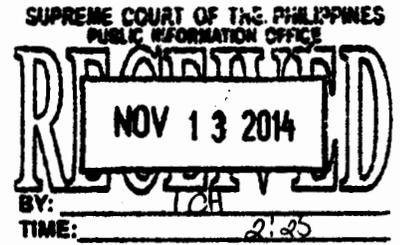




Republic of the Philippines  
Supreme Court  
Manila



EN BANC

NOTICE

Sirs/Mesdames:

*Please take notice that the Court en banc issued a Resolution dated NOVEMBER 11, 2014, which reads as follows:*

**“G.R. No. 208610 (*Fernando C. Corvera vs. Hon. Adriano S. Savillo, Judge-Designate, RTC, Branch 12, Antique and Rony L. Molina*).** – Fernando C. Corvera (petitioner) seeks the nullification of the Order<sup>1</sup> dated July 8, 2013 issued by the respondent, Judge Adriano S. Savillo (Judge Savillo), in his capacity as Judge-Designate of the Regional Trial Court (RTC) of San Jose, Antique, Branch 12, in Election Case No. 2013-01.

In the May 14, 2013 elections, the Municipal Board of Canvassers of San Jose, Antique proclaimed the respondent, Rony L. Molina (Molina), as the duly-elected Mayor of the Municipality of San Jose de Buenavista, Province of Antique after obtaining the highest number of votes cast of 11,459. The petitioner came in second with 11,412 votes.<sup>2</sup>

On May 24, 2013, an election protest<sup>3</sup> was filed by the petitioner alleging discrepancies in the Random Manual Audit, glitches in the operation of the Precinct Count Optical Scan machines and strange pattern of votes (60-Team Pnoy, 30-UNA, and 10-Independents) obtained by the administration, opposition and independent candidates in the Certificate of Canvass.

The RTC allowed the protest to proceed by issuing three Orders all dated June 11, 2013: (1) directing the payment of the necessary additional cash deposit with the Office of the Clerk of Court within five (5) days therefrom; (2) denying the summary dismissal of the Election Protest; and (3) ordering the revision of ballots and directing the delivery of the ballot boxes and other paraphernalia to the court on June 13, 2013 at 9:00 a.m.<sup>4</sup>

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<sup>1</sup> *Rollo*, pp. 78-88.  
<sup>2</sup> *Id.* at 78.  
<sup>3</sup> *Id.* at 215-231.  
<sup>4</sup> *Id.* at 81.

Molina consequently filed an “*Urgent Omnibus Motion for Reconsideration of 3 Orders dated June 11, 2013 with Prayer for Suspension of Commencement of Ballots Revision pending Resolution of this Motion.*”<sup>5</sup> The petitioner did not file any opposition thereto despite receipt of the same.<sup>6</sup>

Acting on the omnibus motion, Judge Savillo rendered the assailed Order on July 8, 2013 dismissing the election protest, *viz*:

ALL THE FOREGOING CONSIDERED, for insufficiency in form and substance, this court resolves to grant the subject Motion for Reconsideration, and as a necessary consequence thereof, the Election Protest No. 2013-01 is hereby **DISMISSED**.

LIKEWISE, for failure to allege with specific definiteness the illegal acts of vote-buying, as no sworn statements of witnesses and no Php 300.00 bills were attached to the sample ballots that were annexed to the Petition, the Counter-Protest is also hereby **DISMISSED** for being insufficient in form and substance.

No pronouncement as to costs.

Let separate copies of this Order be furnished to Atty. Eduardo S. Fortaleza, Atty. Robin P. Rubinos in behalf of the other counsel for the protestee, the Provincial Election Supervisor of the Province of Antique, the Municipal Election Officer of the Municipality of San Jose de Buenavista, Province of Antique, the Municipal Treasurer of San Jose, Antique, the protestant and the protestee, while furnish by mail the COMELEC, Manila.

SO ORDERED.<sup>7</sup>

The petitioner filed a Motion for Partial Reconsideration.<sup>8</sup> Ruling that the motion is a prohibited pleading pursuant to the Commission on Elections (COMELEC) Rules, the RTC denied the same in the Order<sup>9</sup> dated August 5, 2013.

Hence, the petitioner filed the instant petition raising the following grounds, to wit:

- THE COURT *A QUO* GRAVELY ERRED WHEN IT DIRECTED PARTIES TO EFFECT ADDITIONAL CASH DEPOSIT ON A PHP1,000.00 PER PRECINCT BASIS, INSTEAD OF PHP1,000.00 PER CLUSTERED PRECINCT BASIS;

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<sup>5</sup> Id. at 102-115.

<sup>6</sup> Id. at 81.

<sup>7</sup> Id. at 88.

<sup>8</sup> Id. at 134-148.

<sup>9</sup> Id. at 89-101.

- THE COURT *A QUO* GRAVELY ERRED WHEN IT GAVE DUE COURSE TO THE URGENT OMNIBUS MOTION FOR RECONSIDERATION OF THREE (3) ORDERS DATED JUNE 11, 2013, FILED ON JUNE 13, 2013 BY THE PROTESTEE, IN SPIITE OF THE ABSENCE OF PROOF OF SERVICE;

- THE COURT *A QUO* GRAVELY ERRED WHEN IT DISMISSED THE PROTEST FOR INSUFFICIENCY IN FORM AND SUBSTANCE, PURSUANT TO THE ORDER DATED JULY 08, 2013;

and

- THE COURT *A QUO* GRAVELY ERRED WHEN IT DENIED THE PARTIAL MOTION FOR RECONSIDERATION DATED JUNE (SIC) 12, 2013.<sup>10</sup>

Molina filed his Comment; after which, the petitioner filed a Reply.

The petitioner filed the instant petition for *certiorari*<sup>11</sup> ascribing grave abuse of discretion in issuing the Order dated July 8, 2013.

A special civil action for *certiorari* under Rule 65 is an independent action based on specific grounds and available only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. Contrary to the contention of the petitioner, the Order dated July 8, 2013 issued by the RTC is a final order which disposed of the election case. It is in effect a decision rendered by the RTC finding the petitioner's election protest to be insufficient in form and substance. From this order of the RTC, the petitioner should have appealed to the COMELEC pursuant to A.M. No. 10-4-1-SC.<sup>12</sup> Rule 14 thereof provides that:

Section 8. *Appeal.* – An aggrieved party may appeal the decision to the COMELEC within five (5) days after promulgation, by filing a notice of appeal with the court that rendered the decision, with copy served on the adverse counsel or on the adverse party who is not represented by counsel.

Clearly, the petitioner has lost the remedy of appeal and filed the instant petition under Rule 65. It is the rule that a petition for *certiorari* is not a substitute for a lost appeal. In any event, the Court finds no grave abuse of discretion on the part of Judge Savillo in issuing the Order dated July 8, 2013. Grave abuse of discretion has been defined as the arbitrary exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an

<sup>10</sup> Id. at 31.

<sup>11</sup> Id. at 3-74.

<sup>12</sup> 2010 RULES OF PROCEDURE IN ELECTION CONTESTS BEFORE THE COURTS INVOLVING ELECTIVE MUNICIPAL OFFICIALS issued on April 27, 2010.

evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be condemned as having been done with grave abuse of discretion, such an abuse must be patent and gross.<sup>13</sup> After a careful review, the Court finds the assailed order to be in accordance with the law and evidence on record. The RTC extensively laid out the reasons and thoroughly explained to the satisfaction of the Court why it ruled to dismiss the election protest:

An intensive study and exhaustive analysis of the allegations of the Petition revealed that the insufficiency in substance arose from the failure of the protest to: (a) indicate the total number of precincts in the municipality of San Jose; (b) specifically state in detail the acts or omissions complained of showing the electoral frauds, anomalies or irregularities in the protested precincts and how the various irregularities and anomalies had affected the results of the elections; (c) identify the precincts where the PCOS machines malfunctioned or failed to accurately account for the votes in favor of protestant; (d) allege with particularity the number of precincts where the CF cards were found defective; and (e) explain with particularity the failure to transmit the results and in what precincts. The foregoing considered, juxtaposed with the pertinent provisions of A.M. No. 10-4-1-SC quoted hereunder, it succinctly appears that the instant election protest is destined for doomsday.<sup>14</sup>

Furthermore, the petitioner attempts to present allegedly legitimate and novel issues which to his mind, only this Court can pass upon. A perusal of the issues shows that these are matters which can be properly addressed by the COMELEC on appeal.

**WHEREFORE**, the petition is **DISMISSED** for lack of merit.”  
Serenio, C.J., Peralta and Bersamin, JJ., on official business. (adv38)

Very truly yours,

  
**ENRIQUETA E. VIDAL**  
Clerk of Court

<sup>13</sup> *Mayor Gamal S. Hayudini v. Commission on Elections and Mustapha J. Omar*, G.R. No. 207900, April 22, 2014.

<sup>14</sup> *Rollo*, pp. 86-87.

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G.R. No. 208610  
fam 11/11/14 (adv38) 11/13/14

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