

EN BANC

[G.R. No. 126221, April 28, 1998]

**HALIM ASMALA, PETITIONER, VS. COMMISSION ON ELECTIONS
AND HADJI HUSNI MOHAMMAD, RESPONDENT.**

DECISION

PURISIMA, J.:

At bench is a special civil action for *certiorari* under Rule 65, in conjunction with Section 2, Rule 39, Revised Rules of Court, and Section 1, Rule 37 of the 1993 Comelec Rules of Procedure, to review and annul the Resolution of respondent Commission on Elections which set aside the Order, dated March 28, 1996, of Branch 11 of the Regional Trial Court in Basilan Province, directing execution of the judgment of said court which found and adjudged the herein petitioner, Halim Asmala, as the duly elected Vice Mayor of the Municipality of Tuburan, Province of Basilan, and ordering his proclamation.

The antecedent facts are, as follows:

In the elections of May 8, 1995, eight candidates vied for the position of Vice Mayor for the Municipality of Tuburan, Province of Basilan. The canvass of votes by the Municipal Board of Canvassers, indicated that :

Hadji Husni Mohammad garnered	3,065 votes,
Emmanuel "Manny" Alano	2,912 votes, and
Halim Asmala got	2,542 votes.

On the basis of the aforestated results of canvass of votes, Hadji Husni Mohammad was proclaimed, and later he assumed office as Vice Mayor of Tuburan.

On May 22, 1995, Halim Asmala filed an election protest with the Regional Trial Court of Basilan. Docketed as Election Case No. 4-95, the protest alleged that election fraud and other irregularities tainted the election and canvass of votes. On the same day, another candidate, Emmanuel Alano, also filed his protest. Docketed as Election Protest No. 6-95, it was consolidated with Election Protest No. 4-95.

During the hearing, the court *a quo* found that several ballots were written by just one hand while other ballots were prepared by only two persons. Consequently, such ballots were invalidated.

On February 14, 1996, the trial court rendered its decision in said election cases, crediting Halim Asmala, the herein petitioner, with 2,130 votes, Emmanuel Alano with 1, 920 votes and Hadji Husni Mohammad with 1,729 votes, and adjudging petitioner the duly elected Vice Mayor of Tuburan, Province of Basilan.

On February 26, 1996, after the promulgation of the aforementioned decision, private respondent Hadji Husni Mohammad filed his Notice of Appeal with the same Regional Trial Court.

On the following day, February 27, 1996, petitioner presented a Motion for Execution Pending Appeal. Thereto, private respondent Mohammad interposed his opposition, theorizing that his perfected appeal divested the trial court of jurisdiction to resolve the Motion for Execution Pending Appeal.

In his Rejoinder to Respondent's Opposition to the Motion for Execution Pending Appeal, petitioner placed reliance on the ruling of this court in *Edding vs. COMELEC*, 246 SCRA 502 to the effect that the mere filing of a Notice of Appeal does not divest the trial court of jurisdiction over the case and to resolve pending incidents, including motions for execution of judgment pending appeal.

In his Comment on the Rejoinder, the private respondent opined that the case of *Edding* aforecited is inapplicable for the reason that the motion for execution in question was filed after perfection of his appeal.

On March 28, 1996, after due hearing, the trial court came out with a Special Order, granting the Motion for Execution Pending Appeal, of petitioner who was required to post therefor a bond in the amount of ₱30,000.00, and instructing the sheriff concerned to install petitioner as Vice Mayor of Tuburan, Province of Basilan, after the latter's proclamation by the Commission on Elections, and taking oath of office.

On April 1, 1996, the trial court, after approving the property bond posted by petitioner, authorized him to assume office. Also on the same day, private respondent filed a Petition for *Certiorari* with the Commission on Elections, theorizing that the assailed Order of March 28, 1996 of the trial court was issued without or in excess of jurisdiction, considering that his appeal was perfected by the mere filing of the Notice of Appeal and payment of the necessary appeal fees.

On August 20, 1996, after submission by the parties of their respective memoranda, the COMELEC granted the petition of private respondent and set aside the questioned Order, dated March 28, 1996, on the ground of lack of jurisdiction of the respondent trial court to issue the same.

Undaunted, petitioner found his way to this court *via* the instant petition for *certiorari*, filed on September 19, 1996.

On September 21, 1996, two days after the institution of this case, private respondent Mohammad moved for the execution of the August 20, 1996 COMELEC Resolution, setting aside the Order of Execution pending appeal of the Regional Trial Court in Election Protest Case No. 4-95; contending that the said COMELEC Resolution had become final and executory pursuant to Section 13(a), Rule 18 of the 1993 COMELEC Rules of Procedure.

Although copy of the said motion for execution was mailed to the lawyer of petitioner, it contained no notice of hearing. It was only on September 26, 1996, when petitioner's counsel received a copy thereof by registered mail.

On September 27, 1996, the herein petitioner, through counsel, submitted to COMELEC his Opposition to the Motion for Execution, inviting attention to his Petition for *Certiorari* before this court, seeking to set aside and annul subject COMELEC Resolution of August 20, 1996.