



Republic of the Philippines
Supreme Court
 Manila

EN BANC

ROLANDO P. TOLENTINO,
 Petitioner,

G.R. No. 218536

Present:

SERENO, C.J.,
 CARPIO,
 VELASCO, JR.,
 LEONARDO-DE CASTRO,
 BRION,
 PERALTA,
 BERSAMIN,
 DEL CASTILLO,
 PEREZ,
 MENDOZA
 REYES,
 PERLAS-BERNABE,
 LEONEN, and
 JARDELEZA, JJ.

- versus -

**COMMISSION ON ELECTIONS
 (FIRST DIVISION), ATTY. CRISTINA
 T. GUIAO-GARCIA, and HENRY
 MANALO,**

Promulgated:

January 26, 2016

Respondents.

J. Brion

X-----X

DECISION

BRION, J.:

This is a petition for *certiorari* filed by Rolando P. Tolentino from the May 25, 2015 Order of the Commission on Elections (*Comelec/the Commission*) in **SPR (BRGY) No. 03-2015**.¹ Tolentino questions the Commission's order *advising* the Election Officer of Tarlac City to await its resolution of the case before implementing the writ of execution issued by the Municipal Trial Court in Cities (*MTCC*), Tarlac City, in Election Case No. 03-2013.

¹ *Rollo*, pp. 426-427. Issued by the COMELEC, First Division, through Presiding Commissioner Christian Robert S. Lim.

Brion

Antecedents

During the 2013 barangay elections, Tolentino and respondent Henry Manalo both ran for the position of Barangay Captain in Barangay Calingcuan, Tarlac City.

The election was held on October 28, 2013. Manalo was proclaimed the winner after garnering 441 votes compared to Tolentino's 440. Tolentino immediately filed an election protest before the MTCC on October 30, 2013. The protest was docketed as **Election Case No. 03-2013**.

During the revision of votes, the MTCC's initial tally was 439 votes for Tolentino and 442 votes for Manalo. However, the MTCC invalidated six (6) of the ballots cast for Manalo and one (1) ballot cast for Tolentino. Thus, Tolentino came out ahead.

On November 26, 2014, the MTCC proclaimed Tolentino as the winner with 438 votes compared to Manalo's 436. On the very same day, Manalo filed a Notice of Appeal with the MTCC.

The following day, November 27, 2014, Tolentino moved for execution pending appeal. Manalo opposed the motion.


On December 16, 2014, the MTCC issued a Special Order granting Tolentino's motion for execution pending appeal [pursuant to Rule 14, Section 11(b)² of the Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials], but held the issuance of the writ in abeyance. The MTCC also gave due course to Manalo's appeal.

On January 8, 2015, Manalo filed with the COMELEC a Petition for *Certiorari*, with a corresponding application for the issuance of a temporary restraining order (*TRO*), a *status quo ante* order, or a writ of preliminary injunction. Manalo argued that the MTCC issued the Special Order with grave abuse of discretion because: (1) an execution pending appeal was not justified, and (2) Manalo, not Tolentino, was the clear winner in the election. The petition was docketed as **SPR (BRGY) No. 03-2015**.

On January 30, 2015, the MTCC issued the writ of execution.

² **Sec. 11. Execution pending appeal.** – On motion of the prevailing party with notice to the adverse party, the court, while still in possession of the original records, may, at its discretion, order the execution of the decision in an election contest before the expiration of the period to appeal, subject to the following rules: x x x

(b) If the court grants an execution pending appeal, an aggrieved party shall have twenty working days from notice of the special order within which to secure a restraining order or *status quo order* from the Supreme Court or the Commission on Elections. The corresponding writ of execution shall issue after twenty days, if no restraining order or *status quo order* is issued. During such period, the writ of execution pending appeal shall be stayed.



On the same day, the COMELEC, First Division, issued a 60-day TRO prohibiting the MTCC from implementing its Special Order in Election Protest Case No. 03-2013. The Commission also required Tolentino to file his answer to the petition.

On February 5, 2015, Tolentino filed his answer and moved for the reconsideration of the TRO.

On February 9, 2015, the Commission required Manalo to file his Comment/Opposition to the motion for reconsideration. Manalo complied on February 17, 2015.

On February 27, 2015, Tolentino filed an urgent motion for the Commission to resolve his pending motion for reconsideration. Acting on the urgent motion, the Commission resolved to include the matter in the hearing of the main petition scheduled on March 4, 2015.

After hearing the parties on March 4, 2015, the Commission directed both parties to submit their respective memoranda within 10 days, after which the case shall be deemed submitted for resolution.

The 60-day TRO lapsed on April 1, 2015, without the Commission issuing a writ of preliminary injunction or rendering a decision. Thus, on April 10, 2015, Tolentino wrote the MTCC requesting the implementation of the writ of execution pending appeal. Tolentino also wrote to the City Election Officer of Tarlac requesting the implementation of the writ of execution pending appeal.³

On April 27, 2015, the MTCC denied Tolentino's request/motion because it no longer had jurisdiction to entertain any further motions after it had transmitted the records of the case to the Commission.

Despite the MTCC's denial, Tolentino, through Atty. Ramon D. Facun, wrote a "Final Request" to the COMELEC City Election Office demanding the implementation of the writ of execution pending appeal with an accompanying threat that he would file contempt charges if immediate implementation would not take place:

In view of the foregoing, protestant Rolando Tolentino respectfully request, [sic] again, for the immediate implementation of the Writ of Execution Pending appeal dated January 30, 2015 within five (5) days from receipt hereof. **Otherwise, much to my regret my client will file contempt charge [sic] and other charges necessary for your non-action to the Writ of Execution Pending Appeal for implementation.**⁴
(emphasis supplied)

³ *Rollo*, p. 412.

⁴ *Id.* at 416.

Respondent Atty. Cristina R. Guiao-Garcia, Election Officer IV, endorsed the matter to the Commission's Law Department which, in turn, made its own endorsement to the First Division where the case was pending.

Acting on the endorsement, the Commission issued the assailed order on May 25, 2015. The relevant portion reads:

Acting thereon and considering that the instant case is now deemed submitted for resolution per Order dated March 4, 2015 issued by the Commission (First Division) and the main case, the Election Appeal Case, docketed as EAC (BRGY) No. 07-2015 [sic] entitled "*Rolando Tolentino, protestant-appellee vs. Henry Manalo, protestee-appellant*," is likewise submitted for resolution, the Commission (First Division) hereby **ADVISES** herein Atty. Cristina T. Guiao-Garcia, Election Officer IV, Tarlac City, Tarlac, to await the Order and Resolution of the case by the Commission (First Division).

SO ORDERED.⁵

On June 26, 2015, Tolentino filed the present petition.

The Petition

Tolentino protests: (1) that the Commission committed grave abuse of discretion in issuing the Order dated May 25, 2015, pursuant to the endorsement of the Law Department; (2) that the order was issued without giving him the benefit of a hearing; (3) that the order effectively prohibited the implementation of the writ of execution pending appeal without the issuance of a writ of injunction; and (4) that Atty. Guiao-Garcia's refusal to implement the writ of execution pending appeal amounted to willful disobedience and is unethical for a lawyer.

Manalo counters: (1) that nothing in the assailed Order constitutes grave abuse of discretion on the part of the Commission; (2) that Tolentino was trying to subvert the Commission's authority, in blatant disregard of the pendency of the case, by seeking relief from another forum: the local COMELEC office; and (3) that Tolentino failed to exhaust his available remedies because he did not move for the reconsideration of the Comelec's Order.

Finally, the Commission maintains: (1) that the present petition is premature because Tolentino has a plain, speedy, and adequate remedy available – a motion for reconsideration of the May 25 Order; and (2) that the petition failed to show that Atty. Guiao-Garcia, who even sought guidance from the Commission, brazenly disregarded the appropriate processes.

⁵ *Id.* at 427.

Our Ruling

We dismiss the petition for patent lack of merit.

Certiorari is available when a court or other tribunal exercising quasi-judicial powers acts without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction. It is an extraordinary remedy of last resort designed to correct errors of jurisdiction.

There is grave abuse of discretion justifying the issuance of the writ of *certiorari* when there is such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction;⁶ where power is exercised arbitrarily or in a despotic manner by reason of passion, prejudice; or where action is impelled by personal hostility amounting to an evasion of positive duty, or to virtual refusal to perform the duty enjoined, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.⁷

After evaluating the facts, this Court fails to see any action on the part of the Commission that constitutes grave abuse of discretion or absence of jurisdiction.

First, the assailed Order dated May 25, 2015, was directed to City Election Officer IV Atty. Guiao-Garcia. As an agent of the Commission, an election officer is under the Commission's direct and immediate control and supervision.⁸ The Commission clearly has the power and jurisdiction to issue orders to its employees to carry out its mandate. It is even clothed with the power to discipline or relieve any officer or employee who fails to comply with its instructions.⁹

Second, the Commission is authorized to enforce its directives and orders that, by law, enjoy precedence over that of the MTCC. The Omnibus Election Code explicitly states:

Omnibus Election Code
Article VII
The Commission on Elections

Sec. 52 Powers and functions of the Commission on Elections. – In addition to the powers and functions conferred upon it by the Constitution, the Commission shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections for the purpose of ensuring free, orderly and honest elections, and shall: x x x

⁶ *Abad Santos v. The Province of Tarlac*, 67 Phil. 480-481 (1939); *Tan v. People*, 88 Phil. 609 (1951); *Pajo v. Ago*, 108 Phil. 905, 916 (1960).

⁷ *Tavera-Luna, Inc. v. Nable*, 67 Phil. 340-341 (1939); *Alafriz v. Nable*, 72 Phil. 278-279 (1941); *Liwanag v. Castillo*, 106 Phil. 375 (1959).

⁸ OMNIBUS ELECTION CODE, Section 52(a), Batas Pambansa Blg. 881 (1985).

⁹ *Id.*

(f) Enforce and execute its decisions, directives, orders and instructions **which shall have precedence over those emanating from any other authority**, except the Supreme Court and those issued in habeas corpus proceedings.¹⁰

Third, the MTCC's writ of execution pending appeal cannot be enforced because it was issued after the MTCC had already lost its residual jurisdiction.

The MTCC rendered its decision on November 26, 2014. Both parties received copies of the judgment on the same day. Pursuant to Rule 14, Section 5 of AM No. 07-4-15-SC, Manalo had a reglementary period of five days, **or until December 1**, to file his notice of appeal.

Manalo filed his notice of appeal on the very same day. Pursuant to Rule 14, Section 10 of AM No. 07-14-15-SC, the MTCC clerk of court was duty bound to transmit the records of the case to the Commission **within fifteen days, or until December 11**.¹¹ Tolentino moved for execution pending appeal on November 27, 2014.

Rule 14, Section 11 of AM No. 07-4-15-SC provides the window of time when the MTCC retains residual powers to order execution pending appeal:

Sec. 11. Execution pending appeal. – On motion of the prevailing party with notice to the adverse party, the court, **while still in possession of the original records**, may, at its discretion, order the execution of the decision in an election contest **before the expiration of the period to appeal**, subject to the following rules: x x x. (emphasis supplied)

Under this Rule, the MTCC retains residual jurisdiction while two conditions concur: (1) records of the case have not yet been transmitted to the Commission; and (2) the period to appeal has not yet expired.

The MTCC ordered execution pending appeal on **December 16, 2014**. At this point in time, the five-day period to appeal had already expired. Moreover, under the presumption of regularity in the performance of their duties, the clerk of court was presumed to have already transmitted the records of the case to the Electoral Contests Adjudication Department of the Commission.

Thus, the MTCC had already lost complete jurisdiction of the case when it issued the writ of execution pending appeal. At this point, the proper forum that could have granted execution pending appeal was the Commission itself which already acquired jurisdiction over the case. It is a

¹⁰ OMNIBUS ELECTION CODE, Section 52(f).

¹¹ **Sec. 10. Immediate transmittal of records of the case.** – The clerk of court shall, within fifteen days from the filing of the notice of appeal, transmit to the Electoral Contests Adjudication Department, Commission of Elections, the complete records of the case, together with all the evidence, including the original and three copies of the transcript of stenographic notes of the proceedings.

fundamental legal tenet that any order issued without jurisdiction is void and without legal effect – a lawless thing which can be treated as an outlaw and slain on sight.¹²

Fourth, even assuming that the writ of execution was issued before the MTCC lost jurisdiction, the MTCC is still subject to the Commission's appellate jurisdiction. The Commission has the power and jurisdiction to affirm, reverse, vacate, or annul the MTCC's judgment. The Commission also has jurisdiction to restrain implementation of the MTCC's judgment through injunctive writs. Tolentino cannot argue that the Commission's refusal to implement the decision pending appeal is beyond the latter's jurisdiction.

We note that despite Manalo's notice of appeal, he filed a petition for *certiorari* with the Commission rather than an appeal brief. Nevertheless, we glean an intention from the Commission to treat the petition as an appeal. This Court is mindful of the liberal spirit pervading the Commission's rules of procedure¹³ and the Commission's authority to suspend any portion of its rules in the interest of justice.¹⁴ Thus, the Commission has the prerogative to treat the petition for *certiorari* as an appeal, as this Court has done in the past in the interest of justice. This Court will not interfere in the Commission's exercise of this prerogative.

Fifth, Tolentino insists that he was not given notice nor the opportunity to be heard. However, the records (and even in Tolentino's pleadings) indicate otherwise: (1) Tolentino filed his answer to the petition and motion for reconsideration of the Commission's TRO on February 5, 2015; (2) the Commission heard Tolentino's motion for reconsideration of the TRO on March 4, 2015; and (3) the Commission even allowed Tolentino to file his memoranda.

Thus, we find no basis in Tolentino's allegation that he was denied the right to notice and hearing. All things considered, we fail to see how the Commission allegedly exceeded its jurisdiction or acted with grave abuse of discretion.

Lastly, *certiorari* is a remedy of last resort. It is not available if a party still has another speedy and adequate remedy available. The petition is premature because Tolentino could still have moved for reconsideration. Tolentino sought relief from everywhere (particularly, from the MTCC, the

¹² *Nazareno v. Court of Appeals*, 428 Phil. 32, 42 (2002).

¹³ Rule 1 – Introductory Provisions

Sec. 3. *Construction* – These rules shall be **liberally construed** in order to promote the effective and efficient implementation of the objectives of ensuring the holding of free, orderly, honest, peaceful and credible elections and to achieve just, expeditious and inexpensive determination and disposition of every action and proceeding brought before the Commission.

¹⁴ Rule 1 – Introductory Provisions

Sec. 4 – *Suspension of the Rules* – In the interest of justice and in order to obtain speedy disposition of all matters pending before the Commission, these rules or any portion thereof may be suspended by the Commission.

local COMELEC office) except from the proper body that had jurisdiction to order execution pending appeal.

As a final word, this Court deems it necessary to admonish the petitioner and his counsel for their thinly veiled threat against the respondent City Election Officer Atty. Guiao-Garcia. Section 261(f) of the Omnibus Election Code provides:

Article XXII.
Election Offenses

Sec. 261. *Prohibited Acts.* – The following shall be guilty of an election offense: xxx

(f) Coercion of election officials and employees. – Any person who, **directly or indirectly, threatens, intimidates,** terrorizes or coerces any election official or employee in the performance of his election functions or duties.¹⁵

Atty. Ramon D. Facun already knew that the MTCC refused to enforce the writ of execution pending appeal after having lost jurisdiction over the case. The matter, too, was already before the Commission, in Division. Yet in his zeal to advance the interests of his client, Atty. Facun threatened an election officer with the filing of a baseless contempt charge in violation of Canon 19.01 of the Code of Professional Responsibility in relation with Section 261(f) of the Omnibus Election Code.

While we cannot usurp the Commission's prerogative of prosecuting election offenses, this Court retains disciplinary authority over all members of the Bar.¹⁶ Canon 19 of the Code of Professional Responsibility for Lawyers provides:

CANON 19 - A LAWYER SHALL REPRESENT HIS CLIENT WITH
ZEAL WITHIN THE BOUNDS OF THE LAW.

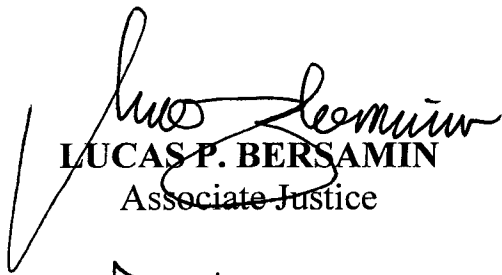
Rule 19.01 - A lawyer shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case or proceeding.

Canon 19 of the Code of Professional Responsibility demands that a lawyer represent his client with zeal; but the same Canon provides that a lawyer's performance of his duties towards his client must be within the bounds of the law. Rule 19.01 of the same Canon requires, among others, that a lawyer shall employ only fair and honest means to attain the lawful objectives of his client. Canon 15, Rule 15.07 also obliges lawyers to

¹⁵ OMNIBUS ELECTION CODE, Section 261.

¹⁶ CONSTITUTION, Art. VIII, Section 5(5).

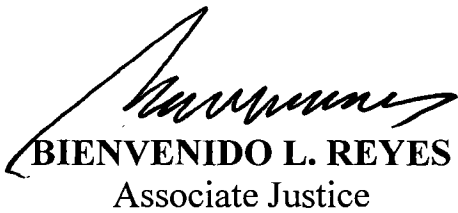



LUCAS P. BERSAMIN
 Associate Justice

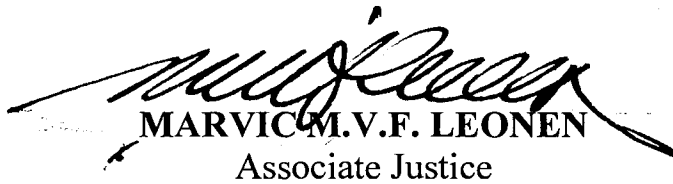

MARIANO C. DEL CASTILLO
 Associate Justice


JOSE PORTUGAL PEREZ
 Associate Justice


JOSE CATRAL MENDOZA
 Associate Justice


BIENVENIDO L. REYES
 Associate Justice

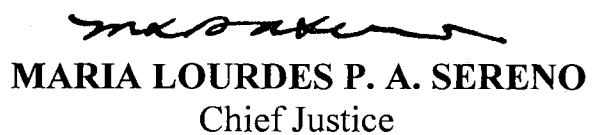

ESTELA M. PERLAS-BERNABE
 Associate Justice

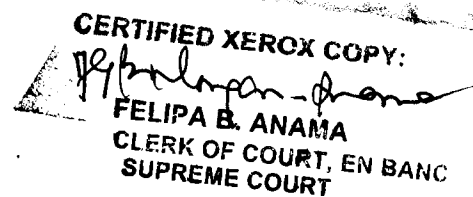

MARVIC M.V.F. LEONEN
 Associate Justice


FRANCIS H. JARDELEZA
 Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.


MARIA LOURDES P. A. SERENO
 Chief Justice

CERTIFIED XEROX COPY:

FELIPA B. ANAMA
 CLERK OF COURT, EN BANC
 SUPREME COURT

impress upon their clients compliance with the laws and the principle of fairness.¹⁷

For lawyers to resort to unscrupulous practices for the protection of the supposed rights of their clients defeats one of the purposes of the state – the administration of justice. While lawyers owe their entire devotion to the interest of their clients and zeal in the defense of their client’s right, they should not forget that they are, first and foremost, officers of the court, bound to exert every effort to assist in the speedy and efficient administration of justice.¹⁸

WHEREFORE, we hereby **DISMISS** the petition for lack of merit. Further, Atty. Ramon D. Facun is **WARNED** that his threatening action in this case dangerously lies at the margins of Rule 19.01 of the Code of Professional Responsibility, and did not spill over into a violation of this Rule only because of the liberality of this Court. Given this warning, any repetition of this or other similar acts shall not be liberally dealt with.

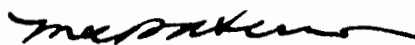
Costs against the petitioner.

SO ORDERED.



ARTURO D. BRION
Associate Justice

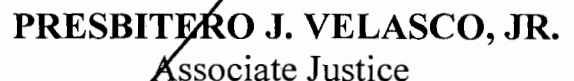
WE CONCUR:



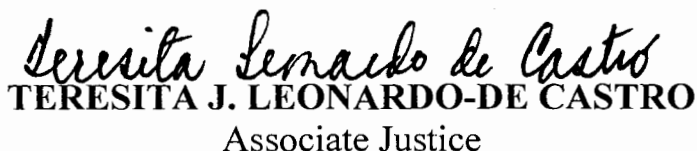
MARIA LOURDES P. A. SERENO
Chief Justice




ANTONIO T. CARPIO
Associate Justice



PRESBITERO J. VELASCO, JR.
Associate Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



DIOSDADO M. PERALTA
Associate Justice

¹⁷ Rule 15.07. - A lawyer shall impress upon his client compliance with the laws and the principles of fairness.

¹⁸ *Atty. Briones v. Atty. Jimenez*, 550 Phil. 402, 408 (2007) citing *Suzuki v. Atty. Tiamson*, 508 Phil. 130, 140-141 (2005).