EN BANC

[G.R. No. 264029. August 08, 2023]

JOENAR VARGAS AGRAVANTE, *PETITIONER*, VS. COMMISSION ON ELECTIONS, MUNICIPAL TRIAL COURT OF GOA, CAMARINES SUR, AND JOSEPH AMATA BLANCE, *RESPONDENTS*.

D E C I S I O N

GESMUNDO, C.J.:

This is a Petition for *Certiorari*[1] under Rule 64, in relation to Rule 65 of the Rules of Court, with an urgent prayer for the issuance of a temporary restraining order (*TRO*) and/or preliminary injunction filed by Joenar Vargas Agravante (*petitioner*), assailing the July 2, 2019 Order[2] of the Commission on Elections (*COMELEC*) First Division (*COMELEC Division*) and the September 20, 2022 Resolution[3] of the COMELEC *En Banc* in EAC No. 167-2018-B.

The Antecedents

Petitioner and Joseph Amata Blance (*private respondent*) were candidates for the position of *Punong Barangay* of Matacla, Goa, Camarines Sur, in the May 14, 2018 *Barangay* and *Sangguniang Kabataan* Elections (*BSKE*). Private respondent garnered 786 votes, while petitioner got 789 votes, the latter winning by a margin of three votes. Thus, petitioner was proclaimed the duly elected *Punong Barangay* of Matacla on May 15, 2018.[4]

Not satisfied with the election result, private respondent filed a protest on May 23, 2018 before the Municipal Trial Court (*MTC*) of Goa, Camarines Sur. On May 30, 2018, petitioner filed an Answer with Counterclaim and with Affirmative Defenses which are Grounds for a Motion to Dismiss and with Counter-Protest. Private respondent subsequently filed his Answer to Counterclaim/Counter-Protest on June 6, 2018.[5]

After the issues were joined and due course given to the protest and counter-protest, a preliminary conference was held on June 25, 2018 whereby a revision committee was constituted. In said conference, the parties agreed that after revision, they will

simultaneously make their formal offer of documentary evidence together with their memoranda with the end in view of expediting the resolution of the case. Thereafter, the case shall be decided on the basis of the memoranda, if any, revision reports, evidence so marked and offered, and other pleadings forming part of the record.[6]

MTC Decision

On October 15, 2018, the MTC promulgated its Decision[7] granting the protest, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the proclamation of Joenar V. Agravante as the winning candidate is hereby SET ASIDE and Joseph A. Blance is hereby DECLARED as the elected *Punong Barangay* of Matacla, Goa, Camarines Sur in the May 14, 2018 BSKE.
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> Costs against the Protestee.
>
> **SO ORDERED.**[8]

According to the MTC, Section 2, Rule 13 of A.M. No. 07-4-15-SC provides that no evidence shall be considered by the court unless it has been formally offered.[9] On the basis of this provision, the MTC excluded from the official count a certain number of ballots that were not formally offered in evidence by either petitioner or private respondent.[10] Thus, after the revision of the ballots, the MTC held that private respondent obtained 789 votes as against petitioner who received 784 votes, the former winning by a margin of five votes.[11]

Aggrieved, petitioner appealed to the COMELEC.

COMELEC Division Order

On July 2, 2019, the COMELEC Division issued an Order, the *fallo* of which reads:

> Accordingly, the Commission (**First Division**) **RESOLVED** as it hereby **RESOLVES** to **DISMISS** the instant appeal for appellant's failure to submit his Brief within the prescribed period pursuant to Section 9 (b), Rule 22 of the

> COMELEC Rules of Procedure, as amended.
>
> **SO ORDERED.**[12]

According to the COMELEC Division, based on petitioner's brief, he furnished the same to private respondent through registered mail. However, petitioner failed to submit an affidavit of mailing, the registry receipt as proof of service, and a written explanation as to why service by mail was resorted to in accordance with Secs. 11 and 13, Rule 13 of the Rules of Court, in relation to Sec. 3, Rule 12 of the COMELEC Rules of Procedure, as amended.[13] Thus, petitioner's brief was deemed not filed for failure to comply with the said mandatory requirements.[14]

Dissatisfied with the said Order, petitioner filed a Motion for Reconsideration.[15]

COMELEC *En Banc* Resolution

On September 20, 2022, the COMELEC *En Banc* issued the assailed Resolution, the dispositive portion of which reads:

> **WHEREFORE**, the Commission hereby **RESOLVES** to **DENY** the instant *Motion for Reconsideration*. Accordingly, the Order promulgated by the Commission (*First Division*) on 02 July 2019 is hereby **AFFIRMED**.
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> **SO ORDERED.**[16]

The COMELEC *En Banc* found no reason to reverse the ruling of the COMELEC Division, holding that petitioner failed to present any controverting evidence to justify his noncompliance with the rules and merely stated that his failure was only due to inadvertence. Considering that the submission of documentary requirements is mandatory in nature and noncompliance is a clear ground for dismissal, the COMELEC *En Banc* held that the motion for reconsideration failed to raise new issues and substantial matters that would warrant the reversal of the assailed Order.[17]

Hence, this Petition.

Arguments of the Parties

Petitioner argues that the COMELEC *En Banc* acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed his appeal outright based on technical grounds. He argues that he immediately rectified his procedural lapse by promptly filing a motion for reconsideration and attaching the following: 1) affidavit of service and explanation of service by registered mail, 2) certification from the Provincial Capitol Complex Post Office of the fact of mailing, and 3) copies of the registry receipts. Despite his substantial compliance, the COMELEC *En Banc* still denied his motion without taking into account the importance of the issues raised and the *prima facie* merit of his brief.[18]

Moreover, petitioner argues that he is the real winner of the 2018 BSKE with a winning margin of at least seven votes. In fact, even the MTC itself acknowledged the fact that if the ballots that were not formally offered were to be considered, the outcome of the revision might change in his favor.[19] According to petitioner, the said ballots were marked as exhibits by the Revision Committee, attached to the records of the election protest, and listed in the revision report.[20]

Petitioner also pointed out that the COMELEC has already issued a certificate of finality and entry of judgment on October 26, 2022, even though he received the assailed Resolution of the COMELEC *En Banc* only on October 18, 2022. Thus, unless a TRO and/or a *status quo ante* order is issued by this Court, the Decision of the MTC and the Resolution of the COMELEC *En Banc* may be implemented anytime to the great detriment of the people of Barangay Matacla.[21]

In its Comment,[22] respondent COMELEC, through the Office of the Solicitor General, argues that it did not commit grave abuse of discretion in denying petitioner's appeal due to the latter's failure to perfect the said appeal in accordance with law.[23] The COMELEC emphasized that petitioner merely offered flimsy excuses for his noncompliance with the rules and asked for liberality as if it were a right he is entitled to.[24]

According to the COMELEC, the required documents specified in the COMELEC Division's Order are mandatory, and petitioner's noncompliance therewith is a valid reason for the dismissal of his appeal. In addition, petitioner failed to provide any evidence to excuse his noncompliance with the rules when he filed a motion for reconsideration with the COMELEC *En Banc*.[25] The COMELEC also argues that petitioner is not entitled to injunctive relief for failing to establish the necessary requisites for its issuance.[26] Thus, the

COMELEC prays that the petition be dismissed similar to this Court's ruling in the recent case of *Coro v. Commission on Elections*[27] (*Coro*).

In his Reply,[28] petitioner argues that there is compelling reason for this Court to exercise its *certiorari* jurisdiction on the ground of his substantial compliance with the rules.[29] He also argues that the instant case warrants relaxation or liberality in the application of the rules in the interest of substantial justice.[30] Furthermore, petitioner is of the opinion that the case of Coro is not on all fours with the instant case.[31] Aside from his substantial compliance with the rules, petitioner invokes the 1958 case of *Reforma v. De Luna*[32] (*Reforma*), where this Court held that the lower court erred in not examining certain ballots for the sole reason that they were not formally presented as evidence.[33]

Issues

> I.
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> WHETHER THE COMELEC *EN BANC* COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING PETITIONER'S APPEAL DUE TO THE LATTER'S FAILURE TO PERFECT THE APPEAL IN ACCORDANCE WITH LAW.
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> II.
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> WHETHER PETITIONER IS ENTITLED TO A TRO, *STATUS QUO ANTE* ORDER, OR A WRIT OF PRELIMINARY INJUNCTION.

The Court's Ruling

The scope of this Court's jurisdiction in a petition for *certiorari* under Rule 64, in relation to Rule 65 of the Rules of Court, is limited; the petition must show that the COMELEC *En Banc* acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.[34]

Grave abuse of discretion has been defined as a whimsical, arbitrary, or capricious exercise

of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law.[35] In the process of determining the existence of grave abuse of discretion, this Court looks into: (1) whether the act involved was done contrary to the Constitution, the law or jurisprudence; or (2) whether it was executed whimsically, capriciously or arbitrarily out of malice, ill will or personal bias.[36] Additionally, mere abuse of discretion is not enough; it must be grave.[37] Unless it is firmly established that the COMELEC *En Banc* committed grave abuse of discretion, this Court would not interfere with its decision.[38]

In this case, the COMELEC *En Banc* did not commit abuse of discretion, much less grave abuse of discretion, when it dismissed petitioner's appeal considering that its September 20, 2022 Resolution is duly supported by law and the records of the case.

It is undisputed that when petitioner was required by the COMELEC Division to file his brief, he failed to submit an affidavit of mailing, the registry receipt as proof of service, and a written explanation as to why service by mail was resorted to. Given that these are mandatory requirements under Secs. 11[39] and 13,[40] Rule 13 of the Rules of Court, in relation to Sec. 3,[41] Rule 12 of the COMELEC Rules of Procedure, as amended, the COMELEC Division considered petitioner's brief as not filed. Consequently, it dismissed petitioner's appeal for his failure to submit his brief within the prescribed period, pursuant to Sec. 9(b),[42] Rule 22 of the COMELEC Rules of Procedure.

When petitioner filed his motion for reconsideration with the COMELEC *En Banc*, the latter denied the motion since petitioner failed to justify his noncompliance with the rules and failed to raise new issues or substantial matters that would warrant reversal of the COMELEC Division's Order. The COMELEC *En Banc* cited Sec. 1, Rule 19 of the COMELEC Rules of Procedure, which provides that "[a] motion for reconsideration may be filed on the grounds that the evidence is insufficient to justify the decision, order or ruling; or that the said decision, order or ruling is contrary to law." Considering that petitioner was unable to show the existence of either ground, and merely argued that his failure to comply with the rules should not automatically result in the dismissal of his appeal, the COMELEC *En Banc* denied his motion.

Based on the foregoing, it is clear that the COMELEC Division and the COMELEC *En Banc* acted in full conformity with applicable laws, rules, and jurisprudence without any hint of whimsicality, arbitrariness, or capriciousness. Their strict adherence to the rules cannot be deemed grave abuse of discretion nor even mere abuse of discretion. In fact, it is the inverse

that holds true; the manifest disregard of basic rules and procedures is precisely what constitutes grave abuse of discretion.[43] Time and again, this Court has held that procedural rules are tools designed to facilitate adjudication of cases, deliberately set in place to prevent arbitrariness in the administration of justice.[44] Since the right to appeal is not a constitutional right but a mere statutory privilege, anyone who seeks to invoke such privilege must comply with the applicable rules; otherwise, the right to appeal is forfeited.[45]

While petitioner does not deny his procedural lapses, he argues that the COMELEC *En Banc* should have afforded him liberality considering his substantial compliance with the rules and the *prima facie* merit of his brief. However, it must be recalled that the relaxation of procedural rules cannot be made without any valid reasons to support it.[46] Any party seeking a liberal application of the rules is required to present strong and compelling reasons to warrant the suspension of the rules.[47] To merit liberality, petitioner must show that there is reasonable cause justifying his noncompliance with the rules and that the outright dismissal of the petition would defeat the administration of substantive justice.[48]

As this Court held in *National Grid Corporation of the Philippines v. Bautista*:[49]

> Liberality in the application of the rules is not an end in itself. It must be pleaded with factual basis and must be allowed for equitable ends. There must be no indication that the violation of the rule is due to negligence or design. Liberality is an extreme exception, justifiable only when equity exists.

Here, petitioner failed to show any reasonable cause justifying his noncompliance with the rules. Petitioner's explanation that his noncompliance was due to mere inadvertence cannot, in any degree, be considered as reasonable cause that would justify the suspension of the rules. In fact, his failure to provide an acceptable explanation for such noncompliance only highlights his complete disregard of procedural rules, further precluding any justification for their liberal application. Thus, no grave abuse of discretion can be attributed to the COMELEC *En Banc* for dismissing petitioner's appeal.

Furthermore, even if the procedural errors committed by petitioner were set aside, the petition remains bereft of merit.

Petitioner argues that the MTC erred in not considering the ballots that he failed to formally offer in evidence,[50] citing *Reforma*, where the Court held that it was erroneous for the

lower court to not examine certain ballots "for the sole reason that they were not formally presented as evidence."[51] However, with the advent of the 1987 Constitution and the adoption of new rules, the case cited by petitioner can no longer be squarely applied to the instant case.

To recall, *Reforma* was resolved based on the provisions of Republic Act No. 180, also known as the Revised Election Code, which was the applicable law during that time. The Court therein observed that the Revised Election Code did not provide for any particular procedure for the disposition of election cases once the issues are joined, and that the Rules of Court shall not apply to election cases except by analogy or in a suppletory manner. On the other hand, the MTC herein resolved the present case by applying A.M. No. 07-4-15-SC.[52] Sec. 2, Rule 13 of the said rules provides:

> Section 2. *Offer of Evidence*. — **The court shall consider no evidence that has not been formally offered.** Offer of evidence shall be done orally on the last day of hearing allowed for each party after the presentation of the last witness. The opposing pai1y shall be required to immediately interpose objections thereto. The court shall rule on the offer of evidence in open court. However, the court may, at its discretion, allow the party to make an offer of evidence in writing, which shall be submitted within three days. If the court rejects any evidence offered, the party may make a tender of the excluded evidence. (Emphasis supplied)

The provision is clear and requires no further interpretation; if any piece of evidence was not formally offered by the parties, then such evidence cannot be considered by the court. In this case, petitioner himself admitted that he failed to offer in evidence 12 ballots due to his own inadve1ience.[53] Pursuant to Sec. 2, Rule 13 of A.M. No. 07-4-15-SC, the MTC was proscribed from considering the ballots that were not formally offered by petitioner in resolving the case. It bears to emphasize that A.M. No. 07-4-15-SC was promulgated on May 3, 2007 by none other than this Court pursuant to its exclusive and expanded rule-making power under the 1987 Constitution. This strengthened rule-making power was discussed in *Echegaray v. Secretary of Justice*:[54]

> The 1987 Constitution molded an even stronger and more independent judiciary. Among others, it enhanced the rule[-]making power of this Court. Its Sec. 5(5),

Article VIII provides:

> [x x x x]
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> Section 5. The Supreme Court shall have the following powers:
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> [x x x x]
>
> (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

> The rule[-]making power of this Court was expanded. This Court for the first time was given the power to promulgate rules concerning the protection and enforcement of constitutional rights. The Court was also granted for the first time the power to disapprove rules of procedure of special courts and quasi-judicial bodies. But most importantly, the 1987 Constitution took away the power of Congress to repeal, alter, or supplement rules concerning pleading, practice and procedure. In fine, the power to promulgate rules of pleading, practice and procedure is no longer shared by this Court with Congress, more so with the Executive.[55] (Italics omitted)

The 1987 Constitution did not patently strengthen the exclusive rule-making power of the Court only for the Court itself to neglect it.[56] Rules are promulgated for the benefit of all, and the Court is duty-bound to follow them and observe the noble purpose for their issuance.[57] Given the applicability and the unequivocal nature of Sec. 2, Rule 13 of A.M. No. 07-4-15-SC, as well as petitioner's failure to justify his noncompliance with the pertinent rules, it is not only proper but crucial, for this Court to apply the said provision. As the highest court of the land, this Court is mandated to firmly enforce its own rules in order to preserve the integrity of the judicial system and to maintain impartiality in the

administration of justice. Otherwise, the fundamental principle of fairness upon which our legal system is built would be rendered meaningless.

In addition, the rule on formal offer of evidence is by no means merely technical. The rule on formal offer of evidence is intertwined with the constitutional guarantee of due process since the parties must be given the opportunity to review the evidence submitted against them and take the necessary actions to secure their case.[58] As laid down in Sec. 2, Rule 13 of A.M. No. 07-4-15-SC, after the formal offer of evidence of a party, the opposing party is required to immediately interpose his or her objections. Afterwards, the court rules on the formal offer of evidence. Without such formal offer, the opposing party is effectively deprived of the opportunity to object. Thus, the MTC committed no error in its judgment and it properly acknowledged that its hands were tied by the rules when it stated that it could not consider the evidence not formally offered by petitioner.[59]

Neither is the Court swayed by petitioner's insistence that he was the true winner of the 2018 BSKE. Petitioner relies heavily on the MTC's statement that the excluded ballots may have changed the results of the revision. Such pronouncement is *obiter dictum* at best, and highly speculative at worst. The trial court cannot, without crossing into the realm of prejudgment, make an appreciation of ballots not properly admitted into evidence. Furthermore, the MTC uniformly and correctly excluded all ballots not formally offered. Notably, there were seven other ballots being contested and/or claimed by private respondent that were likewise excluded from the revision of ballots for the same reason.

To summarize, petitioner failed to comply with Secs. 11 and 13 of the Rules of Court, in relation to Sec. 3, Rule 12 of the COMELEC Rules of Procedure, as amended, as well as Sec. 2, Rule 13 of A.M. No. 07-4-15-SC. Further, petitioner failed to justify his noncompliance with the rules. If this Court were to extend liberality to petitioner despite his unjustified disregard of the rules, it would directly be taking part in undermining the rule of law and the public's trust in the judicial system by promoting arbitrariness in the enforcement of procedural rules.

While it has been held in previous cases that "[t]echnicalities and procedural niceties in election cases should not be made to stand in the way of the true will of the electorate,"[60] such pronouncement cannot be construed as a license for parties in election cases to disregard procedural rules altogether. This Court never intended to establish the precedent that the "true will of the electorate" may be used as an excuse for all kinds of procedural errors, no matter how numerous or serious they may be. Noncompliance with the rules of

procedure in election cases cannot be justified by the mere invocation of the determination of the "true will of the electorate," and neither is the liberal application of the rules automatically be granted by such invocation. To rule otherwise would be akin to holding that the technical rules of procedure need not be followed in election cases.

It must be emphasized that rules of procedure are intended to ensure the orderly administration of justice and the protection of substantive rights in judicial and extrajudicial proceedings.[61] It is a mistake to suppose that substantive law and procedural law are contradictory to each other, or as has often been suggested, that enforcement of procedural rules should never be permitted if it will result in prejudice to the substantive rights of the litigants.[62] The actual policy of the courts is to give effect to both, as complementing each other, in the just and speedy resolution of the dispute between the parties. Observance of both substantive rights is equally guaranteed by due process, whatever the source of such rights may be.[63]

Given that the dismissal of the instant petition is warranted, petitioner's prayer for the issuance of a TRO and/or preliminary injunction need not be discussed.

WHEREFORE, the petition is **DISMISSED**. The July 2, 2019 Order of the Commission on Elections First Division and the September 20, 2022 Resolution of the Commission on Elections *En Banc* in EAC No. 167-2018-B are **AFFIRMED**.

Petitioner's urgent prayer for the issuance of a temporary restraining order and/or *status quo ante* order and/or preliminary injunction is accordingly **DENIED**.

SO ORDERED.

Leonen, SAJ., Hernando, Lazaro-Javier, Inting, Zalameda, M. Lopez, Gaerlan, J. Lopez, Dimaampao, Marquez, Kho, Jr., and *Singh, JJ.*, concur.
Caguioa, J., see concurring opinion.
Rosario,[*] *J.*, on leave.

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[*] On leave.

[1] *Rollo*, pp. 6-26.

[2] *Id*. at 29-30; signed by Presiding Commissioner Al A. Parreño, and Commissioners Ma. Rowena Amelia V. Guanzon and Marlon S. Casquejo.

[3] *Id.* at 46-51; signed by Chairman George Erwin M. Garcia, and Commissioners Socorro B. Inting, Marlon S. Casquejo, Aimee P. Ferolino, and Rey E. Bulay.

[4] *Id.* at 52.

[5] *Id.*

[6] *Id.*

[7] *Id.* at 52-77; penned by Judge Ramon V. Efondo.

[8] *Id.* at 77.

[9] *Id.* at 62.

[10] *Id.* at 55-61; petitioner failed to formally offer 12 of his exhibits, while respondent failed to offer 7 of his exhibits.

[11] *Id.* at 75-77.

[12] *Id.* at 30.

[13] *Id.* at 29.

[14] *Id.* at 30.

[15] *Id.* at 31-38.

[16] *Id.* at 51.

[17] *Id.* at 50.

[18] *Id.* at 11-14.

[19] *Id.* at 14-15 and 114.

[20] *Id.* at 17.

[21] *Id.* at 20-21.

[22] *Id.* at 134-149.

[23] *Id.* at 136.

[24] *Id.* at 140.

[25] *Id.* at 140-141.

[26] *Id.* at 165.

[27] *Id.* at 163-165; **G.R. No. 258307**, July 26, 2022.

[28] *Id.* at 176-187.

[29] *Id.* at 177-178.

[30] *Id.* at 178.

[31] *Id.* at 180.

[32] 104 Phil. 278 (1958).

[33] *Id.* at 287.

[34] **Buenafe v. Commission on Elections, G.R. No. 260374**, June 28, 2022.

[35] **Aggabao v. Commission on Elections, G.R. No. 258456**, July 26, 2022.

[36] **Marquez v. Commission on Elections**, 861 Phil. 667, 684 (2019).

[37] **Buenafe v. Commission on Elections**, *supra*.

[38] *Id.*

[39] Section 11. *Priorities in modes of service and filing*. — Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

[40] Section 13. *Proof of service*. — Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service

is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with Section 7 of this Rule. If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.

[41] Section 3. *Mode, Completion and Proof of Service*. — Service of pleadings, motions, notices, orders or judgment and other papers, the completeness thereof, and proof of such service shall be made in the manner prescribed by the Rules of Court of the Philippines.

[42] Section 9. *Grounds for Dismissal of Appeal*. — The appeal may be dismissed upon motion of either patty or at the instance of the Commission on any of the following grounds:

x x x x

(b) Failure of the appellant to file copies of his brief within the time provided by these rules[.]

[43] **Cruz v. People**, 812 Phil. 166, 174 (2017), citing **Spouses Crisologo v. JEWM Agro-Industrial Corp.**, 728 Phil. 315, 328 (2014).

[44] **China Banking Corp. v. St. Francis Square Realty Corp., G.R. Nos. 232600-04**, July 27, 2022.

[45] **Subic Bay Metropolitan Authority v. Subic Bay Marine Exploratorium, Inc., G.R. No. 237591**, November 10, 2021.

[46] **Philippine Charity Sweepstakes Office v. Commission on Audit, G.R. No. 246313**, February 15, 2022.

[47] **Subic Bay Metropolitan Authority v. Subic Bay Marine Exploratorium, Inc.**, *supra*.

[48] **Philippine Charity Sweepstakes Office v. Commission on Audit**, *supra*.

[49] **G.R. No. 232120**, September 30, 2020, citing **Viva Shipping Lines, Inc. v. Keppel Philippines Mining, Inc.**, 781 Phil. 95, 99 (2016).

[50] *Rollo*, pp. 14-15.

[51] **Reforma v. De Luna**, *supra* note 32, at 287.

[52] Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials.

[53] *Rollo*, p. 14.

[54] 361 Phil. 73 (1999).

[55] *Id.* at 88, cited in **People v. Montierro, G.R. No. 254564**, July 26, 2022.

[56] **People v. Montierro**, *id.*

[57] **Philippine Health Insurance Corp. v. Commission on Audit, G.R. No. 235832**, November 3, 2020.

[58] **Republic v. Spouses Gimenez**, 776 Phil. 233, 256 (2016).

[59] *Rollo*, p. 114.

[60] **Rulloda v. Commission on Elections**, 443 Phil. 649, 655 (2003).

[61] **PPC Asia Corp. v. Department of Trade and Industry, G.R. No. 246439**, September 8, 2020, citing **Limpot v. Court of Appeals**, 252 Phil. 377, 379 (1989).

[62] **Limpot v. Court of Appeals**, *id.*

[63] *Id.* at 379-380.

CONCURRING OPINION

CAGUIOA, *J.*:

I fully concur in the *ponencia*. I write simply to add to the discussion on the importance of formal offer of evidence in relation to the opposing party's right to due process.

Briefly, the facts are:

Joseph Amata Blance (Blance) and Joenar Vargas Agravante (Agravante) were

> candidates for Punong Barangay of Matacla, Goa, Camarines Sur in the May 14, 2018 Barangay and Sangguniang Kabataan Elections (BSKE). Agravante won, with 789 votes against Blance's 786.
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> Blance filed an election protest with the Municipal Trial Court (MTC), which granted the same, after excluding from the official count several ballots which were not formally offered in evidence by Agravante. The exclusion was pursuant to Administrative Matter (A.M.) No. 07-4-15-SC[1] which mandates that no evidence shall be considered by the court unless the same has been formally offered. After revision of the ballots, the MTC held that Blance won by five votes over Agravante, the final count being 789 to 784 votes in Blance's favor.
>
> Agravante appealed to the Commission on Elections (COMELEC) First Division, which dismissed the same outright on technical grounds.[2] The COMELEC *en banc* denied Agravante's motion for reconsideration.

In the present Petition, Agravante argues that the MTC erred in excluding the ballots which he failed to formally offer in evidence.

I agree with the *ponencia*'s rejection of this submission.

In excluding these ballots, the MTC was merely applying the clear prohibition upon trial courts against considering evidence not formally offered under Rule 13, Section 2 of A.M. No. 07-4-15-SC, thus:

> **SECTION 2. *Offer of evidence*. — The court shall consider no evidence that has not been formally offered.** Offer of evidence shall be done on the last day of hearing allowed for each party after the presentation of the last witness. **The opposing party shall be required to immediately interpose objections thereto.** The court shall rule on the offer of evidence in open court. However, the court may, at its discretion, allow the party to make an offer of evidence in writing, which shall be submitted within three days. If the court rejects any evidence offered, the party may make a tender of the excluded evidence. (Emphasis supplied)

The formal offer of evidence is necessary because judges are mandated to rest their findings

of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Formal offer enables the trial judge to know the purpose or purposes for which the proponent is presenting the evidence and allows the opposing party to interpose his or her defenses.[3] In fact, the parties are *required* to interpose objections immediately after the offer of evidence so that the same can be considered by the court in ruling thereon.

Indeed, the rule on formal offer of evidence is not a trivial matter as it is said to be the very basis of due process.[4] To be sure, the respondent, or defendant, or accused, is called upon to craft his or her defense and present evidence **only against evidence that has been offered and admitted**. Therefore, evidence not formally offered has no probative value and must be excluded by the court.[5] **For courts to consider a party's evidence that was not formally offered during trial is to deprive the other party of his or her fundamental right to due process**, thus:

> **The rule on formal offer of evidence is intertwined with the constitutional guarantee of due process. Parties must be given the opportunity to review the evidence submitted against them and take the necessary actions to secure their case.** Hence, any document or object that was marked for identification is not evidence unless it was "formally offered and the opposing counsel [was] given an opportunity to object to it or cross-examine the witness called upon to prove or identify it."
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> This court explained further the reason for the rule:
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> > The Rules of Court provides that "the court shall consider no evidence which has not been formally offered." **A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. *On the other hand, this allows opposing parties to examine the evidence and object to its admissibility.* Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court...**

> **To consider a party's evidence which was not formally offered during trial would deprive the other party of due process. Evidence not formally offered has no probative value and must be excluded by the court.**[6] (Emphasis supplied).

The Rules on Evidence, which applies suppletorily in election cases pursuant to A.M. No. 07-4-15-SC,[7] further provide for the procedures in presenting documentary evidence, as follows: (1) the document should be authenticated and proved in the manner provided in the Rules of Court; *(2) the document should be identified and marked for identification; and (3) it should be formally offered in evidence to the court and shown to the opposing party so that the latter may have an opportunity to object thereon*.[8] A document is identified to ensure that the document being presented is the same one referred to by the witness in his or her testimony[9] and it is then marked to facilitate identification.[10]

Another key point to consider is that during trial proper, certain documents that are marked and identified are never offered in evidence in *Interpacific Transit, Inc. v. Aviles*,[11] the Court correctly made a distinction between the identification of documentary evidence and its formal offer as an exhibit, *viz.*:

> It is instructive at this point to make a distinction between *identification* of documentary evidence and its *formal offer* as an exhibit. The first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit. The second is done only when the party rests its case and *not before*. **The mere fact that a particular document is identified and marked as an exhibit does not mean it will be or has been offered as part of the evidence of the party. The party may decide to formally offer it if it believes this will advance its cause, and then again it may decide not to do so at all. In the latter event, the trial court is, under Rule 132, Section 35, not authorized to consider it.**[12] (Emphasis and underscoring supplied)

Simply stated, the identification of documentary evidence is done in court during the trial and is accompanied by the marking of the evidence as an exhibit, whereas the formal offer (stating the purpose) is made only after a party rests his or her case, not before. Any evidence that a party desires to submit for the consideration of the court must be formally offered; otherwise, it is excluded and rejected. **This means that the opposing party need**

not meet such excluded evidence and can simply craft defenses on the basis of what was formally offered.

Moreover, the requirement of formal offer of evidence facilitates review on appeal because the appellate court or tribunal will not be required to review evidence not previously scrutinized by the trial court.[13] Indeed, this Court has ruled in a catena of cases[14] that evidence not formally offered during the trial cannot be used for or against a party-litigant, nor may such evidence be taken into account on appeal.

On this note, it is well to point out that offer of evidence in election protest cases is made orally after the presentation of the last witness, at which time the opposing party is then required to immediately interpose objections. The trial court may, however, allow the parties to make a written formal offer of evidence.[15] In any case, whether the formal offer is made in writing or orally, the same will still be made part of the records that will be available for review on appeal.

Agravante invokes the 1958 case of *Reforma v. De Luna*[16] where the Court found the lower court to have erred in not examining certain ballots for the sole reason that they were not formally offered. As the *ponencia* succinctly rules, *Reforma* cannot apply as it was decided prior to A.M. No. 07-4-15-SC, and under the old election law which did not provide for specific procedures in disposing of election cases. In contrast, the present case is being decided under A.M. No. 07-4-15-SC which categorically proscribes the consideration of evidence not formally offered.

This proscription under the rules of procedure has been repeatedly affirmed in a long line of cases. In fact, less than a year after *Vda. de Oñate v. Court of Appeals*[17] (1995) was decided, the Court held in *Candido v. Court of Appeals*[18] (1996) (*Candido*) that it is settled that courts will only consider as evidence that which has been formally offered.[19] Thus, in *Candido*, the trial court as well as the appellate court correctly disregarded the documents which were not formally offered as they cannot be considered as evidence. The Court discussed further that if a party-litigant neglected to offer the documents in evidence, however vital they may be, he or she only has himself or herself to blame, not the opponent who was not even given a chance to object as the documents were never offered in evidence.

The strict rule on formal offer of evidence was also applied in the subsequent cases of *Spouses Ong v. Court of Appeals*[20] (1999), *Ala-Martin v. Sultan*[21] (2001), *Spouses Gomez v.*

Duyan[22] (2005), *Villaluz v. Ligon*[23] (2005), *Far East Bank & Trust Co. v. CIR*[24] (2006), *Heirs of Pasag v. Spouses Parocha*[25] (2007), *Spouses Tan v. Republic*[26] (2008), *Heirs of CruzZamora v. Multiwood International, Inc.*[27] (2009), and *Aludos v. Suerte*[28] (2012).

Then, in the 2014 case of *CIR v. United Salvage and Towage* (*Phils.*), *Inc.*,[29] the Court discussed the necessity of the formal offer of evidence in a court of record (such as the Court of Tax Appeals). It held that the exceptions to the rule that only evidence formally offered may be considered should be applied with extreme caution, explaining the reason for the strict application of the rule on formal offer of evidence:

> … A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.
>
> Strict adherence to the said rule is not a trivial matter. The Court in *Constantino v. Court of Appeals* ruled that the formal offer of one's evidence is deemed waived after failing to submit it within a considerable period of time. It explained that the court cannot admit an offer of evidence made after a lapse of three (3) months because to do so would "condone an inexcusable laxity if not non-compliance with a court order which, in effect, would encourage needless delays and derail the speedy administration of justice."
>
> Applying the aforementioned principle in this case, we find that the trial court had reasonable ground to consider that petitioners had waived their right to make a formal offer of documentary or object evidence. Despite several extensions of time to make their formal offer, petitioners failed to comply with their commitment and allowed almost five months to lapse before finally submitting it. Petitioners' failure to comply with the rule on admissibility of evidence is anathema to the efficient, effective, and expeditious dispensation of justice.[30]

Still further, in *Spouses De Guzman, Jr. v. Court of Appeals*[31] (2016) and in the recent case

of *People v. Gabatbat*[32] (2021), the Court also applied the rule that a document, or any article for that matter, is not evidence when it is not formally offered.

In light of the foregoing, I vote to dismiss the Petition.

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[1] Rules of Procedure in Election Contests before the Courts involving Elective Municipal and Barangay Officials, dated May 3, 2007.

[2] Agravante failed to submit, along with his *Brief*, an affidavit of mailing the registry receipt as proof of service, and a written explanation as to why service by mail was resorted to in accordance with Sections 11 and 13, Rule 13 of the Rules of Court in relation to Section 3, Rule 12 of the COMELEC Rules of Procedure.

[3] **A.M. No. 07-4-15-SC**, Rule 13, Sec. 2.

[4] **GG & G Distributors, Inc. v. Calangi, G.R. No. 239499**, September 12, 2018 (Unsigned Resolution), citing **Heirs of Pedro Pasag v. Spouses Parocha**, 550 Phil. 571, 575 and 579 (2007).

[5] **Republic v. Spouses Gimenez**, 776 Phil. 233, 257 (2016).

[6] *Id.* at 256-257.

[7] SECTION 2. *Application of the Rules of Court*. — The Rules of Court shall apply by analogy or in a suppletory character, and whenever practicable and convenient.

[8] **Chua v. Court of Appeals**, 283 Phil. 253, 260 (1992).

[9] O.M. Herrera, REMEDIAL LAW VOL. VI: REVISED RULES ON EVIDENCE (1999 Edition), p. 315.

[10] *Id.*

[11] 264 Phil. 753 (1990).

[12] *Id.* at 759.

[13] **Heirs of Pasag v. Spouses Purocha**, *supra* note 4, at 579.

[14] **Spouses De Guzman, Jr. v. Court of Appeals**, 782 Phil. 71, 89 (2016); **CIR v. United Salvage and Towage (Phils.) Inc.**, 738 Phil. 335, 343-346 (2014); **Aludos v. Suerte**, 688 Phil. 64, 76 (2012); **People v. Villanueva**, 644 Phil. 175, 188-192 (2010); **Heirs of Cruz-Zamora v. Multiwood International, Inc.**, 596 Phil. 150, 159 (2009); **Spouses Tan v. Republic**, 593 Phil. 493, 505 (2008); **Villaluz v. Ligon**, 505 Phil. 572, 588 (2005); **Spouses Gomez v. Duyan**, 493 Phil. 819, 830 (2005); **Spouses Ong v. Court of Appeals**, 361 Phil. 338, 343 (1999).

[15] **A.M. No. 07-4-15-SC**, Rule 13, Sec. 2.

[16] 104 Phil. 278 (1958).

[17] 320 Phil. 344 (1995).

[18] 323 Phil. 95 (1996).

[19] *Id.* at 99.

[20] *Supra* note 14.

[21] 418 Phil. 597 (2001).

[22] *Supra* note 14.

[23] *Supra* note 14.

[24] 533 Phil. 386 (2006).

[25] *Supra* note 4.

[26] *Supra* note 14.

[27] *Supra* note 14.

[28] *Supra* note 14.

[29] *Supra* note 14. *See also* **People v. Gabatbat, G.R. No. 246948**, July 5, 2021, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67923>; **Heirs of Pasag v. Spouses Parocha**, *supra* note 4; **Far East Bank & Trust Company v. Commissioner of Internal Revenue**, *supra* note 24; **Ala-Martin v. Sultan**, *supra* note 21, citing **Sps. Ong v.**

Court of Appeals, *supra* note 14, which further cited **Candido v. Court of Appeals**, *supra* note 18; **Republic v. Sandiganbayan**, 325 Phil. 762, 783-784 (1996); **People v. Peralta**, 307 Phil. 231, 237 (1994); **Vda. De Alvarez v. Court of Appeals**, 301 Phil. 316, 325 (1994); and **People v. Cariño, et al.**, 248 Phil. 105, 112 (1988).

[30] **Heirs of Pasag v. Spouses Parocha**, *supra* note 4, at 578-579, cited in **CIR v. United Salvage and Towage (Phils.), Inc.**, *supra* note 14, at 346.

[31] *Supra* note 14.

[32] *Supra* note 29.

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