

## Party status

### *Akiba v Queensland (No 3)* [2007] FCA 1940 (Papua New Guinean resident)

French J, 7 December 2007

#### Issue

This case concerned the review of a Deputy District Registrar (DDR) of the Federal Court's refusal to join a person resident in Papua New Guinea as a party to the Torres Strait Regional Seas Claim (TSRSC). The motion for review failed because the court could not be satisfied that a determination over the TSRSC area could affect any interest of the person concerned.

#### Background

In July 2005, Pastor Guzu Dorogori sought to be joined to the TSRSC under s. 84(5) of the *Native Title Act 1993*(Cwlth) (NTA) on behalf of Hiamo-Tureture Villagers in Papua New Guinea. A direction was made that any further affidavits be filed and served by 8 September 2005 and the motion was adjourned. No affidavits had been filed by 22 September 2005 and so the DDR dismissed the notice of motion. The application for review of that decision was brought some 18 months out of time but no explanation for the delay was given. His Honour Justice French decided to deal with the motion for review on its merits despite the very substantial delay because:

- issues relating to the joinder of Papua New Guinean parties had only recently been resolved by the Full Court (see *Gamogab v Akiba* (2007) 159 FCR 578, summarised in *Native Title Hot Spots* Issue 25);
- the orders made subsequently governing the joinder of those parties would apply to Pastor Dorogori if he were to be joined as a party; and
- there was no relevant prejudice to any other party—at [17].

#### Submissions

The affidavit filed in support of the notice of motion annexed materials said to be relevant to Pastor Dorogori's family history and links to the Torres Strait sea claim area. Included was an account of the origins of the Hiamo Umumere people, which referred to attacks upon Hiamo people by other Indigenous people in the area. It stated (among other things) that, because of those attacks, the Hiamo people emigrated from Daru and Bobo Islands in the Torres Strait to Papua New Guinea, which was why the group separated from each other but were one Hiamo Umu Mere tribe. There was also:

- an assertion of a right to claim because the Hiamo-Tureture were the owners of the reefs and the sea as well as the land;
- a genealogy, evidently produced in 1977, for the Hiamu Umumere clan showing a person called Guza, a male in a line of descent through another male called Dorogori, with the line of descent ultimately traced back to a male called Kabai.

The court interpreted Pastor Dorogori's oral submissions as suggesting he was an original inhabitant of the area and that he and his clan should be included in any determination of rights in relation to the Torres Strait islands—at [9].

The motion was opposed by the applicant for the TSRSC on the basis that (among other things) no relevant interest in the claim area was identified nor any interest shown that might be affected by a determination in the proceedings. The Commonwealth submitted that:

- Pastor Dorogori had not identified any area of land or reefs or sea within the claim area in respect of which he asserted ownership;
- there was no material to support such an assertion or provide any basis under traditional law and custom.

### **Decision**

French J found that the motion for review failed because there was no basis upon which the court could be satisfied that a determination over the TSRSC area could affect any interest of Pastor Dorogori that was:

[C]apable of clear definition and, equally importantly,...of such a character that they may be affected in a demonstrable way by a determination in relation to the application—at [51], referring to *Byron Environment Centre Inc v Arakwal People* (1997) 148 ALR 46.

While Pastor Dorogori asserted that the people he represented had a history in the claim area, the court was of the view that:

- no historical basis for the assertion of ownership of reefs, seas and waters had been disclosed;
- the location of areas allegedly owned by Mr Dorogori and his people were not disclosed; and
- the fact that he may be descended from people who came from an island in the Torres Strait did not, of itself, support the inference that there was some kind of interest which may be affected by a determination—at [18] to [20].