

EN BANC

[G.R. No. 157863, April 28, 2004]

HADJA NIDA B. ARADAIS, PETITIONER, VS. COMMISSION ON ELECTIONS AND ABDUSALI ASMADUN, RESPONDENTS.

R E S O L U T I O N

CARPIO MORALES, J.:

Before this Court is a Petition for Certiorari under Rule 64 of the 1997 Revised Rules of Court seeking to nullify and set aside the March 31, 2003 Resolution of the Commission on Elections (COMELEC) *En Banc* in SPA Case No. 01-362, "*In Re: Petition for Annulment of Proclamation of Abdul Asmadun as Mayor-Elect of Lugus, Sulu, with Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order, Hadja Nida B. Aradais v. Abdusali Asmadun and the Municipal Board of Canvassers of Lugus, Sulu.*"

The antecedent facts of the case are as follows:

Petitioner Hadja Nida B. Aradais and respondent Abdusali Asmadun were mayoralty candidates in the municipality of Lugus, Sulu during the May 14, 2001 elections.

After the casting of votes on May 14, 2001, the ballot boxes were brought to the headquarters of the 104th Army Brigade in Jolo, Sulu for the centralized counting and canvassing of votes.

The canvassing was completed in the morning of May 17, 2001. As there was no pending pre-proclamation controversy, the Municipal Board of Canvassers (BOC) of Lugus, Sulu proclaimed respondent as the mayor-elect by virtue of a Certificate of Canvass (COC) bearing No. 8701805^[1] signed and thumbmarked by its Chairman Sabdani A. Bakri and Secretary Sitti Hindon Dammang. BOC Vice-Chairman Wadja A. Uddoh's signature and thumbmark do not appear in the first COC.

Petitioner, also on May 17, 2001, was proclaimed as mayor-elect of Lugus, Sulu by virtue of a second Certificate of Canvass^[2] bearing the same serial number as that of the first COC, signed and thumbmarked by all three members of the BOC.

On May 19, 2001, respondent took his oath of office and assumed office on July 2, 2001.

Petitioner, on the other hand, took his oath of office on June 23, 2001. On even date, petitioner's spouse former Mayor Mansur Aradais went to the headquarters of the 104th Infantry Brigade and requested for army escorts for the formal assumption of office of petitioner,^[3] he presenting to Brigade Commander Col. Romeo P. Tolentino photocopies of 1) petitioner's *Panunumpa ng Katungkulan* dated June 23, 2001; 2) the second COC; and 3) the Statement of Votes by Precincts

dated May 17, 2001.

Noting that the documents presented by the former mayor were photocopies, Col. Tolentino directed his deputy to accompany the former to have said documents authenticated by a notary public.^[4]

In the meantime, by letter^[5] of June 26, 2001 to Col. Tolentino, Helen G. Aguila-Flores, Regional Election Director of Region IX, Zamboanga City, advised that the COMELEC "recognize[d] only one proclamation," that of respondent, and petitioner's proclamation was without any legal effect. This prompted petitioner to file before the COMELEC a petition for the annulment of respondent's proclamation with prayer for the issuance of writ of preliminary injunction and/or temporary restraining order.

On July 12, 2001, the COMELEC, by Resolution No. 01-1029, created an ad hoc Committee composed of Atty. Ferdinand T. Rafanan, Atty. Juanito O. Icaro and Atty. Jovencio G. Balanguit to look into cases of double proclamations including the case at bar.

The Ad Hoc Committee thereupon directed^[6] petitioner, respondent, the three members of the BOC, COMELEC Regional Director Aguila-Flores, and the Provincial Election Supervisor of Sulu to submit their respective position papers or memoranda and other pertinent documents, as well as affidavits of their witnesses.

On August 2, 2001, respondent submitted a Manifestation^[7] to the Ad Hoc Committee stating that he was adopting his Opposition^[8] submitted to the COMELEC in SPC Case No. 362, *Hadja Nida Aradais v. Abdulsali Asmadun*, as his position paper. In said Opposition, respondent alleged that the canvassing of votes was completed in the morning of May 17, 2001 in an orderly and peaceful manner after which he was proclaimed as mayor-elect; and that the proclamation of petitioner proceeded from illegal acts of terrorism, intimidation and threats against COC Chairman Bakri and Secretary Dammang.

As for petitioner, she alleged in her Memorandum with Manifestation^[9] that while the canvassing had yet to be completed, respondent and his followers pressured and intimidated the members of the BOC to proclaim him as the winner; and that BOC President Bakri and Secretary Dammang succumbed to the threats and proclaimed respondent as mayor-elect, while BOC member Uddoh walked out of the canvassing hall. Attached to petitioner's manifestation was the affidavit of Uddoh confirming petitioner's allegations.

The Ad Hoc Committee, finding it necessary to hear the testimonies of the members of the BOC, held a clarificatory hearing on August 22, 2001 during which only Bakri and Dammang appeared.

By Bakri's testimony, the first COC declaring respondent as the winner was the legitimate one, he (Bakri) having been merely forced to sign the second COC.^[10]

Dammang, on the other hand, testified that she only signed the first COC proclaiming respondent,^[11] and added that when they were to sign said COC, BOC member Uddoh left the proceedings on account of stomach ache and never