

erroneously stated in her Verified Answer and Counter-Protest her receipt of the Summons and Election Protest as 'August 2, 2016' when she, in fact, received them on August 3, 2016. A review of the records confirms protestee's claim, as the receiving copy of the Summons³ shows that the protestee actually received a copy of the Summons and Election Protest on August 3, 2016 and not on August 2, 2016. Consequently, the protestee had until August 13, 2016 to file her answer; and, considering that August 13, 2016 was a Saturday, the filing of the Verified Answer and Counter-Protest on August 15, 2016 was timely because that was the next working day.⁴

Accordingly, the protestant's Motion to Strike-Out Protestee's Verified Answer is **DENIED** for lack of merit.

2. Protestee's Motions to Expunge Protestant's Answer Ad Cautelam

On September 7, 2016, the protestee filed an "Urgent Ex-Parte Motion to Consider as Waived the Right of Protestant Marcos to file an Answer to the Counter-Protest",⁵ claiming that the protestant's period to answer the Counter-Protest, reckoned from the date when he claimed to have secured a copy thereof, had already lapsed.

In his "Manifestation and Answer *Ad Cautelam* to the Counter-Protest"⁶ (Answer *Ad Cautelam* to the Counter-Protest), filed together with the Motion to Strike-Out Protestee's Verified Answer, the protestant countered by averring that he received the official copy of the protestee's Verified Answer and Counter-Protest on August 30, 2016; thus, pursuant to Rule 24 of the 2010 PET Rules, his answer was timely filed on September 9, 2016.

On September 19, 2016, the protestee filed a "Manifestation with Urgent Ex-Parte Motion to Expunge from the Records the Answer *Ad Cautelam* to the Counter-Protest"⁷ (Manifestation with Motion to Expunge protestant's Answer *Ad Cautelam*), claiming that the protestant's Answer *Ad Cautelam* to the Counter-Protest was not verified in violation of Rule 23⁸ of the 2010 PET Rules, and, because it was filed out of time based on the Certification from the Philippine Postal Corporation (PhilPost) dated September 13, 2016 issued by Marissa Sable (attached as Annex 1 of Manifestation with Motion to Expunge protestant's Answer *Ad Cautelam*) which attests to the fact that protestant received the protestee's Verified

³ *Rollo* (Vol. XX), p. 16025.

⁴ Rule 73 of the 2010 PET Rules provides that the Revised Rules of Court shall be applicable by analogy or in suppletory character and effect. In turn, Section 1 Rule 22 of the Revised Rules of Court states that in computing any period of time prescribed or allowed by the rules, if the last day of the period falls on a Saturday, a Sunday or a legal holiday in the place where the court sits, the time shall not run until the next working day.

⁵ *Rollo* (Vol. XXVIII), pp. 21688-21697.

⁶ *Supra* note 1.

⁷ *Id.* at 21769-21778 (with Annex).

⁸ Annexes "A," "B," "B-1," "C," "C-1," *id.* at 21828-21830.

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Answer and Counter-Protest on August 28, 2016 and not August 30, 2016. Hence, protestee asserts that protestant only had until September 7, 2016, and not September 9, 2016, to file his answer to the Counter-Protest.

In his “Comment/Opposition [to the Urgent Ex-Parte Motion to Consider as Waived the Right of Protestant Marcos to File an Answer to Counter-Protest and Manifestation with Urgent Ex-Parte Motion to Expunge from the Records the Answer *Ad Cautelam* to the Counter-Protest]”,⁹ the protestant insists that he received the protestee’s Verified Answer and Counter-Protest only on August 30, 2016 and, as proof, submitted a Certification from the same Marissa Sable of Philpost attesting to his receipt on August 30, 2016, together with photographic images of the handwritten logbook showing the actual date and time of receipt of the documents delivered by Philpost.¹⁰ The protestant further avers that it would have been impossible for him to receive his copy of the protestant’s Verified Answer and Counter-Protest on August 28, 2016, as claimed by the protestee, because said date was a Sunday, when both Philpost and the law office of protestant’s lead counsel were closed.

As to the lack of verification, the protestant claims that the same is a mere formal defect, which was already rectified and cured when he filed a “Manifestation with Motion to Admit Attached Verification”¹¹ on September 20, 2016.

While it is well settled that election contests involve public interest and technicalities and procedural niceties in election cases should not be made to stand in the way of the true will of the electorate,¹² the Tribunal is gravely concerned as to the conflicting certifications that have been submitted by both protestant and protestee as to when the protestant actually received the protestee’s Verified Answer and Counter-Protest — certifications that are claimed to have been issued by the same Marissa Sable of Philpost. In this regard, it behooves the Tribunal to determine how it is possible that two totally conflicting certifications could have been issued. Accordingly, the Tribunal deems it prudent to defer action on this particular issue until a rational explanation has been given as to the conflicting certifications. Accordingly, Marissa Sable of Philpost is hereby ordered to inform the Tribunal whether she had, in fact, issued the aforesaid certifications, and, if so, affirm which certification is correct. She is also directed to explain why she had issued the two certifications that are inconsistent with each other.

⁹ Id. at 21818-21830 (with Annexes).

¹⁰ Id. at 21828-21830.

¹¹ Id. at 21786-21793.

¹² *Engle v. Commission on Elections*, G.R. No. 215995, January 19, 2016, p. 15, citing *Rulloda v. Commission on Elections*, 443 Phil. 649, 655 (2003).

Marissa Sable - Answer

3. Protestee's Request for Preliminary Hearing on the Special and Affirmative Defenses

In her Verified Answer and Counter-Protest, the protestee raises the following Special and Affirmative Defenses:

- a. The Tribunal has no jurisdiction over this case considering that the Protest improperly questions the authenticity and due execution of the Certificates of Canvass (COC), which should have been raised as an issue in a pre-proclamation case filed before Congress acting as the National Board of Canvassers (NBOC); and
- b. The Protest is insufficient in form and substance because it failed to state, with detailed specificity, the acts or omissions complained of showing the electoral frauds, anomalies and irregularities in the protested precincts and the protestant's allegations are not hinged on facts and law.

The protestee prays that a preliminary hearing be conducted on the abovementioned special and affirmative defenses and thereafter, dismiss the Protest for lack of jurisdiction and for being insufficient in form and substance.

In assailing the Tribunal's jurisdiction, the protestee relies on the Court's pronouncement in *Pimentel III v. COMELEC*¹³ that with the amendments introduced by Republic Act No. 9369, pre-proclamation cases involving the authenticity and due execution of certificates of canvass in elections for President and Vice-President are now allowed to be brought before Congress acting as NBOC. Thus, protestee concludes that by entertaining the instant Protest, which raises as an issue the authenticity of the COCs, the Tribunal will go beyond the scope of its jurisdiction as the sole arbiter of election contests – not pre-proclamation cases.

The protestee is mistaken.

In *Barangay Association for National Advancement and Transparency (BANAT) Party-List v. Commission on Elections*,¹⁴ the Court already clarified that the ruling in *Pimentel* did not in any way deprive the Tribunal of its jurisdiction as defined and conferred by the Constitution.

Section 4, Article VII of the 1987 Constitution, in relation to Rule 13 of the 2010 PET Rules, provides that the Tribunal shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President of the Philippines. The phrase "election, returns,

¹³ 571 Phil. 596 (2008).

¹⁴ 612 Phil. 793 (2009).

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and qualifications” refers to all matters affecting the validity of the contestee’s title, which includes questions on the validity, authenticity and correctness of the COCs.¹⁵

Relevantly, in *Legarda v. De Castro (P.E.T. Case No. 003)*,¹⁶ the Court ruled in this wise:

On this matter, we cannot agree with protestee that questions on the authenticity, correctness or validity of the SOV and COC are excluded from the Court’s jurisdiction. The constitutional function as well as the power and duty to be the sole judge of all contests relating to the election, returns, and qualifications of the President and Vice-President, is vested in the PET, in Section 4, Article VII of the Constitution. It includes, in our view, the duty to correct manifest errors in the statement of votes as well as the certificates of canvass.

In *Rasul v. COMELEC*, we said:

“The phrase ‘election, returns and qualifications’ should be interpreted in its totality *as referring to all matters affecting the validity of the contestee’s title*. But if it is necessary to specify, we can say that ‘election’ referred to the conduct of the polls, including the listing of voters, the holding of the electoral campaign, *and the casting and counting of votes*; ‘returns’ *to the canvass of the returns and the proclamation of the winners*, including questions concerning the composition of the board of canvassers and the authenticity of the election returns; and ‘qualifications’ to matters that could be raised in a *quo warranto* proceeding against the proclaimed winner, such as his disloyalty or ineligibility or the inadequacy of his certificate of candidacy.”

Further, comparatively, the experience of the Electoral Tribunals of the Senate (SET) and of the House of Representatives (HRET), could be instructive. Each of the aforesaid Tribunals is the sole judge of all contests, which include the validity of proclamation and the canvass of the returns, affecting the legality of protestee’s title, brought before the Tribunal concerned. Each cannot refuse to perform even ancillary functions relative to such contests without violating its constitutional mandate.¹⁷

On the matter of sufficiency of the protest, the same is already beyond dispute. With the issuance of Summons, the Tribunal has found the Protest to be sufficient in form and substance. The Protest contained narrations of

¹⁵ See *Rasul v. Commission on Elections*, 371 Phil. 760, 765-766 (1999), citing *Javier v. COMELEC*, 228 Phil. 193, 205-206 (1986).

¹⁶ Resolution dated January 18, 2005, *rollo* (P.E.T. Case No. 003), Vol. I, pp. 351-367.

¹⁷ *Id.* at 356-357.

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ultimate facts on the alleged irregularities and anomalies in the contested clustered precincts, which the protestant needs to prove in due time.

However, while the Tribunal finds the Protest sufficient in form and substance, it must be emphasized that, as to the veracity of the protestant's allegations, nothing yet has been proved. The Protest is only sufficient for the Tribunal to proceed and give the protestant the opportunity to prove his case in accordance with the 2010 PET Rules.

Verily, the Tribunal affirms its jurisdiction over the instant Protest, which is sufficient in form and substance. The protestee's prayer to dismiss the Protest for lack of jurisdiction and for being insufficient in form and substance is **DENIED**.

ACCORDINGLY, the Tribunal resolves, as follows:

- a. **DENY** the "Motion to Strike-Out or Expunge Protestee's Verified Answer dated 12 August 2016" filed by the protestant on September 9, 2016;
- b. **NOTE** the "Verified Answer with Special and Affirmative Defenses and Counter-Protest" filed by the protestee on August 15, 2016;
- c. **FURNISH** Ms. Marissa Sable of Philpost with a copy of this Resolution;
- d. **ORDER** Ms. Marissa Sable of Philpost to file, within ten (10) days from notice hereof, a Manifestation with the Tribunal stating whether she had, in fact, issued both certifications; and, if so, affirm to the Tribunal, under oath, which certification is correct, and explain the discrepancy between them;
- e. **DEFER FURTHER ACTION** on the following: (i) "Urgent Ex-parte Motion to Consider as Waived the Right of Protestant Marcos to file an Answer to the Counter-Protest" filed by the protestee on September 7, 2016; (ii) "Manifestation with Urgent Ex-Parte Motion to Expunge from the Records the Answer *Ad Cautelam* to the Counter-Protest" filed by the protestee on September 19, 2016; (iii) "Manifestation and Answer *Ad Cautelam* to the Counter-Protest" filed by the protestant on September 9, 2016; and (iv) "Manifestation and Motion to Admit Attached Verification" filed by the protestant on September 20, 2016, until such time that the matter as to the correct certification on when protestant actually received the protestee's Verified Answer and Counter-Protest has been clarified;

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- f. **DENY** protestee’s prayer for preliminary hearing of the Special and Affirmative Defenses; and
- g. **DENY** protestee’s prayer to dismiss the Election Protest for lack of jurisdiction and for being insufficient in form and substance.

The Tribunal further Resolved to **NOTE** and **GRANT** the Letter dated January 18, 2017 of Atty. Michael L. Garcia, Acting Division Clerk, Second Division, Commission on Elections (COMELEC), stating that there is an error in the enumeration of barangay and established precincts in his Letter dated November 15, 2016; submitting the corrected barangay and established precincts subject for recount in EPC No. 2016-07 (Ma. Risa Rafols Angana vs. Arlene Espinosa Zambo, et al.); and requesting, in behalf of the COMELEC (Second Division), authority for the temporary prior custody of the ballot boxes and the contents therein, recount of ballots, other election documents and paraphernalia, including the List of Voters, Election Day Computerized Voters List, Voter’s Registration Records and Book of Voters, as well as the data storage devices used in the May 9, 2016 Elections for the position of City Councilors, Toledo City, Province of Cebu, in the following corrected barangay and established precincts pursuant to Section 2, Rule 12 of COMELEC Resolution No. 8804 (*COMELEC Rules of Procedure on Disputes in an Automated Election System*), to wit:

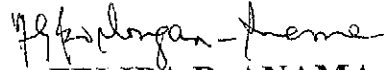
	Barangay	Cluster No.	Established Precincts
1.	Poblacion	22510002	2A, 2B, 2C, 2D
2.	Poblacion	22510011	26A, 26B, 26C, 27A, 27B, 27C
3.	Awihao	22510015	32A, 32B, 32C, 32D
4.	Bagakay	22510018	37A, 37B, 37C, 37D
5.	Bagakay	22510019	38A, 38B, 38C, 38D
6.	Biga	22510028	51A, 51B, 51C, 51D, 51E
7.	Biga	22510029	52A, 52B, 52C, 52D, 52E
8.	Bulongan	22510031	54A, 54B, 54C, 56A, 56B
9.	Cambang-Ug	22510042	72A, 72B, 72C, 72D
10.	Cambang-Ug	22510043	73A, 73B, 73C
11.	Cantabaco	22510053	89A, 89B, 90A, 90B, 90C
12.	Capt. Claudio	22510054	91A, 91B, 91C, 91D, 91E
13.	Capt. Claudio	22510055	92A, 92B, 92C, 92D
14.	Matab-ang	22510110	198A, 199A, 199B
15.	Poog	22510120	213A, 213B, 219A, 219B, 219C
16.	Sam-ang	22510128	224A, 224B, 224C, 224D, 224E
17.	Sam-ang	22510129	225A, 225B, 225C
18.	Subayon	22510139	238A, 238B, 238C, 239A, 239B
19.	Talavera	22510140	240A, 240B, 240C, 240D, 246A
20.	Tungkay	22510145	249A, 249B, 249C, 249D

Ma. Risa Rafols Angana

January 24, 2017

Let copies of this resolution be **PERSONALLY SERVED** on the parties and Ms. Marissa Sable.” (1)

Very truly yours,


FELIPA B. ANAMA
Clerk of the Tribunal *anama*

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