

EN BANC

[A.M. No. P-99-1343, July 10, 2002]

**ORLANDO T. MENDOZA, PETITIONER, VS. SHERIFF IV ROSBERT
M. TUQUERO, AND SHERIFF IV ANTONIO V. LEAÑO, JR.,
RESPONDENTS.**

R E S O L U T I O N

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. Leaño, 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. Leaño, 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. Leaño, 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 Leaño, 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 Leaño, 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.