

ORLANDO T. MENDOZA, PETITIONER, VS. SHERIFF IV ROSBERT M. TUQUERO, AND SHERIFF IV ANTONIO V. LEAÑO, JR., RESPONDENTS.*A.M. No. P-99-1343. July 10, 2002*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/11abd3544001/>**PER CURIAM:**

This refers to the Second Motion for Reconsideration or Motion for Relief from Judgment dated July 18, 2001,[1] filed by respondents Sheriffs Antonio V. Leño, Jr. and Rosbert M. Tuquero alleging that they are not guilty of unreasonable delay in the execution of the writ of demolition in Civil Case No. 5747, entitled: “Lolita P. Casila Mendoza, rep. by her Atty. -in-fact Orlando Mendoza vs. Maria Vda. Tolentino, Sps. Efren Reyes and Magdalena Tolentino, Sps. Ricardo Pineda and Gloria Tolentino, Sps. Eulogio Tolentino and Lucila Tolentino;” that plaintiff cannot hold them liable for the delay which he, himself, had caused; that the gap or distance from June 13, 1994, the date when the Writ of Demolition was issued up to the issuance of the second Alias Writ of Demolition on February 5, 1997 (or 2 years, 7 months and 5 days) was caused by plaintiff agreeing to the postponement of the scheduled demolition; that their participation in the case started only in the second alias writ of demolition which was issued on February 5, 1997; that the first two (2) writs were personally handled by the late Sheriff Antonio Q. Leño, Sr. of the Office of the Clerk of Court whose assignment was to implement all writs issued by the municipal courts within their jurisdiction, as per agreement among the sheriffs in their court; that respondent Rosbert Tuquero, sheriff of Branch 65 of the Regional Trial Court of Tarlac, whose duty was to implement only writs issued by that court, only assisted the late Antonio Q. Leño, Sr. in the implementation of the original writ of demolition upon the latter’s request; that Tuquero did not assist anymore in the implementation of the alias writ of demolition because during those times he was already busy implementing writs of demolition issued by the RTC of Tarlac (Branch 65); that Leño, Sr. died on May 19, 1996 without being able to submit a sheriff’s return of service; that the second Alias Writ of Demolition dated February 5, 1997 clearly shows that the first alias writ of demolition was not implemented in view of the request of the defendants for time to voluntarily remove their houses which, for humanitarian reasons, the plaintiff granted; that the second alias writ of demolition was personally handled by respondent sheriff Antonio Leño, Jr. who succeeded and took the place of his late father in the Office of the Clerk of Court of the RTC (Tarlac); that he was assisted by respondent sheriff Tuquero; that the second alias writ of demolition was not implemented because they received copies of summons and orders issued by Branch 63 of the RTC of Tarlac City in Civil Case No. 8323 regarding the prayer for the issuance of a temporary restraining order and injunction against the Presiding Judge of Branch 11, Municipal Trial Court, Tarlac City and the Provincial Sheriff of Tarlac; that the third alias writ of demolition was issued on April 18, 1997; that on the day set for the demolition, they were ready with the laborers and policemen who were requested to maintain peace and order; that the defendants requested Atty. Enrico Barin, counsel for the plaintiffs, to give them a relocation site of the land in question and at the same time they asked that the demolition of their houses be postponed pending approval of the plaintiff, to which Atty. Barin agreed; that under the circumstances, they submitted their sheriff’s return containing the said information; that on June 19, 1997, plaintiff filed a motion for the issuance of fourth alias writ of demolition confirming therein that the third alias writ of demolition was postponed because defendants were negotiating for relocation site of their lands; that they could not be blamed for the non-implementation of the writ of demolition; that the third writ of demolition was issued only on July 4, 1997

but they were not informed about its issuance by the plaintiff; that instead of delivering to them a copy of said writ of demolition, plaintiff Mendoza went directly to the Supreme Court to file the complaint against them claiming that they were guilty of unreasonable delay in the implementation of the writ of demolition.

Attached to the Second Motion for Reconsideration or Motion for Relief from Judgment is a Motion for Reconsideration which appears to have been filed in the Office of the Deputy Court Administrator and received by Docket and Clearance Division of the Office of the Court Administrator on July 20, 2001. This motion was never referred to the Court.

After the Resolution of the Court en banc promulgated on June 28, 2001, dismissing both respondents sheriffs from service, complainant Orlando T. Mendoza filed a manifestation with motion for clarification which the Court en banc merely noted in its Resolution dated August 14, 2001. However, we observed that the complainant, in his letter dated November 21, 1997, charged Atty. Roberto Tuquero and not Rosbert Tuquero, herein respondent sheriff, with the manifest negligence and from misfeasance of official functions and duties; and that it was Atty. Roberto Tuquero who was impleaded in his original complaint because Atty. Tuquero received the money supposed to be for payment of the demolition crew and he is the person to blame in the delay of the implementation of the writ of demolition. An examination of the record reveals that Atty. Roberto Tuquero is the Clerk of Court and ex-officio provincial sheriff of the RTC of Tarlac.[2]

On September 14, 2001, complainant Mendoza filed an Affidavit which was received by the Docket and Clearance Division, Office of the Court Administrator wherein he denies the Affidavit[3] alleged to have been executed by him, praying that the respondents sheriffs be relieved from liability considering that they have already been placed possession of the property. He claims that said affidavit does not bear his true signature and that he did not see nor appear before the said notary public and prays that the dismissal against sheriffs Tuquero and Leaño, Jr. shall remain and that Atty. Roberto Tuquero be included.

On October 2, 2001, the Court en banc issued a Resolution noting the affidavit of complainant Mendoza and requesting respondents sheriffs to comment on said affidavit within ten (10) days from notice. In compliance therewith, both respondents filed their "Comment/Affidavit" maintaining that complainant Mendoza actually signed the affidavit referred to by the latter and appeared before Notary Public Godofredo Sabado, Jr.; that it is probable that Mendoza executed said Affidavit dated August 15, 2001 because of their failure to give him the One Hundred Thousand Pesos (Php 100,000.00) he was asking for the settlement of the case; that Atty. Roberto Tuquero had nothing to do with the implementation of the writ of demolition issued in Civil Case No. 5745 by the MTC, Tarlac City; that Atty. Tuquero did not issue any order in this case except to implement the fourth alias writ of demolition.

On November 27, 2001, the Court en banc issued a resolution taking note only of the Comment/Affidavit filed by respondents sheriffs Leaño, Jr. and Tuquero and the Second Motion for Reconsideration or Motion for Relief from Judgment of the per curiam resolution of June 28, 2001 dismissing both respondents sheriffs from service.

After a painstaking examination of the second motion for reconsideration or motion for relief from judgment together with the attachments thereto as well as the first motion for reconsideration and as borne by the other portions of the rollo, we find that:

- 1) Indeed, the original complaint filed by Orlando T. Mendoza which is dated November 21, 1997, unmistakably referred to Atty. Roberto Tuquero;[4] that Sheriff Rosbert M. Tuquero was not mentioned in the body of the said complaint but appears in the annexes thereto such as Annex "C",[5] which is a Sheriff's Return dated November 10, 1994, stating therein that the lifetime period of the writ of demolition had expired because complainant Mendoza, the attorney-in-fact representative of the plaintiff, requested for the

cancellation of the demolition set on July 26, 1994 for a possible amicable settlement, signed by both respondents sheriff Leaño, Jr. and Tuquero; Annex “H”[6] which is a second alias writ of demolition, to which is attached a Notification[7] dated April 1, 1997 addressed to the occupants of the area subject of the writ of demolition, signed by Antonio V. Leaño, Jr. and Rosbert M. Tuquero; Annex “G” which is a Sheriff’s Return of Service dated April 14, 1997, signed by both respondents sheriffs reporting that the second alias writ of demolition was duly served but unsatisfied in view of the urgent motion for issuance of temporary restraining order filed in Civil Case No. 8323;[8] Annex “H” is an Order dated April 18, 1997 of Judge Martonino R. Marcos ordering the issuance of a third alias writ of demolition to which is attached a notification signed again by both respondents sheriffs;[9] Annex “I”, a Sheriff’s Return dated May 12, 1997, signed by both respondents sheriffs reporting that the third alias writ of demolition had already lapsed, duly served but unsatisfied because the counsel for the plaintiff, Atty. Enrico Barin, agreed to the postponement of the demolition upon request of the defendants to give them a relocation site pending approval of the plaintiff.[10]

2) Sheriff Antonio Leaño, Jr. started acting as the sheriff responsible for implementing the writ of demolition only after the death of his father, Sheriff Antonio Q. Leaño, Sr., on May 19, 1996.[11] Sheriff Leaño, Jr. was appointed as Sheriff IV of the RTC of Tarlac (Tarlac), Office of the Clerk of Court, Third Judicial Region only on June 25, 1996.[12] It was on April 1, 1997 that Sheriff Leaño, Jr. first acted as such sheriff when he, together with Sheriff Tuquero, sent a notification of the Second Alias Writ of Demolition dated February 5, 1997 to the occupants of the premises in question.

3) Respondent Sheriff Rosbert M. Tuquero assisted the late sheriff Antonio Q. Leaño, Sr. since November 10, 1994, as shown by the sheriff’s return marked as Annex “C” of the Complaint,[13] until the death of Antonio Q. Leaño, Sr. on May 19, 1996 and continued assisting in the implementation of the writs to respondent Sheriff Antonio Leaño, Jr.

4) Complainant Mendoza admits that the Third Alias Writ of Demolition dated April 18, 1997 was returned unsatisfied because of the request of the defendants to give them a relocation site and that the demolition be postponed subject to plaintiff’s approval, to which the latter is not amenable.[14] By reason thereof, Mendoza filed a motion for issuance of fourth alias writ of demolition which the trial court granted on July 4, 1997.

5) The Sheriff’s Return dated March 2, 1998, signed by both respondents sheriffs, shows that the fourth alias writ of demolition had been served and implemented; and that the possession of the land in question had been turned over to the plaintiff.[15]

Clearly therefrom, the second motion for reconsideration together with the first motion for reconsideration should be granted insofar as respondent Sheriff Leaño, Jr. is concerned. He was remiss of his duty to immediately implement the alias writ of demolition issued by the trial court between the period starting from July 4, 1997 to March 2, 1998 or only eight (8) months. He failed to explain why no action had been taken in-between said dates. For this reason, the resolution of this Court dismissing respondent Sheriff Leaño, Jr. should be reconsidered and he be imposed to suffer suspension for a period of fifteen (15) months; while respondent Sheriff Rosbert Tuquero’s dismissal should be maintained as he assisted in the implementation of the writ of execution since 1994 which constituted gross neglect of duty and serious misconduct in office.

The complaint of Orlando T. Mendoza against Atty. Roberto Tuquero should be sent back to the OCA for investigation, report and recommendation.

WHEREFORE, the first and second motions for reconsideration are partly GRANTED. Respondent Sheriff Leaño, Jr. is found guilty of negligence and imposed a penalty of suspension for a period of fifteen (15) months effective date of receipt of copy of June 28, 2002 resolution of this Court. The motions are DENIED for lack of merit insofar as Rosbert M. Tuquero is concerned.

The complaint of Orlando T. Mendoza against Atty. Roberto Tuquero is sent back to the Office of the Court

Administrator for investigation, report and recommendation within sixty (60) days from notice hereof.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, and Corona, JJ., concur.
Quisumbing, J., on official leave.

[1] Rollo, p. 154.

[2] Rollo, p. 112.

[3] Annex “FF”, Rollo, p. 221.

[4] See Complaint, Rollo, p. 3.

[5] Rollo, p. 128.

[6] Rollo, p. 130.

[7] Rollo, p. 15.

[8] Rollo, p. 16.

[9] Rollo, pp. 21-23.

[10] Rollo, p. 24.

[11] Rollo, p. 127.

[12] Rollo, p. 187.

[13] Rollo, p. 8.

[14] Annex “K”, Complaint; Rollo, p. 27.

[15] Rollo, p. 35.

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