

## EN BANC

[ G.R. No. 203302, March 12, 2013 ]

**MAYOR EMMANUEL L. MALIKSI, PETITIONER, VS. COMMISSION  
ON ELECTIONS AND HOMER T. SAQUILAYAN, RESPONDENTS.**

### R E S O L U T I O N

**CARPIO, J.:**

#### The Case

Before the Court is a petition for certiorari<sup>[1]</sup> assailing the 14 September 2012 Resolution<sup>[2]</sup> of the Commission on Elections (COMELEC) En Banc which affirmed the 15 August 2012 Resolution<sup>[3]</sup> of the COMELEC First Division in EAC (AE) No. A-22-2011.

#### The Antecedent Facts

Emmanuel L. Maliksi (Maliksi) and Homer T. Saquilayan (Saquilayan) were both mayoralty candidates for the Municipality of Imus, Cavite during the 10 May 2010 Automated National and Local Elections. The Municipal Board of Canvassers (MBC) proclaimed Saquilayan as the duly elected municipal mayor garnering a total of 48,181 votes as against Maliksi's 39,682 votes. Thus, based on the MBC's canvass, Saquilayan won over Maliksi by 8,499 votes.

Maliksi filed an election protest before the Regional Trial Court of Imus, Cavite, Branch 22 (trial court), questioning the results of the elections in 209 clustered precincts. The case was docketed as Election Protest No. 009-10. In its 15 November 2011 Decision, the trial court declared Maliksi as the duly elected Municipal Mayor of Imus, Cavite. The trial court ruled that Maliksi garnered 41,088 votes as against Saquilayan's 40,423 votes. Thus, based on the trial court's recount, Maliksi won over Saquilayan by a margin of 665 votes. The dispositive portion of the trial court's decision reads:

WHEREFORE, in view of all the foregoing, this Court finds the Election Protest filed by Emmanuel L. Maliksi meritorious. Accordingly, Emmanuel L. Maliksi is hereby DECLARED as the duly elected Mayor of the Municipality of Imus, Province of Cavite after having obtained the highest number of legal votes of 41,088 as against Protestant Homer T. Saquilayan's 40,423 votes or a winning margin of 665 votes in favor of the former.

Thus, the election and proclamation of Homer T. Saquilayan as Mayor of Imus, Cavite is hereby ANNULLED and SET ASIDE and he is COMMANDED to immediately CEASE and DESIST from performing the duties and

functions of said office.

Finally, pursuant to Section 4, Rule 14 of A.M. 10-4-1-SC, the Clerk of Court is hereby DIRECTED to personally deliver the copy of the signed and promulgated decision on the counsels of the parties.

SO ORDERED.<sup>[4]</sup>

Saquilayan filed an appeal before the COMELEC, docketed as EAC (AE) No. A-22-2011. Meanwhile, in a Special Order dated 28 November 2011, the trial court granted Maliksi's motion for execution pending appeal.

On 2 December 2011, Saquilayan also filed with the COMELEC a petition for certiorari with prayer for the issuance of a writ of preliminary injunction and temporary restraining order or status quo order with prayer for early consideration, docketed as SPR (AE) No. 106-2011, assailing the trial court's Special Order of 28 November 2011 granting execution pending appeal. A COMELEC First Division Order dated 20 December 2011<sup>[5]</sup> enjoining the trial court from enforcing its 28 November 2011 Special Order was not implemented since only Presiding Commissioner Rene V. Sarmiento (Sarmiento) voted to grant the temporary restraining order while Commissioners Armando C. Velasco (Velasco) and Christian Robert S. Lim (Lim) dissented.

### **The Resolution of the COMELEC First Division**

The COMELEC First Division, after inspecting the ballot boxes, ruled that it was apparent that the integrity of the ballots had been compromised. To determine the true will of the electorate, and since there was an allegation of ballot tampering, the COMELEC First Division examined the digital images of the contested ballots stored in the Compact Flash (CF) cards. The COMELEC First Division used the following guidelines in appreciating the contested ballots:

1. *On Marked Ballots.* - The rule is that no ballot should be discarded as marked unless its character as such is unmistakable. The distinction should always be between marks that were apparently, carelessly, or innocently made, which do not invalidate the ballot, and marks purposely placed thereon by the voter with a view to possible future identification of the ballot, which invalidate it. In the absence of any circumstance showing that the intention of the voter to mark the ballot is unmistakable, or any evidence *aliunde* to show that the words or marks were deliberately written or put therein to identify the ballots, the ballots should not be rejected.

2. *On ballots claimed to have been shaded by two or more persons.* - Unlike in the manual elections where it is easy to identify if a ballot has been written by two persons, in case of an automated election, it would be very hard if not impossible to identify if two persons shaded a single ballot. The best way to identify if a ballot has been tampered is to go to the digital image of the ballot as the PCOS machine was able to capture such when the ballot was fed by the voter into the machine when he cast

his vote. In the absence of any circumstance showing that the ballot was shaded by persons other than the voter, the ballots should not be rejected to give effect to the voter's intent.

3. *On ballots with ambiguous votes.* - It has been the position of the Commission to always take into consideration [that] the intent of the voter shall be given effect, taking aside any technicalities. A ballot indicates the voter's will. In the reading and appreciation of ballots, every ballot is presumed valid unless there is a clear reason to justify its rejection. The object in the appreciation of ballots is to ascertain and carry into effect the intention of the voter, if it can be determined with reasonable certainty.

4. *On spurious ballots.* - Ballots have security features like bar codes, ultra-violet inks and such other security marks to be able to preserve its integrity and the PCOS machines were programmed to accept genuine and valid ballots only. Further, the ballots used in the elections were precinct specific, meaning, the PCOS machine assigned to a specific precinct will only accept those ballots designated to such precinct. This follows that the digital images stored in the CF cards are digital images of genuine, authentic and valid ballots. In the absence of any evidence proving otherwise, the Commission will not invalidate a vote cast which will defeat the sovereign will of the electorate.

5. *On over-voting.* - It has been the position of the Commission that over-voting in a certain position will make the vote cast for the position stray but will not invalidate the entire ballot, so in case of over-voting for the contested position, such vote shall be considered stray and will not be credited to any of the contending parties.

6. *On rejected ballots.* - As correctly observed by [the] court *a quo*, with all the security features of the ballot, the PCOS machines will only accept genuine ballots and will reject it if, *inter alia*, fake, duplicate, ballots intended for another precinct, or has been fed an[d] accepted by the machines already. Bearing in mind the voter's will, rejected ballots can still be claimed by the parties and be admitted as valid votes, if, upon further examination, it is found that the ballot is genuine and was inadvertently rejected by the machine.<sup>[6]</sup>

After the counting and appreciation of the ballot images in the CF cards of the appealed clustered precincts, the COMELEC First Division came up with the following findings:

<b>Clustered Precinct No.</b>	<b>Ruling of Trial Court</b>	<b>Ruling of COMELEC First Division</b>	<b>Votes for Saquilayan</b>	<b>Votes for Maliksi</b>
96	84 ballots were declared stray because	Upon examining the digital images	235	270

	both slots for Maliksi and Saquilayan were shaded.	of the ballots, there was no over-voting.		
61	68 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	230	173
51	133 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded. 2 ballots were declared stray because the slots for Maliksi and Astillero were both shaded.	Upon examining the digital images of the ballots, there was no over-voting.	212	182
42	207 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded. 1 ballot was declared stray because the slots for Maliksi and Astillero were both shaded.	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Maliksi.	273	231
36	92 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded.	Upon examining the digital images of the ballots there was no over-voting. 2 ballots were rejected by the PCOS machine but it was clear that the intent of the voters was	154	202

		to vote for Maliksi.		
03	33 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Saquilayan.	73	89
49	172 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded.	Upon examining the digital images of the ballots, there was no over-voting.	279	265
50	153 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded.	Upon examining the digital images of the ballots, there was no over-voting. 2 ballots were rejected by the PCOS machine but it was clear that the intent of the voters was to vote for Maliksi.	313	275
34	155 ballots were declared stray because both slots for Maliksi and Saquilayan were shaded. 1 ballot was declared stray because the slots for Maliksi and Dominguez were both shaded.	Upon examining the digital images of the ballots, there was no over-voting. 1 ballot was rejected by the PCOS machine but it was clear that the intent of the voter was to vote for Saquilayan.	210	164