

EN BANC

[A.M. No. P-99-1343, November 24, 2003]

ORLANDO T. MENDOZA, COMPLAINANT, VS. SHERIFFS ROSBERT M. TUQUERO AND ANTONIO M. LEAÑO, JR., RESPONDENTS.

R E S O L U T I O N

AUSTRIA-MARTINEZ, J.:

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. Leaño 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 Leaño 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 Leaño 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?