

ROSITA ANDAMO VDA. DE GILLEGO, COMPLAINANT, VS. ATTY. HENRY AMADO ROXAS, CLERK OF COURT, REGIONAL TRIAL COURT BRANCH 55, SORSOGON, SORSOGON; AND JESUS GARLAN, SHERIFF IV, REGION...

A.M. No. P-91-611. August 05, 1994

Ponente: FELICIANO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/2cbe353bbabd/>

FELICIANO, J.:

Rosita Andamo Gillego filed a sworn complaint dated 29 August 1991 against (a) Henry Amado Roxas, Clerk of Court, Branch 55, Regional Trial Court, Sorsogon, Sorsogon; and (b) Jesus Garlan, Deputy Sheriff of the same court, for dereliction of duty consisting of their failure to enforce a Writ of Execution.

The Supreme Court required the two (2) respondents to file their comments on the complaint. After their Comments had been filed, the Court, in a Resolution dated 28 September 1992, referred the matter to the Hon. Eudario B. Valencia, Executive Judge, Regional Trial Court, Sorsogon, Sorsogon, for investigation, report and recommendation.

The Investigating Judge scheduled several hearings but all were postponed upon motion of one or the other party. Finally, on 7 May 1993, the Investigating Judge issued an order scheduling a hearing on 25 May 1993, at the same time warning the parties that should they be unable to present evidence on that date, they would be deemed to have terminated presentation of evidence. The parties failed to present evidence on that day. Further, while respondents manifested an intention to file position papers, the due date therefor passed without their position papers being submitted to the Investigating Judge.

The Report of the Investigating Judge, dated 4 November 1993, set out the factual background in the following manner:

"It is alleged that as an off-shoot of Civil Case No. 380 for: 'Ejectment/Demolition of Illegal Construction,' the complainant herein (who is the plaintiff therein) was issued, upon her motion, by Judge Jacinto Tagum, MTC, Bulan, Sorsogon, a Special Order of Demolition directing respondent Deputy Sheriff to remove the portion of a residential house belonging to the defendants therein which was illegally constructed on the lot owned by plaintiff (herein complainant). Subsequent thereto, or on April 15, 1991, the complainant paid the respondents Clerk of Court the sum of One Thousand Five Hundred (P1,500) Pesos as legal fees to cover expenses for the implementation of the demolition Order. Notwithstanding payment of the required fees and the hiring of laborers to assist in the intended demolition, respondent Deputy Sheriff failed to appear on the date set for the implementation of the Demolition Order. The respondent Clerk of Court's assurance to implement the demolition order upon payment of required fees was thus in vain.

In his comment dated June 15, 1992, respondent Deputy Sheriff denies the charges and explains that upon receipt from respondent Clerk of Court of the alias writ of demolition on August 9, 1991, he served the same to the defendant's daughter Mrs. Jelly Gonzales-Gille, on the same month; and, as the latter was the actual

occupant of the house, she was advised to immediately and voluntarily vacate the property. Sometime, thereafter, or on October 14, 1991, he chanced upon the defendant in the said house and handed to him the said alias writ of demolition with the advice and instruction to deliver that portion of the land claimed by the plaintiff. The defendant however replied that he is leaving the matter to his daughter who is now presently occupying the property.

Respondent Deputy Sheriff further avers that 'he was about to implement the actual demolition' but respondent Clerk of Court was confined in the hospital for which [reason] he failed to collect the P1,500.00 fee required for the actual demolition. He further claims that had the amount been deposited with the MTC, Clerk of Court, instead of the RTC, Clerk of Court, the implementation should have been effected at once. The amount having been recovered only on June 9, 1992, the demolition can now proceed.

Respondent Clerk of Court, in his Comment dated June 5, 1992 likewise denied the charge and avers that on April 15, 1991 upon the receipt of the sum of P1,500.00 from complainant's brother Federico Andamo, he immediately gave notice to the respondent deputy sheriff regarding the matter. Respondent deputy sheriff, in turn, assured him (respondent Clerk of Court) that the writ will be acted upon; that it had been six (6) months since the writ was issued and respondent Clerk of Court is yet to see the return; that respondent Clerk of Court cannot be deemed to have been remiss in his responsibility over the respondent Deputy sheriff as he constantly reminded the latter of the matter; nor can he be said to be dishonest since the complainant can always request at anytime that the amount of P1,500.00 she paid be withdrawn."^[1]

On the basis of the foregoing facts, the Investigating Judge concluded that Deputy Sheriff Garlan was guilty of dereliction of duty. We agree with this conclusion. Deputy Sheriff Garlan had failed to implement the 3 April 1989 Writ of Execution issued by the Municipal Trial Court ("MTC") of Bulan, Sorsogon, such failure to implement persisted notwithstanding the issuance of a series of subsequent orders. Firstly, the MTC issued a Special Order dated 20 August 1989 specifically ordering Deputy Sheriff Garlan, by name, to implement the Writ of Execution. Secondly, complainant Andamo having requested the Office of the Court Administrator, Supreme Court, for assistance, Deputy Court Administrator Juanito Bernad, in a letter dated 22 November 1990, directed Deputy Sheriff Garlan "to comply without any further delay with the order of demolition issued by Judge Tagum."^[2] And, thirdly, on 30 July 1991, an Alias Writ of Execution was issued^[3] which, respondent Deputy Sheriff himself admitted, he received on 9 August 1991.

On 15 April 1991, respondent Clerk of Court Roxas received the amount of P1,500.00 from complainant Rosita Andamo Gillego as estimated expenses for the demolition. This amount was transmitted by Clerk of Court Roxas to Deputy Sheriff Garlan more than a year later, i.e., on 8 June 1992. Deputy Sheriff Garlan used this delay of remittance on the part of Clerk of Court Roxas to justify his (Garlan's) delay in implementing the Writ of Execution. We do not believe that Deputy Sheriff Garlan may so easily avoid responsibility for his failure for three (3) years to execute the Writ of Execution, disregarding in the process three (3) orders enjoining him so to execute that Writ. Under Rule 141, Section 9 of the Rules of Court, Deputy Sheriff Garlan was obliged to secure the approval of the issuing court of the estimated expenses and fees for implementation of the Writ of Execution.^[4] Under the Writ and Alias Writ of Execution, Deputy Sheriff Garlan was duty-bound "to collect from plaintiff Rosita Gillego --- the expenses of demolition, including your fees for the demolition to be chargeable against the defendants." Moreover, Garlan knew that the sum of money representing the estimated expenses of demolition had been deposited with Clerk of Court Roxas by 15 April 1991; yet, he passively waited for the amount to be remitted to him. And even after such remittance on 8 June 1992, Deputy Sheriff Garlan did not implement the Writ of Execution. So far as the record shows, he has not to date filed his return under the Writ of Execution. Under Rule 39, Section 11 of the Rules of Court, Deputy Sheriff Garlan was obliged to make a return of the Writ of Execution at any time not less than ten (10) days and not more than sixty (60) days from receipt thereof. The Alias Writ itself expressly commanded him to submit a report there on within thirty (30) days

from notice. These requirements are mandatory; the sheriff is left with no discretion on whether or not to execute and to make a return on the Writ of Execution within the period provided by the Rules of Court.[5]

Respondent Deputy Sheriff Garlan contended that he had tried to convince the occupants of the building to be partially demolished to vacate the land encroached upon and to do the necessary demolition of portion of their house voluntarily. When, however, Deputy Sheriff Garlan received the Writ of Execution, his duty was to carry out the Writ and to demolish the building, rather than to wait around for three (3) or so years and to try to convince its occupants to do it for him. The occupants had had sufficient time to demolish the portion of their house encroaching on the land of the complainant; the time for persuasion was over upon the finality of the judgment and issuance of the Writ of Execution.

Respondent Clerk of Court Roxas, for his part, claimed that he had exerted every effort to implement the Writ of Demolition by constantly reminding respondent Deputy Sheriff about the matter. Assuming he had indeed frequently reminded the Deputy Sheriff about the latter's duty, we consider that the Clerk of Court was remiss in his own duty promptly to remit the sum representing the estimated expenses of demolition to the Deputy Sheriff. Clerk of Court Roxas offered no sensible reason, to the mind of the Court, for holding on to the deposit for expenses for an inordinately long period of time before actually transmitting the same to the Deputy Sheriff. Indeed, by the time he actually remitted the amount to the Deputy Sheriff, the Alias Writ of Execution had itself become stale.

The Investigating Judge recommended that the charge against the respondent Clerk of Court be dismissed while respondent Deputy Sheriff be held guilty of dereliction of duty. For reasons set out above, the Court is unable to agree fully with his recommendation.

WHEREFORE, the Court hereby FINDS:

- (a) Clerk of Court Henry Amado Roxas guilty of neglect of duty and he is hereby REPRIMANDED and WARNED that repetition of the same or similar offense will be more severely dealt with in the future; and
- (b) Deputy Sheriff Jesus Garlan guilty of dereliction of duty, and he is hereby SUSPENDED for six (6) months and WARNED that repetition of the same or similar offense will be dealt with more drastically in the future.

Bidin, Romero, Melo, and Vitug, JJ. concur.

[1] Report of the Executive Judge Eudarlo Valencia, pp. 1-4.

[2] Rollo, p. 4.

[3] Annex "B", Comment of Respondent Garlan; Rollo, p. 35.

[4] Ildelfonso Ong v. Maximo Meregildo, A.M. No. P-93-935 (July 5, 1994).

[5] Sibulo v. Ramirez, 154 SCRA 101 (1987).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.