

EN BANC

[G.R. No. 190734, March 26, 2010]

**BAI SANDRA S.A. SEMA, PETITIONER, VS. HOUSE OF
REPRESENTATIVES ELECTORAL TRIBUNAL AND DIDAGEN P.
DILANGALEN, RESPONDENTS.**

D E C I S I O N

PERALTA, J.:

This resolves the Petition for *Certiorari* under Rule 65 of the Rules of Court, praying that the Decision of the House of Representatives Electoral Tribunal (HRET), dated September 10, 2009, and its Resolution dated November 12, 2009, be declared null and void *ab initio*.

The narration of facts in the HRET Decision is not disputed by the parties. Pertinent portions thereof are reproduced hereunder:

On 12 June 2007, protestant Bai Sandra S.A. Sema, a congressional candidate of the Lakas-CMD who obtained 87,237 votes or 18,345-vote difference from protestee Dilangalen, who obtained 105,582 votes, filed an election protest against the latter. Allegedly, it was on 1 June 2007, when the Provincial Board of Canvassers of Shariff Kabunsuan proclaimed protestee Didagen P. Dilangalen as Representative of the Lone District of Shariff Kabunsuan with Cotabato City (as no certified true copy of the Certificate of Canvass of Votes and Proclamation of the Winning Candidate for Member of the House of Representatives was attached to the protest).

Protestant Sema is protesting a total of 195 precincts of the Municipality of Datu Odin Sinsuat of the Lone District of Shariff Kabunsuan with Cotabato City, based on the following grounds:

1. The various Boards of Election Inspectors (BEI), in connivance with the protestee, deliberately and wrongfully read, appreciated, and/or tabulated the votes appearing in the ballots that were lawfully and validly cast in favor of the protestant as votes cast for the protestee;
2. Ballots containing valid votes cast for the protestant were misappreciated and considered as marked ballots and declared null and void;
3. Ballots prepared by persons other than the voters themselves, and fake or unofficial ballots wherein the name of

the protestee was written, were illegally read and counted in favor of the protestee;

4. Ballots wherein no name of any candidate for Member of the House of Representatives was written in the blank space for the said position were illegally read and counted in favor of the protestee;

5. Valid votes entered in the ballots in favor of the protestant were considered stray;

6. Groups of ballots wherein the protestee was voted as Representative but which were evidently prepared by one (1) person were purposely considered as valid ballots and counted in favor of the protestee;

7. Individual ballots wherein the protestee was voted as Representative but which were evidently prepared by two (2) or more persons were purposely considered as valid ballots and counted in favor of the protestee;

8. Ballots wherein the protestee was voted as Representative but were void because stickers were posted unto them, and/or because of other patent or pattern markings appearing on them, were unlawfully read and counted in favor of the protestee;

9. The protestee and his supporters illegally switched the ballots and election returns to manipulate the results;

10. The election returns purportedly coming from these precincts that were used in the canvassing by the Provincial Board of Canvassers bear badges of fraud or irregularity, such as the uniform appearance and pattern of writing of taras, showing that they are manufactured and prepared in an environment that allowed the people who prepared them the luxury of time, convenience and comfort;

11. The election returns purportedly coming from these precincts that were used in the canvassing are spurious as they did not contain the thumbmarks and/or the signatures of the members of the BEI;

12. The election returns purportedly coming from these precincts that were used in the canvassing by the Provincial Board of Canvassers were spurious as they were thumbmarked and/or signed by persons who were not members of the BEI on record;

13. The election returns purportedly coming from these precincts that were used in the canvassing by the Provincial Board of Canvassers appear to have been tampered with to

increase the votes for the protestee recorded therein, as shown by the additional taras in the row for the protestee that are in handwriting different from the other taras;

14. The total number of votes for the position of Member of the House of Representatives in the election returns purportedly coming from these precincts that were used in the canvassing by the Provincial Board of Canvassers exceeded the total number of registered voters in these precincts;

15. The total number of votes for the position of Member of the House of Representatives in the election returns purportedly coming from these precincts that were used in the canvassing by the Provincial Board of Canvassers exceeded the total number of voters who actually voted;

16. The protestee engaged in pervasive vote-buying in order to induce the people voting in these precincts to vote for him;

17. The protestee engaged in the so-called negative vote-buying to induce people who would have voted for protestant not to cast their votes anymore;

18. The protestee employed and deployed "flying voters" to unlawfully increase the votes cast in his favor;

19. The protestee employed armed men to terrorize and intimidate voters and compel them to vote for him;

20. The protestee, employing armed men to terrorize and intimidate the protestant's supporters, prevented them from casting their votes in these precincts; and

21. The protestee, employing armed men to terrorize and intimidate the members of the BEI in these precincts, coerced the said election inspectors to manipulate the counting and tallying of the votes for the position of the Member of the House of Representatives by padding the tallied votes cast for the protestee and/or reducing the tallied votes for the protestant.

On July 19, 2007, protestee filed an Answer with Counter-Protest, counter-protesting 198 clustered/merged precincts in Sultan Kudarat and 50 precincts in Sultan Mastura on the following grounds:

(i) The duly appointed watchers of herein protestant [Dilangalen] were not allowed by the protestee [Sema] and her supporters to enter the hereunder enumerated protested precincts and to [obersve] the casting of votes as well as the counting of votes by the Board of Election Inspectors (BEI's);

(ii) The ballots in most of the protested precincts were written by only one or two persons indicating that no actual voting took place.

(iii) Flying voters were employed by the protestee and her supporters.

(iv) Protestee engaged in massive vote-buying during the campaign period and even during the election day.

(v) Registered voters in the protested municipalities, who are active supporters of herein protestant, were prevented by the protestee and her supporters, through violence and intimidation, from casting their votes.

(vi) In connivance with herein protestee, the members of the BEI's in most of the protested precincts merely filled up the Election Returns giving protestee a wide margin over herein protestant.

(vii) During the canvassing before the Municipal Board of Canvassers, the votes allegedly obtained by the protestee were padded by the members of the board of canvassers in favor of the protestee.

(viii) Obviously manufactured election returns, prepared by the protestee and her supporters were used during the canvassing by the Municipal Board of Canvassers in the protested Municipalities.

From September 16-29, 2008, the Tribunal conducted revision of ballots in all the contested precincts. During the revision of ballots, it was discovered that only one (1) out of the 248 ballot boxes of the counter-protested precincts contained ballots. The other 247 counter-protested ballots were totally empty or did not contain ballots and election documents. The results of revision of ballots in the 195 protested precincts and one (1) counter-protested precinct are shown in the Table below.

| | Protestant Sema | Protestee Dilangalen |
|---------------------------------------|----------------------------|---------------------------------|
| Votes per election returns | 2,238 | 33,707 |
| Votes per physical count | 2,794 | 32,603 |

On November 27, 2008, protestant filed her Formal Offer of Exhibits x x x.

x x x x

On January 22, 2009, protestee filed his Comment (on the Formal Offer of Exhibits of the Protestant) x x x.

x x x x

On May 13, 2009, protestee filed his Formal Offer of Evidence x x x.

x x x x

On May 20, 2009, protestant filed her Comment/Objections (Re: Protestee's Formal Offer of Evidence), x x x.

x x x x

The Tribunal received the memoranda of the parties on June 25, 2009.

Protestant seeks a resolution of her protest by way of appreciation of ballots, asserting that the spurious ballots containing votes for protestee be rejected and be themselves considered as proof that the will of the people was thwarted by election fraud in the protested 195 precincts of Datu Odin Sinsuat.

On the other hand, protestee belied protestant's allegation of fraud invoking the presumptions stipulated by the parties and his reliance in the stipulated testimony of then Acting Municipal Treasurer of Datu Odin Sinsuat, Aladin D. Abdullah, vice Municipal Treasurer Datu Eden Ala, who inhibited himself being a relative of a local candidate, that in such capacity she distributed to the different Boards of Election Inspectors (BEIs) in the municipality of Datu Odin Sinsuat the same official ballots, election returns and other election documents which she received from the COMELEC. To protestee, the votes for him were cast by the voters themselves in official ballots validly read for him, and the entries in the objected ballots were not written by the voters themselves.

In contrast to her position in respect to the votes in Datu Odin Sinsuat, as regards the counter-protested precincts in Sultan Kudarat and Sultan Mastura, where protestant was shown to have attained higher number of votes than protestee based on available official results, but when the ballot boxes of 247 out of 248 precincts were opened during revision, they yielded no ballots and other election documents, protestant asserts that determination of votes of the parties should be based on sources other than the missing ballots.^[1]

The tribunal summarized the issues as follows: