

LOREN B. LEGARDA, Protestant, vs. NOLI L. DE CASTRO, Protestee.

PET Case No. 003. January 18, 2008

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On June 23, 2004, Congress sitting as the National Board of Canvassers (NBC) proclaimed^[1] protestee Noli L. de Castro the duly elected Vice-President of the Republic of the Philippines. The official count of the votes cast for Vice-President in the May 10, 2004 elections showed that the protestee obtained the highest number of votes, garnering 15,100,431 votes as against the 14,218,709 votes garnered by the protestant Loren B. Legarda, who placed second, in a field consisting of four candidates for Vice-President.

On July 23, 2004, the protestant filed this protest with this Tribunal praying for the annulment of the protestee's proclamation as the duly elected Vice-President of the Republic of the Philippines.^[2]

The protest has two main parts. The First Aspect originally covered "all the erroneous, if not manipulated, and falsified results as reflected in the final canvass documents" for 9,007 precincts in six provinces, one city and five municipalities.^[3] Protestant avers that the correct results appearing in the election returns were not properly transferred and reflected in the subsequent election documents and ultimately, in the final canvass of documents used as basis for protestee's proclamation. Protestant seeks the recomputation, recanvass and retabulation of the election returns to determine the true result.

The Second Aspect required revision of ballots in 124,404 precincts specified in the protest.^[4]

The Tribunal confirmed its jurisdiction over the protest and denied the motion of protestee for its outright dismissal. Protestee filed a motion for reconsideration arguing in the main that the Tribunal erred in ruling that the protest alleged a cause of action sufficient to contest protestee's victory in the May 2004 elections.^[5]

On March 31, 2005, the Tribunal ruled that:

On the matter of sufficiency of the protest, protestee failed to adduce new substantial arguments to reverse our ruling. We hold that while *Peña v. House of Representatives Electoral Tribunal* on requisites of sufficiency of election protest is still good law, it is inapplicable in this case. We dismissed the petition in *Peña* because it failed to specify the contested precincts. In the instant protest, protestant enumerated all the provinces, municipalities and cities where she questions all the results in all the precincts therein. The protest here is sufficient in form and substantively, serious enough on its face to pose a challenge to protestee's title to his office. In our view, the instant protest consists of alleged ultimate facts, not mere conclusions of law, that need to be proven in due time.

Considering that we find the protest sufficient in form and substance, we must again stress that nothing as yet has been proved as to the veracity of the allegations. The protest is only sufficient for the Tribunal to proceed and give the protestant the opportunity to prove her case pursuant to Rule 61 of the PET Rules. Although said rule only pertains to revision of ballots, nothing herein prevents the Tribunal from allowing or including the correction of manifest errors, pursuant to the Tribunal's rule-making power under Section 4, Article VII of the

Constitution.

On a related matter, the protestant in her reiterating motion prays for ocular inspection and inventory-taking of ballot boxes, and appointment of watchers. However, the Tribunal has already ordered the protection and safeguarding of the subject ballot boxes; and it has issued also the appropriate directives to officials concerned. At this point, we find no showing of an imperative need for the relief prayed for, since protective and safeguard measures are already being undertaken by the custodians of the subject ballot boxes.

WHEREFORE, protestee's motion for reconsideration is hereby DENIED WITH FINALITY for lack of merit. Protestant's reiterating motion for ocular inspection and inventory-taking with very urgent prayer for the appointment of watchers is also DENIED for lack of showing as to its actual necessity.

Further, the protestant LOREN B. LEGARDA is ORDERED to specify, within ten (10) days from notice, the three (3) provinces best exemplifying the manifest errors alleged in the first part of her protest, and three (3) provinces best exemplifying the frauds and irregularities alleged in the second part of her protest, for the purpose herein elucidated.

Lastly, the Tribunal hereby ORDERS the Commission on Elections to SUBMIT, within 30 days hereof, the official project of precincts of the May 2004 Elections.

SO ORDERED.[6]

On April 11, 2005, protestant identified three (3) provinces as pilot areas best exemplifying her grounds for the First Aspect of the protest. She chose the provinces of Lanao del Sur, Lanao del Norte, and Surigao del Sur with the following number of protested precincts: 1,607, 2,346 and 350, respectively, or a total of 4,303 out of the original 9,007 precincts.[7]

On June 21, 2005, the Tribunal ascertained[8] the number of ballot boxes subject of the protest, to wit:

The Tribunal Resolved to NOTE the Letter dated 30 May 2005 filed by Executive Director Pio Jose S. Josen, COMELEC, in compliance with the Letter dated 14 April 2005 of Atty. Luzviminda D. Puno, Acting Clerk of the Tribunal, informing the Tribunal that one thousand four hundred fifty-four (1,454) ballot boxes are involved in the precincts of the province of Surigao del Sur which the protestant has identified to the Tribunal as best exemplifying the irregularities in connection with the 10 May 2004 National and Local Elections.

Accordingly, without prejudice to its recomputation, the number of ballot boxes involved in the precincts of the provinces which the protestant has identified to the Tribunal as best exemplifying the irregularities in connection with the said elections are as follows:

Lanao del Sur 1,568

Lanao del Norte 2,317

Surigao del Sur 1,454

Cebu City 10,127

Pampanga 5,458

Maguindanao 1,755

Total

22,679 ballot boxes

involved in the precincts

x P500.00

P11,339,500.00

On November 2, 2005 protestant moved to withdraw and abandon almost all pilot precincts in the First Aspect except those in the province of Lanao del Sur.[9] On November 22, 2005, the Tribunal granted the said motion withdrawing and abandoning the protest involving the manifest errors in the municipalities of Lanao del Norte and Surigao del Sur.[10]

Thereafter, proceedings duly ensued concerning both the First and Second Aspects. Former Associate Justice Bernardo P. Pardo as Hearing Commissioner[11] heard the presentation of evidence of both parties for the First Aspect. Subpoenas were issued to the witnesses of the protestant, e.g. the President/General Manager of Ernest Printing Corporation[12] and then Commission on Elections Chairman Benjamin Abalos.[13] On August 28, 2006, a preliminary conference was called by Hearing Commissioner Bernardo P. Pardo to schedule the presentation of evidence. The latter then ordered as follows:

Pursuant to the Resolution of the Tribunal dated 22 August 2006, setting the preliminary conference of the parties with the Hearing Commissioner today, the designated Hearing Commissioner called the preliminary conference in order to consider the order of hearing and presentation of evidence of the parties according to the procedure prescribed in the Resolution of the Tribunal of 1 August 2006, under paragraph B (1 and 2).

The following are the appearances

- 1) Protestant Loren B. Legarda, in person;
- 2) Atty. Sixto S. Brillantes, Jr. and Atty. Jesus P. Casila, for the protestant;
- 3) Protestee Noli L. de Castro did not appear;
- 4) Atty. Armando M. Marcelo and Atty. Carlo Vistan, for the protestee.

Atty. Brillantes manifested that the protestant is ready to adduce testimonial and documentary evidence on a date to be scheduled and agreed upon by the parties; they have about seven witnesses to testify on the first aspect as indicated in the Tribunal's Resolution of 1 August 2006. He suggested 6 September 2006 as the initial date of the hearing. Atty. Marcelo stated that he was leaving for abroad on 6 September 2006 for one month and suggested a hearing after his return in October 2006. At any rate, protestee has a pending motion for reconsideration of the Tribunal's Resolution of 22 August 2006 designating a retired Justice of the Supreme Court as Hearing Commissioner. They wanted an incumbent Justice of the Supreme Court or an official of the Tribunal who is a member of the Bar to be the designated Hearing Commissioner.

The undersigned Hearing Commissioner suggested that the initial hearing be held on 4 September 2006, at 10:00 a.m., when protestee's counsel will still be in town, without prejudice to the resolution of the Tribunal on his motion for reconsideration.

The undersigned Hearing Commissioner suggested to protestant's counsel to submit by this afternoon the list of the names of the proposed witnesses and documents to be produced so that the proper process may be issued to them.

The undersigned Hearing Commissioner set the initial hearing tentatively on Monday, 4 September 2006, at 10:00 a.m., at the same venue, subject to the Tribunal's ruling on protestee's motion for reconsideration of the person of the Hearing Commissioner, and protestant to submit by this afternoon the list of witnesses and documents to be produced at the hearing.

IT IS SO ORDERED.[14]

Several hearings on the First Aspect were held wherein the protestant adduced evidence and the protestee interposed his continuing objection to such in the form of motions and comments. Months of continuous trial took place until the Hearing Commissioner made his final report of the proceedings for detailed consideration by the Tribunal.

On January 31, 2006, while the case was sub judice, the Tribunal ordered both parties to refrain from sensationalizing the case in the media. Its extended resolution on the matter reads as follows:

On December 12, 2005, the re-tabulation of election returns (ERs) from the ten (10) protested municipalities of Lanao del Sur commenced. According to the report submitted by the Acting Clerk of the Tribunal, Atty. Maria Luisa D. Villarama, the correction team was able to re-tabulate only the ERs from four (4) of the ten (10) protested municipalities of Lanao del Sur, namely, Balindong, Masiu, Mulondo and Taraka. The ERs of the other six (6) protested municipalities were not found inside the ballot boxes collected from the House of Representatives, but found were the ERs from municipalities not subject of the protest.

Therefore, acting on the aforementioned report of the Acting Clerk, the Tribunal resolves to REQUIRE Hon. Roberto Nazareno, Secretary General of the House of Representatives and Atty. Artemio Adasa, Jr., Deputy Secretary General for Operation, of the House of Representatives, within a non-extendible period of five (5) days from notice, to (a) DELIVER to the Tribunal the election returns and other election documents/paraphernalia used in the May 2004 National/Local elections for the remaining six (6) protested municipalities of Lanao del Sur, namely (1) Bacolod-Kalawi; (2) Ganassi; (3) Kapai; (4) Sultan Gumander; (5) Tamparan; and (6) Wao;

(b) EXPLAIN why the election returns and other election documents and paraphernalia which were turned over to the PET Retrieval Team are incomplete when compared to the COMELEC's total number of clustered precincts for Lanao del Sur; and

(c) SUBMIT to the Tribunal the complete list of all the election returns, Provincial/District Certificates of Canvass and Statements of Votes and other election documents and paraphernalia used in the May 2004 National and Local Elections for the province of Lanao del Sur which were in its official custody.

In the resolution dated December 6, 2005, the Tribunal granted protestant's motion to suspend the remittance of additional cash deposit amounting to P3,882,000 as required in the resolution of November 22, 2005. Protestant also manifested in said motion that she will make the required cash deposit sometime in the year 2006. Thus, the Tribunal resolves to REQUIRE protestant to comply with the resolution of November 22, 2005 requiring her to make additional cash deposit of P3,882,000 within ten (10) days.

On another matter, the Presidential Electoral Tribunal notes the following news reports:

(1) In an article entitled "Recount shows fraud, says Legarda" appearing in the December 13, 2005 issue of The Manila Times, protestant Legarda said that the election returns from Congress had been tampered after initial retabulation of votes by the Tribunal showed that the lead of protestee De Castro over her has widened. She added that this discovery confirmed her claim of massive poll fraud in favor of protestee in the 2004 election.

(2) In an article entitled "Intel feelers offer proof of poll fraud to Loren" published in the December 13, 2005 issue of The Daily Tribune, sources from protestant's legal team said that feelers from the military's intelligence service arm have reached their camp offering videotapes of cheating in the 2004 elections for a price they cannot afford.

(3) In another article entitled "Election returns altered inside Congress—Loren" published in the December 15,

2005 issue of Philippine Daily Inquirer, protestant claimed that the altering of election returns from Lanao del Sur occurred right inside Congress as borne out by the “spurious” returns being retabulated by the Tribunal. She said the crime could have been perpetrated by the operatives of protestee.

(4) In a news article entitled “Cebu recount shows Noli, Loren votes tally with NBC” appearing in the January 6, 2006 issue of The Manila Times, Atty. Romulo Macalintal, counsel of protestee, stated that “the initial recount in Lapu-lapu showed that there was no tampering of the ballot boxes in the city,” and further noted that the four (4) out of the 40 ballot boxes “contained tampered or spurious ballots, but these are not connected to the protest of Senator Legarda but on local protests.”

(5) In an article entitled “Noli condemns tampering of ballots” appearing in the January 6, 2006 issue of Manila Standard Today, Atty. Armando Marcelo said that their revisors at the PET discovered that several ballots of Legarda had been substituted with fake and spurious ballots. Atty. Macalintal added that “the substitution of ballots was so clear, that the security markings of the substitute ballots were not reflected or visible or that the ultraviolet markings of the COMELEC seal do not appear or are not present”, and that “these ultraviolet markings are readily visible in a genuine ballot once lighted with an ultraviolet light.”

(6) In an article entitled “No cheating in Cebu, Noli's lawyer insists,” published in the January 19, 2006 issue of Philippine Daily Inquirer, Atty. Macalintal said that “the results of the actual count of the ballots for Legarda and De Castro from the cities of Mandaue and Lapu-lapu tallied with the results as reflected in the election returns and tally boards. There was no sign of any tampering of the results of the ballot count as well as the votes reflected on the returns and tally boards.” He also said that protestant Legarda is already estopped from questioning the results of the election in these cities since she failed to object to the returns.

(7) In an article entitled “GMA-Noli poll win in Cebu affirmed,” published in the January 19, 2006 issue of The Philippine Star, it was reported that Atty. Macalintal, in his speech before the Rotary Club of Pasay City, denied protestant's claim that 90 percent of the ballots from two major cities of the province were found to be spurious by the Tribunal. He added that “if a candidate would allow himself to be cheated by 90 percent, then he or she has no business to be in politics.”

(8) In an article entitled “Why Noli is unacceptable” appearing in the January 20, 2006 issue of The Daily Tribune, protestant “told the media that the real ballots from Mandaue City and Lapu-lapu City were ‘clearly substituted with fakes so that they would correspond with the similarly spurious results reflected in the election returns (ERs).’”

Surely, the parties do not harbor the idea that the re-tabulation of election returns and revision of ballots is the end of the election protest. They are merely the first phase of the process and must still pass closer scrutiny by the Tribunal.

The great public interest at stake behooves the Tribunal to exercise its power and render judgment free from public pressure and uninterrupted by the parties' penchant for media mileage. Therefore, in view of the foregoing reports where press statements of both parties appeared as an attempt to influence the proceedings, convince the public of their version of facts, and create bias, prejudice and sympathies, the Tribunal resolves to WARN both parties and counsels from making public comments on all matters that are sub judice.

Finally, acting on the pleadings filed in this electoral protest case, the Tribunal further Resolves to

(a) NOTE the Comment on Protestee's Motion to Allow Revisors to Examine All Ballots dated January 24, 2006, filed by counsel for protestant Legarda, in compliance with the resolution of January 17, 2006, informing the Tribunal that she interposes no objection and opposition to the motion and GRANT the aforesaid motion of the protestee;

(b) DIRECT all Head Revisors to ALLOW the parties to examine the ballots within a reasonable time;

(c) NOTE the Manifestation dated January 24, 2006, filed by counsel for protestant relative to the Motion to Intervene filed by Intervenor/Movant Amytis D. Batao, informing the Tribunal that she is not waiving the revision of the thirty-five (35) ballot boxes subject of the electoral protest for the mayoralty post of Carmen, Cebu, and proposing that priority be given and extended to the same so that upon completion of the revision by the Tribunal, said ballot boxes can be returned to the Regional Trial Court of Mandaue City, at the earliest time possible; and

(d) DENY the above Motion to Intervene of Intervenor/Movant Amytis D. Batao, with regard to the return of the ballot boxes considering that the Tribunal has priority in their possession and examination.” Ynares Santiago, J., no part.[15]

Revision of ballots was also conducted for the Second Aspect in the Tribunal’s premises by the duly designated officials and trained personnel with both parties duly represented. After ten months of continuous work by twenty-four revision teams, under the supervision of Atty. Orlando Cariño as the designated Consultant, the revision of the ballots from the pilot province of Cebu was completed. Revision also started for the second pilot province of Pampanga, but was suspended after the Tribunal granted the protestee’s Motion for Partial Determination of Election Protest Based on the Results of the Revision of Ballots of the Province of Cebu and the Recanvass of Election Returns from Lanao Del Sur and to Hold in Abeyance Revision of Ballots from Pampanga.[16]

On May 3, 2007, the protestant was required to deposit P3,914,500 for expenses necessary for the continuation of the revision of ballots.[17] But protestant failed to pay on the due date. Thus, protestee moved to dismiss the protest. The Tribunal extended the period for protestant to make the necessary deposit. Even with this extension, she still failed to pay. Thus, in a Resolution dated June 5, 2007, the Tribunal partially granted the protestee’s motion to dismiss pursuant to Rule 33[18] of PET rules, and ordered the dismissal of the Second Aspect of the protest as follows:

PET Case No. 003 (Loren B. Legarda vs. Noli L. de Castro). – Acting on the protestee’s Motion to Dismiss dated May 9, 2007, the Tribunal Resolved to (a) PARTIALLY GRANT the aforesaid motion pursuant to Rule 33 of the 2005 PET Rules; and

(b) DISMISS the second aspect of the protest (revision of ballots), for protestant’s failure to make the required deposit.

The Tribunal further Resolved to DENY the request of Atty. Eric C. Reginaldo in his letter dated May 29, 2007 that he be furnished with a copy of the petition in this case for case study, as he is neither a party nor a counsel of any party in this protest.[19]

On June 13, 2007, Hearing Commissioner Bernardo P. Pardo submitted to the Tribunal a Report of the Proceedings of the First Aspect.[20]

On June 18 2007, protestant filed an Urgent Motion to Resolve First Aspect of the Protest, stating that she formally moved for the immediate resolution of the submitted portion of the First Aspect of the protest.[21] Protestee did not interpose any objection to this motion.

On July 10, 2007, the Tribunal resolved to note the report of the Hearing Commissioner. In response to the motion filed by the protestant, the Tribunal required the parties to submit their respective memoranda within twenty days from notice, pursuant to Rule 61[22] of the PET Rules.[23]

On August 2, 2007, by counsel protestant submitted her memorandum.[24] On August 16, 2007, also by counsel protestee filed his memorandum.[25]

On October 1, 2007, Hearing Commissioner Bernardo P. Pardo submitted his Final Report of the Proceedings on the First Aspect. After a thorough analysis of the parties' memoranda and the results of the proceedings on the protest, he recommended the dismissal of the First Aspect.[26]

For her part, protestant filed a memorandum stating that based on the pieces of evidence she presented, both documentary and testimonial, she has shown that electoral fraud or cheating was committed through the so-called dagdag-bawas strategy in the elections for President and Vice-President held last May 14, 2004. Protestant in particular submitted that electoral fraud was perpetuated as follows:

- That the correct votes of the parties were properly recorded and tabulated in the election returns (ERs), wherein she garnered a higher number of votes over protestee De Castro;[27]
- That when the ERs were canvassed at the municipal level, the ER results were "wrongly and erroneously" transposed and transferred to the Statement of Votes by Precinct (SOV-P), such that the protestee was given a higher number of votes;[28]
- That the inaccurate results shown in the SOV-P were totaled and transferred to the Municipal Certificate of Canvass (MCOC), with protestee prevailing over protestant;[29]
- That the MCOC, with incorrect totals, was transmitted to the Provincial Board of Canvassers, wherein the inaccurate MCOC totals were transposed to the Statement of Votes by Municipalities (SOV-M);[30]
- That the numbers reflected in the individual SOV-Ms were totaled, and the sum for the whole province was indicated in the Provincial Certificate of Canvass (PCOC);[31]
- That the PCOCs, with the erroneously transposed totals stemming from the incorrect SOV-Ps, were the ones canvassed by Congress, acting as the National Board of Canvassers for the presidential and vice-presidential positions;[32] and
- That Congress, sitting as the National Board of Canvassers, merely "noted" and denied protestant's request to view the precinct-source ERs, and proceeded to canvass the "already-manipulated/dagdag-bawas" PCOCs, resulting in the flawed and farcical victory of protestee De Castro.[33]

Protestant avers that fraud, by means of the anomalous election practices, was sufficiently proven by using her sample-pilot precincts in two municipalities in Lanao del Sur, particularly Balindong and Taraka. She likewise alleges that the "dagdag-bawas" scheme, which was perpetrated through the deliberate and erroneous transposition of results from the authentic ERs to the SOV-Ps, was further aggravated by an alleged cover-up operation to hide the same. According to protestant, the Congress-retrieved copies of the ERs which tally with the SOV-Ps, were fake and spurious; they were intended to cover-up the electoral fraud committed. Protestant submits that the correct voting results are those reflected in the COMELEC and NAMFREL's copies of the ERs, not those in the copies retrieved from Congress.

Protestant further claims that while she presented pieces of evidence, both testimonial and documentary, in only two municipalities of Lanao del Sur, i.e., Balindong and Taraka, to prove the electoral fraud perpetrated through the dagdag-bawas strategy, she could have shown that such fraudulent machination was replicated in several other municipalities of Lanao del Sur and other provinces, such as Basilan, Sulu, Tawi-Tawi, Maguindanao, Sultan Kudarat, and Lanao del Sur if she had enough time.

Protestee, for his part, argues that the Congress-retrieved ERs are public documents as defined under Section 19 (a),[34] Rule 132 of the Rules of Court, and thus, they enjoy the presumption of regularity accorded thereto, and they are prima facie evidence of the facts stated therein. He avers that there is prima facie presumption that the Congress-retrieved copies of the ERs are genuine, authentic and duly executed. Protestee submits that protestant

has failed to rebut such presumption with clear and convincing evidence.

Protestee adds that a blank or unused ER form duly authenticated by the COMELEC, with the correct and complete set of security features and markings, should have been marked and offered as evidence, to serve as basis for comparison with the various sets of ERs presented to prove the genuineness of the security features and markings in the ER forms. On this score, according to protestee, the protestant's counsel has failed in his task. At any rate, protestee points out that the witnesses presented by protestant, i.e., COMELEC Chairman Benjamin S. Abalos and Mr. Robert Payongayong of the Ernest Printing Corporation, testified that they were able to discern security features and markings in the Congress-retrieved copies of the ERs. Protestee also claims that when Mr. Payongayong testified about the security features on the Congress' copies, he was shown only a sample set thereof, and was not able to examine all Congress' copies being contested. Protestee thus concludes that the Tribunal cannot rely on the testimonies of the protestant's witnesses debunking the authenticity of the Congress-retrieved copies vis-à-vis the other sets of ER copies.

Protestee further contends that, assuming arguendo that the results reflected in the COMELEC, NAMFREL and MBOC's[35] copies of the ERs are re-tabulated, in lieu of the results in the Congress-retrieved copies, or even if all the votes in the 497 precincts included in the pilot areas, as well as in the remaining protested precincts in the First Aspect, are counted in favor of protestant, said votes would be insufficient to overcome the lead of the protestee totaling 881,722 votes. Hence, in view of the failure of the protestant to make out her case for the First Aspect of the protest, the same and ultimately the protest in its entirety, must be dismissed without consideration of the other provinces mentioned.

The Hearing Commissioner further recommended, following the precedent set in *Defensor-Santiago v. Ramos*,[36] that the protest be dismissed for being moot and academic due to abandonment and withdrawal resulting from protestant's election and assumption of office as senator. He also emphasized that assuming that dagdag-bawas had indeed occurred and that the results in the COMELEC's ER copies indicated in Annex "A" were to be used for re-tabulation, protestant would be entitled to an additional 4,912 votes for the municipality of Taraka and 5,019 votes for Balindong, or a total of 9,931 votes, which is not adequate to surpass protestee's lead of 881,722 votes over protestant.

On protestant's charges of electoral fraud allegedly aggravated by a cover-up operation that switched or exchanged the Congress' ER copies with spurious ones, the Hearing Commissioner stressed that the Congress-retrieved ERs are public documents which enjoy the presumption of regularity and are prima facie evidence of the facts stated therein. He concluded that the protestant failed to adequately and convincingly rebut the presumption. The Hearing Commissioner also emphasized that protestant failed to substantiate sufficiently her claim that the Congress-retrieved ERs are spurious and were switched with the authentic copies during an alleged break-in at the storage area of the House of Representatives as no evidence was presented to prove such break-in. Hence, the alleged discrepancies found in NAMFREL, MBOC and COMELEC's copies of the ERs are insufficient to exclude the Congress-retrieved ER copies from the re-tabulation. The Hearing Commissioner also observed that in 11 out of the 51 precincts in Balindong, Lanao del Sur, there are similar entries in the Congress-retrieved ERs and in the COMELEC's copies of the ERs, where protestant garnered a higher number of votes over protestee, while the entries in the respective SOV-Ms are different in that the protestee received more votes, belying protestant's assertion that the Congress-retrieved ERs should all be disregarded since the results therein differ from those in the COMELEC's copies of ERs and that they have been manipulated to favor protestee. Consequently, according to the Hearing Commissioner's report, protestant failed to make out her case.

Thus, the Hearing Commissioner recommended that the protestant's Motion to Resolve the First Aspect of the Protest under consideration should be denied, and consequently, the protest itself, be dismissed for lack of legal

and factual basis, as the pilot-tested revision of ballots or re-tabulation of the certificates of canvass would not affect the winning margin of the protestee in the final canvass of the returns, in addition to the ground of abandonment or withdrawal by reason of her candidacy for, election and assumption of office as Senator of the Philippines.[37]

After thorough deliberation and consideration of the issues in this case, this Tribunal finds the abovestated recommendations of its Hearing Commissioner well-taken, and adopts them for its own.

Further, we are also in agreement that the protestant, in assuming the office of Senator and discharging her duties as such, which fact we can take judicial notice of,[38] has effectively abandoned or withdrawn her protest, or abandoned her determination to protect and pursue the public interest involved in the matter of who is the real choice of the electorate. The most relevant precedent on this issue is *Defensor-Santiago v. Ramos*,[39] a decision rendered by this Tribunal, which held that:

The term of office of the Senators elected in the 8 May 1995 election is six years, the first three of which coincides with the last three years of the term of the President elected in the 11 May 1992 synchronized elections. The latter would be Protestant Santiago's term if she would succeed in proving in the instant protest that she was the true winner in the 1992 elections. In assuming the office of Senator then, the Protestant has effectively abandoned or withdrawn this protest, or at the very least, in the language of Moraleja, abandoned her "determination to protect and pursue the public interest involved in the matter of who is the real choice of the electorate." Such abandonment or withdrawal operates to render moot the instant protest. Moreover, the dismissal of this protest would serve public interest as it would dissipate the aura of uncertainty as to the results of the 1992 presidential election, thereby enhancing the all-[too] crucial political stability of the nation during this period of national recovery.

It must also be stressed that under the Rules of the Presidential Electoral Tribunal, an election protest may be summarily dismissed, regardless of the public policy and public interest implications thereof, on the following grounds: (1) The petition is insufficient in form and substance;

(2) The petition is filed beyond the periods provided in Rules 14 and 15 hereof;

(3) The filing fee is not paid within the periods provided for in these Rules;

(4) The cash deposit, or the first P100,000.00 thereof, is not paid within 10 days after the filing of the protest; and

(5) The petition or copies thereof and the annexes thereto filed with the Tribunal are not clearly legible.

Other grounds for a motion to dismiss, e.g., those provided in the Rules of Court which apply in a suppletory character, may likewise be pleaded as affirmative defenses in the answer. After which, the Tribunal may, in its discretion, hold a preliminary hearing on such grounds. In sum, if an election protest may be dismissed on technical grounds, then it must be, for a decidedly stronger reason, if it has become moot due to its abandonment by the Protestant.[40]

In the case at bar, protestant's tenure in the Senate coincides with the term of the Vice-Presidency 2004-2010, that is the subject of her protest. In *Defensor-Santiago v. Ramos*, the protestant's tenure in the Senate also coincided with the term of the Presidency she was vying for. Like the protestant in the aforementioned case, the protestant in the case at bar filed her certificate of candidacy for the Senate, campaigned for the office, assumed office after election, and discharged the duties and functions of said office. Thus, we agree concerning the applicability of the *Defensor-Santiago* case as a precedent in the resolution of the present protest, though they differ in that *Defensor-Santiago's* case involves the Presidency while *Legarda's* protest concerns only the Vice-Presidency.

On the matter of the alleged spurious ER copies, we agree with the protestee that the protestant had not adequately and convincingly rebutted the presumption that as public documents, the Congress-retrieved ER copies, used for the proclamation of the protestee by the NBC, are authentic and duly executed in the regular course of official business. The evidence adduced by protestee to show that the supposed security features and markings in the Congress-retrieved ERs and the COMELEC/NAMFREL's copies are different, did not categorically establish that the Congress-retrieved ERs are fake and spurious. To overcome the presumption of regularity, there must be evidence that is clear, convincing and more than merely preponderant. Absent such convincing evidence, the presumption must be upheld.[41] In fact, the records show that even the witnesses presented by the protestant testified that they were able to discern security features and markings in the Congress-retrieved ERs. The records also show that witnesses were not made to examine all Congress-retrieved ERs in making observations relative to security features and markings, but only a sample set thereof was utilized, resulting in grave insufficiency in the evidence presented by protestant.

As to the alleged break-in in Congress, which allegedly facilitated the switching of ERs, no conclusive evidence has been given. One of the protestant's own witnesses, Atty. Artemio Adasa, Deputy General for Legislative Operations of the House of Representatives, categorically denied that a break-in and a switching of ERs had occurred in Congress.[42]

At any rate, as pointed out by protestee, even assuming arguendo that all the votes in the 497 precincts included in the pilot areas for the First Aspect with approximately 99,400 votes are considered in favor of protestant, still the protestant would not be able to overcome the lead of the protestee. The margin in favor of protestee adds up to a total of 881,722 votes, and it would take much more than a hundred thousand votes to overcome this lead. This is what the protestant had set out to do in her protest before the Tribunal, but unfortunately she failed to make out her case.[43] In fact, Taraka and Balindong, the only two municipalities on which protestant anchors her arguments for the First Aspect, would only yield an additional 9,931 votes (4,912 votes for Taraka and 5,019 votes for Balindong), a mere fraction of the lead of protestee over protestant. To say that she could have shown that such fraudulent machination was replicated in several other municipalities of Lanao del Sur and other provinces, such as Basilan, Sulu, Tawi-Tawi, Maguindanao, Sultan Kudarat and Lanao del Sur if she had enough time, is mere conjecture and can not be considered convincing by this Tribunal. It is the protestant herself who admits that she was able to adduce evidence only in Taraka and Balindong, for lack of time. But this Tribunal has been liberal in granting her plea for time extension. To say that the protestant had shown enough evidence to prove that the whole or even half (440,862)[44] of the lead of the protestee over the protestant is spurious, would go against the grain of the evidence on hand. One cannot say that half a million votes were illegally obtained based on unclear evidence of cheating in less than ten thousand. The protestant has been afforded ample opportunity to adduce evidence in her behalf for the First Aspect of the protest but the evidence presented is simply insufficient to convince the Tribunal to render invalid all or even half of the 881,722 votes that protestee had over her in the last elections for Vice-President.

WHEREFORE, the First Aspect of the protest is hereby DISMISSED for lack of legal and factual basis, as the pilot-tested revision of ballots or re-tabulation of the certificates of canvass would not affect the winning margin of the protestee in the final canvass of the returns, in addition to the ground of abandonment or withdrawal by reason of protestant's candidacy for, election to and assumption of the office of Senator of the Philippines. The Second Aspect, having been already DISMISSED on June 5, 2007, pursuant to Rule 33 of this Tribunal, the entire Protest is now deemed DISMISSED and TERMINATED.

SO ORDERED.

Puno, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Nachura, Reyes, and Leonardo-De Castro, JJ., concur.

Ynares-Santiago, J., No part.

Carpio, J., I concur but on ground of abandonment alone.

Chico-Nazario, and Velasco, Jr., JJ., On leave.

[1] PET rollo, Vol. I, pp. 39-41.

[2] Id. at 3-36.

[3] Id. at 9-11.

[4] Id. at 11-13.

[5] Id. at 511.

[6] Id. at 514-516.

[7] Id. at 10; 527.

[8] Id. at 660.

[9] PET rollo, Vol. II, pp. 1007-1010.

[10] Id. at 1059-1061.

[11] Id. at 1753, August 1, 2006 PET Resolution.

x x x x

A. Hearing Commissioner–

- Designation.-The Tribunal may delegate the reception of evidence to a Hearing Commissioner who may be a Member of the Tribunal or an official of the Tribunal who is a member of the Philippine Bar or a retired Justice of the Supreme Court who is willing to accept the designation.

x x x x

[12] PET rollo, Vol. III, pp. 2135-2140.

SUBPOENAE AD TESTIFICANDUM ET DUCES TECUM

TO: The President/General Manager
Ernest Printing Corporation
29 M.H. Del Pilar Street
Between 3rd and 4th Avenues, Grace Park
Caloocan City

GREETINGS:

You are hereby commanded:

(1) to appear in person before the Presidential Electoral Tribunal and its duly designated Hearing Commissioner Ret. Justice Bernardo P. Pardo, during the scheduled hearing/proceedings of the above-entitled

case on November 3, 2006, Friday, at ten o'clock in the morning at the Division Session Hall, Ground Floor, New SC Building and then and there to testify under oath on the following matters and/or subjects -

“The DETAILS on the aspect and on the matter of the PRINTING of the Comelec-contracted and ordered copies of the ELECTION RETURNS and other election documents, if any, as prepared and printed by the Ernest Printing Corporation, which printed documents were used in the May 10, 2004 elections, and in particular, on matters respecting the placing and/or incorporating in the said election documents, of some or several secret marks or any other security feature/s, if any including some other details material and relevant to and/or related to or connected with the AUTHORITY of Ernest Printing Corporation to undertake such actual printing of the said election returns and other election documents.”

(2) to bring with you the following -

“Any and all documents such as CONTRACTS, AGREEMENTS and/or AWARDS between Ernest Printing Corp. and COMELEC that would show and prove the scope of the AUTHORITY of Ernest Printing Corporation to undertake the PRINTING of the election returns and other election documents, as extended or granted unto it by the Commission on Elections; as well as any and all other documents on any pertinent matter/s and subject/s relative to and/or connected with, the contracted or awarded PRINTING of election returns and other election documents to the said Ernest Printing Corporation.”

FAIL NOT UNDER PENALTY OF LAW.

WITNESS the Honorable Bernardo P. Pardo, Ret. Associate Justice, this 25th day of October 2006.

(Sgd.) MA. LUISA D. VILLARAMA
Clerk of the Tribunal

[13] PET rollo, Vol. II, pp. 1842-1847.

SUBPOENAE AD TESTIFICANDUM ET DUCES TECUM

TO: Chairman Benjamin Abalos
Commission on Elections
Main Office, Aduana
Intramuros, Manila

GREETINGS:

You are hereby commanded:

(1) to appear in person before the Presidential Electoral Tribunal and its designated Honorable Hearing Commissioner Ret. Justice Bernardo P. Pardo, during the scheduled hearing/proceedings of the above-entitled case at 2:00 o'clock in the afternoon of Monday, September 18, 2006, Division Session Hall, Ground Floor, New SC Building and then and there to testify on the originals of the COMELEC copies of the various election documents herein below enumerated, described and specified, and also to further testify on other matters related to the said various election documents in the possession and custody of the Commission on Elections, coming from and/or pertaining to, the Municipalities of Balindong and Taraka, Lanao del Sur as well as the Province of Lanao del Sur;

(2) bring with you to the Tribunal the following documents, therein below specified:

[a] The ORIGINALS of the ELECTION RETURNS-copies for the COMELEC, for the Municipalities of Balindong and Taraka, Lanao del Sur used in the May 10, 2004 elections;

[b] The Originals of the COMELEC COPIES of the Municipal Certificate of Canvass for the Municipalities of Balindong and Taraka, Lanao del Sur, and their accompanying Originals-Comelec copies of the STATEMENT

OF VOTES BY PRECINCT for the same Municipalities of Balindong and Taraka, Lanao del Sur, used in the May 10, 2004 election; and

[c] The Originals of the COMELEC COPIES of the Provincial CERTIFICATE OF CANVASS for the Province of Lanao Del Sur used by COMELEC in senatorial canvass for the May 10, 2004 elections, including their accompanying Originals of the COMELEC COPIES of the STATEMENT OF VOTES BY MUNICIPALITY for the Province of Lanao del Sur.

You shall also testify on the various election documents above enumerated in respect to their printing, their genuineness and authenticity, and on the presence of SECURITY FEATURES contained, placed and/or embedded therein, should there be any.

FAIL NOT UNDER PENALTY OF LAW.

WITNESS the Honorable Bernardo P. Pardo, Ret. Associate Justice, this 13th day of September 2006.

(Sgd.) MA. LUISA D. VILLARAMA
Clerk of the Tribunal

[14] PET rollo, Vol. II, pp. 1777-1778.

[15] PET rollo, Vol. II, pp. 1330-1335.

[16] Id. at 1592-1600.

[17] PET rollo, Vol. III, p. 2500.

[18] Rules of the Presidential Electoral Tribunal (2005), Rule 33.

RULE 33. Effect of failure to make cash deposit. – If a party fails to make the cash deposits or additional deposits herein required within the prescribed time limit, the Tribunal may dismiss the protest or counter-protest, or take such action as it may deem equitable under the circumstances.

[19] PET rollo, Vol. III, pp. 2554-2555.

[20] Id. at 2564-2576.

[21] Id. at 2615-2618.

[22] Rules of the Presidential Electoral Tribunal (2005), Rule 61.

RULE 61. When submitted; contents. – Within twenty days from receipt of the Tribunal's ruling on the last offer of evidence by the protestee, the parties shall simultaneously submit their respective memoranda setting forth briefly:

- (a) The facts of the case;
- (b) A complete statement of all the arguments submitted in support of their respective views of the case;
- (c) Objections to the ballots adjudicated to or claimed by the other party in the revision of ballots;
- (d) Refutation of the objections of the other party to the ballots adjudicated to or claimed in the revision of ballots;
- (e) Objections to the tallying of election returns and certificates of canvass raised by the other party in the correction of manifest error; and
- (f) Refutation of the objections raised by the other party to the tallying of election returns and certificates of

canvass in the correction of manifest error.

All evidence, as well as objections to evidence presented by the other party, shall be either referred to or contained in the memorandum or in an appendix thereto.

[23] PET rollo, Vol. III, pp. 2619-2620.

[24] Id. at 2661-2684.

[25] Id. at 2712-2733.

[26] Id. at 2834-2844.

[27] Id. at 2671-2673.

[28] Id.

[29] Id.

[30] Id.

[31] Id.

[32] Id.

[33] Id.

[34] SEC. 19. Classes of documents.—For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

x x x x

[35] Municipal Board of Canvassers’.

[36] P.E.T. Case No. 001, February 13, 1996, 253 SCRA 559.

[37] PET rollo, Vol. III, pp. 2840-2844.

[38] Saludo, Jr. v. American Express International, Inc., G.R. No. 159507, April 19, 2006, 487 SCRA 462, 483, held that courts are allowed to take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.

[39] Supra note 36.

[40] Id. at 574-575.

[41] Melchor v. Gironella, G.R. No. 151138, February 16, 2005, 451 SCRA 476.

[42] TSN, November 6, 2006, pp. 89-96.

[43] Rules of the Presidential Electoral Tribunal (2005), Rule 63. 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 preceding paragraph shall also apply when the election protest involves correction of manifest errors.

[44] Computed as follows: $881,722 + 1 = 440,862.2$

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