

PARTIES: WALTER EDWARD CASEY and
GEOFFREY EDWARD CASEY
(as executor of the will of the late
CORAL ELIZABETH CASEY)

v

GREENBUSHES LTD. and THE
MINISTER FOR MINES AND
ENERGY

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: CIVIL

FILE NO: LA 19 OF 1997 (9701112)

DELIVERED: 19 JUNE 1998

HEARING DATES: 16 APRIL 1998

JUDGMENT OF: MILDREN J

REPRESENTATION:

Counsel:

Appellants:	In person
Respondent Greenbushes Ltd.:	J Tippett
Respondent The Minister for Mines & Energy:	C Rowe

Solicitors:

Appellant:	Nil
Respondent Greenbushes Ltd.:	Ward Keller
Respondent The Minister for Mines & Energy:	Solicitor for the Northern Territory

Judgment category classification: C

Number of pages: 7

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

No. LA19 of 1997
(9701112)

BETWEEN:

**WALTER EDWARD CASEY
and GEOFFREY EDWARD CASEY**
(as executor of the will of the late
CORAL ELIZABETH CASEY)
Appellants

AND:

**GREENBUSHES LTD. and THE
MINISTER FOR MINES AND
ENERGY**
Respondents

CORAM: MILDREN J

REASONS FOR JUDGMENT

(Delivered 19 June 1998)

MILDREN J: This is an appeal which purports to be brought as of right from the decision of Mr Loundes SM sitting as a Warden's Court established under the *Mining Act*.

At the hearing of the appeal, Mr Walter Casey, the father of Mr Geoffrey Casey did not appear. Mr Geoffrey Casey sought to represent him at the hearing. Mr Geoffrey Casey has no right of

audience in this Court, except of course, to represent himself as executor of the will of the late Coral Elizabeth Casey. I was informed that Mr Walter Casey was unable to attend through illness. I refused leave to Mr Geoffrey Casey to represent Mr Walter Casey. It is sufficient to record that there was no evidence that Mr Walter Casey had authorised Mr Geoffrey Casey to represent him, and without evidence of express authority, Mr Geoffrey Casey's application could not be entertained. I proceeded to hear the appeal by Mr Geoffrey Casey.

Most of the grounds relied upon by Mr Geoffrey Casey were dismissed during the course of the hearing for reasons which I then expressed briefly. At the end of the hearing, I gave short oral reasons dealing with the remaining grounds of appeal. In the end I dismissed his appeal, with costs, but as I had not heard from Mr Walter Casey, I ordered that he be given an opportunity to put any submissions he may wish to put in writing, and that the orders dismissing Mr Geoffrey Casey's appeal and for costs were not to be taken out until I had considered Mr Walter Casey's appeal and delivered final judgement. The purpose of this was to leave it possible for me to change my mind as a result of hearing from Mr Walter Casey.

Subsequently I received written submissions from Mr Walter Casey and from counsel for the respondents.

The first matter raised by Mr Walter Casey is an objection to my hearing this appeal, presumably on the ground of apparent bias, although the objection is expressed as being that I should not hear this appeal as the appellants are appealing a decision of mine to the Court of Appeal in another matter. The matter referred to is *Casey and Casey v Minister for Mines and Energy*, delivered on 11 February 1998. In that matter I considered an argument raised by the appellants which is substantially the same argument as is raised by ground 1 of the Notice of Appeal in this matter.

Appeals from a Warden's Court to this Court are made pursuant to s159 of the *Mining Act*, which provides:

An appeal shall lie to the Supreme Court from a decision of a warden's court or a warden in the same manner as an appeal against a decision of the Local Court or a Magistrate so lies.

In *Enterprise Gold Mines NL v Mineral Horizons NL* (No2) (1988) 52 NTR 23, the Full Court held that the appeal was an appeal in the strict sense, and the question for decision is:

Subject to s59(2) of the *Local Courts Act*, has the decision of the warden's court been shown to have been incorrect when it was given, on the evidence before that court, or on the evidence together with any further evidence properly admitted on the hearing of the appeal;

and if so, what would that decision have been,
on the date it was given?

Consequently the appellant may raise issues which are questions of fact as well as of law. However, ground 1 of the present appeal is a complaint that the learned Magistrate erred in finding that:

...he had the power to allow the defendant (Greenbushes Pty Ltd) to not comply with Regulation 40 of *the Mining Act* which requires a defendant to lodge a defence with the Mining Registrar.

That is a question of law. In *Casey and Casey v Minister for Mines and Energy* the same ground was raised, and I dismissed it. It is well established that

...a judge should not sit to hear a case if in all the circumstances the parties or the public might entertain a reasonable apprehension that he might not bring an impartial or unprejudiced mind to the resolution of the question involved in it.

See *Livesey v The NSW Bar Association* (1983) 151 CLR 288 at 293-4. The principle applies whenever there is a question of fact to be decided which constitutes a live and significant issue in the subsequent case, or a question about the credibility of a witness whose evidence is of significance on that question, where the

judge has in a previous case decided the same question or expressed strong views about the credibility of that witness. There is no authority which suggests that the mere fact that a judge has decided a particular question of law which is to be raised again in subsequent proceedings is a ground for a reasonable apprehension of bias. Judges are not bound by their own decisions and should be open to be persuaded that their earlier decision was wrong. This is the position here. I reject the application to disqualify myself.

As to ground 1, there is nothing that has been put to me to change my opinion that there is no substance to this ground of appeal.

As to ground 2 of the Notice of Appeal, the complaint is that the learned Magistrate erred in refusing to hear evidence in support of a contention that a right to mine given to the appellants for a period of 5 years pursuant to the terms of an option agreement in writing ran only when the world price of tin and tantalite was at a sufficient level to make the mining of those products economically viable. The learned Magistrate's ruling on this question was given on 15 May 1997, or at the latest, on 13 June 1997 when judgement on the whole of the plaint was given. Consequently the appeal is

out of time, and leave is required pursuant to s19(2) of the Local Court Act. No fresh arguments were raised by Mr Walter Casey which I have not already considered. I do not consider that there are any prospects of the appellants succeeding on this issue, and refuse leave. Ground 2 is therefore dismissed.

As to ground 3 of the Notice of Appeal, this related to an order that the appellants pay the respondents' costs on an indemnity basis. No fresh submissions were made on that issue. I see no reason to depart from the oral judgment which I delivered on 15 April 1998.

A further complaint raised by Mr Walter Casey, which is not a specific ground of appeal, but is mentioned in the Notice of Appeal, is that the learned Warden

...stated at the outset that (he) had no previous experience in the Warden's Court. (He) took guidance from the Defence Counsel rather than the Clerk of the Court (the Mining Registrar, Mr Harry Harmer) who was there at the time.

Mr Harmer is not a legal practitioner, and not a party to the proceedings, although he apparently was called as a witness. It is fundamental that those acting judicially who need guidance or assistance should as a general rule seek that through the parties or their legal representatives, and not through third parties. Whilst there may be some exceptions to this, it is one thing to say that a

Magistrate may seek advice from a third party in certain circumstances, but quite another to impose upon the Magistrate any obligation to do so. There is no basis for criticism of the learned Magistrate for not consulting Mr Harmer, even though the appellants were not legally represented. The obligation rested upon counsel who appeared at the hearing as officers of the court to ensure that the learned Magistrate was properly instructed as to the law, and to draw to the Magistrate's attention any relevant statutory provisions or precedents which might reasonably have supported the appellants' case, as well as those which supported their own clients' cases. It is not suggested that this was not done.

The appeals are therefore dismissed with costs.