

SUPREME COURT OF QUEENSLAND

CITATION: *De Lacey v Juunyuwarra People & Anor* [2004] QCA 323

PARTIES: **RALPH DE LACEY**
(applicant/second respondent)
v
JUUNYJUWARRA PEOPLE
(first respondent/first respondent)
STATE OF QUEENSLAND
(second respondent/appellant)

FILE NO/S: Appeal No 2798 of 2004
NTXP00130 of 2003

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal - Further Order

ORIGINATING COURT: Land and Resources Tribunal at Brisbane

DELIVERED ON: Judgment delivered 13 August 2004
Further Order delivered 10 September 2004

DELIVERED AT: Brisbane

HEARING DATE: 20 July 2004

JUDGES: Davies JA, Mackenzie and Mullins JJ
Judgment of the Court

FURTHER ORDER: **1. The second respondent pay the appellant's costs of the appeal to be assessed**
2. Grant an indemnity certificate under s 15(1) of the *Appeal Costs Fund Act 1973 (Qld)* to the second respondent

CATCHWORDS: PROCEDURE - COSTS - where appeal was necessary as a result of the error of law made by Land and Resources Tribunal - where appellant as the successful party should have an order for costs against the second respondent - whether appropriate in the circumstances for an indemnity certificate to be granted - indemnity certificate granted

Appeal Costs Fund Act 1973 (Qld), s 15(1)

COUNSEL: P J Flanagan SC, with J M Horton, for the appellant
J K Khatri (sol) for the first respondent
G E Hiley QC, with P R Smith, for the second respondent

SOLICITORS: C W Lohe, Crown Solicitor, for the appellant
Ebsworth & Ebsworth for the first respondent
MacDonnells for the second respondent

- [1] **THE COURT:** When the reasons for judgment were published in *De Lacey v Juunjuwarra People & Anor* [2004] QCA 297, the parties were invited to make written submissions as to costs. Each of the parties has delivered written submissions to the Court.
- [2] The first respondent did not take an active role in relation to the appeal and submits that no order for costs should be made against them. That is appropriate. The costs question arises between the protagonists who were the appellant and the second respondent.
- [3] The appellant was successful in arguing on the appeal that the Tribunal did not have jurisdiction to determine as a preliminary issue whether the *Starcke Pastoral Holdings Acquisition Act 1994* (Qld) extinguished all native title rights and interests of the first respondent in relation to the land that was the subject of a high impact exploration permit made by the second respondent. The Tribunal's decision was made on the application of the second respondent. The appellant therefore submits that the general rule that costs should follow the event should operate and that the second respondent should pay the appellant's costs of the appeal.
- [4] The second respondent seeks an order that each party bear its own costs of the appeal. In the alternative, the second respondent seeks an indemnity certificate in respect of the appeal pursuant to s 15(1) of the *Appeal Costs Fund Act 1973* (Qld).
- [5] The second respondent elected to bring the application which resulted in the Tribunal's decision and to which the appellant was a proper party. The second respondent had expressly disavowed in his application that he was seeking a determination of native title. As is apparent from the Tribunal's reasons for decision, the Tribunal went much further in deciding the extent of its jurisdiction than was required of it by the second respondent.
- [6] Notwithstanding that the second respondent is dissatisfied with the dealings which he has had in this matter with the appellant, prior to it being referred to the Tribunal, the appellant has been successful as a litigant on this appeal and should have its costs paid by the second respondent. As the appeal was necessary, as a result of the error of law made by the Tribunal, it is an appropriate case in the circumstances for an indemnity certificate to be granted to the second respondent.
- [7] The orders which should be made are:
1. The second respondent pay the appellant's costs of the appeal to be assessed.
 2. Grant an indemnity certificate under s 15(1) of the *Appeal Costs Fund Act 1973* (Qld) to the second respondent.