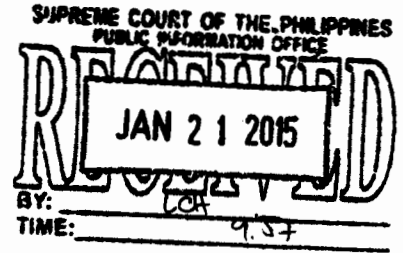




Republic of the Philippines
Supreme Court
Manila
EN BANC
NOTICE



Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated **NOVEMBER 25, 2014**, which reads as follows:

“G. R. No. 202171 - ERNESTO V. CRUZ, Petitioner v. COMMISSION ON ELECTIONS AND ANTONIO S. CAPATI, Respondents.

We hereby resolve the petition for *certiorari* and prohibition¹ assailing the May 17, 2012 order issued by the Commission on Elections *En Banc* (COMELEC) directing the Clerk of the Commission on Electoral Contests Adjudication Department (ECAD) to issue an entry of judgment in COMELEC SPR (BRGY-SK) No. 34-2011 entitled *Antonio S. Capati, Petitioner v. Hon. Franco Paulo R. Arago, Judge, First Municipal Circuit Trial Court of Dinalupihan-Hermosa, Bataan and Ernesto V. Cruz, Respondents.*²

Petitioner Ernesto V. Cruz and respondent Antonio S. Capati ran for the position of Punong Barangay of Saba, Hermosa, Bataan during the May 2010 Barangay Elections. Capati was proclaimed the winner with a margin of three votes.³ Cruz protested the result in the First Municipal Circuit Trial Court of Dinalupihan-Hermosa, Bataan (MCTC), alleging irregularities and violations of the election laws and the general instructions by the Board of Election Tellers.⁴

Considering that Capati did not appear during the preliminary hearing, and did not also file his preliminary conference brief despite notice, the MCTC issued an order on November 19, 2010⁵ allowing Cruz to present evidence *ex parte*, and scheduling the revision of ballots. Capati moved for reconsideration of the order, but the MCTC denied the motion.⁶

¹ Under Rule 65, *Rules of Court*.

² *Rollo*, pp. 22-23.

³ *Id.* at 71-72.

⁴ *Id.* at 113.

⁵ *Id.* at 39.

⁶ *Id.* at 40-42.

Thereafter, Capati brought a petition for *certiorari*, prohibition and *mandamus* in the COMELEC. The Second Division of the COMELEC granted the petition.⁷ Cruz then filed a motion for reconsideration, but the COMELEC *En Banc* denied the motion for being filed late and for not paying the fees within the reglementary period.⁸

Aggrieved, Cruz commenced the present recourse, attributing grave abuse of discretion to the COMELEC *En Banc* for: (a) treating his motion for reconsideration as an appeal, or a special case requiring the filing thereof within five instead of 15 days;⁹ (b) allowing Capati's moot and academic petition to his grave prejudice as the winner during the revision of the ballots in the MCTC;¹⁰ (c) ordering the conduct of another pretrial when it had full custody and safekeeping of the entire records of the case, as well as the ballot boxes holding the original ballots and other election paraphernalia;¹¹ and (d) declaring that the order of default by the MCTC was erroneous.¹²

Both the COMELEC and Capati submitted their respective comments.¹³ Cruz did not file his reply despite notice,¹⁴ and despite having filed several motions for extension that the Court granted.¹⁵ Finally, on March 4, 2014, the Court ordered Cruz's counsel, Atty. Carmelita C. Reyes-Eleazar, to show cause why she should not be disciplinarily dealt with.¹⁶

On May 5, 2014, Atty. Reyes-Eleazar filed her compliance and comment,¹⁷ in which she pertinently averred that:

1.1 The undersigned counsel had the utmost intention to file the Comment in compliance with the September 18, 2012 resolution of the Supreme Court. However, the subsequent turn of events which transpired at the Comelec level after the filing of the instant petition severely discouraged the petitioner to pursue the protest, not to mention the shortness of time before the next 2013 barangay elections were to be held.

1.2 That, notwithstanding the fact that the issue in the case at bar involves merely an interlocutory order which was filed to the Comelec on an original Petition for Certiorari, the Comelec treated the petition as one of an appeal on the protest. Thus, notwithstanding the timely filing of the above-entitled petition for certiorari with the honorable Supreme Court, the Comelec already issued a finality of the herein questioned resolution.

⁷ Id. at 71-75.

⁸ Id. at 22-23.

⁹ Id. at 11.

¹⁰ Id. at 12.

¹¹ Id.

¹² Id. at 14.

¹³ Id. at 112-129, 93-98.

¹⁴ Id. at 101, 132.

¹⁵ Id. at 142, 146.

¹⁶ Id. at 148.

¹⁷ Id. at 152-155.



1.3 That, in its August 6, 2012 order, the Comelec dismissed the private respondent's appeal on the protest on the ground that the Decision of the protest court on the protest was null and void in view of the lack of preliminary conference. And, despite the fact of its receipt of the entire records of the case, including the ballot box and other election documents and paraphernalia involved in the case at bar, the Comelec, resolved to remand the case to the protest court and ordered the court to conduct another preliminary conference on the protest. Petitioner Cruz, was momentarily encouraged by the fact the he could pursue his case once again at the MCTC level in view of the quick disposition of the court of his protest. However, by this time, the Comelec failed to send the ballot box to the protest court despite its own order and a concomitant order from the protest court, along with the several requests from petitioner to do so. While the Comelec issued an order to remand the ballot box to the MCTC, such order was not implemented and followed at all.

1.4 Meantime, already overtaken by events of the forthcoming 2013 midterm elections, the undersigned counsel was told that the petitioner would need time to assess his options and that he would get back to her. The undersigned counsel never heard from the petitioner since then.

2. In view of the foregoing, the undersigned counsel begs for the kind indulgence of the Honorable Supreme Court as she deeply apologizes for her inadvertent failure to file the comment as required in the September 18, 2013 Resolution of the [H]onorable Supreme Court.

3. The undersigned counsel hereby likewise further manifests that she has the utmost respect to the processes and orders of the [H]onorable Supreme Court and she hereby commits to be more careful, cautious and prudent in complying with the orders of the Supreme Court in the future.

4. Considering that the issues in the instant petition had become moot and academic, it inevitably follows that the instant petition should be dismissed.

Although the undersigned counsel would want to pursue the petition on other issues for academic and jurisprudential purposes such as the period of filing of motion for reconsideration on cases involving the original jurisdiction of the Comelec and on protest cases appealed to it, it is hereby respectfully submitted that the precious time of the [H]onorable Supreme Court may be devoted to other pressing matters.¹⁸

Ruling

The Court treats the compliance and comment of his counsel as Cruz's reply, and considers the same to be satisfactory, but warns the counsel to be more diligent in attending to her cases lest she be taken to task

¹⁸ Id. at 152-154.



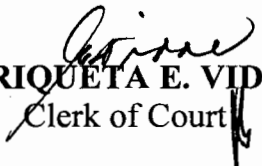
for not complying with her sworn duty under Rule 12.03, Canon 12 of the Code of Professional Responsibility.¹⁹

Given the manifestation by the counsel for Cruz, and considering that the term of the office being contested had meanwhile expired, the issues raised herein have become moot and academic. A case that is moot and academic ceases to present a justiciable controversy due to supervening events, and its resolution would be of no practical value or use.²⁰

WHEREFORE, the Court **DISMISSES** the petition for *certiorari* and prohibition for being moot and academic.

The Court **FINDS** and **CONSIDERS** the compliance and comment submitted by Atty. Carmelita C. Reyes-Eleazar as counsel of the petitioner to be **SATISFACTORY**, but warns her to be more diligent in attending to her cases in the future.” Brion, J., on leave. Perlas-Bernabe, J., on official leave. (20)

Very truly yours,


ENRIQUETA E. VIDAL
Clerk of Court

¹⁹ Rule 12.03 – A lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapsed without submitting the same or offering an explanation for his failure to do so.

²⁰ *Funa v. Villar*, G.R. No. 192791, April 24, 2012, 670 SCRA 579, 592.

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A handwritten signature in black ink, appearing to be the name 'Pomer', is located in the lower right quadrant of the page.