

EN BANC

[G.R. No. 170908, August 24, 2007]

NESTOR SAN JUAN, PETITIONER, VS. COMMISSION ON ELECTIONS (FIRST DIVISION) AND NAPOLEON SELPO, RESPONDENTS.

DECISION

QUISUMBING, J.:

This petition for certiorari and prohibition with application for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction assails both the Resolution^[1] dated October 25, 2004 and Order^[2] dated December 5, 2005 of the Commission on Elections (COMELEC) First Division in EAC No. 3-2003. The COMELEC First Division had affirmed the Decision^[3] dated December 4, 2002 of the Municipal Trial Court (MTC) of Tinambac, Camarines Sur, 5th Judicial Region proclaiming private respondent Napoleon Selpo the duly elected *Barangay* Captain of San Ramon, Tinambac, Camarines Sur and declaring the proclamation of petitioner Nestor San Juan null and void. It also denied San Juan's Motion for Reconsideration.

The facts are as follows.

Petitioner Nestor San Juan and private respondent Napoleon Selpo were the candidates for Punong *Barangay* of San Ramon, Tinambac, Camarines Sur during the July 15, 2002 Synchronized *Barangay* and *Sangguniang Kabataan* elections.

Based on the certificates of canvass of votes and proclamation of winning candidates dated July 15, 2002, the *Barangay* Board of Canvassers proclaimed San Juan the duly elected *Punong Barangay*.^[4]

On July 22, 2002, Selpo filed a Petition^[5] docketed as Election Protest Case No. T-02-003 before the MTC impugning the correctness of the certificates of canvass in Precinct Nos. 45-A, 45-A1 and 45-A2/45-A3 of *Barangay* San Ramon and praying for a revision of the ballots cast in these precincts.

In his Answer with Counter-Protest,^[6] San Juan argued that, contrary to Selpo's allegations, there was no fraud, cheating and/or vote buying allegedly committed by him; and if there was any misreading of ballots/votes as claimed by Selpo, it was made to favor the latter who, despite said alleged illegal and irregular acts, failed to subvert the true will of the people of xSan Ramon. San Juan also prayed that a revision of ballots be made.

In an Order^[7] dated August 12, 2002, the MTC, noting that Selpo and San Juan had both agreed to a recount, ordered a recount or revision and directed the Municipal Treasurer of Tinambac to deposit in court the ballot boxes in Precinct Nos. 45-A, 45-

A1, and 45-A2/45-A3.

In a Decision dated December 4, 2002, the MTC proclaimed Selpo the duly elected *Barangay* Captain and declared the proclamation of San Juan null and void. The MTC ruled as follows:

The Protestant having won by Thirteen (13) votes over the Protestee, decision is hereby rendered,

(1) Proclaiming Napoleon Selpo, to be the duly elected Barangay Captain, of San Ramon, Tinambac, Camarines Sur, in the Barangay election held last July 15, 2002; and

(2) Declaring the proclamation of Nestor San Juan to be NULL and VOID.

SO ORDERED.^[8]

San Juan appealed to the COMELEC. In a Resolution dated October 25, 2004, the COMELEC First Division dismissed San Juan's appeal. The dispositive portion of the resolution states:

WHEREFORE, premises considered, the Commission First Division) **RESOLVED**, as it hereby **RESOLVES**, to **DISMISS** the instant appeal for **LACK OF MERIT**.

SO ORDERED.^[9]

San Juan then filed a Motion for Reconsideration on November 16, 2004. However, in an Order dated December 5, 2005, the COMELEC First Division denied his motion. The dispositive portion of the order reads:

In view thereof, this Commission (First Division) do hereby resolves to treat the receipt on November 3, 2005* by the lead counsel as receipt of protestee-appellant of the resolution denying his appeal, and to **DENY** the Motion for Reconsideration for being filed out of time per Sec. 2, Rule 19 of the Comelec Rules of Procedure and for lack of verified statement on the date of receipt of the assailed resolution.

SO ORDERED.^[10]

Consequently, San Juan filed this petition where he raises the following issues:

I.

WHETHER PUBLIC RESPONDENT COMELEC (FIRST DIVISION) COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RESOLVING PETITIONER'S MOTION FOR RECONSIDERATION AND IN REFUSING TO ELEVATE [THE] MOTION FOR RECONSIDERATION AND THE RECORDS OF THE ELECTION APPEALED CASE TO THE COMMISSION ON ELECTIONS EN BANC;

II.