*Margarula v Minister for Resource Development & Energy Resources Australia* [1999] NTSC 1

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| PARTIES: | YVONNE MARGARULA<br><br>v<br><br>HON ERIC POOLE, MINISTER FOR RESOURCE DEVELOPMENT and ENERGY RESOURCES AUSTRALIA LTD |
| TITLE OF COURT: | SUPREME COURT OF THE NORTHERN TERRITORY |
| JURISDICTION: | SUPREME COURT OF THE NORTHERN TERRITORY exercising TERRITORY JURISDICTION |
| FILE NO: | 9811250 (108/98) |
| DELIVERED: | 8 February 1999 |
| JUDGMENT OF: | THOMAS J |

**CATCHWORDS:**

Costs – General rule – Costs follow the event – Public interest litigation – Discretion of the Court to depart from the general rule – No ground for departure from the usual rule that costs follow the event

*Environmental Planning and Assessment Act* 1979 (NSW) – s123(1)
*Uranium Mining (Environment Control) Act* 1979 (NT)
*Supreme Court Rules* (NT), Order 63.03(1)

*Wilcox: ex parte Venture Industries Pty Ltd* (1996) 141 ALR 727 at 733 – approved
*Oshlack v Richmond River Council* (1998) 72 ALJR 578 – applied
*De Silva and Others v Mr Ruddock (in his capacity as Minister for Immigration and Multicultural Affairs) and Others*, unreported, Federal Court, 31 March 1998 at 2 – approved
*Hollier v Australian Maritime Safety Authority* (No. 2), unreported, Full Court of the Federal Court, 14 August 1998 at 3 (1998) 975 FCA at 11-12 - considered

**REPRESENTATION:**

*Solicitors:*

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| Plaintiff: | D.S. Mortimer (Dalrymple & Associates) |
| 1st Defendant: | R.J. Webb (NT Attorney-General's Dept |
| 2nd Defendant | N. Mukhtar (Cridlands) |

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| Judgment category classification: | C |
| Judgment ID Number: | tho99001 |
| Number of pages: | 5 |

IN SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

*Margarula v Minister for Resource Development & Energy Resources*
[1999] NTSC 1 No. 9811250 (108/98)

BETWEEN:

**YVONNE MARGARULA**
Plaintiff

AND:

**HON ERIC POOLE, MINISTER FOR RESOURCE DEVELOPMENT**
First Defendant

**ENERGY RESOURCES AUSTRALIA LTD**
Second Defendant

CORAM: THOMAS J

REASONS FOR JUDGMENT

(Delivered 8 February 1999)

THOMAS J:

[1] This deals with the question of costs following judgment in this matter delivered on 16 October 1998.

[2] Pursuant to leave granted to put forward further submissions on the question of costs, I received written submissions from the parties.

[3] For the reasons already published the plaintiff was not successful in her application to this Court. The findings made were in favour of the defendants.

[4] The usual order is that costs follow the event. In this case that would mean an order that the plaintiff pay the costs of the first defendant and the second defendant. The first and second defendants each seek such an order.

[5] Ms Mortimer, counsel for the plaintiff, submits that the court should exercise its discretion to make no order for costs.

[6] It is the submission on behalf of the plaintiff that the reason for seeking this order is because this was public interest litigation. The plaintiff's avowed purpose in bringing these proceedings was not to stop the Jabiluka mine but rather to ensure that the Minister exercised the discretions and powers which he had under the *Uranium Mining (Environment Control) Act* 1979 according to law and not otherwise.

[7] Counsel for the plaintiff further submitted that the decision of the Minister under the *Uranium Mining (Environment Control) Act* 1979 was under legislation which governs almost exclusively the environmental control of uranium mining in the Northern Territory. The importance placed on this by the plaintiff is that uranium mining is a significant and environmentally sensitive activity in the Northern Territory. It is submitted that the nature and extent of the Minister's powers to authorise such mining under the *Uranium Mining (Environment Control) Act* 1979 are all matters in which there is a public interest.

[8] I accept that the Court may be justified in departing from the usual orders in relation to costs where the justice of the case so requires because of a

"special or unusual" feature (*Wilcox: ex parte Venture Industries Pty Ltd* (1996) 141 ALR 727 at 733) or because of "exceptional or special" circumstances (*Oshlack v Richmond River Council* (1998) 72 ALJR 578). The plaintiff relies on the last mentioned decision as authority for the submission that a proceeding can properly be characterised as "public interest litigation" and that this is a proper consideration for a judge to take into account in exercising a discretion on the question of costs.

[9] Order 63.03(1) of the *Supreme Court Rules* states:

> "(1) Subject to these Rules and any other law in force in the Territory, the costs of a proceeding are in the discretion of the Court.

[10] This confers on the Court a broad discretion. However, the discretion must be exercised in accordance with established principles.

[11] I consider this matter is distinguishable from the matters under consideration in *Oshlack v Richmond River Council* (supra). The last mentioned authority concerned the administration of the *Environmental Planning and Assessment Act* 1979 of New South Wales. A significant factor in that case was the provisions of s123(1) of the *Environment Protection Act* which gives any person standing to remedy or restrain a breach of the Act:

> "Whether or not any right of that person has been or may be infringed by or as a consequences of that breach."

[12] The majority in the High Court agreed with the decision of the trial Judge, Stein J who had made no order as to costs despite the dismissal of the appellant's application for injunctive and declaratory relief. Gaudron and Gummow JJ at 581-2 referred to the matters taken into account by the primary Judge which included the following:

> "(i) The 'traditional rule' that, despite the general discretion as to costs being 'absolute and unfettered', costs should follow the event of the litigation 'grew up in an era of private litigation'. There is a need to distinguish applications to enforce 'public law obligations' which arise under environmental laws lest the relaxation of standing by s123 have little significance.
>
> (ii) The characterisation of proceedings as 'public interest litigation' with the 'prime motivation' being the upholding of 'the public interest and the rule of law' may be a factor which contributes to a finding of 'special circumstances' but is not, of itself, enough to constitute special circumstances warranting departure from the 'usual rule'; something more is required.
>
> (iii) The appellant's pursuit of the litigation was motivated by his desire to ensure obedience to environmental law and to preserve the habitat of the endangered koala on and around the site; he had nothing to gain from the litigation 'other than the worthy motive of seeking to uphold environmental law and the preservation of endangered fauna'.
>
> (iv) In the present case, 'a significant number of members of the public' shared the stance of the appellant as to the development to take place on the site, the preservation of the natural features and flora of the site, and the impact on endangered fauna, especially the koala. In that sense there was a 'public interest' in the outcome of the litigation.
>
> (v) The basis of the challenge was arguable and had raised and resolved 'significant issues' as to the interpretation and future administration of statutory provisions relating to the protection of endangered fauna and relating to the ambit and future administration of the subject development consent; these issues had 'implications' for the Council, the developer and the public.

(vi) It followed that there were 'sufficient special circumstances to justify a departure from the ordinary rule as to costs'."

[13] I am not persuaded that the exceptional or special circumstances which warranted a departure from the general rule in the decision in *Oshlack v Richmond River Council* (supra) exist in this case.

[14] I adopt with respect the statement of Merkel J in *De Silva and Others v Mr Ruddock (in his capacity as Minister for Immigration and Multicultural Affairs) and Others* unreported, Federal Court, 31 March 1998 at 2:

> "…. The fact that the proceeding involved elements of public law or the judicial review of the exercise of executive power does not, of itself, make the matter one in which the proceeding has been brought in the public interest. ….."

[15] I agree with the submission made by Ms Webb for the first defendant that the fact that the subject matter of litigation is of interest to the public, or raises a matter of public importance, would not provide any ground for departure from the usual rule that costs follow the event (*Hollier v Australian Maritime Safety Authority* (No. 2), unreported, Full Court of the Federal Court, 14 August 1998, at 3 (1998) 975 FCA at 11-12).

[16] For these reasons I order that the plaintiff pay the costs of the first and second defendant.

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