

## THIRD DIVISION

[ A.C. NO. 4929, January 26, 2005 ]

**ALEEM AMERODDIN SARANGANI, COMPLAINANT, VS. ATTY. WYNNE B. ASDALA, ATTY. PACA-AMBUNG MACABANDO AND ATTY. TINGARA-AN BANGKIRO, RESPONDENTS.**

### RESOLUTION

**GARCIA, J.:**

Under consideration is this **complaint for disbarment**<sup>[1]</sup> filed by Aleem Ameroddin Sarangani against **Attorneys Wynne B. Asdala, Paca-ambung C. Macabando and Tingara-an M. Bangkiro** for having allegedly violated Sections 231, 261 and 262 of the Omnibus Election Code; Sections 9 and 10 of COMELEC Resolution No. 2962 dated January 5, 1998; and their respective oaths of office.

It is not disputed that complainant Sarangani was a candidate for the position of Governor, Lanao del Sur in the elections of May 11, 1998, while respondents Asdala, Macabando and Bangkiro are members of the Philippine Bar who acted as chairman, vice-chairman and third member, respectively, of the Provincial Board of Canvassers (PBC) for the Province of Lanao del Sur during the same elections.

In his complaint, complainant alleged that on July 1, 1998, at Manila, respondents, "conniving, conspiring and cooperating with each other, clandestinely, and surreptitiously proclaimed Dr. Mahid M. Mutilan as the winning candidate for Governor of Lanao del Sur", as evidenced by a document denominated as "*Certificate of Canvass of Votes and Proclamation of the Winning Candidates for Provincial Governor and Provincial Vice-Governor*", signed by the three (3) respondents, xerox copy of which document is attached as Annex "A"<sup>[2]</sup> to the complaint. According to complainant, such proclamation was based on incomplete results of the elections because respondents very well know that there were still twelve (12) towns in Lanao del Sur where there was a total failure of elections and ten (10) towns where there was a partial failure, involving an aggregate of about one hundred twenty seven thousand (127,000) votes. Complainant further averred that the proclamation thus made by the respondents was declared null and void by the COMELEC thru its Minute Resolution No. 99-2130, dated July 14, 1998<sup>[3]</sup>, the pertinent portion of which reads:

"Resolved to state that the Commission does not recognize the validity of the proclamation of Dr. Mahid Mutilan as the duly elected governor of the province of Lanao del Sur on the basis of a Certificate of Canvass of Votes and Proclamation dated July 1, 1998, executed by the members of the Lanao del Sur Provincial Board of Canvassers namely: Atty. Wynne B. Asdala, Chairman, Atty. Pacaambong C. Macabando (sic), Vice-Chairman (voting without prejudice to results of special elections), and Atty. Tingaraan M. Bangkero (sic), third member, which proclamation was

without authority from the Commission and neither was the First Copy filed with the Commission, and, therefore, null and void, and, moreover special elections will still be held in certain areas of said province on July 18 and 25, 1998, which will materially affect the results of the elections.”

To complainant, respondents’ actuations in the premises constitute not only a violation of the prohibited acts under Sections 261, 262 and 231 of the Omnibus Election Code and Sections 9 and 10 of COMELEC Resolution No. 2962, dated January 5, 1998, relative to the meeting of the board of canvassers and its canvass of votes, but also of their oaths of office as lawyers since respondents thereby committed acts of dishonesty, grave abuse of authority and serious misconduct in office.

Acting on the complaint, the Court, in its resolution of September 7, 1998<sup>[4]</sup>, required the respondents to comment thereon within ten (10) days from notice.

On October 1, 1998, respondent Asdala filed his comment/compliance,<sup>[5]</sup> whereunder he stated by way of defense that the “entries in the xerox forms of the Certificate of Proclamation were completed and filled up to guide the Board in the preparation of the official proclamation in the event the Commission will grant the authority to proclaim Mahid Mutilan and Mamintal Adiong (a congressional candidate), which should have been done in Marawi City after notice to all candidates and political parties.” The same respondent added that the “xerox proclamation were (sic) merely prepared simply to check the true votes of the candidates and not to serve as an official document for proclamation.” Attached to the same comment is a copy of Asdala’s Memorandum<sup>[6]</sup> dated July 16, 1998 to the Comelec, stating that the “PBC has never proclaimed any provincial and congressional candidates for Lanao del Sur.”

For his part, respondent Macabando in his comment of October 8, 1998, prayed for the outright dismissal of the complaint for lack of factual and legal basis. He denied complainant’s allegation that the members of the PBC met in Manila on July 1, 1998 for the purpose of proclaiming Mutilan as the winning candidate for Governor of Lanao del Sur, adding that Mutilan was in fact in Marawi City on that date. This respondent further averred that the “alleged proclamation is nothing but a xerox copy and therefore mere scrap of paper and without probative value”, arguing that if indeed the PBC had proclaimed Mutilan as governor, the original copies of the alleged proclamation document should have been distributed, as prescribed by Comelec Resolution No. 3030 dated April 7, 1998.

On November 24, 1998, complainant filed a common reply to the separate comments of Asdala and Macabando to disprove the allegation of the two (2) that no proclamation was ever made by the PBC on July 1, 1998. Complainant claimed that the said proclamation was even used by Governor Mutilan as a political strategy and mileage for the voters to vote for him in the July 18 and 25, 1998 special elections in Lanao del Sur, as indeed Mutilan talked about same proclamation during his appearance at the Marawi Cable and Television in Marawi City in the evening of July 11, 1998. To firm up his allegation, complainant submitted an English translation of what purports to be Governor Mutilan’s speech in the TV show, pertinent portions of which read:

"My talk on Cable Television is to clarify to you some happenings in Lanao, especially this past election. *You may have heard that last July 1, 1998, in this last seven days I was proclaimed, that I continue as Governor of Lanao.*

*My proclamation should not be taken to mean that this forthcoming elections in municipalities where elections are not yet finished, well, my proclamation is in the first place for reason that the services to you my relatives in Lanao was deemed by the Members of the Provincial Board of Canvassers and the Comelec that it is appropriate that the Office of the Governor be not left vacant until it is determined who won as Governor of Lanao and that there will be no vacuum in the services and in the search for the welfare of Lanao. (Italics supplied)*

As regards respondent Bangkiro, the record would show that he failed to file his comment to the complaint, prompting the Court, in its resolution of February 24, 1999,<sup>[7]</sup> to require him to show cause why he should not be administratively dealt with, even as he was again required to file the desired comment within ten (10) days from notice. Again, this respondent failed to comply. Hence, in its subsequent resolution of January 23, 2002,<sup>[8]</sup> the Court imposed on this respondent a fine of P1,000.00, payable within ten (10) days from notice or suffer imprisonment of five (5) days in case of non-payment.

In the same resolution of January 23, 2002, the Court referred the case to the Integrated Bar of the Philippines (IBP) "for investigation, report, recommendation or decision within ninety (90) days from notice thereof".

Acting on the referral, the IBP Commission on Bar Discipline designated Atty. Milagros V. San Juan as investigating commissioner.

In due time, Commissioner San Juan issued a Notice of Hearing, requiring the parties to appear before her on July 23, 2002 for the hearing of the case. On said date, only respondents Asdala and Macabando appeared as both complainant and respondent Bangkiro were not duly notified. Accordingly, the investigating commissioner reset the hearing to September 10 and 12, 2002. When the case was called anew on September 10, only respondents Asdala and Macabando were again present, prompting Commissioner San Juan to issue an order on said date. In full, the order reads:

"When this case was called for hearing, both respondents Atty. Wynne Asdala and Paca-ambung Macabando appeared. The complainant failed to appear.

**Both respondents manifested that they were willing to submit this case for resolution based on pleadings on record.**

WHEREFORE, this case is now considered submitted for resolution.

SO ORDERED,<sup>[9]</sup> (Emphasis supplied).

Thereafter, Commissioner San Juan submitted to the IBP Board of Governors her Report and Recommendation bearing date November 7, 2002,<sup>[10]</sup> thereunder

recommending the suspension of the respondents from the practice of law for two (2) years, thus:

"From the foregoing, it is evident that respondents indeed issued the 'Certificate of Canvass of Votes and Proclamation of the Winning Candidates for Provincial Governor and Provincial Vice-Governor' which led some people to believe that Dr. Mahid D. (sic) Mutilan has indeed been proclaimed as the winning Provincial Governor of Lanao del Sur, and that secondly the issuance of said Certificate of Canvass of Votes by respondents was without the requisite authority of the Commission on Elections and thus contrary to law. Respondents clearly abused their authority as members of the Provincial Board of Canvassers when they issued said Certificate of Canvass of Votes, and the same constitutes dishonesty and misconduct on their part. Hence, it is recommended that respondents be meted the penalty of two (2) years suspension."

On June 21, 2003, the IBP Board of Governors passed and approved Resolution No. XV-2003-334<sup>[11]</sup> approving and adopting the Report and Recommendation of Commissioner San Juan, to wit:

"RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution/Decision as Annex 'A'; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering that respondents abused their duty as members of the Provincial Board of Canvassers when they issued Certificate of Canvass of Votes without the requisite authority of the Commission on Elections which constitutes dishonesty and misconduct on their part, Respondents are hereby **SUSPENDED** from the practice of law for two (2) years",

which Resolution was transmitted to the Court via a covering letter dated June 30, 2003.<sup>[12]</sup>

On August 11, 2003, or even before the Court could act on the same Resolution, respondents Asdala and Macabando filed with the Court, thru counsel, a MOTION TO SET ASIDE RESOLUTION NO. XV-2003-334 OF THE IBP BOARD OF GOVERNORS<sup>[13]</sup> invoking, as grounds therefor, the following:

"1. The IBP Investigator did not give the respondents full opportunity to defend themselves in violation of the provisions of Sec. 8, Rule 139-B of the 1997 Rules of Civil Procedure.

2. In violation of the directive of this Honorable Court for the IBP to conduct an investigation, no such investigation was ever conducted prior to the submission of the subject Report, Recommendation and Resolution.

3. Contrary to the Board of Governors' conclusion, the herein respondents did not issue the subject Certificate of Canvass of Votes and neither did they make any proclamation of the winners in the subject elections".