

CONGRESSWOMAN LUCY MARIE TORRES-GOMEZ PETITIONER, VS. EUFROCINO C. CODILLA, JR. AND HON. HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL RESPONDENTS.

G.R. No. 195191. March 20, 2012

Ponente: SERENO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-195191/>

SERENO, J.:

This is a Petition for Certiorari under Rule 65 of the Rules of Court, with application for Temporary Restraining Order and/or Writ of Preliminary Prohibitory Injunction. The Petition seeks to annul and set aside Resolution No. 10-482 of the House of Representatives Electoral Tribunal (HRET) in HRET Case No. 10-009 (EP) entitled "Eufrocino C. Codilla, Jr. v. Lucy Marie Torres-Gomez (Fourth District, Leyte)," which denied the Motion for Reconsideration filed by petitioner.

Statement of the Facts and the Case

On 30 November 2009, Richard I. Gomez (Gomez) filed his Certificate of Candidacy for representative of the Fourth Legislative District of Leyte under the Liberal Party of the Philippines. On even date, private respondent Codilla Jr. filed his Certificate of Candidacy for the same position under Lakas Kampi CMD.

On 6 December 2009, Buenaventura O. Juntilla (Juntilla), a registered voter of Leyte, filed a Verified Petition for Gomez's disqualification with the Commission on Elections (COMELEC) First Division on the ground that Gomez lacked the residency requirement for a Member of the House of Representatives.

In a Resolution dated 17 February 2010, the COMELEC First Division granted Juntilla's Petition and disqualified Gomez. On 20 February 2010, the latter filed a Motion for Reconsideration with the COMELEC En Banc, which dismissed it on 4 May 2010, six days before the May 2010 national, and local elections. The dispositive portion of the COMELEC's Resolution¹ is worded as follows:

WHEREFORE, premises considered, the motion for reconsideration filed by the Respondent is DISMISSED for lack of merit. The Resolution of the Commission (First Division) is hereby AFFIRMED.

SO ORDERED.[2]

On the same date, Gomez filed a Manifestation with the COMELEC En Banc, alleging that, without necessarily admitting the allegations raised by Juntilla, he was accepting the aforementioned Resolution with finality, in order to enable his substitute to facilitate the filing of the necessary documents for substitution.

On 5 May 2010, petitioner Lucy Marie Torres-Gomez filed her Certificate of Candidacy as substitute for the position of representative of the Fourth Congressional District for the Province of Leyte vice Gomez, her husband.

On 6 May 2010, Juntilla filed a Counter-Manifestation with the COMELEC En Banc. At the same time, he wrote a letter to Atty. Ferdinand T. Rafanan, Director of the Law Department of the COMELEC, alleging the invalidity of the proposed substitution of Gomez by petitioner.

On 8 May 2010, the COMELEC En Banc issued Resolution No. 8890, which approved and adopted the recommendation of its Law Department to allow petitioner as a substitute candidate for Gomez for representative of the Fourth Legislative District of Leyte.

On 9 May 2010, Juntilla filed an Extremely Urgent Motion for Reconsideration of the above COMELEC Resolution No. 8890. Pending resolution of his motion, the national and local elections were conducted as scheduled.

After the casting, counting and canvassing of votes in the said elections, petitioner emerged as the winner with 101,250 votes or a margin of 24,701 votes over private respondent Codilla, who obtained 76,549 votes.

On 11 May 2010, Codilla filed an Urgent Ex-Parte Motion to Suspend the Proclamation of Substitute Candidate Lucy Marie T. Gomez (vice Richard I. Gomez) as the Winning Candidate of the May 10, 2010 Elections for the Fourth Congressional District of Leyte.

On the same date, Juntilla filed an Extremely Urgent Motion to resolve the pending Motion for Reconsideration filed on 9 May 2010 relative to Resolution No. 8890 and to immediately order the Provincial Board of Canvassers of the Province of Leyte to suspend the proclamation of petitioner as a Member of the House of Representatives, Fourth District, Province of Leyte.

On 12 May 2010, petitioner was proclaimed the winning candidate for the congressional seat of the Fourth District of Leyte.

Accordingly, on 21 May 2010, private respondent Codilla filed a Petition with public respondent HRET against petitioner docketed as HRET Case No. 10-009 (Election Protest).

On 2 July 2010, petitioner filed her Verified Answer to Codilla's Election Protest questioning the alleged lack of the required Verification and praying for its dismissal.

On 8 July 2010, Codilla filed a Reply to petitioner's Verified Answer.

In an Order issued by public respondent HRET, the instant case was set for preliminary conference on 2 September 2010.

On 1 September 2010, unsatisfied with the Order of the HRET, petitioner filed an Urgent Manifestation and Motion, persistent in her position that Codilla's Election Protest should be dismissed based on the grounds raised in her Verified Answer. She also prayed for the deferment of the preliminary conference until after the resolution of the said motion.

On 9 September 2010, the HRET issued the assailed Resolution No. 10-282[3] resolving the Urgent Manifestation and Motion filed by petitioner, the dispositive portion of which provides:

The Tribunal NOTES the Urgent Manifestation and Motion filed on September 1, 2010 by the protestee; REITERATES its ruling in Resolution No. 10-160 dated July 29, 2010 that the protest cannot be considered insufficient in form, considering that the examination of the original copy of the protest filed before the Tribunal had revealed the existence of the required verification; and DENIES the respondent's motion for deferment of the preliminary conference scheduled on September 2, 2010.[4]

Accordingly, on 30 September 2010, petitioner filed with public respondent HRET a Motion for Reconsideration of the above Resolution No. 10-282.

On 22 November 2010, public respondent HRET issued Resolution No. 10-482[[5]] denying petitioner's Motion for Reconsideration, ruling as follows:

WHEREFORE, the Tribunal DENIES the instant motion for reconsideration as regards the issues pertaining to absence/defect of the verification and propriety of the election protest; and DIRECTS the protestant to have his verification properly notarized.[6]

Thereafter, petitioner filed the instant Petition for Certiorari[[7][[]] dated 7 February 2011. The Petition raises the following grounds:

A.

THE PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT REFUSED TO DISMISS THE ELECTION PROTEST DESPITE AN ADMITTEDLY DEFECTIVE VERIFICATION.

B.

THE PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION WHEN Y ALLOWED THE PROTESTANT TO RAISE ISSUES ON QUALIFICATION OF CANDIDATES IN AN ELECTION PROTEST.[8]

Petitioner claims that there was a material defect in the Verification of the Election Protest, a requirement explicitly provided for in Rule 16 of the 2004 Rules of the House of Representatives Electoral Tribunal (HRET Rules).[9] The verification being a mandatory requirement, the failure to comply therewith is a fatal defect that affects the very jurisdiction of the HRET.

On the second issue, petitioner claims that what is in question in the Election Protest is her qualification as a Member of the House of Representatives, and not the number of votes cast. Her qualification is allegedly not a proper ground for an election protest, in which the issues should be the appreciation of ballots and the correctness and number of votes of each candidate.

On 15 February 2011 this Court required respondents to file their comment on the Petition. Thereafter, Codilla filed his Comment/Opposition dated 28 April 2011. In his Comment, he argues that there was no grave abuse of discretion on the part of the HRET in issuing the assailed Resolutions. He clarifies that the Ejection Protest that he filed contained a validly executed Verification and Certification of Non-Forum Shopping (Verification).[10] However, the defect that petitioner points to is the portion of the jurat of the Verification, which states:

Subscribed and sworn to before me this__ day of May 2010 at _____. Affiant personally and exhibited to me his (1) License ID Card with Card No. 1103-80-002135 issued by LTO on January 16, 2009 (2) Philippine Passport No. XX4793730 issued on "October 20, 2009 valid until October 19, 2014, he, being the same person herein who executed the foregoing document thereof.[11]

The date "May 21 2009" was stamped on the first blank in "__ day of May 2010." "May 21 2010" was written with a pen over the stamped date "May 21 2009" and countersigned by the notary public. Codilla claims that the date of the Verification was a mere innocuous mistake or oversight, which did not warrant a finding that the Verification was defective; much less, fatally defective. He claims he should not be faulted for any alleged oversight that may have been committed by the notary public. Further, the same argument holds true with respect to the absence of the Mandatory Continuing Legal Education (MCLE) Compliance Number of the notary public, as well as the overdue Professional Tax Receipt (PTR) indicated in the notarial stamp. In any case, the insufficiency of the Verification was not fatal to the jurisdiction of the HRET.

With respect to the second issue, Codilla argues that the issues in the Election Protest do not pertain to petitioner's qualification, but to the casting and counting of votes. He claims that his Election Protest contests the declaration by the Board of Canvassers that the 101,250 votes should be counted in favor of petitioner and be credited to him

as these should have instead been declared as stray votes.

Thereafter, public respondent HRET filed its Comment[12] on the Petition dated 5 May 2011. In its Comment, the HRET claims that it did not commit grave abuse of discretion when it took cognizance of Codilla's Election Protest despite an alleged absence/defect in the verification. After all, an unverified petition differs from one which contains a defective verification, such as in this case. A defective verification is merely a formal defect which does not affect the jurisdiction of the tribunal. In any case, the summary dismissal of an Election Protest, as well as the allowance of its amendments in matters of form, is sanctioned by the HRET Rules.

The HRET further argues that it did not commit grave abuse of discretion when it took cognizance of the Election Protest. The issue raised in the Election Protest was the validity of petitioner's proclamation, in view of her alleged invalid substitution. This is a matter that is addressed to the sound judgment of the HRET.

On 7 June 2011, this Court, among others, required petitioner to file a reply to Codilla's Comment. Petitioner later filed her Reply dated 15 August 2011, citing an additional ground for considering the Verification as defective. She claimed that Codilla, a resident of Ormoc City, could not have possibly appeared before a notary public in Quezon City; and that he failed to prove that he was indeed in Quezon City when he supposedly verified the Election Protest.

The Court's Ruling

The Petition is dismissed for failure to show any grave abuse of discretion on the part of the HRET.

On the Allegedly Defective Verification

While the existence of the Verification is not disputed, petitioner notes three alleged defects. First, the Election Protest was filed on 21 May 2010, but the Verification was allegedly subscribed and sworn to on 21 May 2009.[13] Second, Codilla, a resident of Ormoc City, could not have possibly appeared personally before the notary public in Quezon City.[14] Third, in the notarial stamp, the date of expiration of the notarial commission was handwritten while all other details were stamped; the PTR indicated was issued in 2005; there was no MCLE Compliance Number as required by Bar Matter No. 1922.[15] Petitioner claims that due to the lack of a proper verification, the Election Protest should have been treated as an unsigned pleading and must be dismissed.

The alleged defects of the Verification are more apparent than real.

With respect to the date of the notarization, it is clear that the stamped date "2009" was a mere mechanical error. In fact, the notary public had superimposed in writing the numbers "10" and countersigned the alteration. Thus, this error need not be overly magnified as to constitute a defect in the Verification.

With respect to the second alleged defect, there is a presumption that official duty has been regularly performed with respect to the jurat of the Verification, wherein the notary public attests that it was subscribed and sworn to before him or her, on the date mentioned thereon.[16] Official duties are disputably presumed to have been regularly performed. Thus, contrary to petitioner's allegation, there was no need for Codilla to "attach his plane ticket to prove he flew from Ormoc City to Manila." [17]

Further, to overcome the presumption of regularity, clear and convincing evidence must be presented.[18] Absent such evidence, the presumption must be upheld. The burden of proof to overcome the presumption of due execution of a notarized document lies on the party contesting the execution.[19] Thus, petitioner's contention that she "had reliable information that [Codilla] was in Ormoc City on the date indicated in the Verification" cannot be considered as clear and convincing evidence to rebut the presumption that the document was duly executed and notarized.

With respect to the third alleged defect, the fact that some portions of the stamp of the notary public were handwritten and some were stamped does not, in itself, indicate any defect. Further, Bar Matter No. 1922 merely requires lawyers to indicate in all pleadings filed before the courts or quasi-judicial bodies, the number and date of issue of their MCLE Certificate of Compliance or Certificate of Exemption, whichever is applicable - for the immediately preceding compliance period. Clearly, the regulation does not apply to notarial acts. With respect to the PTR number which was dated 5 years prior to the date of notarization, the deficiency merely entails the potential administrative liability of the notary public.[20]

In any case, there was no grave abuse of discretion on the part of the HRET in denying petitioner's Motion to Dismiss the Election Protest and directing Codilla to have his Verification properly notarized.

It has been consistently held that the verification of a pleading is only a formal, not a jurisdictional, requirement. The purpose of requiring a verification is to secure an assurance that the allegations in the petition are true and correct, not merely speculative. This requirement is simply a condition affecting the form of pleadings, and noncompliance therewith does not necessarily render the pleading fatally defective.[21]

This Court has emphasized that in this species of controversy involving the determination of the true will of the electorate, time is indeed of paramount importance. An election controversy, by its very nature, touches upon the ascertainment of the people's choice as gleaned from the medium of the ballot. For this reason, an election protest should be resolved with utmost dispatch, precedence and regard for due process. Obstacles and technicalities that fetter the people's will should not stand in the way of a prompt termination of election contests.[22] Thus, rules on the verification of protests should be liberally construed.

At this point, it is pertinent to note that such liberalization of the rules was also extended to petitioner. A perusal of the Verification and Certification attached to this Petition shows she attests that the contents of the Petition "are true and correct of [her] own personal knowledge, belief and based on the records in [her] possession.[23] Section 4, Rule 7 of the Rules of Court provides that a pleading required to be verified which contains a verification based on "information and belief or "knowledge, information and belief," shall be treated as an unsigned pleading. A pleading, therefore, wherein the verification is based merely on the party's knowledge and belief— such as in the instant Petition — produces no legal effect, subject to the discretion of the court to allow the deficiency to be remedied.[24]

On the Propriety of the Election Protest

Codilla's Election Protest contests the counting of 101,250 votes in favor of petitioner. He claims that the denial of the Certificate of Candidacy of Gomez rendered the latter a non-candidate, who therefore could not have been validly substituted, as there was no candidacy to speak of.

It bears stressing that the HRET is the sole judge of all contests relating to the election, returns, and qualifications of the members of the House of Representatives. This exclusive jurisdiction includes the power to determine whether it has the authority to hear and determine the controversy presented; and the right to decide whether there exists that state of facts that confers jurisdiction, as well as all other matters arising from the case legitimately before it.[25] Accordingly, the HRET has the power to hear and determine, or inquire into, the question of its own jurisdiction - both as to parties and as to subject matter; and to decide all questions, whether of law or of fact, the decision of which is necessary to determine the question of jurisdiction.[26] Thus, the HRET had the exclusive jurisdiction to determine its authority and to take cognizance of the Election Protest filed before it.

Further, no grave abuse of discretion could be attributed to the HRET on this score. An election protest proposes to oust the winning candidate from office. It is strictly a contest between the defeated and the winning candidates,

based on the grounds of electoral frauds and irregularities. Its purpose is to determine who between them has actually obtained the majority of the legal votes cast and is entitled to hold the office.²⁷ The foregoing considered, the issues raised hi Codilla's Election Protest are proper for such a petition, and is within the jurisdiction of the HRET.

WHEREFORE, the instant Petition for Certiorari is DISMISSED.

The Application for a Temporary Restraining Order and/or Writ of Preliminary Prohibitory Injunction is likewise DENIED. Resolution Nos. 10-282 and 10-482 of the House of Representatives Electoral Tribunal are hereby AFFIRMED.

SO ORDERED.

Corona, C.J., Carpio, Leonardo-De Castro, Abad, Villarama, Jr., Perez, Mendoza, Reyes, and Perlas-Bernabe, JJ., concur.

Velasco, Jr., J., no part. chairperson of HRET.

Brion, J., no part, previous member of HRET.

Peralta and Bersamin, JJ., no part, member of HRET.

Del Castillo, J., on leave.

[1] Rollo, pp. 131-142.

[2] Id. at 141.

[3] Rollo, pp. 29-30. The HRET members who were present when Resolution No. 10-282 was passed were Justice Conchita Carpio Morales, chairperson; and Justice Antonio Eduardo B. Nachura, Representative (Rep.) Franklin P. Bautista, Rep. Rufus B. Rodriguez, Rep. Ma. Theresa B. Bonoan-David, and Rep. Rodolfo B. Albano, Jr., members.

[4] Id. at 29; emphasis and italics in the original.

[5] Id. at 31-33. The HRET members who were present when Resolution No. 10-482 was passed were Justice Conchita Carpio Morales, chairperson; and Justice Antonio Eduardo B. Nachura, Justice Arturo D. Brion, Rep. Franklin P. Bautista, Rep. Rufus B Rodriguez, Rep. Justin Marc SB Chipeco, Rep. Ma. Theresa B. Bonoan-David, and Rep. Rodolfo B. Albano, Jr., members.

[6] Id. at 33; emphasis and italics in the original.

[7] Id. at 3-24.

[8] Id. at 10.

[9] Rule 16 provides:

RULE 16. Election Protest. — A verified petition contesting the election or returns of any Member of the House of Representatives shall be filed by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten (10) days after the proclamation of the winner. The party filing the protest shall be designated as the protestant while the adverse party shall be known as the protestee.

xxx

An unverified election protest shall not suspend the running of the reglementary period to file the protest.

- [10] Rollo, p. 93.
- [11] Id.
- [12] Rollo, pp. 201-232.
- [13] Petitioner's Reply dated 15 August 2011, rollo, p. 361.
- [14] Rollo, p. 362.
- [15] Rollo, pp. 362-363.
- [16] Philippine Trust Company v. Court of Appeals, G.R. No. 1503 18, 22 November 2010, 635 SCR A 5 1 8.
- [17] Rollo, p. 362.
- [18] Bote v. Eduardo, A.M. No. MTJ-04-1524, 11 February 2005, 45 I SCRA 9.
- [19] Calma v. Santos, G.R. No. 161027, 22 June 2009, 590 SCRA 359.
- [20] Section 1, Rule XI, 2004 Rules of Notarial Practice.
- [21] Alde v. Bernal, G.R. No. 169336, 18 March 2010, 616 SCRA 60.
- [22] Pumlilio v. COMELEC, G.R. No. 181478, 15 July 2009, 593 SCRA 139.
- [23] Rollo, p. 25.
- [24] Negros Oriental Planters Association, Inc. (NOPA) v. Presiding Judge of RTC-Negros Occidental, Br. 52, Bacolod City, G.R. No. 179878, 24 December 2008, 575 SCRA 575.
- [25] Roces v. House of Representatives Electoral Tribunal, 506 Phil. 654 (2005).
- [26] Id.
- [27] Lokin v. COMELEC, G.R. Nos. I 7943 1-32, 22 June 20 10, 62 1 SCRA 385.

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.