Provincial Prosecutor, Lanao del Sur.⁹

As Petitioner's watchers and voters left, Abinal and her supporters allegedly took the ballots and filled them up themselves.

⁶ *Id.*, p. 4.

⁷ *Id.*

⁸ *Id.*, p. 5.

⁹ *Id.* See also SPA 16-130 (FE) Records, pp. 21-30. *WV*

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To support this allegation, Petitioner attached supposed photos of Abinal's supporters shading the ballots themselves.¹⁰

Petitioner's counsel filed in the concerned precincts Motions to Suspend Elections but the members of the BEI refused to accept them.¹¹

In *Daana Ingud Bacong Elementary School*, Petitioner avers that Abinal's supporters stormed the polling precincts and pointed guns at Petitioner's watchers, supporters, and voters, causing them to vacate the polling center. None of Petitioner's supporters was injured and there were no fatalities.¹² In *Sultan Disomimba Central Elementary School*, unidentified men suspected as Citizen Armed Force Geographical Units (CAFGU) arrived and pointed guns at Petitioner's watchers, forcing them to leave the polling place.¹³

Petitioner claims that when voters and his supporters left the two above-mentioned voting centers, Abinal's supporters filled up and tampered with the ballots to favor her candidacy.¹⁴

In view of the foregoing, Petitioner prays that the Commission declare a failure of elections in *Barangays Bacong, Daana Ingud, Matampay, Poona Marantao, Kialdan, Lubo 1 and 2, Lumbac Kialdan, Mantapoli, Pantiamas, Tuca Kialdan and Punud Proper* of the Municipality of Marantao and direct the holding of elections for the said district or, in the alternative, to annul and exclude the election returns from the aforementioned barangays. Petitioner further prays that any proclamation be declared void until after the results of the special election or the canvassing of the results excluding the barangays in which failure of elections allegedly took place.¹⁵

Abinal's Intervention in SPA 16-130 (FE)

On 27 July 2016, Abinal filed her *Motion to Intervene with Answer in Intervention*, essentially stating that as she won her second term as Mayor of the Municipality of Marantao during the 09 May 2016 NLE, the outcome of the instant Petition will affect her as it

¹⁰ *Id.* See also Records, pp. 34-38.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*, p.7. *mn*

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ultimately seeks to annul her proclamation as the winning candidate for Mayor.¹⁶

In her *Verified Answer (with Special and Affirmative Defenses)*, Abinal denies the allegations therein and counter-argues that:

- a) The Petition should be denied for being filed beyond the statutory period prescribed under Section 6 of the OEC, which provides that "the Commission shall, on the basis of a verified petition by any interested party and after due notice and hearing, call for the holding or continuation of the election not held, suspended or which resulted in a failure to elect on a date reasonably close to the date of the election not held, suspended, or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or failure to elect."¹⁷
- b) The Petition failed to show a cause of action because based on Section 6 of the OEC, as amplified by jurisprudence,¹⁸ "failure of elections" means that "nobody emerged as a winner." In this case, the circumstances provided by law and jurisprudence to warrant the declaration of failure of elections are absent and elections were held. In fact, Abinal emerged as the winning candidate for the position of Mayor and was proclaimed as such.¹⁹
- c) The Petition should be denied for failing to implead and notify all the winning candidates as parties in the Petition, specifically the winning and proclaimed candidates for Sangguniang Bayan of Marantao.²⁰
- d) The Petition fails to prove that terrorism and violence affected the general conduct of elections. In *Hassan v. COMELEC*,²¹ the Court held that "while as a general rule, terrorism may not justify a declaration of failure of elections,

¹⁶ *Id.*, pp. 102-103.

¹⁷ *Id.*, pp. 111-112.

¹⁸ *Canicosa v. COMELEC*, G.R. No. 120318 (05 December 1997) and *Pasandalan v. COMELEC*, *supra* note 1.

¹⁹ *Supra* note 4, p. 112.

²⁰ *Id.*, pp. 112-113.

²¹ G.R. No. 124089 (13 November 1996) *///*

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where terrorism is so prevalent in the area as to warrant a declaration that no voting actually took place therein, there is a failure of election." In this case, Petitioner failed to prove that no elections were conducted. The only pieces of evidence submitted by Petitioner are the affidavits of his poll watchers, which the Supreme Court ruled as insufficient in the *Pasandalan* case.²² Moreover, Petitioner's poll watchers stated in their affidavits that after Abinal's supporters allegedly fired at them, the former left the polling place, which gave the latter the opportunity to shade the ballots themselves in favor of Abinal. How then could they have witnessed the alleged pre-shading of ballots when they left the polling place?²³

- e) The members of the BEIs, the PNP personnel and voters in the subject clustered precincts denied that the elections in the subject clustered precincts were marred by terrorism and violence. Abinal attached their respective affidavits to the Petition.²⁴

II. FACTUAL ANTECEDENTS IN SPA 16-131 (FE)

Petitioner Alimoden G. Cornell in SPA 16-131 (FE) was a candidate for the position of Vice-Mayor of the Municipality of Marantao for the 2016 NLE.²⁵ He names the BEI members of the assailed Clustered Precincts and Election Officer II of the Municipality of Marantao, Akil M. Laguindab (Election Officer Laguindab), as public respondents.²⁶ He also impleads Alahoding Marohum, who was proclaimed as the winning candidate for the position of Vice-Mayor of the Municipality of Marantao, as respondent.²⁷

The areas which Petitioner Cornell seeks this Commission to declare as areas where there had been failure of elections are as follows:

- a) Clustered precincts 0043A, 0044A, 0045A, 0045B, 0045C of Barangay Lubo;

²² *Supra* note 1.

²³ *Id.*, p. 113-114.

²⁴ *Id.*, pp 114-115.

²⁵ SPA 16-131 (FE) Records, p. 3.

²⁶ *Id.*

²⁷ *Id.*, pp. 3-4. *WV*

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- b) Clustered precincts 0047A, 0047B, 0048A, 0048B of **Barangay Lumbac Kialdan**;
- c) Clustered precincts 0049A, 0050A, 0051A, 0052A of **Barangay Mantapoli**;
- d) Clustered precincts 0079, 0080A, 0081A, 0082A, 0083A of **Barangay Tuca Kialdan**;
- e) Clustered precincts 0069A, 0070A, 0071A, 0071B of **Barangay Pantaimas**; and
- f) Clustered precincts 0040A, 0041A, 0042A, 0042B of **Barangay Kialdan**, all in the Municipality of Marantao, Province of Lanao del Sur.²⁸

Petitioner Cornell essentially avers that on Election Day, respondent BEI members of the clustered precincts of Barangays Mantapoli, Pantaimas, Lubo, Kialdan, Tuka Kialdan, and Lumba Kialdan and their escorts allegedly made a stopover at the house of Abinal and respondent Alahoding Maruhom, , instead of delivering the ballots to the subject polling precincts. The house of Abinal is allegedly separated only by a wall from the assigned voting center where the subject clustered precincts were located. Petitioner Cornell alleges that it was there that Abinal and her relatives distributed all the ballots pertaining to the subject clustered precincts and ordered their supporters to pre-shade the same.²⁹

Petitioner Cornell's watchers objected to the alleged illegal acts of Abinal's camp, which resulted in a fist fight among their respective supporters and the death of two of Petitioner Cornell's watchers, Saidamen Ampay and Malik Ampay.³⁰ Because of this violent incident, Election Officer Laguindab, requested for additional AFP troops to augment the PNP personnel in the area.³¹

²⁸ *Id.*, p. 4.

²⁹ *Id.*, p. 5.

³⁰ *Id.*, p. 6. They were also the watchers of Petitioner Samson U. Adiong in SPA 16-130 (FE).

³¹ *Id.* The Memorandum of Election Officer Laguindab to Atty. Roberto V. Dela Peña dated 09 May 2016 is attached to the Petition as Annex "C." *MBV*

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Petitioner insists that the registered voters assigned to the subject clustered precincts were not able to vote at all because the ballots were pre-shaded by the supporters of Abinal and Maruhom.³²

To support this allegation, Petitioner submitted photographs purportedly showing the supporters of Abinal and Maruhom pre-shading the ballots and a video recording.³³

He also claims that the Election Day Computerized Voter's Lists (EDCVLs) pertaining to the assailed clustered precincts which were submitted by the members of the BEI to the EO Laguindab were fake and spurious. The photocopies thereof,³⁴ which were attached to the Petition, allegedly came from colored EDCVLs, which could not have been genuine as the Commission issued black and white EDCVLs in connection with the 2016 NLE. An examination of the supposed fake EDCVLs shows supposed dissimilarities in the signatures recorded in the EDCVLs and the signatures of the voters who voted on Election Day. Hence, Petitioner argues, that the voters registered in the EDCVLs are not the same persons who cast their votes.³⁵

Finally, Petitioner Cornell asserts that proof of pre-shading by the supporters of Abinal and Maruhom is manifested in the fact that in the challenged precincts, he and other candidates for the position of Vice-Mayor received minimal to zero votes as shown in the election returns attached to the Petition.³⁶

EO Laguindab's Comment in SPA 16-130 (FE) and SPA 16-131 (FE)

On 05 August 2016, EO Laguindab submitted his Comment in compliance with the Commission's directive contained in an Order dated 26 July 2016.³⁷ His report is summarized as follows:

³² *Id.*

³³ *Id.*, p. 7. The photographs are attached to the Petition as Annexes "H", "H-1", "H-2" and "H-3", while the video is attached as Annex "H-4."

³⁴ Attached to the Petition as Annexes "I-1 to I-24."

³⁵ *Id.*, pp. 8-9.

³⁶ *Id.*

³⁷ *Id.*, p. 505. *BN*

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- a) As regards the allegation of pre-shading of ballots, EO Laguindab avers that he did not receive any complaints or reports about pre-shading of ballots in the questioned Clustered Precincts from the candidates' watchers and supporters, members of the BEI, or other interested persons on Election Day. He states that had he received such reports of such incident, he would have investigated the same and acted accordingly.³⁸
- b) As regards the allegation that the members of the BEI made a stopover at Abinal's house, he alleges that he had no personal knowledge of the same and that he did not receive any report from the candidates' watchers and supporters, BEI members or the latter's security escorts.³⁹
- c) With respect to the allegation of spurious EDCVLs, he states that in the case of Barangay Lumbac Kialdan, the EDCVLs pertaining to Precinct Nos. 0047A, 0047B, 0048A, and 0048B appear to be fake as they were colored. The EDCVLs he distributed to the members of the BEI were printed in black and white. He recommends that an investigation be conducted as well as on the allegation of irregularities in the signatures of the voters in the EDCVLs.⁴⁰
- d) As regards the allegation of terrorism and violence, he confirms the shooting incident that resulted in the deaths of two of Samson Adiong's watchers. He went to the crime scene to investigate together with the PNP and AFP personnel assigned in the area. He then reported the incident to Atty. Dela Peña, who suggested that he request for additional PNP and AFP personnel to secure the area, which he complied with. Thereafter, voting in the affected polling center resumed after the shooting incident without any other untoward incidents occurring.⁴¹
- e) He denies having any personal knowledge of the terrorism and violence described in the Petition.⁴²

³⁸ *Id.*, p. 509.

³⁹ *Id.* p., 510.

⁴⁰ *Id.*

⁴¹ *Id.*, p. 511.

⁴² *Id.* 

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On 22 August 2016, he submitted a Comment in SPA 16-130 (FE), praying that the Comment he submitted in SPA 16-131 (FE) be considered as his Comment/Report in the former Petition.⁴³

Respondent Maruhom's Verified Answer

On 23 August 2016, Respondent Maruhom filed his Verified Answer with Special Affirmative Defenses.⁴⁴ In sum, he alleges:

- a) The Petition was filed out of time. In a number of cases,⁴⁵ the Supreme Court held that a petition for annulment or declaration of failure of election may be filed at any time before proclamation. The Court also held that "there is no law that provides for a reglementary period within which to file annulment of elections where there is as yet no proclamation." In the present case, Petitioner Cornell himself admitted that Respondent Maruhom had already been proclaimed.⁴⁶
- b) The grounds cited by Petitioner Cornell to support his Petition are not grounds for declaration of failure of elections as provided under Section 6 of the OEC. Petitioner Cornell claims that no elections were held because the ballots were allegedly pre-shaded by Abinal's supporters. But the police report as well as EO Laguindab's Memorandum to Atty. Dela Peña,⁴⁷ both state that elections were held in the challenged Clustered Precincts.⁴⁸
- c) The Petition failed to implead indispensable parties, specifically all provincial, regional and municipal candidates in the 2016 NLE whose winning or losing margin is equal to or less than the 4,345 votes, which is the total number of registered voters in the seven (7) clustered precincts subject of this Petition.⁴⁹
- d) The allegations in the present Petition do not make a case for declaration of failure of elections. They should be properly ventilated in an election protest case.⁵⁰

⁴³ *Supra* note 4, pp. 181-183.

⁴⁴ *Id.*, p. 562.

⁴⁵ *Hassan v. COMELEC*, G.R. No. 124089 (13 November 1996) and *Banaga v. COMELEC*, G.R. No. 134696 (31 July 2000).

⁴⁶ *Id.*, p. 63.

⁴⁷ Attached to the Petition as Annexes "A" and "C", respectively.

⁴⁸ *Id.*, p. 568.

⁴⁹ *Id.*, p. 568 and 569.

⁵⁰ *Id.*, p. 569. *MM*

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ISSUES

The main issue that is now before the Commission *En Banc* for resolution is whether a failure of elections should be declared in the subject polling centers in the Municipality of Marantao in relation to the 09 May 2016 NLE.

RULING

I. Abinal's Motion to Intervene (with Answer in Intervention) is granted.

As noted earlier, Abinal filed her *Motion to Intervene with Answer-in-Intervention* on 27 July 2016 alleging that, being the proclaimed Mayor, her interests as such will be adversely affected.

Sections 1 and 3, Rule 8 of this Commission's Rules of Procedure provide:

Section 1. *When Proper and Who may be Permitted to Intervene.* - Any person allowed to initiate an action or proceeding may, before or during the trial of an action or proceeding, be permitted by the Commission, in its discretion, to intervene in such action or proceeding, if he has legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or when he is so situated as to be adversely affected by such action or proceeding.

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Sec. 3. *Discretion of Commission.* - In allowing or disallowing a motion for intervention, the Commission or the Division, in the exercise of its discretion, shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the intervenor's rights may be fully protected in a separate action or proceeding.

Based on the foregoing provisions, the Commission grants Abinal's intervention.

First, Abinal timely filed her *Motion to Intervene* as the same was filed during the trial and before this case was submitted for resolution. *MNV*

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Moreover, as the winning and proclaimed candidate for the position of Mayor, Abinal has a legal interest in the subject matter of the instant Petitions and her rights as such will be adversely affected should the present Petitions be granted. Additionally, her rights as such cannot be fully protected in a separate action or proceeding. Assuming that these Petitions are granted and failure of elections is declared in the subject clustered precincts, the possibility of her being unseated is not farfetched. Her opportunity and the appropriate avenue for her to protect her legal interests as the proclaimed Mayor of Marantao is in the adjudication of these Petitions.

For these reasons, the Commission grants her Answer-in-Intervention.

II. The Petitions are dismissed.

After a careful consideration of the evidence submitted by all the parties, We rule that the case should be **DISMISSED** for lack of merit for the following reasons:

IIA. The allegations in the Petitions do not fall under any of the instances under Section 6 of the OEC that would justify the declaration of failure of elections in the assailed clustered precincts.

Both Petitioners in SPA 16-130 (FE) and SPA 16-131 (FE) allege that there was failure of elections in the voting centers named in their Petitions because of the incidence of violence allegedly perpetrated by Abinal's brothers and supporters, which resulted in the deaths of Petitioner Adiong's two watchers, and the pre-shading of ballots by Abinal's supporters. Additionally, Petitioner Cornell alleges that the BEI members passed by the house of Abinal on the morning of Election Day and that was where the latter purportedly gave instructions to her supporters to pre-shade the ballots.

Contextualizing the foregoing allegations with the relevant law and jurisprudence on failure of elections, We find that the said allegations do not constitute grounds to declare a failure of elections.

Section 6 of the OEC provides: *mn*

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Sec. 6. Failure of election. - If, on account of force majeure, violence, terrorism, fraud, or other analogous causes the election in any polling place has not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect, and in any of such cases the failure or suspension of election would affect the result of the election, the Commission shall, on the basis of a verified petition by any interested party and after due notice and hearing, call for the holding or continuation of the election not held, suspended or which resulted in a failure to elect on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or failure to elect.

The Supreme Court has ruled that the pre-conditions for declaring a failure of election are: (1) that no voting has been held in any precinct or precincts because of *force majeure*, violence or terrorism, and (2) that the votes not cast therein suffice to affect the results of the elections.⁵¹ The concurrence of these two (2) circumstances is required to justify the declaration of failure of elections and the calling of a special election.

Further fleshing out the concept of failure of elections, the Court, in *Pasandalan*, elaborated:

[T]hree instances justify a declaration of failure of election. These are:

"(a) the election in any polling place has not been held on the date fixed on account of *force majeure*, violence, terrorism, fraud or other analogous causes;

(b) the election in any polling place has been suspended before the hour fixed by law for the closing of the voting on account of force majeure, violence, terrorism, fraud or other analogous causes; or

(c) after the voting and during the preparation and transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect on account of force majeure, violence, terrorism, fraud or other analogous causes."

⁵¹ *Usman v. COMELEC*, 42 SCRA 667 (1971); *Sardea v. COMELEC*, 225 SCRA 374 (1993); *Lucero v. COMELEC*, 234 SCRA 280 (1994); *Gov. Tupay T. Loong v. COMELEC*, G.R. Nos. 107814-107815, G.R. No. 120826, G.R. No. 122137, G.R. No. 122396, May 16, 1996.

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What is common in these three instances is the resulting failure to elect. In the first instance, no election is held while in the second, the election is suspended. In the third instance, circumstances attending the preparation, transmission, custody or canvas of the election returns cause a failure to elect. The term failure to elect means nobody emerged as a winner.⁵²

None of these three instances is present in this case. Elections did take place in the assailed clustered precincts as the evidence on record establishes. There is no evidence on record that elections were suspended before the hour fixed by law for the closing of the voting because of the alleged terrorism and anomalies claimed in the Petitions. Moreover, the alleged terrorism and anomalies did not result in failure to elect. In fact, for the local elective posts challenged in the subject Petitions, *i.e.*, Mayor and Vice-Mayor of the Municipality of Marantao, Abinal⁵³ and Maruhom⁵⁴ received the plurality of votes and were proclaimed as the winning candidates for the said positions respectively. For these reasons, it becomes clear that the Petitions have no legal foundation to stand on and must accordingly be dismissed.

That elections were held in the affected polling center is buttressed by the statements of EO Laguindab in his *Comment*, the pertinent portions of which read:

After the shooting incident, I immediately went to the crime scene to investigate, together with the PNP and AFP personnel. I personally saw the bodies of the victims as they were carried out of the polling center.

x x x

Voting in the affected polling center resumed after the shooting incident without any other untoward incidents occurring.⁵⁵ (Emphasis supplied)

Even the Spot Report of the PNP of Marantao Municipal Police Station⁵⁶ on the shooting incident at the Municipal Gym Polling Center, Barangay Poblacion, Mantapoli, Municipality of Marantao confirms that elections in the said polling center did take place. In the said Report, Police Inspector Alonto Mambuay Arobinto stated:

⁵² *Supra* note 1. See also *Mutlan v. COMELEC and Ampatuan*, G.R. No. 171248 (02 April 2007).

⁵³ *Supra* note 4, p. 104-107.

⁵⁴ *Supra* note 24, p. 573-574.

⁵⁵ *Supra* note 40.

⁵⁶ *Id.*, p. 19. *AM*

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Initial investigation conducted by this office disclosed that while casting of votes the subject victims were watched by mayoralty candidate Samsung usop adiong (sic) of this municipality and they were had (sic) a short conversation commotion (sic) and fist fight with the suspect x x x.⁵⁷ (Emphasis supplied)

The Affidavits⁵⁸ of the public school teachers who served as members of the (BEI) of Barangays Punud Proper, Matampay, Tuca Kialdan, Lubo 1, Lubo 2, Lumbac Kialdan, Pantaimas, Kialdan Proper, Pantaimas, Daana Ingud also confirm that elections were conducted and that the same were carried out without any untoward incident.

The BEI members who were assigned to Barangays Punud Proper (with Central Disomamba Central Elementary School as the polling center), Matampay (with Daana Ingud Bacong Elementary School as the polling center), Tuca Kialdan (with the Marantao Municipal Gymnasium as the polling center), and Daana Ingud (with Daana Ingud Bacong Elementary School as the polling center) essentially state that: a) on Election Day around six o'clock in the morning, they prepared the materials and equipment needed for the conduct of the elections; b) they opened their respective polling precincts and allowed voters to cast their votes; c) the voters were able to cast their votes in the ballots and the polling place remained peaceful all throughout the day; d) there was no incident that caused any problem in the conduct of the elections; e) their respective polling centers were secured by PNP and AFP personnel; and f) after the polls were closed, they were able to successfully transmit their respective election returns to the municipal canvassing center without problem or delay.⁵⁹

On the other hand, the BEI members who were assigned to Barangays Tuca Kialdan, Lubo 1, Lubo 2, Lumbac Kialdan, Pantaimas, and Kialdan Proper, with the Marantao Municipal Gymnasium as the designated voting center, essentially state that: a) on or about six o'clock a.m. on Election Day, as they were preparing the materials and equipment to be used for the elections, they heard gun fires which they deemed to be not within the vicinity of the polling center; b) because the shooting incident was not within the premises of their polling center, it did not bother them and thus, they continued with their preparation; c) that the voters were able to cast

⁵⁷ Id.

⁵⁸ *Supra* note 4, pp. 124-144.

⁵⁹ Id. *AN*

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their votes and the shooting incident did not disrupt the casting of votes; d) the voting center was secured by PNP and AFP personnel; and e) after the polls closed, they were able to successfully transmit their respective election returns to the municipal canvassing center without any delay or problem.⁶⁰

Finally, the Certificates of Canvass of Votes and Proclamation of Winning Candidates for Mayor⁶¹ and Vice-Mayor⁶² issued by the members of the Municipal Board of Canvassers (MBOC) of the Municipality of Marantao, which states that the said members have duly canvassed the votes cast in 39 precincts for the candidates therein and certifying that, after the canvassing of votes, Abinal and Maruhom received the highest number of votes, also confirm that elections were conducted in the clustered precincts subject of these Petitions.

All these pieces of evidence show that elections were indeed undertaken in the challenged clustered precincts, which resulted in Abinal and Maruhom, among other candidates for local posts in the Municipality of Marantao, as winners.

It must be pointed out that EO Laguindab, the public school teachers who submitted their affidavits, and the members of the MBOC are public officials who enjoy in their favor the presumption of regularity in the performance of their respective official duties during the 2016 NLE. As the Court held in a long line of cases, the presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty. The presumption, however, prevails until it is overcome by clear and convincing evidence to the contrary. Thus, unless the presumption is successfully rebutted, it becomes conclusive. Every reasonable intendment will be made in support of the presumption and in case of doubt as to an officers act being lawful or unlawful, construction should be in favor of its lawfulness.⁶³

In the case under consideration, Petitioners failed to present clear and convincing evidence to overturn this presumption in favor of the above-mentioned public officials in the performance of their official duties during the 2016 NLE.

⁶⁰ *Id.*

⁶¹ *Supra* note 52.

⁶² *Supra* note 53.

⁶³ *People v. De Guzman*, G.R. No. 106025 (09 February 1994) and *Bustillo et al. v. People*, G.R. No. 160781 (12 May 2010). *μN*

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IIB. The shooting incident and pre-shading of ballots that supposedly marred the elections in the assailed clustered precincts are not sufficient justification to declare the elections therein as void.

As earlier pointed out, Petitioners insist that the shooting incident and the alleged pre-shading of ballots should render the elections in the questioned precincts void, thus justifying the declaration of failure of elections therein.

We do not agree.

While there is evidence on record showing that there was a shooting incident at the Municipal Gym of Marantao, which resulted in the deaths of two of Petitioner Adiong's watchers, the same cannot be considered as sufficient basis to declare failure of elections because evidence shows that the violent encounter did not fully disrupt or adversely affect the voting in the questioned polling centers. At the risk of being repetitive, elections were actually held in the questioned clustered precincts. On this point, it is apt to be reminded of the pronouncement of the Court in *Pasandalan* regarding the invocation of terrorism as ground for a petition to declare failure of elections, thus:

Courts exercise the power to declare a failure of election with deliberate caution so as not to disenfranchise the electorate. The fact alone that actual voting took place already militates against Pasandalan's cause. Also, Pasandalan's allegations of terrorism and fraud are not sufficient to warrant a nullification of the election in the absence of any of the three instances justifying a declaration of failure of election. Terrorism may not be invoked to declare a failure of election and to disenfranchise the greater number of the electorate through the misdeeds of only a few, absent any of the three instances specified by law. (Emphasis supplied)

Moreover, the affidavits⁶⁴ of Petitioner Adiong's watchers are insufficient to establish the alleged terrorism. As the Court held in *Pasandalan*, mere affidavits are insufficient to prove terrorism especially when the affidavits were all executed by petitioner's own poll watchers, as in this case.

⁶⁴ *Id.*, pp. 29-36. See also *supra* note 4, pp. 21-30. *mn*

C. J. J.

As regards the allegation of pre-shading of ballots, Petitioners Adiong and Cornell have different versions on how this was carried out.

The former alleges that when Abinal's supporters arrived at the Marantao Municipal Gym, they ordered their men to take the official ballots from the BEI members and fill up the ballots. When Petitioner Adiong's watchers and the voters left, Abinal and her supporters purportedly took the ballots and filled them up themselves.

Petitioner Cornell, on the other hand, alleges that at around six o'clock in the morning on Election Day, the members of the BEI went to the house of Abinal, and it was there that the latter and her relatives distributed all the ballots pertaining to the subject clustered precincts and ordered them to pre-shade the same.⁶⁵

We find these claims to be contradictory.

In SPA 16-130 (FE), Petitioner Adiong claims that after the violent encounter between his watchers and the supporters of Abinal, the former left the voting center. This is affirmed by the affidavits of Adiong's watchers. If this were indeed the case, who among Adiong's watchers witnessed Abinal and her supporters allegedly snatching the ballots and filling them up themselves when they themselves confirm that they left the polling center after the fracas between the rival candidates' supporters?

In SPA 16-131 (FE), Petitioner Cornell claims that the BEI members went to the house of Abinal where the latter and her relatives distributed the ballots and directed them to pre-shade the ballots. Similarly, how did Petitioner Cornell or his supporters see this happening in the morning of Election Day? There is no evidence on record that Petitioner Cornell himself personally witnessed what allegedly transpired inside the house. In fact, the affidavits of the watchers of Petitioner Adiong,⁶⁶ which Cornell also attached to his Petition as part of his evidence, make no reference to this supposed stopover by BEI members named as respondents in SPA 15-131 (FE).

As regards the photographs supposedly showing the supporters of Abinal pre-shading the ballots, the Commission cannot

⁶⁵ *Supra* note 24., p. 5.

⁶⁶ *Supra* note 63. *PN*

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give credence to the same. In a long line of cases,⁶⁷ the Supreme Court ruled:

The rule in this jurisdiction is that photographs, when presented in evidence, must be identified by the photographer as to its production and testified as to the circumstances under which they were produced. The value of this kind of evidence lies in its being a correct representation or reproduction of the original, and its admissibility is determined by its accuracy in portraying the scene at the time of the crime.


In the present case, the photographs lack proper identification from the photographer as to their production. The records are bereft of an affidavit from the photographer relating the circumstances under which they were produced. There is no evidence on record showing that the photographs are a correct representation or reproduction of the situation being depicted. This being the case, the pictures have no probative value and impact in resolving the merits of these consolidated Petitions.

One final note: Assuming that the Petitions deserve to be granted based on the evidence presented, such decision will be naught and will not serve any practical purpose because Section 6 of the OEC provides that the special elections must be conducted on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty (30) days after the cessation of the case of such postponement or suspension of the election or failure to elect.

All told, the allegations in the present Petitions do not warrant the declaration of failure of elections in the challenged clustered precincts. They are best ventilated in an election protest.

WHEREFORE, premises considered, the Commission En Banc **RESOLVES**, as it hereby **RESOLVED**, to **DISMISS** the Petitions for **LACK OF MERIT**.

SO ORDERED.


J. ANDRES D. BAUTISTA
Chairman *AB*

⁶⁷ City of Manila v. Cabangis, 10 Phil. 151 [1908], Tan v. Sun Insurance, 51 Phil. 212 (1927), and Sison et al. v. People/People v. Ferrer, G.R No.s 108280-83 and 114931-33 (16 November 1995).

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I join Comm. Guia.


CHRISTIAN ROBERT S. LIM
Commissioner


AL A. PARREÑO
Commissioner


LUISTITO F. GUIA
Commissioner

Law Dept.
to investigate possible
C.O.S (Gleefing offense)


ARTHUR D. LIM
Commissioner


MA. ROWENA AMELIA V.
GUANZON
Commissioner


SHERIFF M. ABAS
Commissioner

CERTIFICATION

I hereby certify that the conclusions in the above resolution were reached in consultation among the members of the Commission before the case was signed to the writer of the opinion of the Commission (*En Banc*). *HW*


J. ANDRES D. BAUTISTA
Chairman



Republic of the Philippines
COMMISSION ON ELECTIONS
Intramuros, Manila

EN BANC

MONAWARA AMPATUAN, *et al.*,
Petitioners,

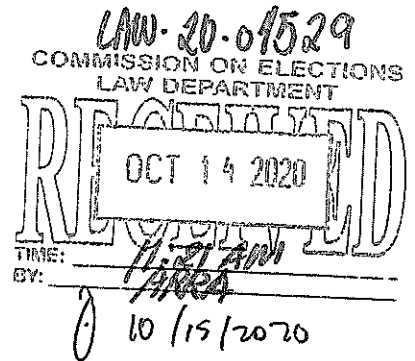
-versus-

RESHAL AMPATUAN, *et al.*,
Respondents.

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SPA No. 16-132 (FE)

Promulgated:
FEB 01 2018



RESOLUTION

Before the Commission (*En Banc*) is the Petition for Annulment of Proclamation and/or Declaration of Failure of Elections¹ ("Petition") filed by Petitioners Monawara Ampatuan, Kamarudin Ibrahim, Abdul Hamid Lumena, Tato Abdulradzak, Macmod Ebrahim, Norodin Datuali, Mulba Ampakay, Zacaria Saway, Mohammad Unggala, and Rocky Nacio (collectively, "Petitioners") against Reshal Ampatuan, Janine Mamalapat, Salahudin Tagadaya, Zuhari Guiapal, Wanay Dukay, Tho Pasawilan, Abdulrahman Abdullah, Ging Amman, Mohammad Sharon Sapalon, Dor Engkel (collectively, "Respondents") and the Municipal Board of Canvassers of Datu Unsay, Maguindanao ("Respondent MBOC") under Section 6² of the Omnibus Election Code in relation to Section 2³, Rule 26 of

¹ Records, pp. 2-22.

² Section 6. Failure of election. - If, on account of force majeure, violence, terrorism, fraud, or other analogous causes the election in any polling place has not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect, and in any of such cases the failure or suspension of election would affect the result of the election, the Commission shall, on the basis of a verified petition by any interested party and after due notice and hearing, call for the holding or continuation of the election not held, suspended or which resulted in a failure to elect on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or failure to elect.

COMELEC Rules of Procedure.

THE FACTS

Petitioners and Respondents were candidates for the positions of Mayor, Vice-Mayor and Members of *Sangguniang Bayan* in the municipality of Datu Unsay, Maguindanao ("Datu Unsay") during the 9 May 2016 National and Local Elections ("2016 Local Elections"). There were 11 clustered precincts that functioned in Datu Unsay and the elections were held at three different places, namely: a.) *Datu Unsay Public Market* for *Clustered Precinct Nos. 1, 2, 3, 9, 10, and 11*, comprising Barangays Meta, Panangeti and Tuntungan; b.) *Maitumaig Elementary School* for *Clustered Precinct Nos. 4, 6, 7 and 8* comprising Barangays Bulayan, Macalag, Maitumaig and Malangog; and c.) *Iganagampong Primary School* for *Clustered Precinct No. 5* comprising Barangay Iganagampong.⁴

On 9 May 2016, Respondents were proclaimed winners.⁵ Ten days after their proclamation, or on 19 May 2016, Petitioners filed the instant Petition seeking the declaration of failure of elections in *Clustered Precinct Nos. 1, 2, 3, 9, 10 and 11* held at *Datu Unsay Public Market* and *Clustered Precinct Nos. 4, 6, 7 and 8* held at *Maitumaig Elementary School*.

³ Section 2, Rule 26 of the COMELEC Rules of Procedure provides:

Rule 26- Postponement or Suspension of Elections

[Xxx.]

Section 2. Failure of Election. - If, on account of force majeure, violence, terrorism, fraud or other analogous causes the election in any precinct has not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody of canvass thereof, such election results in a failure to elect, and in any of such cases the failure or suspension of election would affect the result of the election, the Commission shall, on the basis of a verified petition by any interested party and after due notice and hearing, call for the holding or continuation of the election not held, suspended or which resulted in a failure to elect on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty (30) days after the cessation of the cause of such postponement or suspension of the election or failure to elect.

⁴ *Records*, p. 7.

⁵ *Id.*, pp. 23-24; pp. 25-26; and 27-28.

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Petitioners allege that the elections in said clustered precincts were attended with *"massive substitution of voters such that there was hardly any election that was conducted"* and that *"fraud and terrorism marred fatally the preparation and transmission, custody and canvass of the election returns since the [VCMs] counted the ballots [cast] by fake voters in a sham election which resulted [in] a failure to elect"* perpetrated by supporters and persons commonly known to be associated with Respondents.

On 16 August 2016, Respondents filed their Answer, Comments and Opposition to the Petition.⁶ They vehemently denied Petitioners' allegations and countered, among others, that it was Petitioners' supporters who caused trouble on 8 May 2016 by barricading the national highway, hitting commuters with clubs and stones, and firing grenade launchers on Respondents' supporters so that failure of elections would be declared, but to no avail. Respondents averred that the 2016 Local Elections in Datu Unsay were clean, honest, credible and peaceful.

The hearing on the Petition was held on 16 August 2016.⁷ Thereafter, Petitioners filed a Motion for the Conduct of Technical Examination⁸ to examine and compare the signatures and thumb marks of all the voters in the Voters Registration Records (VRRs) and the Election Day Computerized Voters Lists (EDCVL). In their Opposition to Motion for Conduct of Technical Examination,⁹ Respondents aver:

[Xxx]

1. That the motion should be denied on the following grounds:

1.1 The case is all about failure of election, thus, the EOCVL [(sic)] will not show that there was really such failure of elections;

1.2 The petitioners failed to prove that there was a failure of elections in the [e]leven (11) clustered precincts of Datu Unsay, Maguindanao [xxx];

⁶ *Id.*, pp. 173-185.

⁷ *Id.*, pp. 225-226.

⁸ *Id.*, pp. 228-236.

⁹ *Id.*, pp. 243-245.

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2. That the Petitioner [(sic)] failed to secure clearance from the Presidential Electoral Tribunal for such technical examination considering that Datu [U]nsay in Maguindanao is included in the election protest of Ferdinand Marcos Jr;

[Xxx]

THE COMMISSION'S RULING

The Petition is dismissed.

Section 4 of Republic Act No. 7166¹⁰ empowers the Commission to declare failure of elections under Section 6 of the OEC, thus:

Section 4. Postponement, Failure of Election and Special Elections.- The postponement, declaration of failure of election and the calling of special elections as provided in Sections 5, 6 and 7 of the Omnibus Election Code shall be decided by the Commission sitting en banc by a majority vote of its members. The causes or the declaration of a failure of election may occur before or after the casting of votes or on the day of election.

[Xxx.]

Section 6 of the OEC states:

Section 6. Failure of Election. - If, on account of force majeure, violence, terrorism, fraud, or other analogous causes, the election in any polling place has not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect, and in any of such cases the failure or suspension of election would affect the result of the election, the Commission shall, on the basis of a verified petition by any interested party and after due notice and hearing, call for the holding or continuation of the election not held, suspended or which resulted in a failure to elect on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or failure to elect.

¹⁰ An Act Providing For Synchronized National And Local Elections And For Electoral Reforms, Authorizing Appropriations Therefor, And For Other Purposes.

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In *Pasandalan vs. Comelec, et al.*¹¹, the Supreme Court, based on the above-quoted provision, explained three (3) instances where a failure of election may be declared, thus:

Based on the foregoing provision [Section 6 of the OEC], three instances justify a declaration of failure of election. These are:

- (a) the election in any polling place has not been held on a date fixed on account of force majeure, violence, terrorism, fraud or other analogous causes;
- (b) the election in any polling place has been suspended before the hour fixed by law for the closing of the voting on account of force majeure, violence, terrorism, fraud or other analogous causes; or
- (c) after the voting and during the preparation and transmission of the election returns or in the custody of canvass thereof, such election results in a failure to elect on account of force majeure, violence, terrorism, fraud or other analogous causes.

What is common in these three instances is the resulting failure to elect. In the first instance, no election is held while in the second, the election is suspended. In the third instance, circumstances attending the preparation, transmission, custody or canvass of the election returns cause a failure to elect. The term failure to elect means nobody emerged as a winner.

Simply put, failure to elect must be understood in its literal sense which is that nobody emerges as a winner.¹²

Petitioners assert that the elections held on 9 May 2016 at Datu Unsay Public Market and Maitumaig Elementary School should be nullified on the grounds of massive substitution of voters and random acts of terrorism. However, contrary to Petitioners' claim, their allegations do not fall under the definition and within the coverage of declaration of failure of elections.

The Commission elucidates.

¹¹ *Pasandalan vs. COMELEC, et al.*, [G.R. No. 150312, (18 July 2002)]; citations omitted.
¹² *Macabago vs. COMELEC, et al.*, [G.R. No. 152163, (18 November 2002) citing *Typoco, Jr. vs. COMELEC, et al.*, [G.R. No. 136191, (29 November 1999)]].

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There is nothing in the Petition which states that the elections in Datu Unsay Public Market and Maitumaig Elementary School was not held on 9 May 2016 or that the same was suspended before the hour fixed by law for voting. Records disclose that the elections were conducted and Respondents who emerged as winners were proclaimed.¹³

While Petitioners stress that though elections were held in Datu Unsay Public Market and Maitumaig Elementary School, it resulted in failure to elect on account of massive substitution and random acts of terrorism, the Commission finds that their allegations in the Petition fall short of making a *prima facie* case of declaration of failure of elections.

For ease of reference, pertinent portions of the Petition are reproduced, as follows:

I. Datu Unsay Public Market

[Xxx]

According to one Saddam Ulilisen, a resident of Brgy. Dimampao, municipality of Abdul Sangki, he was brought to the mansion of Mayoralty-elect Reshal Ampatuan, who was the wife of Datu Unsay Ampatuan, a principal suspect [in] the 2009 Maguindanao massacre, at Shariff Aguak, Maguindanao, days before May 9, 2016. According to him, he was merely promised five hundred pesos if he were to eat and sleep in the mansion of Reshal Ampatuan in Shariff Aguak for only three days. However, when he was brought there during the first week of May 2016, he was kept under lock and key along with so many people whom he could not identify, except for a few whom he personally recognized as residents also of his barangay in the municipality of Abdul Sangki. He said that during May 8, 2016, at around 6:00 in the evening, he and the rest of the people who were held inside the mansion's premises were loaded in two ten-wheeler trucks. They were then brought to the public market of Datu Unsay where they were made to enter the market building and were made to sleep. He was awakened at around 4:00 am of May 9, 2016, and was given three different voters' ID's by a certain Tukay Upham, a henchman of Reshal Ampatuan whom he came to know during his stay inside

¹³ See Certificates of Canvass of Votes and Proclamation of Winning Candidates; *Records*, pp. 23-24; pp. 25-26; pp. 27-28. See also Statement of Votes By Precinct; *Records*, pp. 29-31; pp. 32-34; pp. 35-41.

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her mansion. He was given five hundred pesos at that time in order to vote using those ID's. He said he was instructed to vote for herein respondent candidates-elect, while being assisted by the BEI's. He recalled that the BEI themselves were acting in concert with Tukay Upham's intentions, and even helped him vote. He was given another five hundred pesos after voting.

According to Denden Saguia and Nasrudin Acob, as watchers of petitioner-candidates, they were **threatened to be killed by supporters of respondent-candidates-elect**. They said that, at around 4:00 am of May 9, 2016, when they accompanied the delivery of the VCM to the Datu Unsay public market, the said supporters, led by Mohammad Shamron U. Sapalon, who was known in the municipality to be the henchman of Reshal Ampatuan, all wore blue bands and were waiting for them in front of the public market. **When they approached nearer the crowd, they could hear Mohammad Shamron Sapalon telling the crowd that they will be killing Mr. Saguia's and Mr. Acob's companions after the election. They could see that the crowd gathered there were carrying bladed weapons, and according to them, the police officers then present did not even do anything about the said bladed weapons although these items were being carried in plain sight.**

According to Guialalaludin Abdul, a VCM technician who was able to enter the Datu Unsay public market building during May 9, 2016, he witnessed how supporters of herein respondent-candidates-elect prevented other voters from voting inside the polling places. He said that these supporters of herein respondent-candidates-elect identified themselves by wearing blue wristbands. These supporters allegedly flocked outside the polling places such that it would be difficult for any person to enter the doors of the polling places easily. He said that whenever they would notice a voter come near them without a blue wristband, they would either shove or pull the voter away. He said these supporters did the same to any other voter whom they could identify as not one of their own. He also said that he did not even knew those persons who flocked outside the rooms, and he claimed that he never saw them reside in his barangay in his entire life. **He also testified that he was even surprised to see several names of residents of his barangay who were thumbmarked and signed, indicating that the names have already been used for voting.** However, he never saw the said residents themselves come to the voting place. He also said that these supporters and voters were headed by Muhamad Shamrul Sadpalong, also known as 'Toh', Tukay Upham and Salahudin Tagadaya, also known as 'Commander Fighter', all who were known on the municipality as henchmen of Reshal Ampatuan, who were all walking to and fro [(sic)] in front of the precincts.

He even testified that he saw the BEI's made children companions of persons with blue wristbands vote. He said that the BEI's were the ones who filled the PCVL for the child voter, and refer the said child to a nearby 'assistor' who would then shade the ballot for the child.

According to Lucman Macmod and Kamarudin Not, watchers of herein petitioner candidates, they testified that respondent mayoralty-candidate-elect Reshal Ampatuan is the wife of Unsay Ampatuan, Jr., one of the suspects of the Maguindanao massacre last November of 2009. They noticed that there were a lot of flying voters who were brought to the public market of Datu Unsay on the day of the election who were instructed to vote for herein respondent-candidates-elect. They saw that her supporters brought wooded clubs and whips, which scared away the voters except her other supporters. All of her supporters were recognized to having worn blue wristbands. They observed that, since these flying voters were already at the polling place early in the morning, they were made to vote first. Kamarudin Not even testified that these supporters of Reshal Ampatuan were led by respondent candidate-elect Muhamad Shamrul Sadpalong.

Lucman Macmod and Kamarudin Not also observed that, although there were some supporters of petitioner candidates who were able to enter the precinct and shade their ballots, their ballots were merely set aside and not fed in the machine by a certain Nicardo Malang, who is known in their area as one of the stalwart supporters of herein respondent candidates-elect. The wife of respondent candidate-elect Wanay Dukay was seen outside the precinct and was giving pre-shaded ballots to children wearing blue wristbands. Lucman Macmod was able to seize a couple of these ballots from some children before they were able to enter the precinct.

As a result of these massive substitution of voters and terrorism, only voters and supporters of herein respondent-candidates-elect were made to vote. They even manipulated the voting to make it appear as if some voters also voted for candidates other than respondent-candidates-elect. These acts of massive vote substitution and terrorism, inevitably resulted to sham and farcical elections in the Datu Unsay public market during the May 9, 2016, and thus resulted to a failure to elect.

II. Maitumaig Elementary School

[Xxx.]

Although the witnesses in this place were generally watchers from other precincts, they could easily see the gathering of hundreds of 'flying voters' of herein respondent-candidates-elect who gathered outside the school classrooms as early as 4 am on May 9, 2016. These witnesses identified these 'flying voters' as

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all having worn blue wristbands during the election. These witnesses testified that, since these so-called voters have gathered outside the classrooms as early as 4 am, they were made to vote first, to the exclusion of the voters who arrived without blue wristbands later that morning of the elections.

These witnesses also testified that the BEI's of all precincts inside the school never verified the identities of these 'flying voters'. Neither did the members of the BEI heed any warnings nor challenges to the identities of these 'flying voters'.

According to these witnesses, the BEI's of the precincts in Maitumaig Elementary School even made children companions of voters with blue wristbands to vote. They gave ballots to the children, and 'assistors' would then assist the children by shading the ballots for them.

Worse, these witnesses saw voters who did not have blue wristbands enter the classrooms later that day only to leave immediately in disgust upon finding out their names have already been voted upon before they even arrived.

According to Tugkwai Panayangan, a farmer from Pikit, North Cotabato, he was brought there in Maguindanao by cohorts of respondent-candidates-elect, led by Reshal Ampatuan, wife of Datu Unsay Ampatuan who was the principal suspect of the 2009 Maguindanao massacre case, from North Cotabato in order to vote for their candidates. According to him, he was one of the many who were made to wear blue wristbands and were brought to Brgy. Maitumaig in order to gather outside the classrooms. **He testified that he was given five hundred pesos just to eat and sleep inside the mansion of Reshal Ampatuan in Shariff Aguak for three days only, starting May 3, 2016.** However, upon reaching there, he and his companions from Pikit, North Cotabato were kept inside the mansion of respondent-mayoralty candidate-elect Reshal Ampatuan in Shariff Aguak, Maguindanao, and were only brought there in Brgy. Maitumaig only during the day of the election. He also testified how the BEI's of the place cooperated easily in the orchestration of making flying voters vote by giving voters with blue wristbands blank ballots without even verifying their identities. He also recalled that he was instructed by the cohorts of Reshal Ampatuan to vote for all herein respondent-candidates-elect, and that the BEI helped him do so, as long as he also wore his blue wristband. **He also testified that there were so many other persons there in the school voting as 'flying voters' whom he did not know where they came from.**

Morsid Paraid, a watcher of herein petitioner candidates, testified that at Maitumaig Elementary School, during the day of the elections, he also saw the supporters of herein respondent candidates-elect, who wore blue wristbands, bringing with them

wooden clubs and pipes. He observed that those who brought wooden clubs and pipes with them were scaring away voters or persons who came to insist to vote who did not wear blue wristbands. He also observed that those who wore blue wristbands were made to vote first by the BEI. He also observed that the BEI in the precincts of Maitumaig Elementary School during the day of the election were acting in concert with the supporters of respondent mayoralty candidate-elect Reshal Ampatuan, that the BEI facilitated the voting by voters who wore blue wristbands, and even gave the ballots to children companion of these voters.

Bobby Buisan, another watcher for herein petitioner candidates, testified during the day of the election, noticed that when he arrived at Maitumaig Elementary School, in his precinct, it was a certain Saudi Guiapal, a known henchman of respondent mayoralty candidate-elect Reshal Ampatuan, who directed the conduct of the voting. According to said witness, it was Saudi Guiapal who determined who would enter the precinct, that he told the voters he let to come inside to vote for respondent mayoralty candidate-elect Reshal Ampatuan, respondent vice-mayoralty candidate-elect Janine Mamalapat, and the rest of herein respondent candidates-elect. He also said that the BEI's in his precinct merely followed the orders of this Saudi Guiapal. He even saw barangay officials Mingle Johad and Lito Unao act as 'assistors' of voters and shaded their ballots for them.

Bobby Buisan also testified that he had the opportunity to go to Datu Unsay public market during the same day. There he was able to confront the supporters of respondent mayoralty candidate-elect Reshal Ampatuan and their leader, Mohamad Shamron Sapalon. He said that they were harassing his co-supporters and the other voters there who were not wearing blue wristbands.

As a result of these massive substitution of voters, only voters and supporters of herein respondent-candidates-elect were made to vote. They even manipulated the voting to make it appear as if some voters also voted for candidates other than respondents-candidates-elect. These events of massive vote substitution inevitably resulted to sham and farcical elections in the Maitumaig Elementary School during the May 9, 2016, and thus resulted to a failure to elect.

III. ACTS OF TERRORISM AT BRGY. META,
DATU UNSAY, AMPATUAN, DURING
MAY 8, 2016.

[Xxx.]

Surab Hasim and Siddick Lumena both testified that in the afternoon of May 8, 2016, two multicab vehicles ridden by

supporters of herein respondent candidates-elect passed by them along the road from the municipality of Shariff Aguak. When the two multicab vehicles came near to them, the passengers of the nearer multicab began to throw rocks and stones at them and their companions without provocation on their part. The passengers of the following multicab followed suit. Therefore, Surab Hasim, Siddick Lumena and their companions began to throw back at the said supporters the rocks and stones that were thrown at them.

According to them, the multicab vehicles stopped along the road. They saw all passengers and the drivers disembark and use the vehicles as a shield, while they threw rocks, stones, wooden clubs and bottles at said witnesses. A riot ensued. Said witnesses even saw that the subject multicabs were loaded rocks, stones and wooden clubs. They recall that later, members from the media, specifically from TV5 and GMA news, who arrived at their area and televised the riot.

The riot lasted for several hours. As a result, the watchers of herein petitioner candidates became very fearful and hesitant to move and raise objections the following day, May 9, 2016, for fear of their lives.

Another witness, Sauman Usman, a watcher of petitioner candidates, testified that while he was driving his motorcycle in front of the mansion of respondent mayoralty candidate-elect Reshal Ampatuan at Shariff Aguak, her supporters threw stones and rocks at him under the orders of a certain Tukay Upham, who is known in their municipality as one of the stalwart henchmen of respondent candidate-elect Reshal Ampatuan, without provocation on his part. He hurriedly left the place, wounded.

Another witness, Rodman Guiamaludin, a ticket dispenser of the Datu Unsay public terminal, testified that he was mauled repeatedly at the said place by the cohorts of a certain Tukay Upham, who was known in their area as a henchman of respondent mayoralty candidate-elect Reshal Ampatuan during the evening of May 8, 2016. He witnessed that this Tukay Upham, also in violation of the election gun ban, pulled out a gun in his possession and slammed it on said witness head. He said that he heard this Tukay Upham telling him not to join the forces of petitioner candidate Monawara Ampatuan.

As a result of this random acts of violence and terrorism by the supporters of herein respondent candidates-elect upon the supporters of herein petitioner candidates in the said barangay the day before the election wrecked fear and terror in the populace. A careful perusal of the rest of the judicial affidavits of the witnesses would show that they were mostly fearful and hesitant to complain to the BEI's of the apparent substitution of voters for fear of their lives and safety, in addition to the fact that they could see that the

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BEI acted in concert with the supporters of herein respondent candidates-elect. These random acts of violence and terrorism during the day of the election inevitably resulted to sham and farcical elections in the Datu Unsay public market during the May 9, 2016, and thus resulted to a failure to elect.

12. All in all, election cheating, through massive fraud, widespread intimidation and terrorism and other serious irregularities, was perpetrated before and during the casting votes at precinct level. Almost all voters of herein petitioner candidates were not able to vote in said places: (1) since only the supporters, all wearing blue wristbands, of herein respondent candidates-elect clogged the entrance of voting precincts; (2) due to the fear of their lives and safety if they were to insist in entering the voting center; and (3) due to the fact that non-residents of the municipality were brought by herein respondent candidates-elect and were made to fall in line as early as 4 am in the public market and at Maitumaig Elementary School, thus they were the first to vote using names of voters appearing in the PCVL, and that the legitimate voters who successfully entered polling places would only find out that their names have already been voted upon;

13. In Clustered Precincts 1, 2, 3, 4, 6, 7, 8, 9, 10 and 11 of Datu Unsay, Maguindanao, no actual voting took place but 'voting' was made only by flying voters and supporters of respondent mayoralty candidate-elect Bai Reshal Ampatuan, in collaboration with the BEI's, who designed and rigged the elections such that the results of which would ultimately, definitely, surely, certainly, positively turn out in favor of herein respondents candidates-elect.

14. To terrorize the supporters of herein petitioner candidates, to substitute the voters in all said clustered precincts, to prevent the voters of the opposing candidates from voting on their own names, and to rig the elections such that an honest and proper mechanical counting of ballots casted would definitely, surely, certainly, positively turn out in favor of respondent candidates-elect, and rig the said elections such that there can never be a slightest chance that herein petitioner candidates would win, can hardly be called an election at all.

15. The total number of registered voters of Clustered Precincts 1, 2, 3, 4, 6, 7, 8, 9, 10 and 11 of Datu Unsay, Maguindanao, if were only allowed to participate in an honest, peaceful, credible and free elections, would surely and definitely affect the results of the elections for the mayoralty, vice-mayoralty and sangguniang bayan member positions in Datu Unsay, Maguindanao.

16. The sanctity and integrity of the ballots of Clustered Precincts 1, 2, 3, 4, 6, 7, 8, 9, 10 and 11 of Datu Unsay, Maguindanao was already violated at the precinct level wherein most, if not all, of

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those ballots from those barangays were either shaded without the consent of the voters, or prepared under duress, coercion and intimidation by supporters of herein respondent candidates-elect. This kind of electoral fraud cannot be permitted in a recount of ballots during an ordinary election protest;

17. These invalid votes and sham voting were improperly and unlawfully made the basis for proclamation of the winners for the municipal candidates during the said election since they did not reflect the true will of the legitimate electorate;

18. Fraud and irregularities of the casting of votes cannot be determined by mere revision of the ballots since the sanctity and integrity of the said ballots have been violated due to substituted voting or being prepared under duress, coercion or intimidation;

19. Thus evidence *aliunde* in the form of official reports, documents and testimonies of eye witnesses has to be presented before this Honorable Commission;

20. Fraud in the form of massive substitution of voters, and random acts of terrorism marred fatally the preparation and transmission, custody and canvass of the election returns, since the VCM's counted the ballots casted by the fake voters in a sham election, thus resulting to a failure to elect;

21. Having ventured on the foregoing anomalies and irregularities, herein respondent candidates-elect were proclaimed based on massive Electoral fraud and irregularities in the casting of the votes during the National and Local elections of May 9, 2016. Thus, this resulted to the great disadvantage of the inhabitants and voters of Datu Unsay, Maguindanao, thereby frustrating the will of the electorate and rendering the constitutional right to suffrage into a farce and futile exercise;

22. Herein petitioner candidates, therefore, impugn the election held at Datu Unsay public market and at Maitumaig Elementary School during the May 9, 2016 elections and the proclamation of herein respondent candidates-elect based on the foregoing grounds of massive substitution of voters in the casting of the votes and random acts of terrorism resulting to the illegal proclamation of herein respondent candidates-elect;

[Xxx.]

From the foregoing, the grounds upon which the Petition is based can be summarized, as follows:

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1. Vote-buying;
2. Substitution of voters and/or "flying-voters;" and
3. Terrorism, violence, threat and intimidation allegedly employed by Respondents' supporters against the voters.

Such irregularities as fraud, vote-buying and terrorism are proper grounds in an election contest but may not as a rule be invoked to declare a failure of election and to disenfranchise the greater number of the electorate through the misdeeds, precisely, of only a relative few.¹⁴

The allegations of massive substitution of voters, multiple voting, and other electoral anomalies should be resolved in a proper election protest in the absence of any of the three instances justifying a declaration of failure of election.¹⁵

In the case of *Pasandalan vs. COMELEC, et al.*¹⁶ the Supreme Court held:

The nullification of elections or declaration of failure of elections is an extraordinary remedy. The party who seeks the nullification of an election has the burden of proving entitlement to this remedy. It is not enough that a verified petition is filed. The allegations in the petition must make out a *prima facie* case for the declaration of failure of election, and convincing evidence must substantiate the allegations.

It must be remembered that "[t]he power to declare a failure of elections should be exercised with utmost care and only under circumstances which demonstrate beyond doubt that the disregard of the law had been so fundamental or so persistent and continuous that it is impossible to distinguish what votes are lawful and what are unlawful, or to arrive at any certain result whatsoever, or that the great body of the voters have been prevented by violence, intimidation and threats from exercising their franchise."¹⁷

¹⁴ See GAD vs. COMELEC, G.R. No. 78302, 36 May 1987.

¹⁵ See *Pasandalan vs. COMELEC, et al.*, [G.R. No. 150312, (18 July 2002)], footnote omitted.

¹⁶ *Ibid*, citations omitted.

¹⁷ *Abayon vs. HRET, et al.*, [G.R. No. 222236 and G.R. No. 223032, (3 May 2016)] citing *Batabor vs. COMELEC, et al.*, [G.R. No. 160428, (21 July 2004)].

WHEREFORE, premises considered, the Petition for Annulment of Proclamation and/or Declaration of Failure of Elections dated 16 May 2016 is hereby **DISMISSED** for **LACK OF MERIT**.

SO ORDERED.;


CHRISTIAN ROBERT S. LIM
Acting Chairman


AL A. PARRENO
Commissioner


LUE TITO F. GUIA
Commissioner


ARTHUR D. LIM
Commissioner


MA. ROWENA AMELIA
V. GUANZON
Commissioner


SHERIFF M. ABAS
Commissioner

CERTIFICATION

I hereby certify that the conclusions in the above resolution were reached in consultation among the members of the Commission before the case was assigned to the *ponente*.


CHRISTIAN ROBERT S. LIM
Acting Chairman



Republic of the Philippines
COMMISSION ON ELECTIONS
Manila

EN BANC

ABUBAKAR KATAMBAK and
SUKARNO BADAL,

Petitioners,

- versus -

THE MUNICIPAL BOARD OF
CANVASSERS OF SULTAN SA
BARONGIS, MAGUINDANAO,
RAMDATU ANGAS, and AL-FIZZAR
ALLANDATU ANGAS,

Respondents.

x ----- x

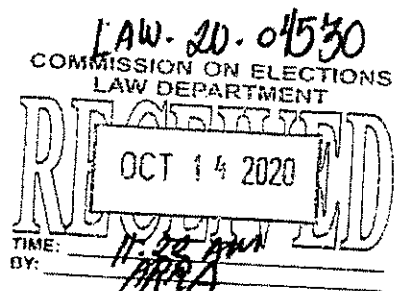
ORDER

During today's hearing, Atty. Arnold Labay, counsel for the Private Respondents, appeared. There was no appearance on the part of the Petitioners and/or their counsel despite due notice.

Based on the records, Atty. Israelito P. Torreon, counsel for the Petitioners, received the Notice of Hearing on October 19, 2016. Considering his failure to appear despite due notice and without justifiable cause, the dismissal of the instant case is warranted.

IN VIEW OF THE FOREGOING, the instant case is **DISMISSED**.

SO ORDERED.



SPA No. 16-135 (FE)
(formerly SPC No. 16-017)

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GIVEN this 8th day of November 2016, Manila, Philippines.

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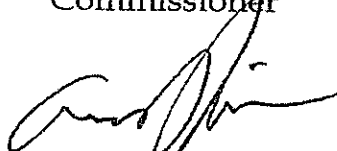
J. ANDRES D. BAUTISTA
Chairman


CHRISTIAN ROBERT S. LIM
Commissioner


AL A. PARRENO
Commissioner

O.B.

LUIE TITO F. GUIA
Commissioner


ARTHUR D. LIM
Commissioner

O.B.

MA. ROWENA AMELIA V. GUANZON
Commissioner


SHERIFF M. ABAS
Commissioner