

EN BANC

[G.R. No. 182221, February 03, 2010]

THEMISTOCLES A. SAÑO, JR., PETITIONER, VS. COMMISSION ON ELECTIONS, THE MUNICIPAL BOARD OF CANVASSERS OF DULAG, LEYTE, FERDINAND A. SERRANO, IN HIS CAPACITY AS ACTING CHAIRMAN OF THE MUNICIPAL BOARD OF CANVASSERS OF DULAG, LEYTE, AND MANUEL SIA QUE, RESPONDENTS.

D E C I S I O N

DEL CASTILLO, J.:

This case, with records spanning nearly 2,000 pages, revolves around the simple question of what issues may be properly alleged in a pre-proclamation controversy. Petitioner has valiantly and passionately argued his case and invoked every available ground to suspend and annul a proclamation validly made. Unfortunately, argument is not evidence; advocacy is not legitimacy. The mere invocation of the grounds of a pre-proclamation controversy, without more, will not justify the exclusion of election returns which appear regular and authentic on their face.

This Petition for *Certiorari* filed pursuant to Rule 65 in relation to Rule 64 of the Rules of Court, assails the Resolution^[1] dated October 3, 2007 of the Commission on Elections (COMELEC) First Division in SPC Case No. 07-191, as well as the COMELEC *En Banc's* Resolution^[2] dated February 12, 2008.

Petitioner Themistocles A. Saño (Saño) was the official candidate of Lakas Christian Muslim Democrats (LAKAS-CMD) for Municipal Mayor of the Municipality of Dulag, Leyte during the May 14, 2007 synchronized national and local elections.^[3] Private respondent Manuel Sia Que (Que) ran for the same position under the auspices of the Liberal Party.

Petitioner's Factual Allegations

Saño alleged that after the casting and counting of votes, at about midnight of May 14, 2007, a man was seen carrying a ballot box that was not locked; he then inserted certain documents in said ballot box, took the aluminum seal, sealed the box, and then turned it over to the Reception Group. The election returns (ERs) allegedly affected by this anomalous activity were ER Nos. 5301624, 5301603, 5301633, 5301602, and 5301668 (the contested ERs) for Precinct Nos. 49-A, 31-A, 58-A, 30-A, and 90-A, respectively (the questioned precincts).

During the canvassing at the Dulag Municipal Hall, Saño sought to have the contested ERs excluded on the following grounds: massive fraud, illegal proceedings, and tampered/falsified and obviously manufactured returns. He alleged that timely oral objections were made, and the written *Petition for Exclusion* was filed with the Municipal Board of Canvassers (MBOC)^[4] on May 15, 2007 at 6:50

p.m.^[5] together with affidavits prepared by his brother, Tancredo A. Saño, and a certain Peter C. Alicando.^[6] Upon the filing of the *Petition for Exclusion*, canvass of the contested ERs was deferred.

Saño further alleged that in the morning of May 16, 2007, Lydia Camposano (Camposano), Election Officer for Dulag, and Chairperson of the MBOC, was overheard calling a certain "sir" over the telephone to ask for a ruling. The telephone conversation was video recorded by Wilfredo O. Lazar (Lazar), who executed an affidavit attesting to said occurrence.^[7] Saño, through counsel, then verbally moved for the inhibition of Camposano as MBOC Chairman on the ground of bias and for prejudgment of the election results. Camposano allegedly acknowledged that she was talking to her superior, Atty. Jose Nick Medros, Director III of Region VIII and Chairman of the Leyte Provincial Board of Canvassers, but declined to inhibit herself until she was ordered to do so by her superiors. The canvassing continued.

At around 9:00 p.m. of May 16, 2007, Saño filed his written *Petition for Inhibition* together with the affidavit of Lazar, reiterating his request for the inhibition of the MBOC Chair.^[8] At midnight of May 16, 2007, Camposano inhibited herself and declared the canvassing temporarily adjourned.

At around 5:00 p.m. of May 17, 2007, Saño received a copy of the COMELEC Regional Office's Memorandum designating Ferdinand Serrano (Serrano) as the Acting Election Officer and MBOC Chairperson.^[9] Canvassing resumed at about 6:00 p.m. of May 17, 2007, during which Serrano verbally ruled that the contested ERs would be opened. Serrano promised that this ruling would be put in writing within 24 hours. Thereafter, petitioner, through counsel, filed a *Notice of Appeal* at 5:00 a.m. of May 18, 2007^[10] covering the contested ERs.

Finally, Saño claimed that instead of suspending the canvass as required by law and the canvassing rules, Serrano proceeded to hastily open and canvass the contested ERs. Despite the filing of petitioner's *Notice of Appeal*, and the fact that the exclusion of the contested ERs would materially affect the results of the election,^[11] the MBOC neither made a written ruling nor elevated the appeal to the COMELEC together with the MBOC's report and records of the case. Instead, the MBOC proclaimed Que as Municipal Mayor.

Private Respondent's Factual Allegations

On the other hand, Que alleged that in the early morning of May 15, 2007, the MBOC of Dulag, Leyte, convened and started to canvass the ERs.^[12] At around 3:46 a.m. of May 15, 2007, the ER from Precinct No. 30-A was temporarily set aside because of lack of data on the number of registered voters, voters who actually voted, and excess and rejected ballots. At the time that this ER was opened, no objection to its inclusion was made.^[13]

At around 6:15 a.m. of May 15, 2007, the Board of Election Inspectors (BEI) from Precinct No. 30-A appeared before the MBOC to complete the data. This time counsel for Saño complained that the LAKAS-CMD copy had imprints but BEI Chairperson Ruel Congzon explained that the imprints were due to the carbonized

duplicate forms, and that the copies given to the various political parties were borrowed by the watchers so they could copy the election results. Not finding the explanation satisfactory, counsel for petitioner moved for the exclusion of said ER because of material defects in the return. Camposano ruled that the ER from Precinct No. 30-A would be set aside until the submission of petitioner's written objection.^[14]

Meanwhile, at around 5:20 a.m. of May 15, 2007, petitioner's counsel verbally moved for the exclusion of the ERs from Precinct Nos. 31-A, 49-A, and 58-A on the ground that the ballot boxes were opened. The ERs were set aside and the members of the BEI from said precincts were summoned to appear before the MBOC.^[15]

At around 6:30 p.m. of May 15, 2007, counsel for petitioner likewise orally objected to the inclusion of the ER from Precinct No. 90-A on the ground that it had been tampered with and contained many erasures.^[16]

At 6:50 p.m. of May 15, 2007, petitioner's counsel submitted a written *Petition for Exclusion* of the five contested ERs.^[17] Canvass of the contested ERs was deferred until the submission of Que's comment. On May 16, 2007 at 10:49 a.m., Que submitted his written *Opposition*.^[18]

At around 9:17 p.m. of May 16, 2007, petitioner filed a *Petition for Inhibition* of Camposano.^[19] Subsequently, at 12:30 a.m. of May 17, 2007, Camposano manifested that she would inhibit herself as MBOC Chairperson.^[20] At 1:12 a.m. of May 17, 2007, canvassing was temporarily adjourned to await the appointment of a new MBOC Chairperson.^[21]

Canvassing resumed at 5:55 p.m. of May 17, 2007, when the MBOC was reconvened with Serrano as Acting Chairperson^[22] at which time, 25 precincts were not yet canvassed. Serrano explained that he was required by law to finish the canvass, and that the BEIs assigned to the various questioned precincts would be summoned. He also stated that "these allegations can't be determined if we won't open the election returns x x x the BOC will ascertain if the election return has been tampered [with]. We will see if statistical data of ballots are filled out and [ask] the BEI to correct the statistical data about the ballots which were not correct".^[23]

While the ERs were being canvassed, counsel for petitioner did not immediately manifest her intention to appeal the ruling on the canvassing of ER in the questioned precincts. The Minutes of the Canvass provide:

Precinct	Minutes

Precinct	Minutes
90-A ^[2]	<p>Precinct 90A of San Rafael completed the data (contested) Envelope serial No. 015884 Envelope Seal - 0916966 (seal open) ER seal - no seal ER # 5301668 Valid Votes - 164 Spoil - 0 Excess - 0 Rejected - 0</p> <p>Atty. Palabrica asked if the result will be tallied separately. Chairman Serrano: If it is a pre-proclamation issue, then I will separate. I am inviting you to house rules 6 & 8. You are alleging massive fraud and [tampering of ERs]. Atty. Palabrica: I did lump the reasons for this objection. [I] am asking if it's temporarily tallied. Chairman Serrano: You alleged that the ER [was] obviously manufactured. Atty. Palabrica: The ER was already prepared and that is why the ballot box was opened. The face of the ER [is] okay. Chairman Serrano: Such ground is covered by regular protest. Asked Lolita Ducanes, chairman and the third member. Are these your signatures? Are these the same election returns that you signed and placed on the ballot box? Lolita Ducanes: Yes, it's my signature and they are the election returns that we signed. Atty Palabrica: Asked why the ballot box was opened. Lolita Ducanes: It was opened in the custody group.^[25]</p>

Precinct	Minutes
30-A ^[26]	<p>At 2:13a.m. to 2:18 p.m. Precinct 30-A of Barangay Arado was opened and canvassed.</p> <p>Data Envelope # 015811 Envelope Seal # 0915307 (seals sticking to envelope) ER seal # - no inner seal ER # 5301602 # of valid ballots in compartment for valid ballots - 162 # of spoil[ed] ballots - 0 # of excess ballots - 0 # of rejected ballots - 0</p> <p>Atty. Palabrica: had it noted that BEI of 30-A of Brgy. Arado did not give a certificate of votes to the Lakas watchers.</p>
58-A ^[27]	<p>At 2:21 a.m. to 2:40 a.m., Precinct 58-A of Barangay Luan was opened and in good condition.</p> <p>Data Envelope # 015854 Envelope Seal # 0916088 ER inner seal # - 0916087 ER # 5301633 # of valid ballots - 162 # of spoiled ballots - 0 # of excess ballots - 0 # of rejected ballots - 0</p>
49-A ^[28]	<p>At 2:40 a.m. to 2:48 a.m. Precinct 49A of Barangay Camote was opened and canvassed.</p> <p>Data Envelope # 015803 Envelope Seal # 015803 - envelope partly good otherwise in good condition ER seal # - 0915855 ER # 5301624 # of valid ballots - 167 # of spoil[ed] ballots - 0 # of excess ballots - 0 # of rejected ballots - 0</p>