[G.R. No. 192793, February 22, 2011]

FESTO R. GALANG, JR., PETITIONER, VS. HON. RAMIRO R. GERONIMO, AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF ROMBLON, BRANCH 81; AND NICASIO M. RAMOS, RESPONDENTS.

DECISION

This resolves the Petition for *Certiorari* under Rule 65 of the Rules of Court, praying that the Order[1] of the Regional Trial Court (RTC) of Romblon, Branch 81, dated June 24, 2010, denying petitioner's Motion to Admit Answer and the Order[2] dated July 22, 2010, denying herein petitioner's Omnibus Motion, be reversed and set aside.

The records reveal the following antecedent facts.

On May 12, 2010, at 12:37 p.m., petitioner was proclaimed winner for the mayoralty race during the May 10, 2010 Automated Elections for the Municipality of Cajidiocan, Province of Romblon. The proclamation was based on the Certificate of Canvass (COC), but without the official signed Certificate of Canvass for Proclamation (COCP). This was done with the approval of the Provincial Board of Canvassers (PBOC) Chairman.

Subsequently, private respondent Nicasio Ramos, who was also a mayoralty candidate in the same election, requested the Commission on Elections (COMELEC) to conduct a manual reconciliation of the votes cast. The COMELEC then issued Resolution No. 8923, granting said request. The manual reconciliation was done on May 20, 2010 at the *Sangguniang Bayan* Session Hall, after which proceedings the eight winning *Sangguniang Bayan* Members were also proclaimed. The MBOC made erasures and corrections using correction fluid on the COCP for the *Sangguniang Bayan* Members to reflect the results of the manual reconciliation. As for the COCP for the previously proclaimed mayoralty and vice-mayoralty candidates, the total number of votes for each of the candidates remained the same even after the manual reconciliation; hence, only the date was erased and changed to read "May 20, 2010" to correspond with the date of the manual reconciliation.

On May 27, 2010, private respondent filed an election protest case against petitioner before the RTC. The following day, the court sheriff went to petitioner's residence to serve summons with a copy of the petition. The Sheriff's Return of Summons[3] stated that the sheriff was able to serve Summons on petitioner by leaving the same and the attached copy of the protest with a certain Gerry Rojas, who was then at petitioner's residence.

On June 8, 2010, petitioner, together with his then counsel of record, Atty. Abner Perez, appeared in court and requested a copy of the summons with a copy of the election protest. During the hearing on said date, respondent judge directed petitioner to file the proper pleading and, on June 11, 2010, petitioner filed a Motion

to Admit Answer, to which was attached his Answer with Affirmative Defense and Counterclaim. One of his affirmative defenses was that the electoral protest was filed out of time, since it was filed more than ten (10) days after the date of proclamation of the winning candidate.

The trial court then issued the assailed Order dated June 24, 2010, finding the service of Summons on petitioner on May 28, 2010 as valid, and declaring the Answer filed on June 11, 2010, as filed out of time. The dispositive portion of said Order reads as follows:

> WHEREFORE, in view of the foregoing, the Motion to Admit Answer is DENIED for lack of merit.
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> The Motion to Admit Answer having been denied, the preliminary conference shall proceed *ex parte*, as previously scheduled pursuant to Section 1, Rule 9, A.M. No. 10-4-1-SC.
>
> SO ORDERED.[4]

On July 12, 2010, petitioner filed an Omnibus Motion to: (1) Restore Protestee's Standing in Court; (2) Motion for Reconsideration of the Order dated June 24, 2010; and (3) Suspend Proceedings Pending Resolution of Falsification Case Before the Law Department of the COMELEC. However, on July 22, 2010, the trial court issued the second assailed Order denying petitioner's Omnibus Motion.

Hence, the present petition for *certiorari* and prohibition under Rule 65, alleging that respondent judge acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in considering as valid, the Sheriff's Service of Summons on May 28, 2010 on a person not residing in petitioner's residence.

On the other hand, respondents pointed out that the petition for *certiorari* should not be filed with this Court but with the COMELEC.

The petition must fail.

Section 4, Rule 65 of the Rules of Court, as amended by A.M. No. 07-7-12-SC, which provides when and where a petition for *certiorari* should be filed, states thus:

> SEC. 4. *When and where to file petition*. - The petition shall be filed not later than sixty (60) days from notice of the judgment or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion.
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> If the petition relates to an act or an omission of a municipal trial court or of a corporation, a board, an officer or a person, it shall be filed with the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals or with the Sandiganbayan, whether or not the same is in aid of the court's appellate jurisdiction. If the petition involves an act or an omission of a quasi-judicial agency, unless otherwise provided by law or