

EN BANC

[G.R. No. 179813, December 18, 2008]

**DATU PAX PAKUNG S. MANGUDADATU PETITIONER, VS. THE
HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL AND
ANGELO O. MONTILLA, RESPONDENTS.**

DECISION

LEONARDO-DE CASTRO, J.:

Before us is a petition for certiorari with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction^[1] assailing Resolution Nos. 07-179^[2] dated August 16, 2007 and 07-300^[3] dated September 19, 2007, of the House of Representatives Electoral Tribunal (HRET) in HRET Case No. 07-021, entitled *Angelo O. Montilla v. Datu Pax Pakung S. Mangudadatu*.

Datu Pax Pakung S. Mangudadatu (petitioner) and Angelo O. Montilla (private respondent) were congressional candidates for the First District of Sultan Kudarat during the May 14, 2007 national elections. Petitioner won by 17,451 votes and was proclaimed on May 22, 2007 by the Provincial Board of Canvassers as the duly elected Representative of the said congressional district.

On May 31, 2007, respondent filed with the HRET a Petition of Protest (*Ad Cautelam*)^[4] contesting the results of the elections and the proclamation of petitioner.

On June 14, 2007, the Secretary of the HRET caused the service of summons^[5] upon petitioner through registered mail at *Purok Losaria*,^[6] Tamnag (*Poblacion*), Lutayan, Sultan Kudarat, requiring petitioner to file an Answer to the protest within ten (10) days from receipt thereof.

On July 11, 2007, the HRET received the Registry Return Receipt Card,^[7] showing that a certain Aileen R. Baldenas^[8] (Baldenas) received the summons on June 27, 2007.

On August 16, 2007, the HRET issued Resolution No. 07-179^[9] which noted the aforementioned Registry Return Receipt Card and that despite the fact that 43 days from June 27, 2007 had passed since Baldenas received the summons, petitioner had not filed an answer in accordance with Rule 27^[10] of the 2004 HRET Rules. In the same Resolution, the HRET considered petitioner to have entered a general denial of the allegations of the protest.

In an Order dated August 17, 2007, the HRET set the preliminary conference on September 27, 2007 at 11:00 a.m.

Meanwhile, petitioner informally learned of respondent's protest, prompting petitioner to request his lawyers to verify the same from the records of the HRET. Thereafter, his lawyers entered their appearance on September 4, 2007 and requested that they be furnished with copies of the petition of protest as well as notices, orders and resolutions pertaining to the protest.

On September 10, 2007, petitioner filed a Motion to Reconsider^[11] Resolution No. 07-179 and Motion to Admit Answer with Counter-Protest, alleging that he never received the summons issued by the HRET. In his affidavit^[12] attached to the motion, petitioner denied that Baldenas was a member of his household or his employee. He further claimed that she was not authorized to receive any important documents addressed to him. And assuming that he had authorized her, the summons received by her was never brought to his attention.

On September 19, 2007, the HRET issued Resolution No. 07-300^[13] denying for lack of merit, petitioner's Motion to Reconsider Resolution No. 07-179, as well as his Motion to Admit Answer with Counter-Protest, the latter for having been filed out of time. The HRET explained that:

In the instant case, the recipient, Ailene R. Baldenas, could not have received the summons had she not been found in said address or had she not been present therein as to have been in a position to have acted in behalf of the resident of the house, the protestee herein. The act of a person in receiving a mail matter cannot be easily defied by simply denying that the receipt was unauthorized. We doubt protestee's self-serving allegation of lack of knowledge of Ailene R. Baldenas. This denial of authority, or of knowledge of the recipient's identity must be supported by conclusive proof, the burden of which belongs to no other than the one making such assertion, the protestee himself. The ruling cited by protestee in J.M. Tuason & Co. vs. Fernandez does not apply herein as the summons was served at protestee's residence and not just at any house owned by him. In that case, service of summons was made in a house, but not the defendant's residence or dwelling place. Thus, such service was ineffective and improper which is not the case herein as the service of the summons was made to protestee's residence in the province.

The records of the case bear that protestee's residence is Purok Lo[sa]ria, Tamnag (Poblacion), Lutayan, Sultan Kudarat. Aside from the protest, a Manifestation filed by protestant to submit the Roll of Attorneys Numbers of his counsels indicates that a copy thereof was sent to the same address on June 5, 2007, through registered mail. The summons was sent and was received at the same address stated in the protest. Accordingly, the registry return receipt card shows proper receipt by Ailene R. Baldena[s] on June 27, 2007. In all instances of posting, either by protestant or by the Tribunal, the presumption is that mailed matters were duly received by the addressee, by himself or his representatives. The Tribunal should not be taken to task to ascertain or cause the Postmaster's personnel to first determine whether or not the person receiving was or was not known to protestee. With the proof of

service, such as the registry return receipt card, at hand, the Tribunal is satisfied that jurisdiction was acquired over protestee.

After the preliminary conference on September 27, 2007, the HRET issued a Preliminary Conference Order, of even date, granting respondent's motion for the revision of ballots and directing the Secretary of the HRET to conduct the same in all or 100% of the protested precincts in the instant case. The HRET also noted petitioner's manifestation in open court that his participation in the preliminary conference was without prejudice to whatever legal remedies he may avail for the reconsideration of Resolution No. 07-300 dated September 13, 2007, denying his Motion to Reconsider Resolution No. 07-179 with Motion to Admit Answer with Counter-Protest.

Petitioner filed the instant petition imputing grave abuse of discretion amounting to lack of jurisdiction on the part of the HRET for issuing Resolution Nos. 07-179 and 07-300. He also prayed for a temporary restraining order and/or a writ of preliminary injunction for this Court to enjoin the HRET from further proceeding with HRET Case No.07-021.

Petitioner contended that the HRET never acquired jurisdiction over his person because of the absence of a valid service of summons. He argued that a substitute service of summons is made only "when the defendant cannot be served personally at a reasonable time after efforts to locate him have failed."^[14] In his case, since the process server's return failed to show on its face the impossibility of personal service, then the substituted service was improper and invalid.

In the Resolution of this Court dated October 16, 2007, we required respondent to file his comment on the petition for certiorari within a non-extendible period of ten (10) days from notice.

In his comment, respondent countered that the HRET did not commit grave abuse of discretion in issuing Resolution Nos. 07-179 dated August 16, 2007 and 07-300 dated September 19, 2007. He argued that Rule 22 of the 2004 HRET Rules merely states that "the Secretary of the Tribunal shall issue the corresponding summons to the protestee or respondent, as the case may be." He posited then that the intent of the HRET in not expressly specifying personal service of summons on the protestee or respondent was to give it a reasonable discretion or leeway in serving the summons by other means such as registered mail. Thus, service of summons on petitioner through registered mail did not violate Rule 22 of the 2004 HRET Rules. Further, respondent claimed that Rule 14, Sections 6 and 7 of the Rules of Court were inconsistent with Rule 22 of the 2004 HRET Rules and therefore should not be given suppletory application to HRET proceedings.

Petitioner, in his reply, posited that Rule 22 of the 2004 HRET Rules was not inconsistent with Sections 6 and 7 of Rule 14 of the Rules of Court. According to petitioner, the Secretary of the Tribunal is equivalent to the Clerk of Court, and both the regular courts and the HRET have process servers and sheriffs who may serve notices, orders, and summons. Petitioner further contends that there is nothing in the 2004 HRET Rules that allows service of summons by registered mail and strongly asserts that service of summons by registered mail is susceptible to fraud and manipulation.

We grant the petition.

Rule 22 of the 2004 HRET Rules provides:

RULE 22. *Summons*. - If the petition is not summarily dismissed in accordance with Rule 21 of these Rules, the Secretary of the Tribunal shall issue the corresponding summons to the protestee or respondent, as the case may be, together with a copy of the petition, requiring him within ten (10) days from receipt thereof to file his answer.

The 2004 HRET Rules on summons is silent on how the summons should be served on the protestee. Significantly, Rule 80^[15] of the 2004 HRET Rules provides that the 1997 Rules of Civil Procedure applies by analogy or suppletorily in so far as the latter may be applicable and not inconsistent therewith as well as with the orders, resolutions and decisions of the HRET. In view of the failure of the HRET Rules to specify the authorized modes of service of summons, resort then is necessary to Sections 6 and 7, Rule 14, 1997 Rules of Civil Procedure, which state:

SEC. 6. *Service in person on defendant*. - Whenever practicable, the summons shall be served handing a copy thereof **to the defendant in person**, or, if he refuses to receive and sign for it, **by tendering it to him**.

SEC. 7. *Substituted service*. - If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) **by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein**, or (b) **by leaving copies at defendant's office or regular place of business with some competent person in charge thereof**.

In the case at bar, the service of the summons was made through registered mail, which is **not** among the allowed modes of service under Rule 14 of the Rules of Court.

In *Federico S. Sandoval II v. House of Representatives Electoral Tribunal (HRET) and Aurora Rosario A. Oreta*,^[16] this Court has held that in the matter of service of summons, Sections 6 and 7, Rule 14 of the Rules of Court apply suppletorily to the rules of the HRET. To quote from that case:

The matter of serving summons is governed by the *1997 Rules of Civil Procedure* which applies suppletorily to the *Revised Rules of the House of Representatives Electoral Tribunal* through its Rule 80.²³ Sections 6 and 7 of Rule 14 of the *1997 Rules of Civil Procedure* provide -

Sec. 6. *Service in person on defendant*. - Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.

Sec. 7. *Substituted service*. - If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and