

**MARCIANO YACAPIN, PETITIONER, VS. COURT OF FIRST INSTANCE
OF MISAMIS ORIENTAL, BRANCH VIII, PRESIDED BY HON.
BERNARDO TEVES, AND EUGENIA EDURIA, BERNARDA, TROPINO
AND PORFERIO, ...**

G.R. No. L-38228. September 12, 1975

Ponente: AQUINO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/c9cad339e562/>

AQUINO, J.:

Marciano Yacapin filed on February 6, 1974 the instant "petition for review on certiorari" of the order of execution dated February 6, 1973 issued in Civil Case No. 2598 of the Court of First Instance of Misamis Oriental entitled "Eugenia Eduria et al. vs. Pio Bagongon and Marciano Yacapin."

The petition was filed beyond the reglementary thirty-day period contemplated in Republic Act No. 5440. A copy of the order complained of was received by petitioner's counsel on February 9, 1973. Twenty-seven days later, he filed a motion for reconsideration which was denied in the lower court's order of December 19, 1973. A copy of that order was served on petitioner's counsel on January 3, 1974, when he had only three remaining days within which to file the petition for review. The instant petition was belatedly filed on February 6, 1974.

If the petition were treated as a special civil action of certiorari, the issue would be whether the lower court acted with grave abuse of discretion in ordering that the remaining 5,618 square meters of land in litigation should be delivered to the owners thereof. The antecedents of the instant incident are as follows:

The judgment sought to be executed refers to a parcel of land with an area of 12,075 square meters located at Barrio Agusan, Cagayan de Oro City. In that judgment the northern portion of the land with an area of 2,437.88 square meters was adjudicated to Marciano Yacapin "as owner and possessor" and the remainder, with an area of 9,537.12 square meters, was divided equally among the five children of the original owner Buenaventurada Salon (Decision dated May 9, 1969). Yacapin's portion is known as Lot 19177 covered by Original Certificate of Title No. P-934.

The original writ of execution dated January 22, 1972 directed the parties or "co-owners" to partition the land among themselves. The sheriff manifested on February 29, 1972 that he could not implement the execution because he and Teofilo Bacarrisas, a geodetic engineer, found that the land had an actual area of only 5,618 square meters and not 12,075 square meters.

On April 3, 1972, Bacarrisas, as a commissioner appointed by the lower court, reported that the northern portion of the land containing the area adjudicated to Marciano Yacapin had been eroded by the sea; that the eastern, southern and western boundaries thereof remained unaltered, and that only a portion With an area of 5,618 square meters, included within the southern portion of 9,537.12 square meters adjudicated to the heirs of Buenaventurada Salon, was existing.

On January 29, 1973 Yacapin filed a motion praying that his share of 2,437.88 square meters be taken from the

existing area of 5,618 square meters and that the remainder thereof should be divided into five equal shares among the plaintiffs. He filed an objection to the report of Bacarrisas.

As already stated, the lower court issued an order dated February 6, 1973 wherein it found "that the northern portion of the land in litigation which was originally owned by the late Buenaventurada Salon with an area of 12,075 square meters has been eaten up by erosion of the sea inasmuch as this portion faces the Macajalar Bay of Cagayan de Oro and that only 5,618 square meters is left of the land in litigation." It ordered that the remainder of 5,618 square meters "be delivered to the owners pursuant to" its judgment. It is that order which is being assailed herein.

We hold that the lower court did not gravely abuse its discretion in issuing the questioned order. Yacapin could not possibly have any share in the remainder of 5,618 square meters because that portion (which is part of the southern portion adjoining Yacapin's northern portion) clearly belongs to the heirs of Buenaventurada Salon. Yacapin's share, which had long been segregated and of which he was the "administrator and possessor," happened to be under water.

The lower court did not deprive him of his share and did not alter its decision nor annul his free patent title. It was the sea that dispossessed Yacapin of the northern portion (See *Aragon vs. Insular Government*, 19 Phil. 223; *Francisco vs. Government of the Philippine Islands*, 28 Phil. 505; *Government of the Philippine Islands vs. Cabangis*, 53 Phil. 112). He alone should bear the loss of the northern portion (*res perit domino suo*).

Even without Bacarrisas' report, Yacapin presumably knew that his portion had been overrun by sea water as shown by the prayer in his motion for execution that the northern portion adjudicated to him in the decision of May 9, 1969 be taken from the "existing area" of 5,618 square meters. If that prayer were granted, then the absurd and unjust result would be that a part of the land which had been rightfully and definitely adjudicated to the heirs of Buenaventurada Salon would be ceded to him.

That solution would be unfair to the heirs of Salon whose share of the land had already been reduced from 9,537.12 square meters to 5,618 square meters. It was not their fault that Yacapin's northern portion is now part of the sea. It was the advance of the tidal waters which reduced the area of the land. That was *force majeure*. Yacapin and the heirs of Buenaventurada Salon were not co-owners of the land.

The lower court in issuing the order of February 6, 1973 simply exercised its inherent power "to control its process and orders so as to make them conformable to law and justice" (Sec. 5[g], Rule 135. Rules of Court).

WHEREFORE, the petition for certiorari is hereby dismissed with costs against the petitioner. So Ordered.

Makalintal, C.J., Fernando, Barredo, and Martin, JJ., concur.

Antonio and Concepcion, Jr., JJ., are on leave.

Martin, J., was designated to sit in the Second Division.

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.