

**EVELYN ABEJA, PETITIONER, VS. JUDGE FEDERICO TAÑADA,
REGIONAL TRIAL COURT OF LUCENA CITY, BRANCH 58, AND
ROSAURO RADOVAN (DECEASED), RESPONDENTS.**

G.R. No. 112283. August 30, 1994

Ponente: BIDIN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-112283/>

BIDIN, J.:

In this petition for certiorari, petitioner seeks the annulment of the orders dated September 21, 1992 and October 18, 1993 issued by respondent Judge Federico Tañada which decreed, among others, the revision of some 36 precincts contained in the counter-protest filed by respondent Radovan. The said orders were issued by respondent judge in resolving petitioner/protestant's "Motion to Determine Votes, to Proclaim Winner and to Allow Assumption of Office" dated August 27, 1993.

The antecedent facts of the case are as follows:

Petitioner Evelyn Abeja and private respondent Rosauro Radovan (deceased) were contenders for the office of municipal mayor of Pagbilao, Quezon, in the May 11, 1992, national elections.

Based on the official returns of the Municipal Board of Canvassers for the said municipality, private respondent was credited with 6,215 votes as against petitioner's 5,951 votes.

Soon after the proclamation of private respondent, petitioner filed an election contest, docketed as Election Case No. 92-1, entitled "Evelyn Abeja vs. Rosauro Radovan" with the Regional Trial Court of Lucena City. The protest, covered twenty-two (22) precincts.

On June 5, 1992, private respondent filed an Answer with a Counter-Protest of the results in thirty-six (36) precincts.

During the pre-trial, private respondent's counsel filed a motion praying that the 36 counter-protested precincts be revised only if it is shown after completion of the revision of the 22 protested precincts that petitioner leads by a margin of at least one (1) vote. The trial court declared discussion on the matter to be premature (TSN, July 6, 1992, pp. 8-12; Rollo, p. 148). The revision of the ballots covering 22 protested precincts was completed in September 1992. Thereafter, petitioner urged private respondent to commence the revision of the 36 counter-protested precincts by paying the necessary fees for the purpose. Private respondent refused.

In view thereof, petitioner moved that the counter-protest of private respondent be considered withdrawn. Private respondent opposed the motion and reiterated that the ballots of the 36 counter-protested precincts should only be revised and recounted if it is shown after the revision of the contested ballots of the 22 precincts that petitioner leads by at least one (1) vote.

Petitioner filed another manifestation and motion on September 29, 1992, praying that the counter-protest be considered withdrawn from the time the final report of the Board of Revisors is submitted to the court for

approval.

The then presiding Judge, Hon. Ludovico Lopez, did not rule on the aforementioned motions but, according to petitioner, he (Judge Lopez) declared during a hearing in October 1992 that once a ruling is made on the contested ballots of the 22 protested precincts, he will not allow further revision of ballots.

By April 1993, all pending incidents including the report of the Board of Revisors as well as petitioner's formal offer of evidence were considered submitted for resolution without private respondent having caused the revision of the ballots in the 36 counter-protested precincts.

In an order dated April 15, 1993, Presiding Judge Lopez ruled that "(p)rotestant's offer of evidence as well as the protestee's objections thereto are now submitted for the Court's resolution" (Rollo, p. 61).

On June 13, 1993, private respondent Rosauro Radovan died. He was substituted by Vice-Mayor Conrado de Rama and, surprisingly, by his surviving spouse, Ediltrudes Radovan.

On July 13, 1993, private respondents de Rama and Radovan filed a Manifestation seeking a prompt resolution of all pending incidents.

On August 12, 1993, the trial court issued an order stating that "(c)ounselors for both parties having signified to this Court that they are submitting the motion to resolve without further argument. This motion being a motion to resolve, the Court hereby informs the parties that pending matters submitted for resolution will be duly resolved on or before August 20, 1993" (Rollo, p. 143).

Shortly thereafter, Judge Lopez was reassigned to the Regional Trial Court of Kalookan City. Before transferring to his new post, however, Judge Lopez issued an order dated August 18, 1993 which contained his ruling in each of the contested ballots in the 22 contested precincts and the reasons therefor. In the said order, Judge Lopez emphasized that "in ruling on the various objections lodged by both parties during the revision proceedings, the originals of the contested ballots in the ballot boxes were subjected to careful scrutiny in the seclusion of the Court's chamber" (Rollo, p. 161). Nonetheless, the ruling did not contain a summation of the exact number of votes to be credited to each of the parties, or a declaration of the winner in the election protest for that matter.

On August 27, 1993, petitioner filed a "Motion to Determine Votes, To Proclaim Winner and to Allow Assumption of Office" considering that based on her own computation of revised ballots ruled upon by Judge Lopez, she led private respondent by a margin of 281 votes.

Private respondents filed a Motion to Correct the order dated August 18, 1993, issued by Judge Lopez as well as oppositions to the motion of petitioner. Respondents claim that petitioner's "Motion to Proclaim Winner" is premature since the 36 counter-protested precincts are yet to be revised.

In an order dated September 21, 1993, herein respondent Judge Federico Tañada, who succeeded Judge Lopez, denied the "Motion to Determine Votes, to Proclaim Winner and to Allow Assumption of Office" filed by petitioner. Respondent judge ruled that petitioner's motion was indeed premature on the ground that until after the 36 counter-protested precincts have been revised, the court could not render a valid decision.

On October 18, 1993, respondent judge issued another order denying petitioner's motion for reconsideration and directed the revision committee to conduct a revision of the results of the 36 counter-protested precincts scheduled on November 10, 1993.

These orders are the subject of this petition filed on November 8, 1993.

As prayed for by petitioner, the Court issued a temporary restraining order on November 17, 1993, enjoining

respondents from continuing with the revision of the ballots in the 36 counter-protested precincts. It appears, however, that the restraining order was served on November 19, 1993, after the revision committee had completed revising 11 ballot boxes.

The sole issue to be resolved in this case is whether or not private respondents should be allowed to proceed with the revision of the 36 precincts subject of the counter-protest.

It is clear from the records that Judge Lopez failed to issue a definitive ruling on this specific procedural issue raised by the parties, which this Court must now provide.

Although petitioner claims that Judge Lopez issued a warning to private respondent to the effect that he (private respondent) shall not be allowed to cause the revision of the counter-protested precincts after the revision of the protested precincts is completed and ruled upon, she fails to cite a specific oral or written order of Judge Lopez containing such warning or at least the date and circumstances of the hearing in which the said warning was issued. Consequently, the alleged warning issued by Judge Lopez is unsubstantiated and must therefore be disregarded.

Coming now to the merits of the case, petitioner contends that the revision of the counter-protested precincts filed by private respondent has already been abandoned by his failure to pursue the same, right after the revision of the 22 protested precincts. Petitioner also argue that the case was deemed submitted for decision upon submission by the Board of Revisors of the Report on the Revision of the 22 protested precincts.

In the instant case, petitioner, as protestant below, completed the revision of ballots in the 22 protested precincts in September 1992 and her presentation of evidence in April 1993. Likewise, the Board of Revisors had submitted its report and the trial court issued a ruling dated August 18, 1993 on the said revision. Given this state of the proceedings, the question to be resolved is whether respondent may still be allowed to commence the revision of the counter-protested precincts or should he be deemed to have waived his right to present his own evidence, i.e., the revision of the counter-protested precincts after stubbornly refusing to do so.

Petitioner argues that while the sequence in the presentation of evidence may be altered for special reasons, the applicable rules of procedure do not allow presentation of evidence after the court has already rendered a decision. Clearly, petitioner considers the August 18, 1993 Order of Judge Lopez to be the "decision" on the case although the order did not contain a summation of the total votes credited to each of the parties or a declaration of the winner in the election protest.

Petitioner objects to the stand taken by private respondent on the procedure to be followed for being "unprocedural" in the sense that a decision rendered on the election protest would be subject to another decision for the counter-protest. It is further argued that since the 36 counter-protested precincts were already under the jurisdiction of the trial court, the same should have been revised unconditionally and should not have been subjected to the whim and caprice of the private respondent.

The petition is impressed with merit.

Considering that this petition involves an election protest heard by a regional trial court, the Comelec Rules of Procedure are controlling.

In view of the fact that the subject election contest was filed on May 26, 1992, Section 2, Rule 17 and Section 11, Rule 35 of the aforementioned Comelec rules are applicable. Rule 17 treats of Hearings whereas Rule 35 treats of Election Contests Before Courts of General Jurisdiction.*

Section 2, Rule 17 provides, in part:

"Sec. 2. Order of hearing. — Unless the Commission or the Division, as the case may be, for special reasons, directs otherwise, the order of hearing shall be as follows:

“(a) The petitioner or protestant shall present evidence on his part;

“(b) The protestant-in-intervention, if any, shall then offer evidence in support of his defense or counter-protest, if any;

“(c) The respondent or protestee shall then offer evidence in support of his defense or counter-protest, if any;”

It thus appears from the foregoing rule that the petitioner/protestant and the respondent/protestee shall present their evidence upon their original case in succession in accordance with the order or sequence provided therein.

On the other hand, Section 11, Rule 35 provides:

"Sec. 11. Presentation and reception of evidence. — The presentation and reception of evidence in election contests shall be made in accordance with Section 2 of Rule 17 of these Rules, but the same shall be completed within thirty (30) days from the date of the commencement thereof."

The record shows that the revision of ballots in the 22 protested precincts was completed sometime in September 1992. Judge Lopez issued a ruling on the said revision almost a year later, or on August 18, 1993.

In the interim, private respondent failed to commence the revision of the ballots in the counter-protested precincts, stubbornly maintaining the position that said precincts should be revised only if it is shown after the revision that petitioner leads private respondent by at least one (1) vote. No law or rule authorizes such a procedure. Consequently, private respondent must be deemed to have waived or abandoned his counter-protest.

The applicable Comelec rules provide for the presentation of evidence by the parties in succession in the order or sequence provided under Sec. 2, rule 17 (Comelec Rules) which must be submitted within a reasonable time, if not immediately after the revision of the precincts covered by the protest proper.

By insisting that the counter-protested precincts should be revised only if it is shown after the revision of the protested precincts that petitioner, his opponent, leads by at least one (1) vote, private respondent is adopting a self-serving rule without legal sanction calculated to unduly prolong the litigation.

Furthermore, it is readily apparent from the provisions of the applicable Comelec Rules that the court shall render its decision after both parties shall have presented their respective evidence. Nowhere in the said provisions is it indicated that presentation of evidence by the protestee may continue after the court has ruled on the evidence of the protestant and determine the number of votes obtained by the latter. Otherwise, it would be possible for the protestee to prolong the protest and render it moot by expiration of the term of office contested.

There is likewise merit to petitioner's claim that private respondent is guilty of laches, which, in a general sense, is a failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence could or should have been done earlier; it is negligence or omission to assert a right within a reasonable length of time, warranting a presumption that a party entitled to assert it either has abandoned it or declined to assert it (*Republic v. Caballero*, 79 SCRA 177 [1977]).

In the case at bar, private respondent unreasonably failed to cause the revision of the counter-protested precincts despite being afforded ample time to do so and must be deemed to have abandoned it. However, it is not clear from the record of the case whether Judge Lopez issued an order requiring private respondent to pay the required cash deposit for the revision of the ballots in the counter-protested precincts in accordance with Section 10, (b), Rule 35 of the Comelec Rules of Procedure, otherwise, the counter-protest shall be automatically dismissed as

provided in Sec. 10 [c] thereof:

"Sec. 10. Cash Deposit. —

xxx xxx xxx

“(b) In case revision of ballots is required, there shall be deposited, within ten days after being required by the Court, the sum of three hundred pesos (P300.00) for every ballot box for the compensation of revisors at the rate of P100.00 each.

“(c) Failure to make the cash deposits herein provided within the prescribed time limit shall result in the automatic dismissal of the protest, counter-protest or protest-in-intervention, as the case may be.”

In the Comment of private respondent's widow, it is alleged that "the record of the case definitely show (sic) that Judge Lopez himself categorically ruled that the counter-protest was filed on time and the necessary cash deposit submitted by private respondent pursuant to law" (Rollo, p. 60). However, private respondent fails to cite that part of the record in which the said ruling may be found.

Private respondent attributes the delay in the resolution of the case to Judge Lopez for failing to rule on the issues raised by the parties. However, it cannot be denied that private respondent has maintained the same position regarding the revision of his counter-protest from the very beginning, as early as the pre-trial of the case, and all throughout the course of the proceedings. Although Judge Lopez' inaction may have contributed to the delay of the case, private respondent Radovan must bear the grave consequences of his stubborn and unfounded refusal to proceed with the revision of the counter-protested precincts. Instead of conducting the revision of his counter-protested precincts, private respondent hedged and stalled on the resolution of the case which is a purely dilatory technique.

Private respondent's argument is that the procedure advocated by him would actually save time. Noting that the resolution of petitioner's protest took almost a year, he contends that about the same length of time would be saved in the event a revision of the counter-protested precincts would be declared unnecessary. Suffice it to state that the procedure proposed by private respondent is not sanctioned by the Rules and need not delay us any longer that it already has in the disposition of this case.

Upon the foregoing, we hold that the respondent judge erred in rendering the assailed orders denying petitioner's "Motion to Determine Votes, to Declare Winner and to Allow Assumption of Office" and directing the revision of the counter-protested precincts at this late hour, so to speak. Under the circumstances and for reasons discussed above, the order of Judge Lopez dated August 18, 1993 which resolved the party litigants' objections to the revised ballots may very well be the subject of a valid decision to resolve the instant electoral protest based on the revised ballots of the 22 protested precincts.

In the event petitioner is declared the winning candidate, she should, upon proper motion, be allowed to immediately assume the contested office. We say this because in their pleadings, petitioner and private respondent have amply discussed their respective arguments in the applicability of *Garcia v. de Jesus* and the accompanying case of *Tobon Uy v. Comelec* (206 SCRA 779 [1992]) and the possibility is not remote that private respondent may once again resort to dilatory tactics.

Section 2, Rule 39 of the Rules of Court allows execution pending appeal in election cases upon good reasons (*Garcia v. de Jesus*, supra; in relation to Rule 43, Sec. 1, COMELEC Rules of Procedure) which we find obtaining in the case before us.

Gahol v. Riodique (64 SCRA 494 [1975]) is even more emphatic:

"Why should the proclamation by the board of canvassers suffice as a basis of the right to assume office, subject to future contingencies attendant to a protest, and not the decision of a court of justice? Indeed, when it is considered that the board of canvassers is composed of person who are less technically prepared to make an accurate appreciation of the ballots, apart from their being more apt to yield to external consideration, and that the board must act summarily, practically racing against time, while on the other hand, the judge has the benefit of all the evidence the parties can offer and of admittedly better technical preparation and background, apart from his being allowed ample time for conscientious study and mature deliberation before rendering judgment, one cannot but perceive the wisdom of allowing the immediate execution of decisions in election cases adverse to the protestees, notwithstanding the perfection and pendency of appeals therefrom, as long as there are, in the sound discretion of the court, good reasons therefor." (cited in *Garcia v. de Jesus*, supra)

We also find as erroneous the substitution of the deceased Rosauro Radovan's widow, Ediltrudes Radovan, on the ground that private respondent had a counter-claim for damages. "Public office is personal to the incumbent and is not a property which passes to his heirs" (*Santos vs. Secretary of Labor*, 22 SCRA 848 [1968]; *De la Victoria vs. Comelec*, 199 SCRA 561 [1991]). The heirs may no longer prosecute the deceased protestee's counter-claim for damages against the protestant for that was extinguished when death terminated his right to occupy the contested office (*Dela Victoria*, supra).

WHEREFORE, the petition is hereby GRANTED. The assailed orders of respondent judge as well as the results of the revision of the 11 ballot boxes subject of the counter-protest are SET ASIDE. Respondent judge is further ordered to DISMISS the counter-protest in Election Case No. 92-1 and to resolve the "Motion to Determine Votes, to Proclaim Winner and to Allow Assumption of Office" filed by petitioner conformably with this decision within a non-extendible period of fifteen (15) days from receipt hereof. This decision is immediately executory. Costs against respondent Ediltrudes Radovan.

SO ORDERED.

Feliciano, (Chairman), Romero, Melo, and Vitug, JJ., concur.

* Died on June 13, 1992 and is substituted by Vice-Mayor Conrado de Rama and Ediltrudes Radovan, widow of Rosauro Radovan

* These provisions were subsequently repealed and superseded by COMELEC Resolution No. 2493, promulgated on July 14, 1992.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.