

ORLANDO T. MENDOZA, COMPLAINANT, VS. SHERIFFS ROSBERT M. TUQUERO AND ANTONIO M. LEAÑO, JR., RESPONDENTS.*A.M. No. P-99-1343. November 24, 2003*

Ponente: AUSTRIA-MARTINEZ, J.

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For resolution by the Court are: (a) the Motion for Consideration of the Decision/Resolution dated July 10, 2002 filed by respondent Sheriff Rosbert Tuquero; and (b) the complaint for manifest negligence and misfeasance filed by complainant Orlando T. Mendoza against Atty. Roberto Q. Tuquero, former Clerk of Court of the Regional Trial Court (RTC) of Tarlac.

In the Resolution of July 18, 2001, Sheriffs Tuquero and Antonio V. Leño Jr. of the Office of the Provincial Sheriff of Tarlac were dismissed from the service for unreasonable delay in the implementation of the writ of demolition in Civil Case No. 5747, entitled "Lolita P. Mendoza, represented by her attorney-in-fact Orlando T. Mendoza vs. Maria vda. de Tolentino, et al.," of the Municipal Trial Court of Tarlac, Tarlac. Subsequently, in the Resolution of July 10, 2002, the Court reconsidered the judgment against Sheriff Leño Jr. and merely imposed a fifteen-month suspension upon him since he had only been remiss in his duties for eight months. On the other hand, the dismissal of Sheriff Tuquero was maintained considering that he had assisted in the implementation of the writ of demolition since November 10, 1994.

Sheriff Tuquero is once again before the Court seeking reconsideration of his dismissal, reiterating that he merely assisted the late Sheriff Antonio Leño Sr. in executing the writ of demolition, that he signed the notifications and returns believing in good faith that there was nothing wrong in signing them and not knowing its legal repercussions, and that the delay from the issuance of the writ of demolition to that of the second alias writ of demolition was due to postponements consented to by complainant. He also argues that he was not impleaded in the complaint as shown by the Motion for Clarification dated July 16, 2001 of complainant, and, therefore, should not be adversely affected by the judgment of the Court.

The subject motion is already the third motion for reconsideration filed by Sheriff Tuquero and as such, should no longer be entertained for being a prohibited pleading. More importantly, the Court has already passed upon the issues and allegations raised by him in the Resolution of July 10, 2002. It is likewise too late in the day for Sheriff Tuquero to assail his dismissal on the ground that he was not named in the complaint. Although not named in the complaint, he was fully apprised of the charges against him and accordingly, required by the Court to comment thereon, to which he complied without pointing out the alleged defect. Besides, as explained by the Court in its Resolution dated July 10, 2002:

- 1) Indeed, the original complaint filed by Orlando T. Mendoza which is dated November 21, 1997, unmistakably referred to Atty. Roberto Tuquero; 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," 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" which is a second alias writ of demolition, to which is attached a Notification 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; 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; 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.

As to the complaint against Atty. Tuquero, the Court referred the matter back to the Office of the Court Administrator (OCA) for investigation, report and recommendation following complainant's insistence that Atty. Tuquero was also responsible for the delay. In his Manifestation with Motion for Clarification, complainant alleged:

That complainant would like to state however, that in my original complaint, it was Atty. Roberto Tuquero, who was impleaded as other respondents considering that it was he and not his son ROSBERT TUQUERO, who received the money supposed to be for the payment of demolition crew and the person to blame for the delay in the implementation of the Writ of Demolition;

That even when the case was investigated it was respondent Atty. Roberto Tuquero who was furnished with notices by the Office of the Court Administrator (OCA) Supreme Court ...;

That in the decision rendered by the Honorable Supreme Court, it was ROSBERT TUQUERO, and not ATTY. ROBERTO TUQUERO who should be slapped with the said penalty;

That in case the sanction was against ROSBERT TUQUERO what will happen to the case against ATTY. ROBERTO TUQUERO? Is it now considered abandoned or will it be reinvestigated anew?

There is no doubt, though, that since both TUQUEROS are equally liable to the acts complained of, the other Tuquero (Atty. Roberto Tuquero) should be DISMISSED.[1]

On November 15, 2002, the OCA directed Atty. Tuquero to comment on the complaint to afford him the right to be heard and to controvert the charges.

In his comment, Atty. Tuquero stated:

When our Office received a copy of the Writ of Demolition dated June 13, 1994, which was issued by the Municipal Trial Court, Branch 11, Tarlac City in connection with Civil Case No. 5747, the late Sheriff Antonio Leaño, Sr. asked permission from me to handle the implementation of the said writ because, according to him, he wanted to help the plaintiff who is his relative.

Since then, as the implementing sheriff he was the only one who made the necessary arrangement with the plaintiff about how the demolition will be effected, and he was the only one also, who made the follow-ups of needed documents with the MTC as shown by the Resolution issued by the Municipal Trial Court, Tarlac City ..., although I came to learn later that he was being assisted by my son Sheriff Rosbert M. Tuquero.

The letter complaint of Mr. Mendoza shows that the writ of demolition dated 13 June 1994 was not effected because he gave the defendants who are his relatives a chance to settle the case amicably.

The Alias writ of demolition was not also effected because after its issuance sheriff Antonio Leaño, Sr.,

became sickly and weak. He was hospitalized until he eventually died sometime in 1996.

Not long thereafter, Antonio Leño, Jr. was appointed to the position of his late father. He succeeded the subject writ of demolition. The second Alias writ of demolition was issued. According to Sheriff Antonio Leño Jr. he wanted to continue the work which was left unfinished by his father.

Since then, I had no more knowledge of what happened with the writ.

....

(Emphasis supplied)

In its Memorandum dated August 11, 2003, the OCA recommended that Atty. Tuquero be fined in the amount of P10,000.00, explaining:

Respondent Atty. Roberto Tuquero, in trying to exculpate himself from liability for failure to execute the writ of demolition and execution reasoned that "Sheriffs now are no longer deputy Sheriffs. They can now perform their duties without prior permission from the Clerk of Court."

We disagree.

That the writs of demolition and writ of execution subject matter of the instant complaint were issued by the Municipal Trial Court, Tarlac, which as such MTC has no sheriff to implement the execution of its judgments. As such, the matter was referred to the Office of the Clerk of Court and Ex-Officio Sheriff, RTC of Tarlac headed by herein respondent. Respondent Atty. Tuquero being the Clerk of Court and Ex-Officio Sheriff of the RTC, Tarlac, has general administrative supervision over the personnel of said office as well as on matters of execution of judgments of the court. He cannot be allowed to avoid responsibility relative to the execution of judgment by saying that after the designation of the sheriff who shall execute the judgment "he had no more knowledge of what happened with the writ."

...

Sheriffs play an important part in the administration of justice. As an officer of the court, a sheriff is duty-bound to use reasonable skill and diligence in the performance of his duties (*Ayo vs. Violago-Isnani*, 308 SCRA 543) and conduct himself with propriety and decorum and act above suspicion (*Mamanteo vs. Magumun*, 311 SCRA 259). Respondent Atty. Roberto Tuquero fell short of this duty. For his neglect of duty in supervising the execution of the judgment in Civil Case No. 5747, he has exposed himself and his office not to mention the entire judiciary to suspicion. He failed to live-up to the strictest standard of honesty and integrity in the public service.

The Court finds the recommendation of the OCA partly meritorious.

A sheriff is primarily responsible for the speedy and efficient service of court processes and writs originating from his office and the branches thereof, and those that may be delegated to him from other courts.[2] Being the then Clerk of Court and ex-officio sheriff of the RTC of Tarlac, Atty. Tuquero indeed exercised general administrative supervision over all court personnel as well as the execution of judgments. However, to hold Atty. Tuquero equally responsible with Sheriffs Leño Jr. and Tuquero for the delay in the implementation of the writ of demolition in Civil Case No. 5747 on the basis of this fact alone would be unfair and unjust especially since complainant has not demonstrated how he, by positive acts or omissions, caused or contributed to such delay. Even complainant's subsequent allegation that Atty. Tuquero was the recipient of money intended for the demolition crew was unsubstantiated considering that the affidavit dated September 13, 2001 of Rodolfo Cayetano[3] which complainant submitted is irrelevant to this case. In said affidavit, it was alleged that Sheriffs Leño Jr. and Tuquero, under orders of Atty. Tuquero, sought and were given P100,000.00 for the costs of

demolition. It is noted, however, that the acts alleged therein were committed in connection with another case, i.e. Civil Case No. 9056, entitled "Rodolfo Cayetano vs. Jay and Mariquit Flores," which is not involved in the present administrative case.

This notwithstanding, the Court finds that Atty. Tuquero is administratively liable for simple negligence in allowing Sheriffs Leaño Sr. and his son, Leaño Jr., to implement the subject writ of demolition. In seeking permission to handle the execution of the writ of demolition, Sheriff Leaño Sr. had informed Atty. Tuquero that he wanted to help the plaintiff who is his relative. With such disclosure, Atty. Tuquero should have exercised prudence and circumspection and immediately denied permission to Sheriff Leaño Sr. to avoid impropriety and bias in the execution proceedings. Worse, after his death, Atty. Tuquero allowed the son, Sheriff Leaño Jr., to continue therewith.

Atty. Tuquero also informs the Court that he has compulsorily retired from the service on November 15, 2002. It has been held, however, that retirement of judge or any judicial officer from the service does not preclude the finding of any administrative liability to which he shall still be answerable.[4]

IN VIEW THEREOF, the Motion for Consideration of the Decision/Resolution dated July 10, 2002 of Sheriff Rosbert Tuquero is DENIED for lack of merit. No further pleadings shall be entertained respecting this matter.

Atty. Roberto Tuquero is found guilty of simple negligence and hereby REPRIMANDED.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Carpio Morales, Callejo, Sr., Azcuna and Tinga, JJ., concur.

[1] Rollo, pp. 96-97.

[2] Resolution dated October 1, 1985, Re: Approving the guidelines and procedure in the service and execution of writs and processes in the reorganized courts.

[3] Rollo, pp. 104-105.

[4] Lilia vs. Judge Batolome M. Fanuñal, A.M. No. RTJ-99-1503, December 13, 2001.

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