

EN BANC

[G.R. No. 129040, November 17, 1997]

**NESTOR C. LIM, PETITIONER, VS. COMMISSION ON ELECTIONS,
HON. FELIMON C. ABELITA, III, IN HIS CAPACITY AS PRESIDING
JUDGE OF THE REGIONAL TRIAL COURT OF MASBATE, BRANCH
44, AND SALVADORA O. SANCHEZ, RESPONDENTS.
D E C I S I O N**

MENDOZA, J.:

This is a petition for certiorari to annul the resolution dated April 17, 1997 of Commission on Election, sustaining the dismissal by the Regional Trial Court (Branch 44) of Masbate of petitioner's counterprotest against private respondent Salvadora O. Sanchez in connection with the mayoralty contest for Uson, Masbate.

Petitioner Nestor C. Lim and private respondent Salvadora O. Sanchez were candidates for the office of mayor of the Municipality of Uson, Masbate in the May 8, 1995 elections. Petitioner was credited 7,532 votes against 7,193 votes for private respondent and declared winner by a margin of 339 votes. On May 11, 1995, he was proclaimed the duly-elected mayor of Uson, Masbate by the municipal board of canvassers.

On May 22, 1995, private respondent filed an election protest alleging massive and rampant fraud committed by petitioner's camp in 32 polling precincts.

Petitioner was required to answer. Summons and copies of the election protest were served on him on June 2, 1995.^[1] On June 15, 1995, Atty. Renato M. Cervantes entered his appearance as counsel for petitioner and moved for an extension of 15 days from June 17, 1995 within which to file petitioner's answer.

The trial court granted petitioner an extension of ten (10) days from June 16, 1995, i.e., until June 26, 1995, within which to file his answer.

On June 22, 1995, petitioner instead filed a motion to dismiss the election protest on the ground that the protest was filed beyond the reglementary period of ten (10) days counted from the proclamation of the results of the elections on May 11, 1995.

On August 23, 1995, the trial court denied petitioner's motion to dismiss. Private respondent's protest, which was sent by registered mail on May 22, 1995, was held to have been filed on time, considering that May 21, 1995, the last day of the ten-day reglementary period, fell on a Sunday. A copy of the order of denial was received by the petitioner on August 31, 1995. Petitioner filed a motion for reconsideration, but the trial court denied his motion. He then questioned the orders in a petition for certiorari in the Court of Appeals. However, his petition was dismissed by the appellate court for want of jurisdiction.^[2]

Petitioner also filed a motion for a bill of particulars upon the denial of his motion to dismiss. Again, his motion was denied. Petitioner received a copy of the order of denial on November 8, 1995.

On November 13, 1995, petitioner filed his answer with counterprotest by registered mail. The trial court thereafter ordered the parties to name their representatives to the revision committee.

The revision of the ballots subject of private respondent's protest having been finished on June 10, 1996, petitioner, on June 13, 1996, moved for the revision of ballots subject of his counterprotest. But the trial court denied his motion in its order of August 7, 1996 on the ground that petitioner's answer with counterprotest was filed out of time. In its order dated September 9, 1996, it denied petitioner's motion for reconsideration. A copy of the order was received by the petitioner on September 21, 1996.

Petitioner filed a petition for certiorari in the COMELEC which, in its resolution dated April 17, 1997, dismissed petitioner's petition for lack of merit. Petitioner received a copy of the resolution on the same day. On April 22, 1997, he filed a motion for a reconsideration. Realizing that such motion was not allowed under Rule 13, §1(d) of the COMELEC Rules of Procedure, he brought this petition on May 17, 1997.

Meantime, on May 8, 1997, the trial court rendered a decision annulling the proclamation of petitioner as the duly-elected mayor of Uson, Masbate and declaring in his place private respondent as winner of the mayoralty contest by a margin of 111 votes.^[3]

Petitioner contends that the COMELEC gravely abused its discretion in upholding the trial court's order denying his counterprotest. He argues that the Rules of Court, rather than those of the COMELEC, govern the requirements and periods for pleading in election contests cognizable by the Regional Trial Courts. He argues that his pleadings were filed within the periods prescribed by the Rules of Court. He avers that he filed a motion to dismiss the protest on June 22, 1995, within the extension to file an answer granted by the trial court; that he had fifteen (15) days to file an answer from August 31, 1995, the date he received notice of denial of his motion to dismiss; that, in accordance with the Rules of Court, he had up to September 4, 1995 within which to file a motion for a bill of particulars; and that upon denial of his motion, he had five (5) days from receipt of the order on November 8, 1995 within which to file his answer, which he did on November 13, 1995, as provided in Rule 12, §1(b) of the Rules of Court.

After due consideration of the petition, to which an answer (comment) was filed by private respondent, we think the petition should be dismissed for lack of merit.

The COMELEC correctly found that petitioner's counterprotest was filed out of time. The basic flaw in petitioner's theory is his insistence that because the election protest is cognizable by the Regional Trial Court, the period for filing pleadings is governed by the Rules of Court. The Omnibus Election Code (B.P. No. 881) provides:

254. Procedure in election contests. - The Commission shall prescribe the rules to govern the procedure and other matters relating to the election

contests pertaining to all national, regional, provincial, and city offices not later than thirty days before such elections. Such rules shall provide a simple and inexpensive procedure for the expeditious disposition of election contest and shall be published in at least two newspapers of general circulation.

However, with respect to election contests involving municipal and barangay offices the following rules of procedure shall govern:

(a) Notice of the protest contesting the election of a candidate for a municipal or barangay office shall be served upon the candidate by means of a summons at the postal address stated in his certificate of candidacy except when the protestee, without waiting for the summons, has made the court understand that he has been notified of the protest or has filed his answer hereto;

(b) The protestee shall answer the protest within five days after receipt of the summons, or, in case there has been no summons from the date of his appearance and in all cases before the commencement of the hearing of the protest or contest. The answer shall deal only with the election in the polling places which are covered by the allegations of the contest;

(c) Should the protestee desire to impugn the votes received by the protestant in other polling places, he shall file a counter-protest within the same period fixed for the answer serving a copy thereof upon the protestant by registered mail or by personal delivery or through the sheriff;

(d) The protestant shall answer the counter-protest within five days after notice;

(e) Within the period of five days counted from the filing of the protest any other candidate for the same office may intervene in the case as other contestants and ask for affirmative relief in his favor by a petition in intervention, which shall be considered as another contest, except that it shall be substantiated within the same proceedings. The protestant or protestee shall answer the protest in intervention within five days after notice;

(f) If no answer shall be filed to the contest, counter-protest, or to the protest in intervention, within the time limits respectively fixed, a general denial shall be deemed to have been entered;

(g) In election contest proceedings, the permanent registry list of voters shall be conclusive in regard to the question as to who had the right to vote in said election.

Conformably to these provisions, the COMELEC Rules of Procedure likewise provides: