

MOHAMAD-ALI DIMAPORO, PETITIONER, VS. HON. MANUEL ESTIPONA, ET AL., RESPONDENTS.*G.R. No. 17358. May 30, 1961*

Ponente: BAUTISTA ANGELO, J.

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Mohamad-Ali Dimaporo and Salvador T. Lluch were candidates for the office of provincial governor of Lanao del Norte in the elections held on November 10, 1959. After the canvass of the votes, the provincial board of canvassers found that Dimaporo obtained 27,537 votes while Lluch 27,259 votes and so it proclaimed the former as the duly elected governor of said province.

On December 10, 1959, Lluch filed a protest with the court of first instance praying to annul the election in 92 precincts spread out in different municipalities on the grounds, among others, that the elections were not free nor orderly, but were characterized by frauds; terrorism, coercion, corrupt practices and other irregularities committed by protestee and/or his leaders. Considering that protestant did not mention the names of those who allegedly committed said acts, protestee filed a motion for bill of particulars praying that said names be specified in order that he may be able to properly prepare his answer and the government to prosecute the persons responsible therefor.

On December 19, 1959, protestee filed a counter protest alleging the commission of similar irregularities by protestant and/or his leaders in the precincts and municipalities there in indicated, to which protestant filed his answer denying the averment of irregularities mentioned therein. On December 21, 1959, protestant filed an opposition to the bill of particulars alleging that the specification desired by protestee is not necessary for they are merely evidentiary matters which protestant will establish during the trial. And while the court denied at first said motion it however reconsidered it later requiring protestant to make the specification prayed for and, in compliance therewith, protestant submitted a written manifestation mentioning therein the names of those who allegedly committed the acts averred in the protest.

On April 12, 1960, protestee filed his answer alleging that if frauds were committed in the protested precincts the same were committed by protestant and not by him.

On June 15, 1960, protestant filed an urgent motion to stop the recanvassing in the 36 precincts covered by his protest on the ground that, after recanvassing 29 out of the protested 92 precincts he found it unnecessary to do so considering that he won in said precincts, to which protestee objected contending that since the alleged derogatory acts were committed by protestant and his henchmen, the same can no longer be withdrawn because if the alleged acts are proven the result of the election should be annulled.

On June 25, 1960, the court denied the motion of withdrawal reasoning that, since both parties alleged that irregularities were committed in the precincts to be withdrawn, and the protest is vested with public interest, the matter is no longer under the control of protestant since the public is entitled to know what actually happened in said precincts. Thereupon, protestant filed a motion for reconsideration, to which protestee filed an opposition,

and while the same was pending consideration the trial judge, Hon. Manuel Estipona, received an administrative order from the Secretary of Justice authorizing him to hold court in the province of Albay for three months beginning August 8, 1960, to be substituted by Judge Tito V. Tizon who in turn was authorized to hold court in the province for the same period of time, for which reason protestee requested Judge Estipona not to act on the motion for reconsideration of protestant until such time as the question of his transfer shall have been decided. Apparently, Judge Estipona chose to decline the transfer, and so on August 9, 1960 he entered an order granting the motion for reconsideration authorizing protestant to withdraw his protest insofar as the 36 precincts are concerned. Protestee moved to reconsider this order, which was denied.

In the meantime, protestant moved that the keys to all the ballot boxes of the precincts which have not yet been recanvassed be turned over to the clerk of court in order that they may be available every time they are needed, and that in the canvassing of their contents only two out of the three commissioners be authorized to act to facilitate their work and avoid unnecessary delay, which request met an opposition on the part of protestee who claimed that such arrangement may only lead to the commission of frauds or may place the clerk of court in a precarious situation, a thing which may not happen if the keys were left as they were in the possession of the provincial commander, the provincial treasurer, and the provincial fiscal as provided by law. Protestee requested at the same time that he be not required to recanvass the precincts covered by his counter-protest until after the 36 precincts covered by the protest shall have been opened and recanvassed as originally requested, but, ignoring this request, the court ordered the board of canvassers to immediately proceed with the canvass of the remaining precincts even if one of the commissioners is absent in order that the trial may not be unnecessarily delayed. And considering this order to be oppressive and arbitrary and one issued in excess of its jurisdiction, protestee interposed the present petition for certiorari.

The main theme of petitioner is that the trial court committed an abuse of discretion in granting the motion of respondent that he be authorized to withdraw 36 out of the 92 precincts covered by his protest on the ground that after the recanvass of the first 29 precincts he found that his protest with regard to said 36 precincts was unnecessary. Petitioner contends that to allow such withdrawal at that stage would be tantamount to amending the protest which can no longer be done because the period fixed for doing so had already expired. And this contention is apparently predicated upon the fact that at the time the motion for withdrawal was filed the recanvass of the votes has already started and the period for filing the pleadings has expired.

There is no merit in this contention. While it is true that the period for filing the pleadings has already expired and the recanvass of the ballots covered by the protest has already started when the motion for withdrawal was filed and protestee had traversed the allegations of the motion insofar as the 36 precincts are concerned, it cannot be said that the trial court erred in allowing the withdrawal considering that the move of protestant in asking for such withdrawal is not to amend his protest but merely to inform the court that he was desisting from it with regard to said 36 precincts. We have no quarrel with the theory that an election protest is impressed with public interest in the sense that the public is interested in knowing what has actually happened in the elections, but that issue is not involved herein. This is a matter that wholly depends upon protestant. Even if the withdrawal of the protest is not effected, if the protestant desists from acting thereon or from presenting evidence to substantiate it, that will be the end of the case. The most that can happen is that the protest should be dismissed for lack of action or proof, and to such eventuality protestee cannot object nor complain, because the precincts concerned are not involved in his counter-protest. In other words, he cannot allege prejudice if the withdrawal is allowed. This is the exclusive prerogative of protestant.

The next question at issue refers to the order of the trial court requiring the keys to the ballot boxes to be turned over to the clerk of court as well as that which authorizes two out of the three commissioners to be present in the

recanvass in order that the same may be facilitated and no further delay is suffered. Petitioner contends that such authority is improvident for the reason that to turn over the keys to the clerk of court would be to place him in a precarious situation for he may be under duress on the part of protestant or amenable to undue influence thereby facilitating the commission of frauds.

There is also no merit in this contention. While it is true that under the law immediately after the boxes are locked upon the completion of the counting the three keys pertaining to the white boxes shall be placed in three separate envelopes which shall be sealed and signed by all the inspectors and the envelopes containing the keys shall be delivered one to the provincial commander, another to the provincial treasurer, and the third to the provincial fiscal, who shall keep them during a period of three months, and thereafter they shall be delivered to the provincial treasurer for safekeeping (Section 70, Revised Election Code), this requirement is subject to the discretion of the court. Thus, it is therein provided that the keys shall remain in the possession of said officials "if before said date the court did not order otherwise." This means that the legislature has foreseen that circumstances may supervene during the substantiation of an election protest which may warrant the delivery of the keys to other officials in order that the purpose of the protest may not be defeated. And, undoubtedly, such a situation is here present since it is to be presumed that the trial court has acted with the only end of promoting the interest of justice. There are times when the three officials charged with the keys are not in a position to attend to the recanvassing due to pressure of their official duties thereby giving to the protestee a convenient excuse to ask for postponement or to delay the proceeding. This apparently has happened here, and conscious of its duty to expedite the disposal of the case considering its urgent nature, the trial court saw no other course than to issue the order in question. Far from being an abuse of discretion, we see in this action one that is plausible and deserving of support. The fear of petitioner that an untoward happening may result if the order is implemented is merely hypothetical. The clerk of court is a responsible official who is entitled to the confidence of the court and unless something is shown that may reflect against his character there is no justification for presuming that he will be a derelict in the performance of his official duties.

The same thing may be said with regard to the authority given by the court that two out of the three commissioners may undertake the canvassing of the votes, for experience has shown that not all three could be present at the same time. And, undoubtedly, the trial court was forced to take such action also with the end of preventing unnecessary delay. At any rate, this is a matter that is addressed to the sound discretion of the court, and from the record we find nothing that may justify that it has abused its discretion.

Wherefore, petition is denied, with costs against petitioner.

Bengzon, C.J., Padilla, Concepcion, Barrera, Paredes, Dizon, De Leon, and Natividad, JJ., concur.

DISSENTING OPINION

REYES, J. B. L., J.:

I dissent. Where frauds or terrorism or both are alleged to have been committed, public policy demands that the charges be inquired into, so that if such frauds were really committed, steps should be taken in order to mete condign punishment on its perpetrators; and if judicial inquiry should show that no frauds really took place, the basis is laid for defamation and damage suits against those who recklessly charged such false violations of the election law. To treat the issue as the sole concern of either party is to encourage irresponsibility in electoral contests.

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