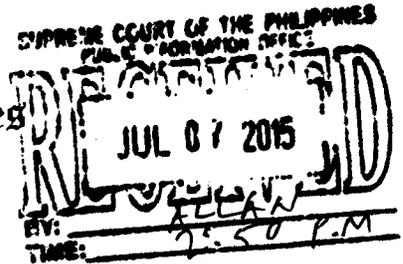




Republic of the Philippines
Supreme Court
Manila



EN BANC

NOTICE

Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated **JUNE 16, 2015**, which reads as follows:

“G.R. No. 214378 - ANECITO C. QUEVEDO, Petitioner, v. HON. COMMISSION ON ELECTIONS and DAVID A. AVILA, Respondents.

Before the Court is a Petition for *Certiorari* filed under Rule 65 in relation to Rule 64 of the Revised Rules of Court by Anecito C. Quevedo (Quevedo).

Quevedo seeks to nullify the September 1, 2014 Order¹ of the Commission on Elections (COMELEC), *En banc*, in UNDK (EAC) BRGY NO. 42-2014, entitled “*David A. Avila v. Anecito C. Quevedo*,” denying his motion for reconsideration for being filed out of time.

The salient facts of the case are as follows:

Petitioner Quevedo and David A. Avila (Avila) were both candidates for the position of *Punong Barangay* of Barangay Kauswagan, San Agustin, Surigao del Sur, during the October 28, 2013 Barangay Elections.

Quevedo was proclaimed the winner with 413 votes over Avila who obtained only 411 votes.

Avila instituted an Election Protest case before the Fifth Municipal Circuit Trial Court (MCTC) of Marihatag-San Agustin, Surigao del Sur, questioning the results in Precinct No. 19 due to misappreciation of ballots.

In a Decision² dated March 12, 2014, the MCTC declared Avila as the duly elected *Punong Barangay*, to wit:

The above tabulations of votes and the report of the Committee on Revision of Ballots clearly show that Protestant DAVID A. AVILA

¹ Rollo, pp. 98-100.

² Id. at 58-67.

obtained a total votes (*sic*) of FOUR HUNDRED FOURTEEN (414) while the Protestee Anecito C. Quevedo received a total votes (*sic*) of FOUR HUNDRED THIRTEEN (413).

In view of the foregoing, Protestant DAVID A. AVILA has a plurality of One (1) vote over and above the total number of votes received by Protestee Anecito C. Quevedo.

The dispositive part thereof reads:

WHEREFORE, judgment is hereby rendered setting aside as null and void the proclamation of Protestee Anecito C. Quevedo as the elected Punong Barangay of Barangay Kauswagan, San Agustin, Surigao del Sur, by the Barangay Board of [Canvassers], and declaring DAVID A. AVILA as the duly elected Punong Barangay of Barangay Kauswagan, San Agustin, Surigao del Sur, during the 2013 Barangay Elections held last October 28, 2013.

The counter-claim filed by the Protestee is hereby ordered **DISMISSED**.

Quevedo appealed the foregoing Decision to the COMELEC.

In an Order³ dated June 13, 2014, the COMELEC, First Division, dismissed the Notice of Appeal filed by Quevedo for nonpayment of the required appeal fee, *viz.*:

The "*Notice of Appeal*" filed on March 25, 2014 by protestee-appellant Anecito C. Quevedo from the Decision dated March 12, 2014 by the 11th Judicial Region, Fifth Municipal Circuit Trial Court of Marihatag & San Agustin, Marihatag, Surigao del Sur, is hereby **DISMISSED** for non-payment of the required appeal fee of Three Thousand Two Hundred Pesos (Php 3,200.00) payable to the Commission on Elections pursuant to the 1993 COMELEC Rules of Procedure as amended by COMELEC Minute Resolution No. 02-0130 dated September 18, 2002 and COMELEC Resolution No. 8486 promulgated on July 15, 2008.

Although appellant was able to file his Notice of Appeal within the prescribed period of five (5) days from receipt of the assailed Decision and paid the appeal fee of One Thousand Pesos (Php 1,000.00) to the court *a quo*, he however failed to pay the requisite appeal fee payable to the Commission.

Quevedo filed a motion for reconsideration and prayed for the indulgence of the COMELEC to liberally interpret the provisions on nonpayment of the appeal fee.

³ Id. at 74.

But in an Order dated September 1, 2014, the COMELEC, *En banc*, denied said motion for reconsideration for late filing:

Acting on the *Motion for Reconsideration* filed by protestee-appellant Anecito C. Quevedo, through counsel, by registered mail on July 1, 2014, seeking reconsideration of the Order issued by the Commission (First Division) on June 13, 2014, dismissing the appeal for non-payment of the required appeal fee of Three Thousand and Two Hundred Pesos (₱3,200.00) payable to the Commission on Elections, within the prescribed period, the Commission En Banc hereby resolves to **DENY** the same for protestee-appellant's **FAILURE** to **FILE** the said motion for reconsideration *within* the **five (5)-day** reglementary period as provided in Section 2, Rule 19, COMELEC Rules of Procedure.

As per admission in his Motion for Reconsideration, protestee-appellant, through counsel, received a copy of the Order dated June 13, 2014 issued by the Commission (First Division) on June 25, 2014. Protestee-appellant filed his aforementioned Motion through registered mail, on July 1, 2014, which is one (1) day late reckoning after the last day to file his Motion for Reconsideration on June 30, 2014.

X X X X

Hence, the Order of the Commission (First Division) issued on June 13, 2014 a copy of which was received by protestee-appellant, through counsel, on June 25, 2014, per records of the case, had become final and executory as of July 11, 2014.

ACCORDINGLY, the Commission En Banc hereby **RESOLVES** to:

- 1) **DIRECT** the Clerk of the Commission, Electoral Contests Adjudication Department (ECAD), this Commission to:
 - (a) **Issue** an entry of judgment in the instant case and to record the same in the Book of Entries of Judgments;
 - (b) **Send** copies of this Order to His Excellency, President Benigno Simeon C. Aquino III, the Secretary of the Department of Interior and Local Government, the Chairman of the Commission on Audit, and the Secretary of the Barangay Kauswagan, San Agustin, Surigao del Sur, in accordance with Section 11(b), Rule 18 of the COMELEC Rules of Procedure.
- 2) **REMAND** the entire records of the above-captioned case to the court a quo for its proper disposal.

On September 4, 2014, an Entry of Judgment was issued by the COMELEC.

Consequently, the MCTC, in its Order dated October 2, 2014, ordered the issuance of a writ of execution for the enforcement of the judgment of the COMELEC by the Provincial Sheriff or any of the Deputies of the Regional Trial Court, Branch 28 of Lianga, Surigao del Sur.

A *Writ of Execution* was issued on the same day, October 2, 2014, followed by a *Notice to Vacate* dated October 3, 2014, which effectively ousted Quevedo as *Punong Barangay* of Barangay Kauswagan, San Agustin, Surigao del Sur.

Hence, this Petition for *Certiorari* filed by Quevedo alleging grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the COMELEC, *En banc*, for denying his motion for reconsideration for being filed out of time.

Quevedo maintains that he filed his motion for reconsideration on time, *viz.*:

First proof is the signature of the receiving clerk of the counsel of private respondent with the date “6/30/14” written opposite her **signature**, appearing on page 4 of the motion, acknowledging receipt of the copy **personally served** to the office of the latter. The copy filed with the public respondent, Commission on Elections, bore the same signature and date of the private respondent’s receiving clerk. It would be very unnatural and reckless for Petitioner’s counsel to file the Motion for Reconsideration on July 1, 2014, instead of filing it on June 30, 2014 when the same was already available and ready for filing on that date, and he was fully aware of the five (5)-day reglementary period, and the grave consequence if he fails to file his motion on time.

Second proof is the Post Office’s **Registry Receipt No. RD 001 208 069 22** with date “06 30 14” clearly stamped on it, evidencing the fact that Petitioner’s Motion for Reconsideration was duly filed on that date, June 30, 2014.

And the **third proof** is a **sworn CERTIFICATION** issued by Rebecca S. Lequit, Postmaster II, of the Office of the Cluster Head Postmaster, Tandag City, Surigao del Sur paid under O.R. No. 1104648 dated Sept. 22, 2014, amount ₱30.00, stating that per records of the Office, Registered Letter No. RD 00120806922 sender ATTY ELPIDIO I. DIGAUM of National Highway, Dawis, Tandag City, Surigao del Sur addressed to COMMISSION ON ELECTIONS, MANILA, was mailed at this Office last **June 30, 2014**.

Thus, Quevedo essentially prays for the annulment of the September 1, 2014 Order of the COMELEC, *En banc*, including the subsequent Entry of Judgment dated September 4, 2014 issued in the said case.



June 16, 2015

In his Comment, Avila argued that Quevedo's motion for reconsideration, even if filed on time, could not be resolved in his favor due to his nonpayment of the appeal fee.

Quevedo countered that Avila failed to present any concrete evidence to support the finding of the COMELEC on his alleged late filing of the motion for reconsideration.

This Court finds merit in the instant petition.

A perusal of the record of this case would bear out that there is no legal or factual basis to support the COMELEC's September 1, 2014 Order. In actuality, the record of this case shows that Quevedo timely filed his Motion for Reconsideration with the COMELEC by posting said pleading at the Tandag Post Office, Surigao del Sur on **June 30, 2014**, as certified by Postmaster II Rebecca S. Lequit. Quevedo also presented the corresponding Registry Receipt with R.R. No. RD 001 208 069 22 as further proof that he mailed said motion for reconsideration to the COMELEC on June 30, 2014.

Clearly, Quevedo's motion for reconsideration was filed within five days from June 25, 2014, the date when he received the Order dated June 13, 2014 from the COMELEC, First Division, dismissing his appeal for nonpayment of the required appeal fee. Consequently, the September 1, 2014 Order of the COMELEC, *En banc*, was issued with grave abuse of discretion and should be nullified.

Given the above, this Court deems it best to remand this case to the COMELEC, *En banc*, for the proper disposition of Quevedo's Motion for Reconsideration.

WHEREFORE, the petition for *certiorari* is hereby **GRANTED**. The Order dated September 1, 2014 of the Commission on Elections, *En banc*, in UNDK (EAC) BRGY NO. 42-2014 and the Entry of Judgment dated September 4, 2015 issued in said case are both **NULLIFIED** and **SET ASIDE**. This case is **REMANDED** to the Commission on Elections, *En banc*, for the proper disposition of Anecito C. Quevedo's Motion for Reconsideration without delay." Peralta and Leonen, JJ., on official leave. (adv78)

Very truly yours,


ENRIQUETA E. VIDAL
Clerk of Court

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Supreme Court

[FOR UPLOADING PURSUANT TO A.M. No. 12-7-1-SC]

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G.R. No. 214378
kat 4/21/15 (URes78) 6/3/15

