

ALIMUDIN A. MACACUA, PETITIONER, VS. COMMISSION ON ELECTIONS AND MIKE A. FERMIN, RESPONDENTS.*G.R. No. 175390. May 08, 2007*

Ponente: AZCUNA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-175390/>**AZCUNA, J.:**

This is a petition for certiorari alleging that the Commission on Elections (COMELEC) en banc acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Resolution promulgated on November 20, 2006, disallowing the conduct of a third special election in Barangay Guiawa, Kabuntalan, Maguindanao.

The facts are:

Petitioner Alimudin A. Macacua and private respondent Mike A. Fermin were candidates for Mayor in the May 2004 local elections in the Municipality of Kabuntalan, Maguindanao. The Municipal Board of Canvassers of Kabuntalan proclaimed private respondent as the duly elected Mayor of Kabuntalan. The COMELEC, however, annulled the proclamation due to the failure of clustered polling Precinct No. 25A/26A to function in Barangay Guiawa, Kabuntalan, Maguindanao. The existence of 264 registered voters in the clustered precinct would affect the results of the election. Thus, the COMELEC scheduled a special election in clustered Precinct No. 25A/26A on July 28, 2004.

In the special election of July 28, 2004, petitioner was proclaimed as the winning candidate for Mayor. Private respondent challenged the special election due to alleged procedural infirmities. In a Resolution dated June 2, 2005, the COMELEC nullified the special election. Petitioner's proclamation was set aside and the Vice Mayor-elect temporarily assumed the mayoralty post.

The COMELEC scheduled another special election for clustered Precinct No. 25A/26A on May 6, 2006. The Special Municipal Board of Canvassers (SMBOC) of Kabuntalan, Maguindanao was created composed of Atty. Lilian A. Suan-Radam as Chairman; Atty. Paisal Diaz Tanjili - Vice-Chairman; and Atty. Yogie G. Martirizar as Member Secretary. Atty. Piio Jose S. Josen, Executive Director of the Commission, was tasked to supervise the special election and the deputized PNP and military contingents were to provide security for the exercise.

The special election held on May 6, 2006 was peaceful and orderly at the onset. However, at about 1:45 p.m., the election was disrupted when two persons, in the queue where the voters' verification was being made, engaged in a heated argument and began pushing each other. They were later pacified by the deputized security forces manning the area. But before the special election could be concluded at 3:00 p.m., SMBOC Chairman Suan-Radam stopped the election at 2:15 p.m. upon the advice of P/S Supt. Lumala Gunting, head of the PNP contingent, that armed elements were seen in the vicinity of the barangay. There were still thirty-one (31) voters lined up to vote in the precinct when the election was stopped.

Per SMBOC canvass, petitioner obtained 136 votes, while private respondent garnered 39 votes. When the

election results were added, petitioner and private respondent got 2,208 votes each, ending in a tie.

The SMBOC notified the parties concerned that a Special Public Hearing would be held on May 14, 2006 at the Municipal Hall of Sharif Aguak, Maguindanao to break the tie pursuant to Sec. 240[1] of the Omnibus Election Code.

On May 9, 2006, petitioner filed with the COMELEC en banc an Extremely Urgent Omnibus Motion:

- To investigate why the May 6, 2006 Special Election was stopped at 2:15 p.m. with 30 to 40 voters still lined-up to vote;
- To require the SMBOC of Kabuntalan headed by Atty. Radam and the PNP Contingent headed by a certain Supt. Gunting to show cause why they should not be held liable for an election offense under paragraphs (e) and (f), Sec. 261 and Sec. 262 of the Omnibus Election Code; and
- To hold in abeyance the Special Public Hearing set by the Board on May 14, 2006 for purposes of Sec. 240 of the Omnibus Election Code until after the Commission shall have ruled on the incidents.

On May 9, 2006, the COMELEC issued an Order, the dispositive portion of which reads:

The Commission, after due deliberation, hereby orders as follows:

- to require the petitioner and the Special Municipal Board of Canvassers of Kabuntalan, Maguindanao to file their respective comments within five (5) days from receipt hereof;
- to hold in abeyance the Special Public Hearing set by the Special Municipal Board of Canvassers on May 14, 2006; and
- to set this Extremely Urgent Omnibus Motion for hearing on May 18, 2006 at 10:00 a.m., Comelec Session Hall, 8[th] Floor, Palacio del Gobernador, Intramuros, Manila.

SO ORDERED.

Despite the Order dated May 9, 2006, the Special Public Hearing pushed through on May 14, 2006, and the SMBOC proclaimed private respondent as the duly elected Mayor of Kabuntalan.

On May 16, 2006, petitioner filed a Manifestation and Motion to nullify the proclamation of private respondent on May 14, 2006, to cite the private respondent and the SMBOC in contempt of the Commission for defying its Order dated May 9, 2006, and to proceed with the hearing on the omnibus motion on May 18, 2006.

On May 16, 2006, the COMELEC en banc issued an Order, which annulled the proceedings of the Special Public Hearing conducted on May 14, 2006 and set aside the proclamation of private respondent.

In the hearing of May 18, 2006, the following field personnel of the Commission appeared and testified: Atty. Lilian A. Suan-Radam, SMBOC Chairman; Atty. Lintang H. Bedol, Provincial Election Supervisor of Maguindanao; Board of Election Inspectors Chairman[2] Dante A. Parnas; and Atty. Yogie G. Martirizar, SMBOC Member Secretary. Their testimonies covered the circumstances of the stoppage of the special elections in Kabuntalan, including the proceedings conducted by the SMBOC on May 14, 2006.

During the hearings held on May 30, 2006 and June 6, 2006, the following persons appeared or testified regarding what transpired during the May 6, 2006 special election: P/S Supt. Lumala Gunting, Lt. Col. Julieta D. Ando, P/S Supt. Salik E. Macapantar, Barangay Captain Senting M. Ampuan, Gaudencio P. Teves, Datumanong Salik, Naot Gomez, Utok Samson, and COMELEC Executive Director Pio Jose S. Joson.

On June 20, 2006, petitioner filed a Memorandum praying that the COMELEC en banc issue an Order to set the

mechanics for the continuation of the aborted special election held on May 6, 2006. Private respondent filed a Memorandum on June 26, 2006.

On November 20, 2006, the COMELEC en banc promulgated its Resolution in SPC No. 04-296, entitled *Mike A. Fermin v. Special Board of Canvassers of Kabuntalan and Alimudin A. Macacua*, which Resolution also considered the petitioner's Extremely Urgent Omnibus Motion dated May 9, 2006 and his Manifestation and Motion dated May 16, 2006. The pertinent portions of the Resolution read:

At the onset, it must be emphasized that the instant case had its inception when herein petitioner Mike A. Fermin filed before this Commission a "Petition to Annul Proclamation and/or Declare Proclamation Null and Void Ab Initio", with respect to the proclamation of private respondent Alimudin A. Macacua as Mayor of Kabuntalan, Maguindanao in the 10 May 2004 Synchronized National and Local Elections. The Commission took cognizance of the petition and docketed the same as a Special Case pursuant to Section 5(h), Rule 1 of the COMELEC Rules of Procedure.

Bearing this in mind, we believe that the first and most important to be resolved among the issues raised herein before us by the parties is the matter of whether or not to hold a third or another special election in Barangay Guiawa. Accordingly, if we rule in the affirmative, it would be the third special election that will be held thereat considering that the two (2) special elections conducted before both resulted in a failure to elect.

To the above-mentioned issue, we in the Commission (en banc) find it rather unfortunate that we cannot anymore sanction the holding of a third or another special election in Barangay Guiawa. Verily, to declare such will truly be unprecedented for never in the history of the Commission that three (3) special elections were ordered held in one place. Our decision to forego of another special election however is not solely grounded on this. More compelling are the peculiar facts surrounding the instant case and the force of circumstances attendant to it, not to mention on matter and principles of law and equity also.

Firstly, judicial notice must be taken of the fact that there is already scarcity of funds in the Commission considering that even as of this writing, its budget for the year 2006 has yet to be approved and released by the Department of Budget and Management (DBM). Thus, at present, it can very well be said that there is truly lack of available funds for the holding of another special election in Barangay Guiawa. Whatever amount, if any, is still left in the Commission's coffers, the same has already been channeled and devoted to the other equally urgent and/or more important projects/endeavors of the Commission, which the pursuit, to us, has more the assurance of transparency, reliability and success.

Moreover, it must be stressed that the Commission has already spent considerable amounts in the regular election and in the last two (2) special elections held in Barangay Guiawa which, sadly, all resulted in a failure to elect. In the second special election alone, the Commission already spent the huge amount of P300,000.00 for just one (1) clustered precinct (Precinct No. 25A/25B) comprising of two hundred sixty-four (264) registered voters. It must be noted however that based on the records, only one hundred seventy-eight (178) voters voted in the failed electoral exercise.

x x x

Another cogent and compelling reason not to conduct another special election anymore in Barangay Guiawa deals with the peculiar circumstances that attended the regular election and the past two (2) special elections held thereat. It must be recalled that after the 10 May 2004 regular local election failed, the two (2) special elections that followed in said barangay likewise resulted in a failure of election. Primarily, initial investigation shows that this is because of the anomalies that transpired during the course or proceedings thereof brought about by the very persons who are supposed, under the law, to ensure that the said elections would be free, orderly, honest, peaceful, and credible. Sadly, included in the controversy are some of our very own people in the Commission.

As already told, we in the Commission (en banc) find it very disappointing that the regular election and the two (2) special elections held in just one (1) precinct in Barangay Guiawa failed notwithstanding the enormous amount the Commission had spent particularly in the second special election. Verily, this is the main reason why in the final hearings of the instant case, an initial investigation was conducted regarding the responsibility and liability of those officers, field personnel, the parties and other persons connected with the conduct of the second special election in Barangay Guiawa, and the resultant failure thereof. The results of the investigation, albeit preliminary, are very discouraging which led us in the Commission (en banc) to forego any decision of holding a third or another special election in Barangay Guiawa.

To reiterate, never in the history of the Commission that a third special election was ordered, or three (3) special elections were held, in one place. This lack of precedence can be best explained in connection with the proximity of the next elections to be held involving the position being contested, after the second special election failed. More often than not, the length of time that the case is ongoing before the second special election held again resulted in a failure to elect, almost already consumed the term of the office being contested. Otherwise put, the next regular election, usually, is just around the corner.

As in the case at bar, considering the above stated peculiar facts and circumstances in the instant case which resulted in the failure of the two (2) special elections held in Barangay Guiawa, the issue of whether or not to order a third and/or another special election thereat is truly a serious matter to consider. It is worth stressing that the next regular election involving the herein contested position is now just around the loom, or to be more specific, in May of 2007. Verily, it would be impractical in time, effort and money to declare the holding of a third or another special election in Barangay Guiawa. To rule the aforesaid issue in the affirmative, we respectfully but strongly submit, would be a grievous error on our part for it is surely [dis]advantageous to the government, specifically to us in the Commission on Elections.[3]

The dispositive portion of the Resolution states:

WHEREFORE, premises considered, this Commission (en banc) RESOLVED, as it hereby RESOLVES, to:

- DENY/DISMISS with finality the instant petition, and any and all motions filed by the herein parties, for the holding/conduct of a third and/or another special election in Barangay Guiawa for the position of Mayor of Kabuntalan, Maguindano in view of the failure of the second special election held thereat on 6 May 2006. ACCORDINGLY, the hiatus created by this decision in the herein contested position shall be filled in accordance with the provisions of Republic Act No. 7160, otherwise known as the Local Government Code; and
- DIRECT the Law Department (this Commission) to conduct the requisite preliminary investigation, in accordance with law, with respect to the following persons/witnesses who were called to testify in the hearings conducted in the instant case, to wit:
 - Atty. Lilian A. Suan-Radam - Chairman, Special Municipal Board of Canvassers of Kabuntalan;
 - Atty. Paisal Diaz Tanjili - Vice-Chairman, Special Municipal Board of Canvassers of Kabuntalan;
 - Atty. Yogie G. Martirizar - Member Secretary, Special Municipal Board of Canvassers of Kabuntalan;
 - Atty. Lintang H. Bedol -- Provincial Election Supervisor of Maguindanao;
 - Mr. Dante A. Parnas - Chairman, Board of Election Inspectors, Barangay Guiawa, Kabuntalan;
 - P/S Supt. Lumala Gunting, PNP Provincial Director for Maguindanao, PNP Cotabato City;
 - Lt. Col. Julieto D. Ando, Commanding Officer, 61B Kabuntalan, Maguindanao;
 - P/S Supt. Salik E. Macapantar, GD, 15[th] RMG, Kabuntalan Maguindanao; and

- Atty. Pio Jose S. Joson, Executive Director, Commission on Elections.

The investigation, among others, must focus mainly on their involvement or participation in the regular and special elections held at Barangay Guiawa, particularly with regard to the second special election, its stoppage before the time provided by law and the consequent failure thereof, which may constitute as probable cause to hold them liable for election offenses for violation of the provisions of the Omnibus Election Code and other pertinent election laws. Likewise, the Law Department must determine whether or not the said persons/witnesses must be indicted not only for election offenses but also for administrative offenses, in particular, those officers and personnel of this Commission who are responsible and mandated under the law to ensure that the election in Barangay Guiawa must be free, orderly, honest, peaceful and credible, and one which must be held truly in accordance with law.

SO ORDERED.[4]

Thereafter, petitioner filed this petition raising this sole issue:

Whether or not the Public Respondent COMELEC [en banc] committed grave abuse of discretion amounting to lack or excess of jurisdiction in promulgating the questioned Resolution on November 20, 2006, disallowing the holding of a third Special Election for lack of funds.[5]

Petitioner contends that the ruling against the holding of a third special election is an "abnegation" of COMELEC's constitutional duty to conduct elections.

The Court is not persuaded.

Petitioner's allegation of grave abuse of discretion by the COMELEC en banc in issuing the resolution dated November 20, 2006 denying his motion to hold a third special election in Barangay Guiawa implies capricious, whimsical exercise of judgment amounting to lack of jurisdiction, or arbitrary and despotic exercise of power because of passion or personal hostility.[6]

However, the COMELEC en banc's decision not to hold a third special election in Barangay Guiawa for the position of Mayor of Kabuntalan, Maguindanao cannot be characterized as capricious, whimsical or arbitrary since it was based on the following considerations: (1) lack of available funds for holding another special election in Barangay Guiawa; (2) the anomalies that transpired during the regular and two special elections which all resulted in failure of election do not inspire assurance that the will of the voters in the area will be upheld in another special election; and (3) the next regular elections scheduled on May 14, 2007 is close-by.

In his separate concurring opinion, Commissioner Florentino A. Tuason, Jr. stated:

...[T]he Commission has already set into motion the mechanism for the conduct of [the 2007] election as early as July 26, 2006. Preparations have already started and conducting another special election in one precinct only might disrupt the whole system and jeopardize our major electoral exercise come May 14, 2007. At the time preparation alone for the conduct of the special election might already coincide or so nearly approximate the May 14, 2007 election so that any result of the special election may already be mooted by the May 14, 2007 election.[7]

The COMELEC en banc enunciated that it would be impractical in terms of time, effort and money to declare the holding of a third special election in Barangay Guiawa, and it would be disadvantageous to the government, specifically to the Commission.

The decision of the COMELEC en banc should not be taken as an abdication of its duty to conduct elections, but a judgment call by the Commission based on lack of available funds to hold another special election, the peculiar circumstances of this case, and the fast approaching regular elections on May 14, 2007 that would render the

result of another special election moot.

Based on the foregoing, the COMELEC en banc did not gravely abuse its discretion in issuing the Resolution dated November 20, 2006, denying petitioner's motion to hold a third special election in Barangay Guiawa for the position of Mayor of Kabuntalan, Maguindanao.

WHEREFORE, the petition is DISMISSED. The Resolution of the COMELEC en banc promulgated on November 20, 2006 is AFFIRMED.

Costs against petitioner.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Tinga, Chico-Nazario, Garcia, Velasco, Jr., and Nachura, JJ., concur.

Austria-Martinez, and Corona, JJ., on leave.

Carpio-Morales, J., I certify that J. Morales voted/concurred in the Decision. -CJ RSPuno.

[1] Sec. 240. Election resulting in a tie.-Whenever it shall appear from the canvass that two or more candidates have received an equal and highest number of votes, or in cases where two or more candidates are to be elected for the same position and two or more candidates received the same number of votes for the last place in the number to be elected, the board of canvassers, after recording this fact in its minutes, shall by resolution, upon five days notice to all the tied candidates, hold a special public meeting at which the board of canvassers shall proceed to the drawing of lots of the candidates who have tied and shall proclaim as elected the candidates who may be favored by luck, and the candidates so proclaimed shall have the right to assume office in the same manner as if he had been elected by plurality of vote. The board of canvassers shall forthwith make a certificate stating the name of the candidate who had been favored by luck and his proclamation on the basis thereof. Nothing in this section shall be construed as depriving a candidate of his right to contest the election.

[2] Barangay Guiawa, Kabuntalan.

[3] Id. at 51-52, 54-56.

[4] Id. at 56-58.

[5] Id. at 21.

[6] *Batul v. Bayron*, G.R. Nos. 157687 & 158959, February 26, 2004, 424 SCRA 26, 41.

[7] *Rollo*, p. 61.

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.