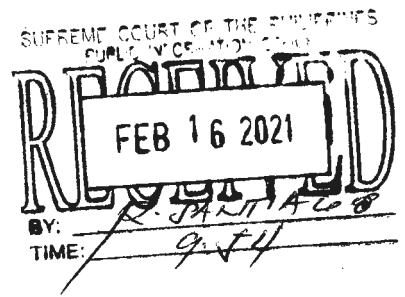


REVISED



Republic of the Philippines
Supreme Court
Manila

EN BANC

NOTICE

Sirs/Mesdames:

*Please take notice that the Court en banc issued a Resolution dated **OCTOBER 6, 2020** which reads as follows:*

“GR. No. 253103 (Alison R. Subrabas v. Hon. Sheriff M. Abas and Atty. Maria Norina S. Tangaro-Casingal)

X ----- X

RESOLUTION

The Case

This is a petition for mandamus to compel the Commission on Elections (COMELEC) to resolve the election complaint filed by petitioner Alison R. Subrabas (Subrabas) against the candidates of the Nationalist Party (NP) and PDP Laban Party for vote-buying and vote-selling in violation of Section 261(A), Article XXII of the Omnibus Election Code.

Antecedents

Epifanio Calayca (Calayca) was a mayoralty candidate in the Municipality of Clarin, Misamis Occidental under the political party Pilipinong Dugong Dakilang Samahan* (PDDS) during the 2019 synchronized election.¹

Three (3) days prior to the election, Calayca filed a case before the COMELEC against mayoralty candidates David M. Navarro (Navarro) and Marissa L. Villa and their party-mates under the Nationalist Party (NP) and

* Sometimes referred to as “Pederalismo ng Dugong Dakilang Samahan” in some parts of the *rollo*.
¹ *Rollo*, p. 6.

PDP-Laban Party, respectively, for vote-buying and vote-selling.² After the election, Navarro and Gloria Fe D. Roa won as Mayor and Vice Mayor, respectively, while seven (7) NP candidates and one (1) independent candidate won the eight (8) sanggunian bayan seats.³

Acting on the complaint, COMELEC Law Department Director Maria Norina S. Tangaro-Casingal, on May 29, 2019, transmitted Calayca's complaint to Atty. Renate A. Magbutay, Regional Election Director of Region X, Cagayan De Oro City for preliminary investigation. In turn, the latter forwarded the complaint to Provincial Election Supervisor Atty. Milber G. Alinas (Atty. Alinas).⁴

Under Order dated July 22, 2019, Atty. Alinas directed Calayca to submit the affidavits of his witnesses and additional copies of the complaint with its attachment considering the number of respondents impleaded therein. Calayca complied.⁵

On August 14, 2019, Navarro and the elected municipal officials of the Municipality of Clarin filed their joint affidavit. They denied engaging in vote-buying/vote-selling, imputed political harassment on complainant, and sought the dismissal of the case for lack of merit.⁶

In September and November 2019, Calayca twice moved to resolve with dispatch the complaint, sans any hearing as he and his party mates feared for their lives.⁷

Meanwhile, sometime in October 2019, Navarro was slain in Cebu.

Between December 2019 and February 2020, Calayca sent various requests for the Regional COMELEC office to conduct a hearing prior to resolving the complaint. He also charged the COMELEC regional officials before the Ombudsman with alleged inaction on his complaint.⁸

On June 4, 2020, Calayca executed an affidavit designating Subrabas to substitute him as complainant in the complaint due to health reasons. Subrabas was Calayca's running mate in the 2019 Election.⁹

On June 11, 2020, COMELEC Provincial Election Supervisor Atty. Alinas replied to Calayca's complaint against him and other COMELEC's officials for abuse authority and dereliction of duty. He explained that

² *Id.* at 7, 17-21.

³ NP Councilors Elias L. Revelo, Roy J. Labuga, Arnel J. Espejo, Jerson E. Saquin, Noel S. Abejuela, Rodolfo P. Tejada, Keymoor E. Lomoljo and Councilor Michael F. Saquin (Independent).

⁴ *Id.* at 7.

⁵ *Id.* at 8.

⁶ *Id.* at 57-64.

⁷ *Id.* at 73-74, 77-81.

⁸ *Id.* at 85-89.

⁹ *Id.* at 91.

COMELEC's role in his complaint for vote-buying and vote-selling was merely to conduct a preliminary investigation. His recommendation on the complaint had already been submitted to the COMELEC Law Department in February 2020 for transmittal to the COMELEC *En Banc* which shall determine whether to file the case with the regular court.

Present Petition

Subrabas directly comes to the Court seeking the remedy of mandamus to compel COMELEC to immediately resolve the complaint for election offense against the named officials based on the evidence she had submitted.

Ruling

Rule 65 and other related provisions of the 1997 Rules of Civil Procedure, as amended, require strict compliance with the requirements governing petitions for *certiorari*, prohibition and mandamus filed with the Supreme Court. Strict compliance with the Rules of Court is indispensable for the prevention of needless delays and for the orderly and expeditious dispatch of judicial business.¹⁰ Failure to comply therewith warrants the dismissal of the petition.

Here, the petition suffers from numerous infirmities, *viz.*:

- (1) lack of proof of service of the petition on the COMELEC and adverse parties as required by Section 2 (c), Rule 56, Section 3 (3rd par.), Rule 46 in relation to Section 2 (1st par.), Rule 56, and Section 13, Rule 13, 1997 Rules of Civil Procedure, as amended;
- (2) failure to file the required number of plain copies of the petition as required by the Efficient Use of Paper Rule in relation to Section 6 (2nd par.), Rule 65 in relation to Section 2 (c), Rule 56, 1997 Rules of Civil Procedure, as amended;
- (3) paid legal fee is P830.00 short;
- (4) failure to indicate petitioner's contact details, e.g., telephone number, fax number, cellular phone number or e-mail address, pursuant to the *En Banc* Resolution dated July 10, 2007 in A.M.

¹⁰ *Saint Louis University v. Sps. Cordero*, 478 Phil. 739, 754 (2004).

No. 07-6-5-SC (Re: Statement of Contact Details of Parties or Their Counsels in All Papers Filed with the Supreme Court).

(5) failure to submit the required competent proof of identity in the verification/certification.

In view of the foregoing procedural infirmities, the petition ought to be dismissed. For procedural rules are not to be disdained as mere technicalities. They may not be ignored to suit the convenience of a party. Adjective law ensures the effective enforcement of substantive rights through the orderly and speedy administration of justice.¹¹

But even if we disregard these infirmities, the petition must still fail. Mandamus lies to compel the performance of a ministerial duty when refused, but not to compel the performance of a discretionary duty.¹² An act is considered ministerial if “an officer or tribunal performs in the context of a given set of facts, in a prescribed manner and without regard for the exercise of his or its own judgment, upon the propriety or impropriety of the act done.” In contrast, an act is considered discretionary “[i]f the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed.”¹³ The writ will lie if the tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law enjoins as a duty resulting from an office, trust or station. The writ of mandamus, however, will not issue to compel an official to do anything which is not his duty to do, or to give to the applicant anything to which he is not entitled by law.¹⁴

In the prosecution of election cases, the COMELEC’s duty is to conduct preliminary investigation to determine whether or not there is ground to file an Information to the court. Petitioner who has a pending election complaint before it now asks the Court to direct COMELEC to immediately resolve it.

For sure, the Court cannot, by mandamus, direct COMELEC on how to conduct its investigation of an election offense. It is within its exclusive authority at first instance to determine whether or not there is basis in filing the complaint with the trial court. This is a matter of discretion and not just a ministerial duty, hence, beyond the ambit of mandamus.

In any event, there is no showing that the remedy of appeal or other plain, speedy or adequate remedy is not available to petitioner in the ordinary course of law. In fact, she has not even shown that she has exhausted all the remedies available to her before the COMELEC. Verily,

¹¹ *BPI v. Court of Appeals*, 646 Phil. 617, 627 (2010).

¹² *Knecht v. Desierto*, 353 Phil. 494, 503 (1998).

¹³ *De Lima v. Reyes*, 776 Phil. 623, 639-640 (2016).

¹⁴ *Association of Retired Court of Appeals Justices, Inc. v. Abad, Jr.*, G.R. No. 210204, July 10, 2018.

therefore, her immediate resort to mandamus before the Court is at best premature.

ACCORDINGLY, the petition is **DISMISSED.**" Baltazar-Padilla, J., on leave. (44)

By authority of the Court:


EDGAR O. ARICHETA
Clerk of Court

ALISON R. SUBRABAS (reg)
Petitioner
Purok No. 3, Mialen, Clarin
Misamis Occidental

~~PUBLIC INFORMATION OFFICE (x)~~
~~JUDICIAL RECORDS OFFICE (x)~~
~~JUDGMENT DIVISION (x)~~
Supreme Court

G.R. No. 253103
kat 10/6/20 (URes44) 2/11/21

HON. SHERIFF M. ABAS (reg)
Chairperson
Comelec, Intramuros, Manila

ATTY. MARIA NORINA S. TANGARO-CASINGAL (reg)
Law Department
Comelec, Manila

ATTY. RENATO A. MAGBUTAY (reg)
Regional Election Director
Region X, Cagayan de Oro City

ATTY. MILBER G. ALINAS (reg)
Comelec Investigator, Misamis Occidental
Oroquieta City

MARRY DOLLY D. REVIL (reg)
Comelec Registrar
Clarin, Misamis Occidental

HON. GLORY FE D. ROA (reg)
Municipal Mayor
Clarin, Misamis Occidental

HON. MEL DAVIDSON R. NAVARRO, et al. (reg)
Respondents in Case No. 29-186
Clarin, Misamis Occidental

THE SOLICITOR GENERAL (reg)
Office of the Solicitor General
134 Amorsolo St., Legaspi Village
Makati City

