

CITATION: *Clarke v Murray* [2016] QCAT 203

PARTIES: Richard Ernest Clarke
(Applicant)
v
Russell Murray
(Respondent)

APPLICATION NUMBER: NDR101-16

MATTER TYPE: Other civil dispute matters

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Senior Member Brown**

DELIVERED ON: 20 June 2016

DELIVERED AT: Brisbane

ORDERS MADE: **1. The application is dismissed.**

CATCHWORDS: JURISDICTION – tree dispute – where trees located on applicant’s land – where applicant seeks orders preventing respondent neighbour from interfering with applicant’s trees – where Tribunal lacks jurisdiction – where proceeding misconceived or lacking in substance

Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 (Qld), ss 45, 46, 59 62
Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 47

APPEARANCES:

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)* (QCAT Act).

REASONS FOR DECISION

[1] Richard Clarke says that his neighbour, Russell Murray, has been cutting the trunks of the bamboo trees situated on Mr Clarke’s land. Mr Clarke has filed an application in the Tribunal seeking an order that Mr Murray cease cutting the bamboo and seeking compensation for the damage to the bamboo.

- [2] Disputes in relation to trees are governed by the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 (Qld)* (NDA). A neighbour may apply to the Tribunal for an order relating to a tree¹ if the neighbour's land is affected by a tree.² A tree includes bamboo.³ Land may be affected by a tree in specified circumstances.⁴
- [3] The jurisdiction of the Tribunal in respect of dispute involving a tree is enlivened when a neighbour's land is affected by a tree situated on adjoining land.
- [4] The difficulty facing Mr Clarke is that his application does not relate to a tree on Mr Murray's land. Rather, Mr Clarke seeks orders relating to what he says is the interference by Mr Murray with the bamboo on Mr Clarke's land.
- [5] The Tribunal is a creature of statute and derives its jurisdiction from, among other enabling Acts of the Queensland parliament, the NDA. Mr Clarke's land is not affected by a tree for the simple reason that the bamboo is *on* his land. Mr Clarke therefore cannot apply to the Tribunal for an order relating to the bamboo. The NDA does not apply to the particular dispute the subject of Mr Clarke's application. The Tribunal has no jurisdiction in respect of the dispute.
- [6] Mr Clarke may well have a justifiable grievance as a result of what he says are the actions of Mr Murray. Any remedy available to Mr Clarke is not one he can seek in the Tribunal.
- [7] Where a proceeding is misconceived or lacking in substance, the Tribunal may dismiss the proceeding.⁵
- [8] The application must be dismissed and I order accordingly.

1 NDA, s 62.
2 Ibid, s 59(a).
3 Ibid, s 45(1).
4 Ibid, s 46.
5 QCAT Act, s 47.