Wuthathi People No. 2 v Queensland [2010] FCA 1103

Greenwood J, 5 October 2010

Issue

The issue relates to an application for an injunction under the *Federal Court of Australia Act* 1976 (Cwlth) to restrain the conduct of a native title claim group meeting that was to take place the following day at Injinoo at the northern tip of Cape York Peninsula. The Federal Court refused to make the orders sought.

Background

The meeting was for a claimant application brought on behalf of the Wuthathi People. It was called so that the traditional owners of the claim area could discuss the native title claim group description and consider making amendments to the application, including amendments to the boundary description. The notice was directed to, and called for, the descendants of the apical ancestors of Eliza and Ela to attend the meeting. However, two elders of the Gudang Yadhaykenu People, who applied for the injunction, said they did not wish to attend the meeting because other apical ancestors who, in their view, ought to have been included in the notice were not included. The applicants for the injunction contended that, by reason of these omissions, the notice was defective and failed to comply with the *Native Title Act 1993* (Cwlth). It was said that:

- boundary changes were of great importance to the Gudang Yadhaykenu People;
- substantially, the position was that there was one broader Gudang Yadhaykenu group properly called the Gudang Yadhaykenu mob.

It was not contended that the Wuthathi People had no interest in the claim area. The Gudang Yadhaykenu People's point was that they had a 'fundamental interest' that was being ignored, both in the calling of the meeting and in relation to some earlier arrangements.

Interlocutory injunctions

According to Justice Greenwood:

- the question of the interests the Wuthathi People have (or might have) is a matter requiring 'detailed and forensic examination' by anthropologists;
- issues going to the rights and interests of the Gudang Yadhaykenu People 'would require examination as to the facts and history of connection and other matters which are well known elements of claims of this kind';
- the injunction proceedings were not 'the place or the forum to decide' those issues—at [7] to [8].

It was noted that there was insufficient information before the court upon which to decide whether there was an arguable case as required under the 'well understood principles governing interlocutory injunctions' as noted in *Australian Broadcasting Corporation v O'Neill* (2006) 227 CLR 57—at [8].

However, the 'real issue' involved considering the cost of convening the proposed meeting, which was to be held in a remote location. As his Honour noted, if the court granted an injunction, $60,000 of expenditure spent by Cape York Land Council would be 'entirely wasted',

as would all of the 'effort, time and energy involved in gathering people together at the place nominated for the meeting', especially since many of them were probably already there. His Honour could not identify any utility 'whatsoever in wasting that money by enjoining this meeting from taking place'. Further: 'The question of the legal efficacy or validity of decisions made [at the meeting] can, ... in the calm light of day be tested', at which time the relevant parties can put on whatever material they may wish to challenge or defend decisions taken at the meeting—at [10] to [11].

Decision

Greenwood J dismissed the injunction application.