

**JOSEPH EJERCITO ESTRADA AND HON. ANDRES REYES, JUDGE OF
THE COURT OF FIRST INSTANCE OF RIZAL (BRANCH VI),
PETITIONERS, VS. BRAULIO STO. DOMINGO AND THE COURT OF
APPEALS, RESPOND...**

G.R. No. L-30570. July 29, 1969

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Petitioner Joseph Ejercito Estrada invokes the authority of this Court to overturn the judgment of the Court of Appeals - voting three to two - which (1) declared that the Court of First Instance of Rizal acted with grave abuse of discretion for not resolving on the merits respondent Braulio Sto. Domingo's motion for reconsideration of its decision of October 29, 1968, and (2) nullified said trial court's order of November 25, 1968 which held final and executory the decision aforementioned declaring petitioner the winner in the election contest for the mayoralty of San Juan, Rizal.

The controlling facts may be recited as follows:

In the local elections in San Juan, Rizal held on November 14, 1967, candidates for Mayor were then incumbent Mayor Nicanor Ibuna, Nacionalista Party official candidate; respondent Braulio Sto. Domingo, Liberal Party official candidate; petitioner Joseph Ejercito Estrada, independent; and Enrique Lenon, also independent. On December 31, 1967, the municipal board of canvassers proclaimed Braulio Sto. Domingo as elected Mayor with 7,926 votes as against Joseph Ejercito Estrada with 7,882, or a plurality of 44 votes. Nicanor Ibuna ran third with 6,775 votes. Enrique Lenon obtained 55 votes. In due course, petitioner Estrada lodged an election protest, and respondent Sto. Domingo counter-protested, in the Court of First Instance of Rizal.[1] On October 29, 1968, judgment was rendered in said election protest, thus:

"IN VIEW OF ALL THE FOREGOING, the Court hereby annuls and sets aside the proclamation of the protestee, Dr. Braulio Sto. Domingo and hereby proclaims and declares the protestant, Joseph Ejercito Estrada as the Mayor duly elected for the Municipality of San Juan, Province of Rizal in the elections held on November 14, 1967, with a plurality of 192 votes, with costs against the protestee."

Sto. Domingo's counsel was served with copy of the decision on October 30, 1968.

At 1:45 p.m. on November 4, 1968, the last day of the five-day period to appeal statutorily fixed by Section 178, Revised Elec-tion Code, Sto. Domingo filed a motion to reconsider the decision. Copy of the motion was sent to Estrada's counsel by registered special delivery mail and with notice that the motion would be heard on the following Saturday, November 9, 1968 at 8:30 a.m. Attached to the motion was registry receipt 17713. Sto. Domingo therein averred that the trial judge erred (1) in reviewing and annulling the decisions of the other branches of the same court on the exclusion of voters; (2) in rejecting "Boyong" and "Dr. Boyong" votes; (3) in rejecting protestee's (private respondent's) evidence on the tam-pering of ballots after revision; and (4) in appreciating certain ballots.

Came the morning of November 9, 1968. Sto. Domingo and his counsel appeared in court. Absent were Estrada and his counsel, both of whom until then had not received copy of the motion. For lack of proof that Estrada had received notice of the motion for reconsideration of November 4, 1968, the hearing thereof was reset for November 16, 1968 at 8:30 a.m.

In the afternoon of November 9, 1968 Estrada, who got wind of what took place in the trial court that morning, filed an "omnibus motion" alleging that Sto. Domingo's motion for reconsideration was not legally sanctioned, flimsy and frivolous, a mere scrap of paper, and intended for delay. He prayed that that motion be stricken out and that the judgment be immediately executed as it had become final and executory. The omnibus motion he set for hearing on November 12, 1968 at 8:30 a.m.

Parenthetically, Estrada's counsel was personally served a copy of the motion for reconsideration only on November 11, 1968 upon the court's verbal order given on the 9th of November. The copy sent by registered mail reached his counsel only on November 13, 1968, four days after it was set for hearing (November 9, 1968, 8:30 a.m.).

At the November 12 hearing, the judge advised the parties to submit memoranda of authorities and reset both the omnibus motion and the motion to reconsider on November 16, 1968.

It was on the scheduled hearing of November 16 that Sto. Domingo completed proof of service by mail of his motion for reconsideration by the presentation of the registry return card postmarked November 13, a certification by the Acting Postmaster of Makati as to the mailing of registered letter No. 17713 on November 4, 1968, and the affidavit of Manuel B. Busico who posted the mail. Estrada's counsel orally moved for the immediate resolution of the pending incidents. The judge was ready to rule on the motions. Sto. Domingo demurred, pleaded that his memorandum and opposition to the omnibus motion be first considered; that in the event of an adverse resolution he be allowed at least five (5) days from receipt to enable him to procure extraordinary relief from the Court of Appeals. The judge thereupon declared that he would promulgate the resolution in open court on November 23, 1968, a Saturday.

On November 19, 1968, Sto. Domingo filed a cautionary notice of appeal, manifesting that he would appeal to the Court of Appeals in the event his motion for reconsideration be thwarted. Admittedly, however, he withdrew the cautionary notice of appeal later. This withdrawal was granted by the court on November 21, 1968.

On November 20, 1968, upon Sto. Domingo's urgent motion, the judge calendared the promulgation of the resolution for Monday, November 25, 1968, at 8:30 a.m.

Allegedly informed that resolution on his reconsideration motion would be adverse to him, Sto. Domingo's counsel sought the judge in the morning of November 23, 1968, asked the latter to give him a copy of the order before the close of office hours on that day. The judge declined, instead stated that the order would be read and released in open court the following Monday, November 25, 1968.

A hectic day, November 25, began at 7:30 a.m. when Sto. Domingo's counsel saw the judge to ask for a copy of the order. The judge told him to wait until the order shall have been read in open court. An hour later, 8:30 a.m., when the case was called, Sto. Domingo's counsel requested that the case be called again at 10:00 a.m. purportedly on the ground that he would first ask for the postponement of another case in Caloocan City. The court granted the request. At 10:00 a.m., the disputed order was read and promulgated in open court. The parties secured their copies of the order at 10:15 a.m. The dispositive portion of the order reads: "IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, it is the opinion of the Court that the reconsideration of its decision dated October 29, 1968 is not in order as the same had already become final and executory."

Then and there, Sto. Domingo's counsel orally moved to reconsider. The judge after hearing the arguments of the parties denied the motion.[2] Sto. Domingo's counsel was prepared to meet this contingency. He drew from his pocket and exhibited to the judge a copy of the Court of Appeals' restraining order.

It developed that some two hours earlier, at 8:04 a.m. on November 25, Sto. Domingo's counsel lodged with the Court of Appeals a three-pronged double spaced 15-page petition with Annexes A to J for certiorari, prohibition and mandamus with preliminary injunction.[3] Counsel secured in the appellate court in about an hour's time a full-page single spaced typewritten summons and a one-and-a-half page single spaced temporary restraining order enjoining the Court of First Instance of Rizal "from executing any order and/or writ of execution x x x in Election Case No. 10545" and from declaring the decision in said case "final and executory."

Upon the other hand, with equal dispatch, Estrada tried to fend off Sto. Domingo's move when he filed with the Court of Appeals, although belatedly, at 10:43 a.m., a 5-page opposition to the petition for certiorari, prohibition and mandamus attaching thereto his oath of office.

At 10:52 a.m. before the trial court adjourned, a bailiff of the Court of Appeals served on then Judge Andres Reyes, presiding over the trial court, the summons and restraining order; and at 11:50 a.m. likewise served the summons and restraining order upon Estrada.

After hearing, respondent Court of Appeals rendered the disputed decision of February 13, 1969, mentioned at the start of this opinion. Reconsideration thereof was denied by said court, again voting three to two, on May 22, 1969.

1. The forefront question to draw our attention is the correctness of the temporary restraining order of November 25, 1968 issued ex parte by the Court of Appeals promptly upon the filing therein of the certiorari, prohibition and mandamus petition. The directive in that restraining order is that respondents before the Court of Appeals refrain "from executing any order and/or writ of execution issued by respondent Judge declaring the decision in Election Case No. 10545 of the CFI-Rizal final and executory, from removing petitioner from his office as municipal mayor of San Juan, Rizal, from installing respondent Joseph Ejercito Estrada in petitioner's place as said mayor, and from otherwise molesting, disturbing petitioner in, or excluding him from, his lawful exercise and performance of his duties, rights and prerogatives as municipal mayor, until further orders from this Court." Well to remember is that the restraining order was issued even before the trial court could release the very order complained of in the petition.

The averments in Sto. Domingo's petition before the Court of Appeals upon which the restraining order was issued are:

"17. - That while petitioner has been unable to secure an official copy of the resolution of respondent Judge (for reasons hereinafter stated) he has been reliably informed (and because of the afore-mentioned circumstances and the persistent reports circulated by followers of respondent 'Estrada' that he (Estrada) will 'sit as Mayor on Monday', has reason to believe) that at the hearing at 8:30 o'clock this morning (Nov. 25), the respondent Judge will in open court (1) disregard or strike out petitioner's motion for reconsideration as prayed for by respondent 'Estrada' on the ground that the Election Code does not provide for a motion for reconsideration but only for appeal and that there was no proof of service of the motion, both of which are incorrect; (2) declare as final and executory his decision ousting petitioner as Municipal Mayor of San Juan and installing respondent Estrada in petitioner's stead; (3) order the execution or enforcement of said decision with the petitioner considered notified of said order in open court (as in a criminal case) and to abide by the same (while respondent 'Estrada' takes his 'oath' as mayor immediately if not also 'in open court'); and thereby deprive petitioner of any opportunity to contest the said order and execution in the appellate courts before they are carried out by the respondents over his objection.

18. - That the aforesaid actuations of respondent Judge have given rise to serious anxiety and great tension among the parties and their followers, as well as among the people of San Juan, Rizal and, as this petition is being filed by petitioner, the respondent 'Joseph Ejercito Estrada' and his men, many of whom are armed, are reported to be poised to forcibly execute the order to be issued by respondent Judge this morning while the petitioner's men, despite his instructions and advice to them to keep the peace and to ignore the taunts and challenges hurled at them by respondent 'Estrada' and his men, may not be able to restrain themselves if unduly provoked or harmed, and unless a restraining order or writ of preliminary injunction is issued by this Honorable Court against the respondents, their employees, agents, men and representatives, violence and disorder, and possibly bloodshed, are likely to break out in the municipality of San Juan, Rizal to the consequent injury not only of the parties and their men, but also of other people, and the petitioner will be forcibly and unlawfully removed from his office as mayor without due process of law.

19. - That in spite of petitioner's efforts to secure a copy of the respondent judge's resolution up to the close of office hours last Saturday, he has been unable to do so, he being informed that the said Order would be read in open court this morning and any written order would be released only thereafter; hence, the inability of petitioner to attach a copy of said resolution to this Petition which, because of the extraordinary circumstances above cited, has to be filed even before receipt of said copy. Petitioner, however, shall file said copy by way of supplemental pleading immediately upon receipt thereof this morning if the same is reduced to writing by respondent Judge.

20. - That by the foregoing acts the disregard or striking out of petitioner's motion for reconsideration of his decision without just and legal ground, the denial of petitioner's remedy of appeal from said decision as provided by law, and the execution of the said decision although the same is not yet final and executory (by reason of petitioner's motion for reconsideration and also the cautionary notice of appeal), and the opportunity given to respondent 'Joseph Ejercito Estrada' and his men to forcibly and unlawfully remove petitioner from his office as mayor immediately without giving petitioner adequate opportunity to seek relief from the appellate courts -- the respondent Judge has unlawfully neglected the performance of an act which the law specifically enjoins as a duty resulting from his office as Judge, unlawfully excludes the petitioner from enjoyment or exercise of his legal right to move for the reconsideration of respondent Judge's decision and to appeal therefrom, and likewise unlawfully sanctions the petitioner's removal from his lawful office without due process of law."

We take a grave view of the averments in Sto. Domingo's petition before the Court of Appeals just transcribed. We particularly note his statement that later on that day, November 25, the judge in open court would disregard or strike out petitioner's (Sto. Domingo's) motion for reconsideration, declare final his decision, and order the execution or enforcement thereof. All of these upon the allegation that Sto. Domingo had "been reliably informed" of the contents of the trial court's yet unreleased order. What is disturbing is that the information thus obtained constitutes the substance of the lower court's resolution eventually promulgated on that day, November 25.

Whatever merit may be accorded to the averments in the petition before the Court of Appeals aforesaid, our deepening concern for public policy will prevent us from lending support to the appellate court's restraining order. For, the information was secured upon a betrayal of trust. Not by the trial judge; he had consistently refused to divulge the contents of the resolution prior to its promulgation. The only logical conclusion is that the information must have been given by those closely associated with the judge in the discharge of his official duties.

Decisions or orders of courts must be kept inviolate until they shall have been promulgated or released. Officials and employees of the courthouse must be strictly enjoined against giving any information in advance as to what will be done by the judge. No opportunity should be afforded the unscrupulous litigants, their lawyers, friends, relatives, sympathizers or those with power or influence to go to court employees and by insidious means and

even bribery acquire advance information on the desired judgment or order of the court. Employ-ees should be made to understand that they are not to succumb to greed, to temptations for advancement in public service, that cause them to destroy the integrity of court proceedings or court records. A relaxation of this rule would embolden officials and employees of the courts to seek out interested parties in a case, give them the so-called "inside information" on the decision or order, or furnish them with copy of an unreleased decision or order, or hide, destroy or steal court records, or hold unserved a decision or resolution to promote a party's cause - thereby to earn a quick peso. Some such occurrence as has happened in this case should be stamped out. A contrary proposition would breed graft and corruption and erode confidence in the administration of justice.

Since the information procured is the "fruit of the poisonous tree"[4] the betrayal of trust - private respondent should not be allowed to benefit by it. Information immorally extracted cannot be dignified with the imprimatur of courts of justice. For this reason alone, we hold that there was abuse of discretion on the part of the Court of Appeals in granting the restraining order on the basis of the allegations rooted on what Sto. Domingo calls "reliable information".

But herein respondent Sto. Domingo avers that petitioner Estrada and his men, many of whom were armed, were reportedly poised to forcibly execute the order enforcing the judgment as yet to be issued in the morning of November 25. Said respondent told the Court of Appeals that a restraining order was a necessity to forestall impending bloodshed because his men, in the words of his petition before the appellate court, "despite his instructions and advice to them to keep the peace and to ignore the taunts and challenges hurled at them by respondent 'Estrada' and his men, may not be able to restrain themselves if unduly provoked or harmed."

This is an imagined wrong. It is so easy to conjure some such situation. Rumors may be blown into hysteria. Surely, the trial judge is not a party to this alleged scheme. Nor will he consent, we are sure, to be a party to such dastardly acts.

It is because of this that courts should be careful, indeed very cautious, in giving in to averments such as are heretofore recited. Courts should be on guard against litigants who swell up a picture into an alarming situation. We do not hesitate to say that at the time the petition (lodged in the Court of Appeals as early as 8:04 a.m.) was being thought of, framed in the minds of the lawyers and eventually typewritten, there was no such grave problem of threatening armed clashes or bloodshed as would call for the remedy of a restraining order from the Court of Appeals. If tension such as was depicted by Sto. Domingo existed, it would not have escaped notice of the trial judge. He was at the vortex of the alleged ominous events. Representations then could have been made to him in view of the alleged turbulence of the atmosphere either to do away with the oral promulgation of the resolution altogether, or after the promulgation thereof, to have its enforcement delayed so that appropriate relief may be had in the appellate courts. So it is, that the averment in the Court of Appeals' petition that the judge would purportedly refuse to afford respondent Sto. Domingo opportunity to seek aid from the appellate courts is premature and at best pure conjecture. And, if it were really true that there was the gathering momentum leading to violence, we believe that guardians of the law should likewise have known of the same - which is not even suggested in the record - and readied themselves to forestall armed clashes.

It thus results that there is a remedy elsewhere other than in the form of a premature restraining order from the Court of Appeals.

Besides, if the judge would declare his decision final and executory, as he later on did, and the forces of respondent Sto. Domingo would resist petitioner Estrada's takeover, such a resistance would certainly be patently illegal and indeed even criminal. Surely, impending bloodshed can never be a valid ground to restrain a lawful assumption of office. What will happen to the rule of law?

It is in the context heretofore recited that we hold that the Court of Appeals committed a grave abuse of discretion in issuing ex parte the restraining order here complained of. For this reason, we strike down the said restraining order.

2. We face the problems ahead with an eye to the nature of election contest proceedings.

The statutory scheme clearly mapped out in the Revised Election Code is that proceedings in election protests are special and expeditious. The periods for filing pleadings are short. Trials are swift. Decisions in municipal election contests are to be handed down in six months after the protest is presented. The time to file a notice of appeal is cut short to five days from notice of the decision. Appeal is to be decided within three months after the case is filed with the clerk of the court to which appeal is taken. Preferential disposition of election contests except as to habeas corpus proceedings is set forth in the law.[5] Even the Rules of Court make it abundantly clear that election cases enjoy preferential status.[6] The proceedings should not be encumbered by delays. All of these are because the term of elective office is likewise short. There is the personal stake of the contestants, which generates feuds and discords. Above all is the public interest. Title to public elective office must not be left long under cloud. Efficiency of public administration should not be impaired. It is thus understandable that pitfalls which may retard the determination of election contests should be avoided. Courts should heed the imperative need for dispatch. Obstacles and technicalities which fetter the people's will should not stand in the way of a prompt termination of election contests.

Since 1966, when this Court in *Lagumbay vs. Climaco*[7] projected the pressing need to strike a blow at the "pernicious 'grab-the-proclamation-prolong-the-protest' slogan of some candidates or parties", we observe, to our dismay, that courts of justice still have to cope with oft-recurring cases which come about in utter disregard of this rule.[8]

These are the desiderata which should be uppermost in the mind of courts of justice, if only to give substance to the constitutional precept that "[s]overeignty resides in the people and all government authority emanates from them." [9]

3. The thrust of *Sto. Domingo's* petition before the Court of Appeals is that therein respondent Judge Andres Reyes did not resolve his motion for reconsideration on the merits; that accordingly mandamus should issue to compel him so to do; and that in the event the resolution be adverse, the judge be directed to give due course to his cautionary notice of appeal.

The majority decision of the Court of Appeals gave its nod to the posture so taken and directed the judge "to act upon and resolve petitioner's [private respondent's] motion for reconsideration of the decision in said case on the merits."

A reading of the November 25 order of Judge Andres Reyes brings about the salient points thereof, viz:

"To begin with, the Court does not believe that the filing of a motion for reconsideration in an election case is in order x x x.

x x x

And even granting for the sake of argument that the aggrieved party can file a motion for reconsideration, the instant motion filed by *Braulio Sto. Domingo* is pro forma and therefore, did not suspend the running of the period of appeal. It is pro forma because the said motion for reconsideration was but a repetition of the contents of the memorandum filed by the said protestee and in a small way, a refutation of a portion of the memorandum filed by the protestant, which the movant could have refuted by filing a reply memorandum before the case was submitted for decision. To make it short, the motion for reconsideration merely makes reference to the contents of the memorandum filed by both parties which had already been considered by the

Court before rendering its decision. (Arnaldo vs. Bernabe, 87 Phil. 379).

Not only this, even granting for the sake of argument again, that the instant motion for reconsideration was not pro forma, still the Court believes that the filing of the said motion was fatally defective, and such being so, the motion is but a mere scrap of paper which did not stop the running of the period for appeal. x x x.

The motion lacked the required affidavit. The affidavit is a very important requirement considering the fact that a registry receipt does not show the nature of the contents of the letter that has been mailed. The deficiency was not cured when the movant Braulio Sto. Domingo submitted the affidavit of a certain Manuel Busico which is dated November 13, 1968, or four (4) days after the date when said motion was set for hearing. The failure therefore of the protestee to attach the affidavit to the motion was fatal.

And not only this. The failure of the protestee to comply with the requirements of Section 2, Rule 37, Section 4, Rule 15 and Section 8, Rule 13 x x x is like-wise fatal. A copy of the motion for reconsideration was not served on the protestant three (3) days before the date set for hearing. The record shows that the protestant received the copy of the motion for reconsideration of the protestee only on November 13, 1968 or four (4) days after the said motion was set for hearing by the movant on November 9, 1968."

Nothing more forcefully downgrades the charge that the judge did not fully resolve the motion for reconsideration than the recitals in the order just quoted. To be sure, Section 12, Article VIII, Constitution, and Section 1, Rule 36, Rules of Court which require express findings of fact in a decision, both have no application to the questioned order. Here involved is not a decision on the merits but a mere order upon a motion to reconsider. The judge could simply dish out a routine capsule-form order "Denied for lack of merit" or "Motion for reconsideration denied". And yet, that kind of order would serve to immunize the judge against an unlawful neglect-of-duty charge. But the judge did not merely content himself with a perfunctory order. He wrote a reasoned out five-page resolution.

Nor is it correct to tag the judge's order with failure to consider the motion for reconsideration on the merits. Meaning should be attached to the judge's statement that the motion for reconsideration is pro forma because the same is "but a repetition of the contents of the memorandum filed by the said protestee and in a small way, a refutation of a portion of the memorandum filed by the protestant, which the movant could have refuted by filing a reply memorandum before the case was submitted for decision." The judge added that: "To make it short, the motion for reconsideration merely makes reference to the contents of the memorandum filed by both parties which had already been considered by the Court before rendering its decision." Implicit in these statements is that the judge waded through private respondent's motion for reconsideration, read and examined the merits of the arguments therein, compared them with those set forth in private respondent's memorandum and then came to the conclusion that the arguments advanced would not change the result. Had the judge found in that motion for reconsideration some argument of weight or substance which would bring about a conclusion different from that reached in his decision, surely enough, he would have spelled it out and written it in an amended decision. For, the presumption is that a judge performs his duty to the best of his knowledge and ability. Since the judge did not change his decision, then under the circumstances his November 25 order amounted to a denial of the motion for reconsideration on the merits. And this is quite clear from the dispositive part thereof which stated that the order was "IN VIEW OF ALL THE FOREGOING CONSIDERATIONS".

We thus find ourselves unable to go along with the Court of Appeals' insistence that the judge's statement that the motion was pro forma is not to be taken as a resolution of the motion on the merits. The reasons the appellate court gave are: first, such pro forma finding "merely supported [i.e., for the sake of argument] the main thesis x x x that the decision 'had already become final and executory'; and second, it is inconsistent for the judge "to say that the remedy of reconsideration is not available and at the same time pass upon it [the motion] on the merits." Courts at times do not hesitate to avail of all grounds to throw out a motion or pleading. It is not uncommon to

read in decisions or orders some such statement as this: "Viewed from any angle, the petition in this case should be dismissed." [10]

For these reasons, it is difficult to hew to the Court of Appeals' view that the judge so unlawfully neglected his duty to rule on the merits of the motion for reconsideration. It bears repeating that the judge did more than what was expected; that instead of mechanically writing "Denied for lack of merit", he examined the arguments set forth in said motion and explained as cogently as he could why it should not be granted. His order meets the rigid standards expected of his judicial position.

And more. In the resolution of a motion for reconsideration, judges wield sound discretion. As Mr. Justice Edilberto Soriano of the Court of Appeals, in his dissent to the resolution denying reconsideration, aptly observed, "[h]ow he was going to go about it, or upon what ground or grounds, is of little moment." The fact is that the judge's duty under the premises is to grant or deny. He did deny. He is not remiss in his duty.

We, accordingly, hold that the trial court's order of November 25, 1968 properly ruled on private respondent's motion for reconsideration.

4. The conclusion just reached brings us to the next question: Did private respondent's motion for reconsideration arrest the five-day period for appeal set forth in Section 178 of the Revised Election Code?

To repeat, the motion for reconsideration of the decision was based on four grounds, namely, the court erred (1) in reviewing and annulling the decisions of the other branches of the same Court of First instance in exclusion cases; (2) in rejecting the so-called "Boyong" and "Dr. Boyong" votes; (3) in rejecting protestee's evidence on the tampering of ballots after revision; and (4) in appreciating certain ballots. And we have said that the lower court in rejecting this motion ruled that it was pro forma in that the matters therein discussed "had already been considered by the Court before rendering its decision." There is much to the trial judge's statement just quoted.

On the first ground which refers to the decision of the other branches of the Court of First Instance in exclusion cases, it is clear from the decision that this matter had already been brought to the attention of the trial judge before the decision was rendered. Said the trial judge:

"According to the protestee, 659 out of 1,508 excluded voters were able to vote, and 285 of them voted for Estrada, 95 for Sto. Domingo, and 279 for Ibuna. This was determined by a matching conducted by a witness for the protestee by the name of Major Catalino Hernandez. To represent the facts clearer, the results of this matching are tabulated and appears on page 8 of Protestee's memorandum.

The protestee vigorously claims that the ballots cast by these excluded voters should be deducted from the number of votes credited to Estrada, Sto. Domingo, and Ibuna." [11]

On the so-called "Boyong" and "Dr. Boyong" votes, there is the admission on the part of counsel for Sto. Domingo (during the course of oral arguments before the trial judge on November 25, 1968 in support of his verbal motion to reconsider the denial of his motion for reconsideration of the decision) that "we raised this question in our memorandum because of the exception laid down in the case of Abrea vs. Lloren but also on the principle of *idem sonans*." [12]

On the alleged tampered ballots, the trial judge, on pages 56 and 57 of the decision, explained quite in detail how, after this case had been submitted for decision, the protestee (respondent Sto. Domingo), on August 27, 1968, moved to reopen the case alleging evidence to show that said ballots were tampered. Of the 264 ballots, respondent Sto. Domingo only claims 31 ballots stating: "By our count, a total of 31 ballots wherein the protestee was voted for Mayor were rejected by the Court as marked ballots because of such 'marks' as '3 stars', swastika figures, drawings of bottles of beer and the word 'toma', likeness of human face, carbon traces, 'Jr. 007', 'xxx'

below OFFICIAL BALLOT, etc. appearing thereon." On the question of whether these 31 ballots should be counted for Sto. Domingo, his counsel admitted that: "We cited the arguments and the law applicable. We learned this appreciation only upon receipt of the decision. We could not have anticipated it because we have vigorously maintained that the alleged 'marks' there were not placed by the voters themselves but by other persons without their consent. How then could our motion be pro-forma?"[13] Respondent Sto. Domingo in his motion for reconsideration would want the trial court to read the memorandum of objections filed by protestant (petitioner Estrada) to convince said court that its ruling on this point was wrong. But this memorandum of objections had already been considered by the trial court when it said, on page 57 of its decision: "Anyone who tampers these ballots must also be familiar with the memorandum of objections filed by the protestant as early as May, 1968 in order to harmonize the written objections with the physical appearance of the 264 ballots."

Nor will the appreciation of 56 ballots given as the fourth and last ground of the motion for reconsideration be of any importance. The question of appreciation of ballots in election protests comes up after those ballots have been challenged. They are separated. The parties are heard on their reasons pro and con. Only thereafter does the judge weigh the relative value of the reasons given by one party or the other.

It is quite apparent then that the questions raised in the motion for reconsideration have already been considered by the trial judge before the decision of the case on the merits. This is an election protest. Public policy demands that it be instituted and finished with utmost promptitude. It was indeed an utter waste of time for private respondent to have sought reconsideration upon questions which, after all, could have been very well decided by the appellate court.

We, accordingly, rule that where in an election protest a motion for reconsideration of the decision on the merits presents questions which have already been considered by the court prior to or upon the promulgation of such decision, said motion for reconsideration is pro forma and does not suspend the running of the period for appeal. This rule, we are confident, helps remove from the reach of proclamation grabbers a dilatory device conveniently used by them to keep them in office and to frustrate the victors from taking the seats that are justly theirs.

As we look back at the facts, we discern a pattern of delay on the part of private respondent. Recited by petitioner Estrada are the following which took place in the trial court: (1) Motion to reduce deposit from P7,500 to P4,000 dated February 12, 1968;[14] (2) Motion for time to evaluate revision dated February 14, 1968;[15] (3) Motion to allow services of handwriting expert dated February 16, 1968;[16] (4) Motion to reset beginning of technical examination by handwriting expert dated February 27, 1968;[17] (5) Urgent motion to suspend revision of counter-protested precincts dated February 27, 1968;[18] (6) Motion to conduct matching tests with respect to Precinct Nos. 8, 72 and 77 dated June 5, 1968;[19] and (7) Petition to reopen the case to adduce evidence of tampering dated August 26, 1968.[20] This last motion was granted by the judge despite the fact that the tampering, on which evidence was to be adduced, was already previously brought to his attention.

Indeed, even private respondent's conduct after the trial court's decision is not arguably insulated from the charge of delaying tactics. It was on the last day of the statutory period fixed for appealing the main decision - November 4, 1968 - that private re-spondent's motion for reconsideration was filed. And then, instead of serving a copy thereof on petitioner personally, as had at times been done before admittedly with previous pleadings,[21] service on petitioner was made by registered special delivery mail, with notice that the incident would be heard on the following Saturday, November 9. Copy of the motion and the notice of hearing sent by mail did not reach petitioner on time. Petitioner actually received the mailed matter on November 13, four days after the motion for reconsideration was set for hearing. This was, of course, to be expected from the experience people have with our postal system. Private respondent, we are sure, knew this. Because, service was effected thru the mails, private respondent won a week's delay - the judge reset the hearing on the motion for reconsideration on November 16.

On November 16, when the judge announced his readiness to rule on the motion, we find private respondent objecting, asking that his memorandum and opposition to petitioner's omnibus motion be first considered and suing for time to procure extraordinary relief from the Court of Appeals. Private respondent won another week's delay. The judge declared that he would promulgate the resolution in open court on November 23, the next Saturday. In the meantime, however, private respondent made another move to postpone the promulgation. The judge again reset the same on Monday, November 25.

On November 25 at 8:30 a.m., private respondent's counsel successfully obtained a one-and-a-half hour delay upon the ground that he had to postpone another case in Caloocan City. It turned out that, meanwhile, private respondent's lawyers were frantically attempting to secure a restraining order from the Court of Appeals. They filed a special civil action with the said appellate court at 8:04 a.m. that same morning. When private respondent received a copy of the judge's order disposing of their motion for reconsideration at 10:15 a.m., and when the judge denied private respondent's oral motion for reconsideration thereof, the latter was ready. Private respondent's counsel came out with the restraining order from the Court of Appeals.

Consider also the time consumed by the present proceedings in the Court of Appeals. Private respondent's petition was filed on November 25, 1968. It was finally resolved only on May 22, 1969. And yet, upon the excuse that his motion for reconsideration of the decision was not ruled upon on the merits, private respondent would want the appellate court to command the trial judge first to rule on the said motion and thereafter give due course to his appeal. One may well imagine the baneful effects of some such procedure. Had his petition prospered, it is not unlikely that by the time the case is finally decided, the Pyrrhic victory which courts abhor would again be repeated.

It must be emphasized that the questions raised in the motion for reconsideration could very well be disposed of, and with finality, on appeal. In the realities of political life, it is unreasonable to assume that whatever be the resolution on the motion for reconsideration, the defeated party would take that resolution hands down. It is not to be expected that respondent Sto. Domingo, who is presently sitting as Mayor, would not appeal from the decision adverse to him.

If any meaning is to be attached to the events in the lower courts, it is that private respondent has, in ingeniously chiseled language, so skillfully taken advantage of judicial procedure to stave off the day of reckoning when petitioner would replace him as Mayor of San Juan, Rizal. The pattern of delay is patent.

A principle already forged by this Court is that a motion for reconsideration which has no other purpose than to gain time is pro forma and does not stop the period of appeal from slipping away.[22] It is in recognition of this doctrine that we hold that where a motion for reconsideration in an election case is taken advantage of for purposes of delay to the prejudice of the adverse party or where such motion forms part of a matrix of delay, that motion does not stop the running of the five-day period for appeal.

The foregoing discussions pave the way for an examination of the remedies, if any, available to private respondent.

5. Mandamus will not issue to compel the trial judge to decide private respondent's motion for reconsideration. That motion for reconsideration, we say again, had been decided on the merits. And even on the assumption that the court did not so decide, mandamus will not issue. For, the court did decide; it denied the motion. Perhaps in a way not satisfactory to private respondent. But then, mandamus is no remedy to control the exercise by the court of its discretion.[23] Nor will it avail to compel him to resolve an incident in a particular way.[24] Reason for this is that the law concedes to judges the right to decide questions according to their own judgment and understanding of the law. If the court's resolution is wrong, correctible it is by appeal, not mandamus.[25]

As unavailing is mandamus to compel the judge to approve his appeal. Private respondent has not appealed from the judgment. He cannot rely on the cautionary notice of appeal which he has withdrawn.

6. Nor will the writs of certiorari and prohibition issue. Their function is to keep an inferior court within the bounds of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to excess of jurisdiction.[26] Admittedly, the trial court had jurisdiction over the election case. The questioned order of November 25, 1968 was issued in the proper exercise of such jurisdiction. Granting or denying a motion for reconsideration indeed involves an exercise of discretion.[27] As was pointed out in *Bustos vs. Moir*, 35 Phil. 415, 417, an election case: "It is absurd to claim that a court has no jurisdiction to do the very thing which the law authorizes it to do. The mere fact that it decides the question wrong is x x x utterly immaterial to the question of its jurisdiction." And, discretion has not been abused.

Respondent Sto. Domingo's motion for reconsideration did not stop the running of the five-day period for appeal. No appeal has been taken from the judgment dislodging said respondent from his seat as Mayor. Accordingly, that judgment has become final.

Besides, as adverted to earlier in this opinion, the trial court - upon the allegations set forth in paragraphs 17 to 20 of private respondent's petition before the Court of Appeals based on alleged "reliable information" - may not be restrained by the latter court from enforcing the order of November 25, 1968 denying the motion for the reconsideration of its main decision. We have also said that the trial court has correctly denied said motion for reconsideration. It follows then that neither certiorari nor prohibition will issue against the trial judge to stop him from proceeding with the execution of his judgment.

7. In fact, no extraordinary writ may at all issue in the present case. For, a rule that has definitely crystallized because of frequent reiteration is that extraordinary remedies - such as mandamus, certiorari and prohibition - may not be sought if there is another remedy as adequate and speedy.[28] We have no doubt that an appeal within the statutory period from the judgment rendered on October 29, 1968 in this election case is as adequate and as speedy as any special civil action. Faster it could be. For, the law commands that election contest appeals "shall be decided within three months after the filing of the case in the office of the clerk of the court to which the appeal has been taken." [29] This is fortified by another statutory precept which directs the trial and appellate courts to "give preference to election contests over all other cases, except those of habeas corpus" and to "hear and decide them without delay, within the time limits fixed by law, whether they are holding regular sessions or not." [30] But appeal, we have heretofore stated, is lost. No remedy is left.

8. In a last ditch attempt to keep this case alive, respondent Sto. Domingo now comes to this Court with the plea "that in the remote possibility that his petition" in the Court of Appeals "for any reason be denied, the same be considered or treated as an appeal."

Reasons there are why this cannot be done. First. At the time the petition before the Court of Appeals was filed, the judgment of the trial court was already final. Second. Said respondent cannot now invoke this Court's power to help him retrieve his right to appeal which he has deliberately discarded in favor of a special civil action - which, mildly put, has served no purpose other than to delay these proceedings. He has already eaten up almost one-half of the term of office that the electorate, to all appearances, had not entrusted to him. He cannot gamble with one court proceeding, and failing in this, resort to another. Indeed, resorting piecemeal to one remedy after another could be an instrument of oppression against the adversary. Third. Respondent Sto. Domingo's petition before the Court of Appeals is bereft of any allegation indicative of any intention of his to appeal. On the contrary, it was meant to procure a decision remanding the case to the court below for further proceedings.

These are considerations which deter us from heeding Sto. Domingo's plea that the special civil action in the Court of Appeals be treated as an appeal. In those cases where this Court considered an appeal as a special civil action or vice-versa, there was reason therefor: to avoid delay and to thwart the commission of injustice.[31] But

for this Court to grant said respondent Sto. Domingo's plea, delay instead of being avoided would be encouraged; justice instead of being advanced, denied. No equitable consideration there is which would give some semblance of authority to consider the special civil action as an appeal, He lost his remedy of appeal. Not through fraud, accident, mistake, or excusable negligence,[32] or through the court's own fault.[33] If negligence or mistake there was, we are certain it was not excusable. The short of it is that private respondent opted to travel the road of extraordinary remedies, not with the intention of having the case brought up for appellate review on the merits. Clear was his aim to have the present questions decided first and, if adversely resolved against him, to appeal. To legitimize such maneuvers is to run smack against the letter and spirit of the election law. Temporizing with delay in election cases is repugnant to our sense of justice. It is our duty to hold that appeal as a remedy has been totally fore-closed to respondent Sto. Domingo.

The merits of the election protest are not before us in these proceedings. But as this decision will have the effect of affirming the finality of the judgment of the trial court upholding the protest of petitioner Joseph Ejercito Estrada, we have gone over the records of the Court of First Instance and the Court of Appeals which have been elevated to this Court. And we are satisfied that our decision here does not defeat the expressed will of the electorate of San Juan, Rizal.

FOR THE REASONS GIVEN -

(1) the judgment of the Court of Appeals promulgated on February 13, 1969 is hereby set aside; and

(2) the judgment of the Court of First Instance of Rizal in Election Case No. 10545 entitled "Joseph Ejercito Estrada, Protestant, versus Braulio Sto. Domingo, Protestee", declaring Joseph Ejercito Estrada as the duly elected Mayor for the Municipality of San Juan, Province of Rizal in the elections held on November 14, 1967 with a plurality of 192 votes, with costs against protestee, is hereby declared final and executory as of November 5, 1968.

Our decision herein shall become final five (5) days from notice hereof.

Costs against private respondent Braulio Sto. Domingo.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Zaldivar, Castro, Fernando, Capistrano, and Teehankee, JJ., concur.
Dizon and Barredo, JJ., concurs in separate opinion.
Makalintal, J., took no part.

[1] Election Protest 10545, Court of First Instance of Rizal, Branch VI, entitled "Joseph Ejercito Estrada, Protestant, versus Dr. Braulio Sto. Domingo, Protestee."

[2] The verbal denial order was confirmed in a written order of the same date, November 25, 1968.

[3] CA-G.R. 42386-R, Court of Appeals, entitled "Braulio Sto. Domingo, Petitioner, versus Hon. Andres Reyes, Judge of the Court of First Instance of Rizal, and Joseph Ejercito Estrada, Respondents."

[4] *Nardone vs. U.S.*, 308 U.S. 338, 341.

[5] Section 179, Revised Election Code. See also: Sections 89, 172 to 178, Revised Election Code.

[6] Section 1, Rule 22, Rules of Court.

[7] 16 SCRA 175, 180.

[8] See: Ong vs. Commission on Elections (1968), 22 SCRA 241, 256-257; Pacis vs. Commission on Elections (1968), 22 SCRA 539, 542; Pedido vs. Commission on Elections (1968), 22 SCRA 1403, 1413; Aguam vs. Commission on Elections (1968), 23 SCRA 883, 887-888; Pacis vs. Commission on Elections (1968), 25 SCRA 377, 389; Solidum vs. Macalalag, L-28666, May 20, 1969.

[9] Section 1, Article II (Declaration of Principles), Constitution.

[10] See: E.g. Giron vs. Caluag, 8 SCRA 285, 292. See also: Espi-ritu vs. Municipal Council, 102 Phil. 866; Hebron vs. Reyes, 104 Phil. 175; Buencamino vs. Hernandez, 8 SCRA 483; Palting vs. San Jose Petroleum, Inc., 18 SCRA 924; Co Pek vs. Vivo, 18 SCRA 954, where although the appeals were dismissed for being moot, this Court nevertheless decided the issues on the merits.

[11] Decision of the trial court, p. 16; emphasis supplied.

[12] Rollo, Court of Appeals, p. 247.

[13] Oral arguments on the oral motion for reconsideration of the resolution denying private respondent's motion to reconsider the decision. Rollo, Court of Appeals, pp. 248-249; emphasis supplied.

[14] Record of Election Case 10545, Court of First Instance of Rizal, p. 55.

[15] Id., p. 66.

[16] Id., p. 72.

[17] Id., p. 95.

[18] Id., p. 97.

[19] Id., p. 224.

[20] Id. p. 279.

[21] This was admitted by private respondent's counsel in the oral arguments before this Court.

[22] Valdez vs. Jugo, 74 Phil. 49; "Y" Shipping Corporation vs. Erispe (1967), 20 SCRA 1, 4; Lonaria vs. De Guzman (1967), 21 SCRA 349, 354.

[23] Board of Election Inspectors vs. Sison, 55 Phil. 914, 917; Eugenio vs. Tan, 84 Phil. 563, 565; Caltex Filipino Managers and Supervisors Association vs. Court of Industrial Relations (1968), 23 SCRA 492, citing Inchausti & Co. vs. Wright, 47 Phil. 866; Marcelo Steel Corporation vs. Import Control Board, 87 Phil. 374; Palileo vs. Fred Ruiz Castro, 85 Phil. 272; Diokno vs. Rehabilitation Finance Corporation, 91 Phil. 608.

[24] Santiago Labor Union vs. Tabigne, 17 SCRA 286, 287, citing Lupisan vs. Alfonso, 78 Phil. 842, De Castro vs. Court of Appeals, 75 Phil. 824, Morada vs. Caluag, 5 SCRA 1128. See also: Dy Cay vs. Crossfield & O'Brien, 38 Phil. 521, 528; Montalbo vs. Santa-maria, 54 Phil. 955, 963; Quianzon vs. Provincial Fiscal of Ilocos Norte, 58 Phil. 594, 597; Eugenio vs. Tan, supra; Caltex Filipino Managers and Supervisors Association vs. Court of Industrial Relations, supra.

[25] Id.

[26] Sections 1 and 2, Rule 65, Rules of Court; Pacis vs. Averia (1966), 18 SCRA 907, 914-915, citing cases; Gray vs. Kiungco (1968), 25 SCRA 216, 218, citing Ma-ao Sugar Central Co. vs. Barrios, 79 Phil. 666, 669; Ang

Ching Gi vs. De Leon, 79 Phil. 580, 582; Ong Sit vs. Piccio, 78 Phil. 785, 789; Tarnate vs. Daza, 76 Phil. 842; Claudio vs. Zandueta, 64 Phil. 812, 819; Westminster Bank vs. Torres, 57 Phil. 422, 425-426; Tayko vs. Capistrano, 53 Phil. 866, 871; Sabado vs. Gonzales, 53 Phil. 770, 777; So Chu vs. Nepomuceno, 29 Phil. 208, 210-211. See also: 3 Moran, Comments on the Rules of Court, 1963 ed., pp. 143, 159.

[27] Lucero vs. Dacayo (1968), 22 SCRA 1004, 1007; Gray vs. Kiungco, *supra*.

[28] Lidasan vs. Commission on Elections (1968), 22 SCRA 975, 977. See also: Giron vs. Caluag (1963), 8 SCRA 285, 291; Republic vs. Perez (1963), 8 SCRA 337, 342; Harrison Foundry & Machinery vs. Harrison Foundry Workers' Association (1963), 8 SCRA 430, 434, citing cases; De la Cruz vs. Sta. Maria (1963), 7 SCRA 992, 1000.

[29] Section 178, Revised Election Code; Portillo vs. Salvani, 54 Phil. 543, 550; Querubin vs. Court of Appeals, 82 Phil. 227, 229-230.

[30] Section 179, Revised Election Code.

[31] Pampanga Sugar Development Co., Inc. vs. Quiroz (1966), 16 SCRA 784, 785; Mutuc vs. Commission on Elections (1968), 22 SCRA 662, 665; People vs. Doriguez (1968), 24 SCRA 163, 168; Sotto vs. Mijares, L-23563, May 8, 1969.

[32] Punzalan vs. Papica, L-13804, February 29, 1960; Pacis vs. Averia, *supra*, p. 915; Pendon vs. Cabatuando (1968), 25 SCRA 184, 190-191.

[33] Gavan vs. Wizlizenus, 48 Phil. 632, 636; Dais vs. Court of First Instance, 51 Phil. 396, 403.

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CONCURRING OPINION

DIZON, J.:

The undersigned adopts as part of this concurring opinion the following masterly exposition of the case end of the facts nude by Mr. Justice Conrado Sanchez:

"Petitioner Joseph Ejercito Estrada invokes the authority of this Court to overturn the judgment of the Court of Appeals - voting three to two - which (1) declared that the Court of First Instance of Rizal acted with grave abuse of discretion for not resolving on the merits respondent Braulio Sto. Domingots motion for reconsideration of its decision of October 29, 1968, and (2) nullified said courts order of November 25, 1968 which held final and executory the decision aforementioned declaring petitioner the winner in the election contest for the mayoralty of San Juan, Rizal.

"The controlling facts may be recited as follows:

"In the local elections in San Juan, Rizal held on November 14, 1967, candidates for Mayor were then incumbent Mayor Nicanor Ibuna, Nacionalista Party official candidate; respondent Braulio Sto. Domingo, Liberal Party official candidate; petitioner Joseph Ejercito Estrada, independent; end Enrique Lenon, also independent. On December 31, 1967, the municipal board of canvassers proclaimed Braulio Sto. Domingo as

elected Mayor with 7,926 votes as against Joseph Ejercito Estrada with 7,882, or a plurality of 44 votes. Nicanor Ibuna ran third with 6,775 votes. Enrique Lenon obtained 55 votes. In due course, petitioner Estrada lodged an election protest, and respondent Sto. Domingo counter-protested, in the Court of First Instance of Rizal.[1] On October 29, 1968, judgment was rendered in said election protest, thus:

'IN VIEW OF ALL THE FOREGOING, the Court hereby annuls and sets aside the proclamation of the protestee, Dr. Braulio Sto. Domingo and hereby proclaims, and declares the protestant, Joseph Ejercito Estrada as the Mayor duly elected for the Municipality of San Juan, Province of Rizal in the elections held on November 14, 1967, with a plurality of 192 votes, with costs against the protestee.'

"Sto. Domingo's counsel was served with copy of the decision on October 30, 1968.

"At 1:45 p.m. on November 4, 1968, the last day of the five-day period to appeal statutorily fixed by Section 178, Revised Election Code, Sto. Domingo filed a motion to reconsider the decision. Copy of the motion was sent to Estrada's counsel by registered special delivery mail and with notice that the motion would be heard on the following Saturday, November 9, 1968 at 8:30 a.m. Attached to the motion was registry receipt, 17713. Sto. Domingo therein averred that the trial judge erred (1) in reviewing and annulling, the decisions of the other branches of the same court on the exclusion of voters; (2) in rejecting 'Boyong' and 'Dr. Boyong' votes; (3) in rejecting protestee's (private respondent's) evidence on the tampering of ballots after revision; and (4) in appreciating certain ballots.

"Came the morning of November 9, 1968. Sto. Domingo and his counsel appeared in court. Absent were Estrada and his counsel, both of whom until then had not received copy of the motion. For lack of proof that Estrada had received notice of the motion for reconsideration of November 4, 1968, the hearing thereof was reset for November 16, 1968 at 8:30 a.m.

"In the afternoon of November 9, 1968 Estrada, who got wind of what took place in the trial court that morning, filed an 'omnibus motion' alleging that Sto. Domingo's motion for reconsideration was not legally sanctioned, flimsy and frivolous, a mere scrap of paper, and intended for delay. He prayed that that motion be stricken out and that the judgment be immediately executed as it had become final and executory. The omnibus motion he set for hearing on November 12, 1968 at 8:30 a.m.

"Parenthetically, Estrada's counsel was personally served a copy of the motion for reconsideration only on November 11, 1968 upon the court's verbal order given on the 9th of November. The copy sent by registered mail reached his counsel only on November 13, 1968, four days after it was set, for hearing (November 9, 1968, 8:30 a.m.).

"At the November 12 hearing, the judge advised the parties to submit memoranda of authorities and reset both the omnibus motion and the motion to reconsider on November 16, 1968.

"It was on the scheduled hearing of November 16 Sto. Domingo completed proof of service by mail of his motion for reconsideration by the pre-sentation of the registry return card postmarked November 13, a certification by the Acting Post-master of Makati as to the mailing of registered letter No. 17713 on November 4, 1968, and the affidavit of Manuel B. Busico who posted the mail. Estrada's counsel orally moved for the immediate resolution of the pending incidents. The judge was ready to rule on the motions. Sto. Domingo demurred, pleaded that his memorandum and opposition to the omnibus motion be first considered; that in the event of an adverse resolution he, be allowed at least five (5) days from receipt to enable him to procure extraordinary relief from the Court of Appeals. The judge thereupon declared that he would promulgate the resolution in open court on November 23, 1968, a Saturday.

"On November 19, 1968, Sto. Domingo filed a cautionary notice of appeal, manifesting that he would appeal to the Court of Appeals in the event his motion for reconsideration be thwarted. Admittedly, however, he withdrew the cautionary notice of appeal later. This withdrawal was granted by the court on November 21,

1968.

"On November 20, 1968, upon Sto. Domingo's urgent motion, the judge calendared the promulgation of the resolution for Monday, November 25, 1968, at 8:30 a.m.

"Allegedly informed that resolution on, his reconsideration motion would be adverse to him, Sto. Domingo's counsel sought the judge in the morning of November 23, 1968, asked the latter to give him a copy of the order before the close of office hours on that day. The judge declined, instead stated that the order would be read and released in open court the following Monday, November 25, 1968.

"A hectic day, November 25, began at 7:30 a.m. when Sto. Domingo's counsel saw the judge to ask for a copy of the order. The judge told him to wait until the order shall have been read in open court. An hour later, 8:30 a.m., when the case was called, Sto. Domingo's counsel requested that the case be called again at 10:00 a.m. purportedly on the ground that he would first ask for the post-ponement of another case in Caloocan City. The court granted the request. At 10:00 a.m., the disputed order was read and promulgated in open court. The parties secured their copies of the order at 10:15 a.m. The dispositive portion of the order reads: 'IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, it is the opinion of the Court that the reconsideration of its decision dated October 29, 1968 is not in order as the same had already become final and executory.'

"Then and there, Sto. Domingo's counsel orally moved to reconsider. The judge after hearing the arguments of the parties denied the motion.[2] Sto. Domingo's counsel was prepared to meet this contingency. He drew from his pocket and exhibited to the judge copy of the Court of Appeals' restraining order.

"It developed that some two hours earlier, at 8:04 a.m. on November 25, Sto. Domingo's counsel lodged with the Court of Appeals a three-pronged double spaced 15-page petition with Annexes A to J, for certiorari, prohibition and mandamus with pre-liminary injunction.[3] Counsel secured in the appellate court in about an hour's time a full-page single spaced typewritten summons and a one-and-a-half page single spaced temporary restraining order enjoining the Court of First Instance of Rizal 'from executing any order and/or writ of execution x x x in Election Case No. 10545' and from declaring the decision in said case 'final and executory.'

"Upon the other hand, with equal dispatch, Estrada tried to fend off Sto. Domingo's move when he filed with the Court of Appeals, although belatedly, at 10:45 a.m., a 5-page opposition to the petition for certiorari, prohibition and mandamus attaching thereto his oath of office.

"At 10:52 a.m. before the trial court adjourned, a bailiff of the Court of Appeals served on then Judge Andres Reyes, presiding over the trial court, the summons and restraining order; and at 11:50 a.m. likewise served the summons and restraining order upon Estrada.

"After hearing, respondent Court of Appeals rendered the disputed decision of February 13, 1969, mentioned at the start of this opinion. Reconsideration thereof was denied by said court, again voting three to two, on May 22, 1969."

On the basis of the foregoing, the first question that arises is whether in election contests a Court of First Instance has the authority to consider and resolve a motion for reconsideration or new trial,

In *Arnedo vs. Llorente et al.*, 18 Phil. 257 this Court answered the above question categorically in the negative. After an extensive discussion of whether, in the light of the spirit and purpose of the laws controlling elections at that time, Section 145 of the Code of Civil Procedure was applicable to election contests, this Court finally said:

"This line of reasoning might be extended further, but we deem it unnecessary, and think that what has been said justifies us in holding in favor of petitioners contention that Courts of First Instance have no jurisdiction to vacate final judgments entered by them determining election contests had under the provisions of section 27 of Act No. 1582."

The following vital pronouncement of the Court in *Navarro vs. Veloso* (23 Phil. 625) inferentially but nonetheless clearly supports its view as set forth in *Arnedo-Llorente*:

"We have already decided in a cause not yet published that the Election Law is a special law providing within itself a complete procedure highly special in its nature by which the protest may be carried on; and that it must be strictly followed. The statute requires that a protest shall be inaugurated by motion upon notice to all of the candidates receiving votes for that particular office. That requirement must be literally followed. It was evidently the purpose of the Legislature to bring into the proceeding every person who was interested in the result of the election and to give him an opportunity to be present at the hearing of the protest and to be heard. What that purpose was, we do not now stop to inquire. It is sufficient for us that the Legislature has so required."

While the fact that the present Revised Election Code expressly provides for an appeal from the decision of a Court of First Instance in election cases but is completely silent on the question of whether or not the defeated party has the right to file a motion for reconsideration or new trial may indicate, to a certain extent, continued adherence to the doctrine laid down in *Arnedo-Llorente*, We have to admit that said doctrine has been abandoned, for in *Calañgi vs. Jhocson* (G. R. No. 16108, not reported) and in *Palomata vs. Villa-real* (40 Phil. 641) We held that the remedy by motion for reconsideration or new trial provided for in Section 145 of the Code of Civil Procedure (now Section 3, Rule 37, Rules of Court) is available to the defeated party in election contests. Indeed, it being the rule in this jurisdiction that the Court of First Instance who, either in an action or a special proceeding, rendered a decision, may, before said decision has become executory, modify or reverse it *motu proprio* if, in its opinion, it had committed errors of fact or law justifying such modification or reversal, We can think of no reason sufficiently strong to deny said Court the same authority when a party to the case calls its attention - by motion - to substantial errors committed by it in rendering its decision. This notwithstanding, our pronouncement in *Navarro vs. Veloso* (*supra*) "that the Election Law is a special law providing within itself a complete procedure highly special in its nature by which the protest may be carried on, and that it must be strictly followed" (23 Phil. p. 626, underline supplied) still holds true and as authoritative as ever.

For the purpose of this concurring opinion, therefore, the undersigned assumes that respondent *Sto. Domingo* had the right to file, and the Court of First Instance presided by petitioner Judge *Reyes* had the right to consider and resolve the motion for reconsideration filed by the former.

But was said motion for reconsideration filed in accordance with the Rules of Court? Pertinent and decisive of this question is Section 10, Rule 13 of the Rules of Court which provides that if service of a pleading is made by registered mail, proof of service thereof shall be made by attaching to it the corresponding registry receipt and by means of an affidavit of the person mailing containing a statement of the facts showing compliance with Section 5 of the same Rule. Two different things, therefore, are required by the Rule: (1) the registry receipt to be attached to the original of the motion for reconsideration filed with the Office of the Clerk of Court, and (2) an affidavit certifying, upon personal knowledge, that a copy of the motion was sent by registered mail to the adverse party. Not denied is the fact that respondent *Sto. Domingo's* motion for reconsideration complied only with the first requirement. It did not comply with the second.

The need for the affidavit of service can not be over-emphasized. The registry receipt proves nothing more than that a letter, document or pleading has been sent through the mails. It does not prove at all the nature and purpose of its contents. The required affidavit of service is precisely intended to do this. This is not a mere "technicality"; but even if it were, We say with *Navarro vs. Veloso* (*supra*): "That requirement (service of notice to all of the candidates receiving votes for the particular office under protest) must be literally followed. It was evidently the purpose of the Legislature to bring into the proceeding every person who was interested in the result of the election and to give him an opportunity to be present at the hearing of the protest and to be heard. What that

purpose was, we do not now stop to inquire. It is sufficient for us that the Legislature so required." (23 Phil. 626; Under-lines supplied).

As it has been held that without proof of service, as required by the Rules, a motion is nothing but a scrap of paper which the Clerk of Court would even be justified in not receiving for filing (Tan vs. Dimayuga, et al., L-15241, July 31, 1962), the inevitable conclusion is that, in the eyes, of the law, respondent Sto. Domingo's motion for recon-sideration was of no legal effect, and its filing did not suspend the running of the period of appeal. Upon this ground We agree with petitioner Judge Reyes that said motion was pro-forma.

The motion aforesaid is pro-forma on yet another ground: in substance it was but a reiteration of reasons and arguments previously setforth in respondent Sto. Domingo's memorandum submitted to the trial court and which the latter had already considered, weighed and resolved adversely to him when it ren-dered its decision on the merits.

We come now to the question of what remedy or remedies could have been availed of by said respondent after the ren-dition of the final judgment and after the denial of his motion for reconsideration.

Admittedly, the decision rendered by the Court of First instance of Rizal presided by petitioner Judge Reyes declaring Estrada the mayor-elect of San Juan, Rizal, was appealable either to the Court of Appeals or to the Supreme Court, as the case may be, within five days from notice thereof (Section 178, Revised Election Code), said appeal to be taken as in a criminal case. As said notice was served on respondent Sto. Domingo on October 30, 1968, the five-day period of appeal expired on November 4 of the same year. On that date, however, he chose to file not a notice of appeal in accordance with Section 178 of the Revised Election Code, but a motion for reconsideration. For the reasons setforth by petitioner Judge Reyes in the corresponding resolution - which We need not here reproduce in extenso - said motion was denied on November 25, 1968, because "the reconsideration of its decision dated October 29, 1968 is not in order as the same had already become final and executory".

Again, upon receiving notice of the denial of his motion for reconsideration on November 25, 1968, respondent Sto. Do-mingo, instead of taking an appeal from the Court's decision on the merits, filed with the Court of Appeals a special civil action of certiorari, prohibition and mandamus praying for judgment as follows:

"WHEREFORE, it is respectfully prayed:

(1) this Petition be given due course;

(2) upon the filing of this petition, a restraining order, or writ of preliminary injunction, be issued ex parte by this Honorable Court, or by any one of its Justices (as provided by Sec. 2 of Rule 58 of the Revised Rules of Court) considering the urgent and perilous situation created by respondents' acts, commanding or enjoining the respondents, jointly and separately, their agents, representatives and men, from executing any order and/or writ of execution issued by respondent Judge declaring the decision in Election Case No. 10545 final and executory, from removing petitioner from his office as municipal mayor of San Juan, Rizal, from installing respondent 'Joseph Ejercito Estrada' in petitioner's place as said: mayor, and from otherwise molesting, disturbing petitioner in, or excluding him from, his lawful exercise and performance of his duties, rights and prerogatives as municipal mayor, until further orders from this Honorable Court.

(3) after hearing, said restraining order or injunction be declared permanent;

(4) judgment be rendered annulling the proceedings and orders of respondent Judge complained of, commanding the said respondent to desist from continuing with the said proceedings and likewise commanding the respondent judge to take cognizance of, and to resolve, the petitioner's motion for reconsideration, Annex 'D' of this petition and, should said motion be denied, to give due course to petitioner's appeal, as stated in the cautionary notice of appeal, Annex 'J' hereof; with costs against private respondent;

(5) private respondent' Joseph Ejercito Estrada', be sentenced to pay the damages sustained by petitioner by reason of the wrongful acts herein complained of; and

(6) petitioner be granted such other relief as the Honorable Court may deem just and equitable in the premises."

Clear it is from the allegations of respondent Sto. Domingo's petition for certiorari etc. that, because of the alleged intention of Judge Reyes to declare his decision final and order its immediate execution, and protestant Estrada's alleged threat to take over the functions of the Office of the Mayor of San Juan, Rizal, by force, the purpose of his action was to prevent these things from happening by seeking the annulment in advance of the order he feared Judge Reyes would issue, and by compelling the latter, in the meantime, to decide his motion for reconsideration on the merits. That special civil action was not addressed at all against the merits of the final judgment disposing of the election protest, the review of which on errors of fact or of law could be made only by appeal.

Upon the other hand, We hold the view that neither the writ of certiorari nor that of prohibition could lie against the order of petitioner Judge Reyes denying the aforesaid motion for reconsideration. That matter was fully within his jurisdiction - jurisdiction that respondent Sto. Domingo is in estoppel to deny. While the order of denial could have been assailed as suffering from an error of judgment, We are certain that it did not suffer from lack or excess of jurisdiction, nor from what in law is considered as grave abuse of discretion.

The question of whether the writ of mandamus should be issued to compel Judge Reyes to decide respondent Sto. Domingo's motion for reconsideration on the merits must be answered in the negative, for the simple reason that in his resolution of November 25 His Honor had already done that. Suffice it to say, in this connection, that in said resolution, Judge Reyes said that the reasons and arguments relied upon in the motion for reconsideration were a mere repetition of those invoked by the same party in the memorandum submitted to the Court prior to the rendition of judgment and which His Honor had already considered, weighed and found devoid of merit. Clearly implied in this is a reiteration of his opinion that said reasons and arguments were without merit. Indeed; had he found them to be meritorious in any respect, His Honor would have either reversed or modified his decision. But even if this were not the case, respondent Sto. Domingo could have raised all said questions on appeal - unquestionably a plain, speedy and adequate remedy consistent with the purpose of the law to avoid unnecessary delays in election cases.

It has been suggested that, perhaps, construing the law liberally, the special civil action for certiorari etc. instituted by respondent Sto. Domingo in the Court of Appeals should be considered as an appeal from the final judgment disposing of the election protest.

The undersigned is unable to give his assent to this suggestion. It is not feasible under our law and jurisprudence. Moreover, it would defeat the "reason of the law" which is "the life of the law". The peculiar features of the law for the disposition of election protests "are manifestly the result of the demands of public policy that such contests should be instituted with the utmost promptitude, and dispatched and determined in the most summary manner consistent with the right of various contestants to have an opportunity to be heard and to submit evidence in support of their contentions; this in order "to put a speedy and certain end to the litigation between the parties about a public matter so well calculated, to promote and perpetuate discords and feuds" -- "and to destroy confidence on the local magistracy and demolish their efficiency." (*Arnedo vs. Llorente*, supra). All We need add to this is that respondent Sto. Domingo had a clear choice of remedy. Having exercised his option freely, he must stand by the result.

The following is a summary of the views heretofore set forth:

1. After the rendition of a final judgment by a Court of First Instance in an election protest, the prevailing

jurisprudence in this jurisdiction is that the Court, motu proprio or on motion of the defeated party, may, within the period of appeal provided by law, reconsider its decision or grant a new trial, in spite of the fact that the Revised Election Code does not expressly provide for a motion for reconsideration or new trial. This notwithstanding, however, any law or rule of court that may be applied to election protests should be construed strictly to avoid unnecessary delays in the final determination of the case;

2. The final judgment of a Court of First Instance in an election protest is appealable either to the Court of Appeals or to the Supreme Court, as the case may be, within five days from notice thereof, for revision, correction, annulment or confirmation, and the appeal shall proceed as in a criminal case (Section 178, Revised Election Code); but in the present case, neither the motion for reconsideration nor the petition for certiorari, prohibition and mandamus mentioned in the foregoing discussion suspended the running of the aforesaid period of appeal, nor were they, separately or together, equivalent, in law, to the appeal authorized by law; and

3. Upon the undisputed facts obtaining in 'this case, the final judgment rendered by the Court of First Instance of Rizal presided by petitioner Judge Reyes has become executory.

PREMISES CONSIDERED, my vote is to reverse the decision of the Court of Appeals appealed from, with costs.

[1] Election Protest 10545, Court of First Instance of Rizal, Branch VI, entitled "Joseph Ejercito Estrada, Protestant, versus Dr. Braulio Sto. Domingo, Protestee."

[2] The verbal denial order was confirmed in a written order of the same date, November 25, 1968.

[3] CA-G.R. 42386-R, Court of Appeals, entitled "Braulio Sto. Domingo, Petitioner, versus Hon. Andres Reyes, Judge of the Court of First Instance of Rizal, and Joseph Ejercito Estrada, Respondents."

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