

EN BANC

[G.R. No. 179285, February 11, 2008]

IMELDA Q. DIMAPORO, Petitioner, vs. COMMISSION ON ELECTIONS and VICENTE BELMONTE, Respondents.

RESOLUTION

REYES, R.T., J.:

UNDER consideration is a petition for *certiorari* via Rule 65 of the 1997 Rules of Civil Procedure assailing the (1) Resolution^[1] of the Commission on Elections (COMELEC) Second Division dated July 10, 2007 and (2) Resolution^[2] of the COMELEC *En Banc* promulgated on September 5, 2007.

The antecedent facts:

Petitioner Imelda Dimaporo and private respondent Vicente Belmonte were both candidates for Representative of the 1st Congressional District of Lanao del Norte during the May 14, 2007 elections.

The said legislative district is composed of seven (7) towns and one (1) city, namely: the Municipalities of Linamon, Kauswagan, Bacolod, Maigo, Kolambugan, Tubod, Baroy and the City of Iligan.

On May 22, 2007, the Provincial Board of Canvassers^[3] (PBOC) completed the canvass of the Certificates of Canvass (COCs) for the City of Iligan and four (4) of the municipalities, namely, Linamon, Kolambugan, Tubod and Baroy. Upon adjournment on May 22, 2007, the said PBOC issued a Certification showing respondent Belmonte in the lead, with 52,783 votes, followed by candidate Badelles with 39,315 votes, and petitioner Dimaporo in third place with only 35,150 votes, *viz.*:

OFFICIAL PARTIAL TOTAL VOTES
FOR MEMBER, HOUSE OF REPRESENTATIVES
BASED ON THE CANVASS BY THE PBOC
OF THE COCs OF FOUR (4) MUNICIPALITIES OF 1st
DISTRICT AND OF THE COC OF ILIGAN CITY
(Votes for Candidates Leo M. Zaragoza and Uriel G. Borja omitted)

MUNICIPALITY	BELMONTE	BADELLES	DIMAPORO
Linamon	2,395	1,737	1,835
Kolambugan	1,530	4,287	3,731
Tubod	2,084	2,607	9,904
Baroy	1,849	3,275	4,195

Iligan City	44,925	27,409	15,485
PARTIAL SUB-TOTAL	52,783	39,315	35,150

Sometime in the evening of May 19, 2007, the ballot boxes containing the COCs of Kauswagan, Bacolod and Maigo were allegedly forcibly opened, their padlocks destroyed and the envelopes containing the COCs and the Statement of Votes (SOV) opened and violated. When the PBOC was about to resume the canvassing at around 9:00 a.m. the succeeding day, the forced opening of the ballot boxes was discovered prompting the PBOC to suspend the canvass.

On May 22, 2007, the Commissioner-in-Charge of CARAGA Region, Nicodemo Ferrer, issued a Resolution ordering that the canvassing of the ballots contained in the tampered ballot boxes of Kauswagan, Maigo and Bacolod be suspended until after the National Bureau of Investigation (NBI) submits its findings to the Commission.

On May 24, 2007, the NBI submitted its report. It found as follows:

In our assessment and observation, the culprit(s) managed to enter the room of the Vice-Governor [Irma Umpa Ali] which he/she used as a staging and hiding place while persons are still allowed to enter the building during the canvassing. On the night of May 19, 2007 the culprit(s) hide (sic) in the said room and waited until there were no persons allowed inside the building except the provincial guard on duty who was manning the ground floor at the area near the entrance door. The culprit(s) then entered the Session Hall by using some hard ID Card or any similar object which was inserted in between the door and door-lock, and once inside specifically destroyed the padlocks of the ballot boxes for the Municipalities of Bacolod, Maigo and Kauswagan. x x x.

On May 24, 2007, Atty. Dennis L. Ausan, Regional Director, Region X, issued a Very Urgent Memorandum addressed to the COMELEC *En Banc*, enclosing the NBI report, with the following recommendation:

[T]hat the Commission *En Banc* comes out with an order directing the Provincial Board of Canvassers of Lanao del Norte to immediately reconvene solely for the purpose of retrieving the three envelopes supposedly containing the COCs from the said three (3) municipalities, to open the same in the presence of all watchers, counsels and representatives of all contending parties and the accredited Citizens' Arm of the Commission and right there and then to turn over the same to the representative of the NBI for technical examination by their questioned documents expert.

Further, it is requested that it must also be incorporated in the *En Banc's* order the directive for the PBOC to turnover to the NBI the copies of the COC of the three (3) municipalities intended for the Commission and the Election Officer for purposes of comparison with that retrieved from the questioned ballot box.

Thereafter, on May 25, 2007, COMELEC issued Resolution No. 8073 adopting in part the recommendation of Atty. Ausan directing the PBOC of Lanao del Norte to "*immediately reconvene solely for the purpose of retrieving the three envelopes*

supposedly containing the COCs from the municipalities of Kauswagan, Bacolod and Maigo" and to "open the same in the presence of all watchers, counsels, and representatives of all contending parties and the accredited Citizens' Arm of the Commission and right there and then to direct the representatives of the dominant majority and minority parties to present their respective copies of the COCs for comparison with the COCs intended for the COMELEC and with the COCs inside the envelope just opened."

The COMELEC further resolved that when discrepancies show signs of tampering and falsifying, the PBOC is to *"immediately turnover to the NBI the copies of the COCs of said three (3) municipalities intended for the Commission and the Election Officer for purposes of comparison with those retrieved from the questioned ballot boxes."*

On May 30, 2007, Commissioner Nicodemo Ferrer issued his Memorandum relieving the PBOC of its functions and constituting a special provincial board of canvassers (SPBOC).^[4] He further ordered as follows:

The previous *En Banc* Resolution No. 8073 promulgated on May 25, 2007 is hereby amended to state that upon the opening of the envelopes containing the COCs found inside the tampered ballot boxes for the towns of Kauswagan, Maigo and Bacolod, the same shall at once be canvassed in the presence of the candidates and/or their representatives, taking note of whatever objections that they may interpose on any of the entries in said COCs.

However, no canvassing took place on May 30, 2007 in view of the human barricade of some 100 persons who effectively blocked the entrance to the *Sangguniang Panlalawigan* building.

On May 31, 2007, Commissioner Nicodemo Ferrer issued another Memorandum constituting another SPBOC for Lanao del Norte composed of Atty. Lordino Salvana, as chairman, with Atty. Anna Ma. Dulce Cuevas-Banzon and Atty. Gina Luna Zayas, as members. In said Memorandum, Ferrer gave the following instructions:

Considering the heightened controversies occasioned by the admitted tampering of the three (3) ballot boxes containing the COCs of said towns to be canvassed, you are directed to refrain from proclaiming any candidate until ordered by the Commission through the undersigned Commissioner-in-Charge of Region X. Appeal, if any, should be immediately elevated to the Commission for evaluation.

This amends the urgent memorandum addressed to Atty. Joseph Hamilton Cuevas dated May 30, 2007.

The chairman and members of the new SPBOC arrived at the venue of the canvassing at Tubod, Lanao del Norte at 10:15 p.m. on May 31, 2007. However, the human barricade which blocked the entrance to the *Sangguniang Panlalawigan* building had now swelled into a horde of some 300 persons. As a consequence, the canvassing still did not take place.

On June 1, 2007, the new SPBOC convened and opened the ballot boxes for the towns of Kauswagan, Maigo and Bacolod. As the SPBOC proceeded with the canvass, private respondent Belmonte objected to the inclusion of the COCs of the concerned

municipalities on the following grounds:

- 1.) There were manifest errors in the COCs;
- 2.) The numbers of votes in words and in figures opposite the names of appellant and appellees Badelles and Dimaporo contain intercalations done through the application of a white correction fluid ("SnoPake"), which intercalations are visible to the naked eye;
- 3.) The COCs were obviously manufactured;
- 4.) The COCs were tampered or falsified;
- 5.) The intercalations in the COCs were not made or prepared by the Municipal Board of Canvassers (MBOC) concerned; and
- 6.) The SOVs likewise contain intercalations done through "SnoPake" resulting in an altered number of votes for appellant and respondents.

The SPBOC denied Belmonte's objections due to lack of jurisdiction.

On that same day, June 1, 2007, Belmonte filed his verified notice of appeal before the SPBOC. On June 5, 2007, Belmonte filed his appeal with appeal memorandum. On June 7, 2007, Belmonte filed with the COMELEC his alternative petition to correct manifest errors.

In the assailed Resolution of July 10, 2007, the Second Division of the COMELEC granted Belmonte's petition. While conceding that it has no jurisdiction to hear and decide pre-proclamation cases against members of the house, it took cognizance of the petition as one for the correction of manifest errors, hence, within its jurisdiction as per the last sentence of Section 15 of Republic Act (R.A.) No. 7166. The law provides:

Sec. 15. Pre-proclamation Cases in Elections for President, Vice-President, Senator, and Member of the House of Representatives. – For purpose of the elections for president, vice-president, senator, and member of the house of representatives, no pre-proclamation cases shall be allowed on matters relating to the preparation, transmission, receipt, custody and appreciation of election returns or the certificates of canvass, as the case may be, except as provided for in Sec. 30 hereof. However, this does not preclude the authority of the appropriate canvassing body motu proprio or upon written complaint of an interested person to correct manifest errors in the certificate of canvass or election returns before it. (Underscoring supplied)

The dispositive portion of the challenged Resolution reads:

WHEREFORE, premises considered, the Commission (Second Division) resolves to GRANT the Petition and the questioned Rulings of the respondent MBC is hereby REVERSED AND SET ASIDE. The questioned COCs are hereby ordered excluded and should not be canvassed.

The Board of Canvassers is hereby directed to RECONVENE here in Manila