

CITATION: *Munupi Wilderness Lodge Pty Ltd v Executive Director of Township Leasing* [2024] NTSC 36

PARTIES: MUNUPI WILDERNESS LODGE PTY LTD

v

EXECUTIVE DIRECTOR OF TOWNSHIP LEASING

TITLE OF COURT: SUPREME COURT OF THE NORTHERN TERRITORY

JURISDICTION: APPEAL from LOCAL COURT exercising Territory jurisdiction

FILE NO: 2023-03400-SC

DELIVERED: 30 April 2024

HEARING DATE: 22 April 2024

JUDGMENT OF: Brownhill J

CATCHWORDS:

Leases and tenancies – Aboriginal Land Trust – Township Lease - Equitable lease – Executive Director of Township Leasing – Functions and Powers of the Executive Director of Township Leasing – Notice to Quit – Aboriginal Land Trust grants lease to Executive Director of Township Leasing – Warrant of Possession pursuant to Business Tenancies (Fair Dealing) Act 2003 (NT) – Appeal must relate to a question of law – Meaning of ‘landlord’ under Business Tenancies (Fair Dealing) Act 2003 (NT) – Executive Director of Township Leasing not the agent of the Commonwealth – ‘Administration’ of a lease – Consultation requirements – Not a judicially reviewable decision – Appeal dismissed.

Cmunti v New South Wales Commissioner of Police [2019] NSWCCA 177, *Davies v Western Australia* (1904) 2 CLR 29, *Holt v Dental Board of Australia* [2023] NTSC 28, *King v Commissioner for Consumer Protection* [2018] WASCA 194, *Kostas v HIA Insurance Services Pty Ltd* (2010) 241 CLR 390, *Lavorato v The Queen* (2012) 82 NSWLR 568, *Mercantile Mutual Life Insurance Co Ltd v Australian Securities Commission* (1993) 40 FCR 409, *Munupi Wilderness Lodge Pty Ltd v Executive Director of Township Leasing* [2022] FCA 216, *Reynolds v Chief Health Officer* [2020] NTSC 44, *Santos NA Barrossa Pty Ltd v Tipakalippa* [2022] FCAFC 193, *Tiwi Aboriginal Land Trust v Munupi Wilderness Lodge Pty Ltd* [2014] NTSC 5, *Watson v Marshall* (1971) 124 CLR 621, *Work Health Authority v Outback Ballooning Pty Ltd* (2019) 266 CLR 428, referred to.

Aboriginal Land Rights (Northern Territory) Act 1976 ss 3, 3A, 3AA, 5, 19, 19A, 20B, 20C, 20D, 23.

Business Tenancies (Fair Dealings) Act 2003 (NT) ss 123, 124, 125, 129, 131.

REPRESENTATION:

Counsel:

Appellant:	R Clutterbuck
Respondent:	J Ingrames

Solicitors:

Appellant:	Turnbull Mylne Solicitors
Respondent:	Australian Government Solicitor

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

*Munupi Wilderness Lodge Pty Ltd v Executive Director of Township
Leasing* [2024] NTSC 36
No. 2023-03400-SC

BETWEEN:

**MUNUPI WILDERNESS LODGE
PTY LTD**

Appellant

AND:

**EXECUTIVE DIRECTOR OF
TOWNSHIP LEASING**

Respondent

CORAM: BROWNHILL J

REASONS FOR JUDGMENT

(Delivered 30 April 2024)

- [1] The following facts are not in dispute.¹
- [2] The appellant ('Munupi') operates a fishing lodge as a tourism business from land on Melville Island identified as Lot 322(A) on Survey Plan S2012/289A, Pirlingimpi ('Land').
- [3] From 2005, Munupi occupied the Land pursuant to a lease ('original lease') granted by the Tiwi Aboriginal Land Trust ('TALT').

¹ See the decision below, *Tiwi Aboriginal Land Trust v Munupi Wilderness Lodge Pty Ltd* [2014] NTSC 5 and *Munupi Wilderness Lodge Pty Ltd v Executive Director of Township Leasing* [2022] FCA 216.

[4] TALT is an Aboriginal Land Trust which holds a fee simple title to Melville Island pursuant to the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) ('ALRA').

[5] From 1 July 2010, Munupi occupied the Land pursuant to rights and interests arising in equity in the form of an equitable lease on the same terms as the original lease, including provision for a five year term with an option to renew.

[6] The term of the equitable lease expired on 1 July 2015, with the option to renew not having been exercised. From that time, pursuant to a holding over clause in the equitable lease, Munupi occupied the Land on a quarterly periodic basis, subject to terms equivalent to the original lease. The holding over clause ('holding over clause') was in the following terms:

19.1 Should the Lessee continue to occupy the [Land] beyond the expiration of the term of this Lease or any extension or renewal thereof with the consent of the Lessor it will do so on and subject to the covenants conditions and terms hereof as a quarterly tenant only ... to be determinable at the will of either the Lessor or the Lessee by three months' notice in writing expiring on any day of the month.

[7] The respondent ('EDTL') is a statutory office established by s 20B of the ALRA.

- [8] Munupi has not paid rent since October 2016. Despite efforts to negotiate a new lease to Munupi, the parties could not reach an agreement.
- [9] On 26 June 2017, the TALT granted the EDTL a lease over the township of Pirlangimpi pursuant to s 19A of the ALRA, which included the Land ('township lease').
- [10] Section 19A(10) of the ALRA provides that any right, title or other interest in land the subject of a lease granted under s 19 that existed immediately before the time the lease takes effect is preserved as a right, title or interest in that land after that time. Section 19A(11) provides that, if that right, title or other interest was granted by the Land Trust, then, at the time the lease granted under this section takes effect, that right, title or other interest has effect as if it were granted by the EDTL on the same terms and conditions as existed immediately before that time.
- [11] On 5 January 2021, the EDTL served on Munupi a written notice dated 11 December 2020 to vacate the Land and determine the quarterly tenancy in accordance with the holding over clause. This notice was described as a 'notice to quit' ('notice to quit') and sought to raise the consequences under the *Business Tenancies (Fair Dealings) Act 2003* (NT) ('BTFDA'), namely to give the Local Court power to issue a warrant of possession to the EDTL.

[12] Munupi brought proceedings in the Federal Court of Australia seeking an extension of time to commence proceedings for judicial review of the decision of the EDTL to issue the notice to quit. In *Munupi Wilderness Lodge Pty Ltd v Executive Director of Township Leasing* [2022] FCA 216, Charlesworth J held that, after the grant of the township lease, the legal relationship between the TALT, the EDTL and Munupi was as follows:

- a. TALT is the proprietor of the Land;
- b. TALT and EDTL are respectively lessor and lessee under and subject to the terms of the township lease;
- c. Munupi's interest in the Land under and by virtue of the equitable lease is preserved.
- d. The EDTL is taken to have granted to Munupi the interest in the Land;
- e. The EDTL must be taken to enjoy the rights and obligations of TALT under the equitable lease, equivalent to the original lease, which include the holding over clause.

[13] Charlesworth J also held (at [40]) that the effect of those legal relationships is that Munupi has rights equivalent to that of a sub-lessee in relation to the EDTL.

[14] Charlesworth J dismissed Munipi’s application for an extension of time to commence an application for judicial review and dismissed the proceeding, finding that the EDTL’s decision to terminate Munipi’s occupation of the Land was not a decision under the ALRA which is subject to judicial review.

[15] The EDTL then commenced proceedings in the Local Court for a warrant of possession pursuant to s 131 of the BTFDA.

[16] On 15 September 2023, the Local Court made orders extending the time for the EDTL to apply for a warrant of possession to 20 October 2021, granting the application for a warrant of possession, and ordering Munupi to vacate the premises within 21 days.

Appeal

[17] Munupi filed a notice of appeal, appealing against the Local Court’s decision on the following grounds:

- a. The Local Court erred by incorrectly interpreting and applying ss 125 and 131 of the BTFDA, and ss 19A and 20C of the ALRA, to the facts of the case.
- b. The Local Court’s decision involved an error of law in determining that the consultation regime as referred to in *Santos NA Barrossa Pty Ltd v Tipakalippa* [2022] FCAFC 193 did not apply.

[18] At the hearing of the appeal, an application for leave to amend the second ground was made, seeking to delete ground 2 and replace it with the following:

The Local Court erred in finding that consultation had taken place as required by cl 23 of the head lease when there was no evidence upon which that finding could be made.

[19] I granted leave for that amendment to be made, essentially because first, the respondent had had the opportunity at trial, which it appeared to have taken, to put on such evidence as it had regarding the question of consultation with the Consultative Forum referred to below. Second, because the matter had a lengthy history and the parties were keen for it to be finalised, and thirdly because any prejudice to the EDTL could be accommodated by giving the EDTL until the afternoon session of the hearing day to deal with the new ground.

Questions of law on appeal

[20] The appeal is brought pursuant to s 19(1) of the *Local Court (Civil Procedure) Act 1989* (NT), which permits an appeal to this Court ‘on a question of law, from a final order’ in the proceedings.

[21] The subject matter of the appeal must be a question of law itself, not a mixed question of fact and law, or a matter which merely ‘involves’ a

question of law.² The Court must determine whether there has been an error of law and, if so, to describe the nature, content and effect of that error and make such orders as it thinks fit.³

[22] A question that asks: ‘Was there error in deciding that ...?’ does not identify a question of law and will usually involve the Court in deciding a question of mixed fact and law.⁴

[23] The error of law must be such as to vitiate the decision below before the Court will intervene.⁵

[24] The grounds of appeal in this matter are not framed as questions, and the first ground in its terms appears to raise a mixed question of law and fact.

[25] Nevertheless, at the heart of the appeal grounds,⁶ are the following questions of law:

- a. Is the EDTL the ‘agent’ of the Commonwealth within the meaning of s 125 of the BTFDA such that written authority, outside of s 20C of the ALRA, was required from the Commonwealth for the EDTL to issue the notice to quit?

² See *Reynolds v Chief Health Officer* [2020] NTSC 44 at [15] per Grant CJ.

³ Ibid.

⁴ *Cmunti v New South Wales Commissioner of Police* [2019] NSWCCA 177 at [12] per Simpson AJA (Walton and Adamson JJ agreeing), citing *Lavorato v The Queen* (2012) 82 NSWLR 568 at [13].

⁵ Ibid.

⁶ See *King v Commissioner for Consumer Protection* [2018] WASCA 194 at [136], applied in *Holt v Dental Board of Australia* [2023] NTSC 28 at [24] per Brownhill J.

- b. Was there no evidence on which to find that the requirements for consultation in cl 23 of the township lease had been met in relation to the EDTL's issuance of the notice to quit?

[26] Expressed in that way, both grounds of appeal raise questions of law.⁷

Ground 1: Is the EDTL the 'agent' of the Commonwealth?

[27] It was not in dispute that the provisions of Part 13 of the BTFDA apply to the interests of Munupi under the holding over provision in the equitable lease.

[28] Section 124 of the BTFDA provides that a person must not, except in accordance with an order of a court, enter business premises of which a person has possession as a tenant under a business lease, or as a former tenant holding over after termination of a business lease, for the purpose of recovering possession of the premises.

[29] Section 131 of the BTFDA provides that where a landlord has given to a tenant a notice to quit which complies with Div 2 of Part 13, the landlord or an agent authorised in writing may, at any time within 60 days after the expiry of the term of the notice, apply to the Local Court for a warrant of possession.

⁷ A question as to whether there was *no* evidence, as distinct from *insufficient* evidence, of a found fact (whether an ultimate found fact or a found fact from which inferences were drawn) is a question of law. See *Kostas v HIA Insurance Services Pty Ltd* (2010) 241 CLR 390 at [90]-[91] per French CJ (Hayne, Heydon, Crennan and Kiefel JJ agreeing).

- [30] Section 129 of the BTFDA provides that a notice to quit which does not comply with the provisions of Div 2 of Part 13 does not operate so as to terminate the tenancy in respect of which the notice was given.
- [31] Section 125 of the BTFDA provides that a notice to quit given by a landlord is to be in writing and signed by the landlord, or the landlord's agent authorised in writing.
- [32] The term 'landlord' is defined, for the purposes of Part 13, Div 2 of the BTFDA, to mean the party to a business lease who makes premises available for occupation by a tenant or who, being an owner of business premises, permits a person to occupy those premises in exchange for rent (s 123). The term 'tenant' is defined, for the purpose of Part 13, to include a person who remains in possession of business premises after determination of a lease of those premises to him or her, and the word 'landlord' is used correlatively.
- [33] The Local Court held (at [22]-[25]) that there was no suggestion in the ALRA that the EDTL was in the position of the agent of the Commonwealth, and rejected the appellant's argument.
- [34] Counsel for Munupi argued that the notice to quit was signed by the EDTL, who is not 'the landlord' but 'the landlord's agent', within s 125 of the BTFDA. Further, there was no evidence that the Commonwealth had authorised the EDTL in writing to issue the notice

to quit.⁸ It was said that, for this reason, the notice to quit did not comply with the requirements of Div 2, Part 13 and, consequently, the precondition in s 131 to an application for a warrant for possession was not satisfied, thereby denying to the Local Court jurisdiction to grant the application.

[35] The EDTL is established by s 20B of the ALRA. The EDTL is appointed pursuant to s 20D.

[36] Section 19A(1) of the ALRA permits a Land Trust to grant a lease of a township to an approved entity if: (a) the Minister consents, in writing, to the grant; and (b) the Land Council for the area directs, in writing, the Land Trust to grant the lease. An approved entity is a body approved by the Commonwealth Minister to be an approved entity under s 3A of the ALRA (s 3(1)). The Minister may approve the Commonwealth, or a Commonwealth authority, as an approved entity (s 3AA(1)).

[37] It was common ground that the Township Lease was granted by the TALT to ‘the EDTL ... on behalf of the Commonwealth’ pursuant to s 19A of the ALRA. So much is clear from the terms of the Township Lease.⁹

8 The appellant’s written submissions that the ‘true landlord’ was the TALT and written authority was required from it for the issuance of the notice to quit were abandoned at the hearing.

9 See Recitals B, D, E, F and H and the definition of ‘Lessee’.

- [38] It was common ground that the Commonwealth is an ‘approved entity’ within s 19A(1) of the ALRA.
- [39] As already referred to, s 19A(10) preserves any right, title or other interest in land the subject of a s 19A lease that existed immediately before the lease takes effect.
- [40] It was common ground that Munupi’s equitable lease, including the quarterly tenancy under the holding over clause, were preserved by s 19A(10) of the ALRA.
- [41] As already referred to, s 19A(11) provides that if the right, title or other interest was granted by the Land Trust, when the s 19A lease takes effect, the right, title or interest has effect as if it were granted by the approved entity on the same terms and conditions as existed immediately before that time.
- [42] Counsel for Munupi argued that, as the lessor under the equitable lease, the EDTL is not the ‘landlord’ but the ‘landlord’s agent’ within the meaning of the BTFDA.
- [43] Counsel for the EDTL argued that the terms ‘landlord’ and ‘landlord’s agent’ in the BTFDA deal with the relationship of principal and agent as understood under the general law, and the common situation in which the owner of a business premises, who grants a lease of those

premises, authorises a person (such as a real estate agent) to manage the tenancy on their behalf.

[44] Pursuant to the relevant provisions of the ALRA, the EDTL is not appointed as the Commonwealth's 'agent' to manage a tenancy entered into by the principal. Rather, the EDTL is the lessee under the head lease, and by virtue of s 19A(11), Munupi's rights and interests under the quarterly tenancy under the holding over clause are held by the EDTL. Consequently, the EDTL is the party to the quarterly tenancy who makes the Land available for occupation by Munupi, and therefore falls within the definition of the term 'landlord' within s 125 of the BTFDA.

[45] Reliance was placed by counsel for Munupi on the requirement in s 19A(1)(a) for the Minister's consent to the grant of a lease as supporting the conclusion that the EDTL is the Commonwealth's agent in respect of the interest held by Munupi. That submission is plainly wrong, because estates or interests granted by Land Trusts which exceed 40 years require the Minister's consent (see s 19(2), (3), (4A), (7)), but it could not sensibly be said that, as a consequence, the Land Trust, which owns the fee simple, is acting as the Commonwealth's agent in respect of the estate or interest granted.

[46] Even if (contrary to the conclusion reached above) the EDTL is the 'landlord's agent' within the meaning of s 125 of the BTFDA, the

notice to quit was signed by the EDTL. The only additional requirement in s 125 is that the agent was ‘authorised in writing’.

[47] Under general agency principles, an agent can be given broad and general authority to act on behalf of a principal, or narrow and specific authority to do so. Section 125 of the BTFDA contemplates, in its terms, either kind of authorisation, with the only requirement being that the authorisation is in writing.

[48] The functions of the EDTL include to enter into, on behalf of the Commonwealth, leases under s 19A (s 20C(a)) and to ‘administer’ leases granted to the Commonwealth under s 19A, including ‘administering’ subleases and other rights and interests derived from such leases, in accordance with their terms and conditions (s 20C(b)).

[49] Despite the well recognised distinction between functions and powers of a statutory body,¹⁰ it is clear that, under the ALRA, the statutory bodies it creates are implicitly granted the power to perform their functions. So much is clear from the absence of any express conferral of ‘powers’ upon the bodies conferred with ‘functions’ by the ALRA.¹¹

[50] The EDTL is authorised by s 20C(b) of the ALRA to ‘administer’ leases granted to the Commonwealth under s 19A, and subleases and other rights and interests derived from such leases. As already stated, it

10 See *Mercantile Mutual Life Insurance Co Ltd v Australian Securities Commission* (1993) 40 FCR 409 at 422 per Lockhart J.

11 See ss 5, 20C and 23 of the ALRA.

is implicit that the EDTL has the power to undertake the functions conferred on the EDTL by s 20C.

[51] Counsel for Munupi argued that the word ‘administer’ does not encompass the cessation or termination of leases, subleases or other rights and interests, but only extends to what is expressly contemplated by their terms and conditions, and the cessation of Munupi’s quarterly tenancy is not expressly referred to in either the equitable lease or the head lease.

[52] I do not accept that submission. First, the word ‘administer’ is broad and general and apt to encompass all aspects of the exercise of the EDTL’s rights under the relevant lease as lessee, sublease as sub-lessor or other right or interest, including as lessor under the equitable lease and the quarterly tenancy under the holding over clause.

[53] Second, the holding over clause expressly provides for the determination of the quarterly tenancy it creates at the will of either party by the giving of three months’ notice in writing. Its determination is expressly provided for under the terms of the holding over clause.

[54] Third, it would be an unnecessary and inconvenient constraint upon the EDTL’s powers, and the mechanism established by s 20C of the ALRA for administrative ease, if the EDTL had the power to administer these leases, subleases and other rights and interests, save for matters related

to their cessation or termination, in respect of which the Commonwealth Minister would be required to expressly and specifically authorise the EDTL to act.

[55] In my view, the ordinary meaning of the word ‘administer’, read in its statutory context, clearly extends to the determination of a quarterly tenancy created under the holding over clause in the equitable lease.

[56] Further, contrary to the submission of counsel for Munupi, there is no warrant to read or apply s 125 of the BTFDA ‘strictly’ or to ‘read it down’ in accordance with the principle enunciated in *Watson v Marshall* (1971) 124 CLR 621 (at 629). A right to possess land under a quarterly periodic tenancy, terminable at the will of a party without cause, is nothing like the right to personal liberty and freedom at issue in that case or others in which it has been applied.

[57] Statute law is written law. It cannot sensibly be said that the EDTL is not authorised in writing on behalf of its principal the Commonwealth (assuming the relationship is one of agency) to issue a notice to quit in respect of an interest preserved by s 19A of the ALRA.

[58] It would entirely undermine the operation of the ALRA provisions concerning s 19A township leases if the Commonwealth Minister was required to give a further written authorisation to the EDTL to take steps relating to the administration of s 19A leases or rights and interests arising thereunder. To conclude that s 125 of the BTFDA

required a further written authorisation from the Commonwealth to administer rights and interests derived from a township lease, sublease or other rights and interests arising therefrom under the ALRA, would be to find an direct inconsistency between a Commonwealth and a Territory law, with the result that the Territory law would be repugnant to, and would yield to, the Commonwealth law to the extent of the inconsistency.¹² Where more than one interpretation of a statute is possible, the interpretation which will ensure the validity of the Act is to be preferred.¹³ Consequently, I reject the argument that s 125 of the BTFDA requires a written authorisation from the Commonwealth to the EDTL to determine Munupi's quarterly tenancy beyond that contained in s 20C of the ALRA.

[59] No error of law has been established. This ground of appeal fails.

Ground 2: No evidence of consultation

[60] The Local Court held (at [28]-[29]) that the consultation requirements for the issuance of the notice to quit were satisfied.

[61] The appellant argued that the Local Court erred because there was no evidence that the consultations engaged in between the EDTL and the nominated members of the Consultative Forum referred specifically to the issuance of a notice to quit to Munupi.

12 See *Work Health Authority v Outback Ballooning Pty Ltd* (2019) 266 CLR 428 at [30] and [32] per Kiefel CJ, Bell, Keane, Nettle and Gordon JJ.

13 See *Davies v Western Australia* (1904) 2 CLR 29 at 43 per Griffith CJ.

[62] The appellant's arguments about failures to consult relied on the clauses in Part 8 of the township lease.

[63] Part 8 of the township lease is headed 'Consultative Forum, review of Lease, quiet enjoyment'. Immediately after execution of the township lease, the EDTL and the Land Council were required to establish a Consultative Forum comprising nominees of the EDTL and the Land Council, with a majority of members being those nominated by the Land Council (cl 23.2(a)). The purpose of the Consultative Forum is to facilitate communications and to discuss land use and other issues arising in relation to the administration of the head lease so far as they relate to having regard to the interests of the TALT, the traditional Aboriginal owners, other Tiwi people and other legitimate Township interests (cl 23.2(c)(i)). The members of the Consultative Forum who are nominees of the Land Council are required to consult with traditional Aboriginal owners of and other residents of the Township in relation to the business of the Consultative Forum (cl 23.2(d)). The EDTL is obliged to have due regard to any recommendation of the Consultative Forum unless the EDTL is expressly required under the head lease to adopt the position or recommendation of the Consultative Forum (cl 23.4). There are provisions as to the conduct of a Consultative Forum (cl 23.5), providing for a review of the operation of the head lease by the Consultative Forum every five years (cl 24), and providing for the EDTL to have quiet enjoyment of the Township

during the term of the head lease, subject to any existing right, title or other interest (cl 25.1(a)). The term 'consult' is defined in cl 1.1 of the township lease.

[64] Munupi's position in this appeal was that there was no evidence of consultation with the members of the Consultative Forum in accordance with cl 23.2(d) of the township lease in relation to the EDTL issuing Munupi with a notice to quit.

[65] The EDTL deposed, in an affidavit made on 11 November 2022, that she engaged with the Consultative Forum and members of the executive of Munupi on a number of occasions in her efforts to negotiate a further lease with Munupi over the Land. During those engagements, the nominees of the Land Council raised concerns with the EDTL about Munupi remaining on the Land without an existing lease and without having paid rent for a substantial period of time. After Munupi failed to accept a sublease over the Land on terms consistent with other subleases of land in the Township, and continued to fail to pay rent, the EDTL informed the Consultative Forum that the matter 'was being escalated through a legal process', by which I understood her to mean the issuance of a notice to quit. The EDTL informed the Consultative Forum by email that the notice to quit had been issued to Munupi around a months after it was served on Munupi.

[66] Counsel for Munupi argued that this evidence did not refer to or show consultation specifically about the issuance of the notice to quit, and consequently there was no evidence about such consultation.

[67] Even if it were accepted that there was an absence of *any* evidence at all of consultation between the EDTL and the Consultative Forum about issuing Munupi with a notice to quit (a matter which the respondent disputed¹⁴), the difficulties for Munupi in this regard are multiple, and fatal to this appeal.

[68] First, cl 23 does not confer any obligation on the EDTL to consult with the Consultative Forum. Its scope relates to the manner of consultation (ie, via the Consultative Forum) and its purpose. Clause 23.3 provides that a Consultative Forum does not have the power to bind the parties to the township lease (cl 23.3(a)) and that the EDTL must have regard to any recommendation of the Consultative Forum unless expressly required to adopt the Consultative Forum's position or recommendation (cl 23.4).

[69] Second, the obligation on the EDTL under the township lease to consult with the Consultative Forum only arises in relation to the grant by the EDTL of 'township subleases' under cl 19(1) of the township

14 Referring to the availability of inferences to be drawn from the EDTL's affidavit evidence that the engagements she had with the Consultative Forum included discussions about what could happen if a new sublease was not able to be negotiated with Munupi, supported by evidence in cross-examination of one of the four traditional Aboriginal owners of the Land who gave affidavit evidence deposing that they were not consulted by the EDTL about issuing the notice to quit. In cross-examination, Marius Puruntatameri agreed that he knew that the proceeding was about removing Munupi from the Land, not about removing a particular person connected with Munupi from the Tiwi Islands.

lease (cl 19.1(c)). Clause 19 gives to the EDTL the right to grant township subleases, subject to a number of conditions set out in cl 19.1, including to consult with the Consultative Forum. That right is conferred, at least in part, to enable the EDTL to perform her obligation under the township lease to use her best endeavours to formalise existing tenure arrangements in the Township within 12 months after the commencement of the township lease (cl 13.2).

[70] This explains why the evidence regarding the EDTL's consultation with the Consultative Forum related in large part (if not wholly) to the issue of the negotiations between the EDTL and Munupi about the terms of a new sublease proposed to be granted to Munupi.

[71] Third, in its terms, the township lease acknowledges that an existing right, title or interest preserved (by s 19A(10) of the ALRA) may not include the obligations on the EDTL under the township lease, and provides that the EDTL is not required to comply with an obligation under the township lease in respect of the area the subject of the existing right, title or interest to the extent that the same obligation is not contained in the relevant existing right, title or interest (cl 13.1(c)). The equitable lease does not contain any obligation on the lessor to consult with traditional Aboriginal owners or the Consultative Forum regarding determination of the quarterly tenancy established by cl 19 of the equitable lease.

[72] Fourth, and critically, even if the township lease obliged the EDTL to consult with the Consultative Forum about issuing a notice to quit to Munupi, Munupi is not a party to the township lease. It has no standing to enforce the terms of the township lease. Further, the proceeding in the Local Court was not an application for judicial review and, in any event, the Federal Court has held that the decision of the EDTL to issue Munupi with a notice to quit is not a judicially reviewable decision.

[73] It follows that, even if Munupi could establish that there is no evidence that the EDTL consulted with the Consultative Forum regarding issuing the notice to quit to Munupi, the Local Court's conclusion that the requirements for consultation under the township lease were satisfied is not an error of law which vitiates the decision.

[74] No error of law has been established. This ground of appeal fails.

Disposition

[75] The appeal is dismissed.

[76] I will hear the parties as to costs.
