

EN BANC

[G.R. No. 123648, December 15, 1997]

**ABDULLAH A. JAMIL, PETITIONER, VS. THE COMMISSION ON
ELECTIONS, (NEW) MUNICIPAL BOARD OF CANVASSERS OF
SULTAN GUMANDER AND ALINADER BALINDONG,
RESPONDENTS.
D E C I S I O N**

KAPUNAN, J.:

Petitioner Abdullah A. Jamil and private respondent Alinader Balindong were among the mayoralty candidates in the municipality of Sultan Gumander, Lanao del Sur, during the May 8, 1995 elections. Said municipality had a total of thirty-two (32) precincts.

On May 20, 1995, during the canvassing of the election returns by the Municipal Board of Canvassers (MBC) headed by Saadia Sansarona, private respondent objected to the inclusion of four (4) election returns from Precinct Nos. 5, 10-1, 20-1 and 20 on the following grounds: a) Precinct Nos. 5 and 10-1 - the election returns were prepared under duress; b) Precinct No. 20-1 - the election return was spurious, the Chairman, Poll Clerk and Third Member of the Board of Election Inspectors did not sign the election return; c) Precinct No. 20 - the canvassed election return was not an authentic copy as the original was missing.

On May 23, 1995, the Sansarona MBC issued its "rulings" on three (3) of the said objections, thus:

WE, the undersigned Chairman and Members of the Board of Canvassers of Sultan Gumander, after deliberating on the objection to the inclusion/exclusion of

ELECTION RETURN(S) NUMBER 661229

OF PRECINCT NUMBER 5

of the City/Municipality of Sultan Gumander, and admitting the supporting evidence consisting of

EXHIBIT 'A' Affidavit of Basir Sarip for petitioner; and

EXHIBIT '1' Affidavit of Basir Sarip withdrawing his previous affidavit

'2.' Affidavit of Malic Solaiman for oppositor,

hereby RULE as follows:

It created confusion on the part of the Board on whom to rely on the two (2) contradicting affidavits of Basir Sarip, Chairman of Prec. No. 5, hence the election return is hereby set aside pursuant to paragraph E, Sec. 33 Comelec Res. No. 2756 for further investigation.^[1]

WE, the undersigned Chairman and Members of the Board of Canvassers of Sultan Gumander, after deliberating on the objection to the inclusion/exclusion of

ELECTION RETURN(S) NUMBER 661236

OF PRECINCT NUMBER 10-1

of the City/Municipality of Sultan Gumander, and admitting the supporting evidence consisting of

EXHIBIT 'A-' Affidavit of Monaintan Maruhom

B- ER661236

C- List of BEIs for petitioner; and

EXHIBIT '1-' ER 661236

2- Affidavit of Liling Adapun

3- Affidavit of Farida Jamil for oppositor,

hereby RULE as follows:

The election Return is hereby set aside to go deeper into the contradicting testimonies of the Chairman of Prec. No. 10-1 and watchers of the respondent. ^[2]

WE, the undersigned Chairman and Members of the Board of Canvassers of Sultan Gumander, after deliberating on the objection to the inclusion/exclusion of

ELECTION RETURN(S) NUMBER 661251

OF PRECINCT NUMBER 20-1

of the City/Municipality of Sultan Gumander Lanao Del Sur, and admitting the supporting evidence consisting of

EXHIBIT 'A-' Affidavit of Basher Randa

B- Appointment of Basher Randa

C- ER No. 661251 for petitioner; and

EXHIBIT '1-' ER 661251

2- Affidavit of Baingcong Mandagla

3- Affidavit of Azisa Abdullah for oppositor,

hereby RULE as follows:

This Election returns is set aside and summons will be issued for the two (2) BEIS who failed to affix their signatures and explain the alleged increase of votes of a candidate and the use of unauthorized envelope without seal containing ER and thereafter a ruling on the matter shall be rendered.^[3]

No ruling was made with respect to Election Return No. 661252 of Precinct 20.

On May 25, 1995, the composition of the MBC was changed. Saadia Sansarona was replaced by Casan T. Macadato as Chairman of the Board.

On May 30, 1995, the Macadato MBC issued its ruling anent Election Return No. 661252 of Precinct No. 20 as follows:

WE, the undersigned Chairman and Members of the Board of Canvassers of Sultan Gumander, after deliberating on the objection to the inclusion/exclusion of

ELECTION RETURN(S) NUMBER 661252

OF PRECINCT NUMBER 20

of the City/Municipality of Sultan Gumander , and admitting the supporting evidence consisting of

EXHIBIT `__` _____

_____ for petitioner; and

EXHIBIT `__` _____

_____ for oppositor,

hereby RULE as follows:

To deny the petition for the exclusion of Election Return No. 661252 for being without any factual and legal basis. And that Comelec Resolution No. 2756, Sec. 24, says that when an Election Return is lost and destroyed, The Board of Canvassers upon prior authority from the Commission may use any of the authentic copies of

said return. [4]

On June 1, 1995, the Macadato Board convened and resumed its canvass using the Municipal Treasurer's copy of the election return from Precinct No. 20.

Said board, likewise, conducted its investigation with respect to the returns from Precinct Nos. 5, 10-1 and 20-1. Said investigation yielded the report dated June 5, 1995, to wit:

MEMORANDUM FOR: The Honorable Chairman

Commission on Elections

Manila

FROM: Acting Election Officer

Sultan Gumander, Lanao del Sur

DATE: June 5, 1995

S U B J E C T : INVESTIGATION REPORT

Respectfully forwarded to the Honorable Chairman, Commission on Elections the result of investigation in connection with Precinct Nos. 5, 10-1, 20 and 20-1.

The previous Municipal Board of Canvasser composed of Saadia Sansarona, Saripali Benito and Ismael Maulay rendered rulings in the election returns in Precinct Nos. 5, 10-1 and 20-1 as follows:

Precinct No. 5, ER No. 661229: SET ASIDE

a) Mr. Basir Sarip, Chairman, BEI executed two affidavits. In first affidavit executed before Atty. Disalo, Mr. Sarip said that he was instructed to accomplish the election return to make sure that Mayor Abdullah Amatonding will win in the precinct. In second affidavit executed before Atty. Mortaba, Mr. Sarip stated that he was forced to sign the first affidavit so he disown and withdraw the first affidavit. Mr. Sarip also stated in the second affidavit that the election in Precinct No. 5 is clean and the election return is the true result of the election.

b) On June 3, 1995, Mr. Sarip personally appeared BEFORE me and executed sworn statement stating that he was forced by Taratingan Balindong to sign the first affidavit at Banday, Malabang, Lanao del Sur and was not allowed to read it. Mr. Sarip totally disowned the contents of the first affidavit. Mr. Sarip also requested that his second affidavit contains the truth that is that the election in Precinct 5 is clean and orderly and the election returns contains the true result of election in Precinct No. 5 and said election returns should be included in the canvass.

Recommendation: INCLUDE ER NO. 661229 IN THE CANVASS OF VOTES
IN SULTAN GUMANDER.

Precinct No. 10-1, ER No. 661236: SET ASIDE

- a) Mrs. Monaintan Marohom, Chairman, BEI executed an affidavit that they were ordered by Radia Balindong, Election Assistant to make sure Mayor Abdullah Amatonding win in our precinct with threat that something will happen if they do not follow.
- b) A representative of Mayor Jamil submitted to me copy of another affidavit of Mrs. Monaintan Marohom stating that she was forced to sign an affidavit at the house of Mida Balindong at Campo Muslim, Malabang by her cousin Yasser Macadato and she was not able to read it. Mrs. Marohom stated that her first affidavit which she signed out of fear because of the threat of Yasser Macadato is false because the truth is that the election in Precinct 10-1 is clean, orderly and honest.
- c) The signature of Mrs. Marohom in her first affidavit is different from her signature found in the election returns, while her signature in the second affidavit executed before Atty. Mortaba is similar or identical with her signature in the election returns.

Recommendation: INCLUDE ER NO. 661236 IN THE CANVASS OF VOTES IN SULTAN GUMANDER. NO LEGAL BASIS TO EXCLUDE THE ELECTION RETURNS WITH MERE AFFIDAVIT OF ONE OF THE THREE MEMBERS OF THE BEI.

Precinct No. 20-1, ER No. 661251: SET ASIDE RULING TO BE RENDERED AFTER BEI ARE SUMMONED.

- a) Mr. Basher Randa executed an affidavit that he is the Chairman of the BEI in Precinct No. 20-1 but that when he went to the MSU Grandstand, the election return is already being prepared by unauthorized persons.
- b) Mrs. Baingcong Mandagla who appeared in the election returns to be the Chairman of the BEI executed an affidavit that she is the Poll Clerk but that Mr. Basir Randa did not show up when the election returns was to be prepared so she was designated by the COMELEC Office to act as Chairman. The appointment of Mrs. Mandagla shows the notation for her to serve as Chairman;
- c) The Poll Clerk, Monette Saripada and the third member, Azisa Abdullah did not sign the election returns;
- d) On May 26, 1995, Monette Saripada and Azisa Abdullah appeared before the MBC and signed the election returns in the presence of the watchers of various candidates and nobody objected to the signing of the election returns which affirm that they are the persons who appeared in the election returns to be the Poll Clerk and Third Member. The signing was photographed by the representatives of Mayor Jamil.

Recommendation: INCLUDE ER NO. 661251 IN THE CANVASS OF VOTES IN SULTAN GUMANDER.

The investigation was conducted because the previous MBC merely SET ASIDE the three election returns for further investigation. The newly