

PARTIES:

**JIMMY TAPGNUK, TOMMY WURRAN,
ALBERT MYOUNG and BIDDY LINDSAY**

v

NORTHERN LAND COUNCIL

and

**ARTHUR QUE NOY,
MARJORIE FOSTER,
FRANCES STORER, MAXINE HILL,
MICKY FOSTER and RHONA FOSTER**

TITLE OF THE COURT:

SUPREME COURT

JURISDICTION:

CIVIL

FILE NOS:

No. 137 of 1995

DELIVERED:

29 May 1996

HEARING DATES:

24 May 1996

JUDGMENT OF:

Angel J

CATCHWORDS

Costs - General rule - Costs follow the event - Whether
displaced by public interest - Not on facts - Whether
access to public funds for costs relevant - Whether
statutory duty exists - s23(1)f Aboriginal Land Rights
(NT) Act 1976 C'th

Aboriginal Land Rights (NT) Act 1976 C'th s23(1)f

REPRESENTATION:

Counsel:

Plaintiff: A Lindsay
First Defendant: R Levy
Second Defendant: M Hardie

Solicitors:

Plaintiff: Cridlands
First Defendant: Northern Land Council
Second Defendant: Ward Keller

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA

No. 137 of 1995

BETWEEN:

JIMMY TAPGNUK, TOMMY WURRAN
ALBERT MYOUNG and BIDDY LINDSAY
Plaintiffs

AND:

NORTHERN LAND COUNCIL
First Defendant

AND:

ARTHUR QUE NOY, MARJORIE
FOSTER, FRANCES STORER, MAXINE
HILL, MICKY FOSTER and RHONA
FOSTER
Second Defendants

CORAM: Angel J

REASONS FOR JUDGMENT

(Delivered 29 May 1996)

On the 16 May 1996 I delivered judgment in this matter dismissing the plaintiffs' claims for declaratory relief. I announced that costs would follow the event and that the defendants would have their costs against the plaintiffs. Before the judgment was drawn up the parties gave notice that they wished to be heard about costs, and on 24 May 1996 I

heard submissions. Counsel for the plaintiffs said there were five reasons why costs should not follow the event. They were as follows:

1. that as a matter of substance each party was partially successful;
2. that my judgment established the procedure in advance for the parties' traditional claims to the subject land and that the parties would thereby be benefited equally;
3. that by virtue of s23(1)(f) of the Land Rights Act, the first defendant had a statutory obligation to pay the costs both of the plaintiffs and of the second defendants;
4. that the matters argued before me involved questions of public interest; and,
5. that the litigants before the court were publicly financed.

The plaintiffs submitted that the appropriate order was that all parties should bear their own costs.

The first defendant submitted that the appropriate order for costs was that costs follow the event and that the costs of both the first defendant and the second defendants should be paid by the unsuccessful plaintiff.

The second defendants submitted that the appropriate order for costs was that the first defendant should pay the second defendants' costs, it being under a statutory obligation, pursuant to s23(1)(f) of the Aboriginal Land

Rights (NT) Act, to do so, and that the plaintiff should pay the first defendant's costs and also be required to indemnify the first defendant with respect to the second defendants' costs.

I am of the opinion that the plaintiffs' submissions are not such as to justify an order for costs other than that they follow the event. The plaintiffs sought declaratory relief, which, if successful, would have excluded the second defendants from pursuing a traditional claim to the subject land. I can not agree, as was submitted, that each party was "partially successful". Whilst it is true that the effect of the judgment establishes the parties' rights and the procedure in advance as to how the second defendants' claim to the land is to be prosecuted, that of itself is not sufficient in my view to sway the matter. As to s23(1)(f) of the Aboriginal Land Rights (NT) Act, I was referred to the judgment of Olney J in *Majar v Northern Land Council* (1991) 37 FCR 117 and in particular the following passages: at p136:

"My analysis of the relevant provisions of the Act leads me to the conclusion that by virtue of s23(1)(f) the NLC was under a statutory obligation to assist the applicants in pursuing their claim to be recognised as the traditional Aboriginal owners of the land in question, and in particular, it was obliged to arrange for legal assistance for them at the expense of the land council.",

and further, at p138:

"The legislative policy behind s23(1)(f) of the Land Rights Act is to ensure that aboriginals seeking to obtain

recognition of their claimed status as traditional Aboriginal owners of land should receive assistance. It is implicit in the paragraph that such assistance will involve expense and whilst legal assistance is referred to in particular, the paragraph is clearly wide enough to embrace all relevant assistance needed to pursue the claim. This would obviously include the assistance of anthropologists and other experts knowledgeable in appropriate fields of learning."

I am of the opinion s23(1)(f) of the Land Rights Act is not a relevant consideration to an exercise of the judicial discretion as to costs in this litigation. That section is concerned with land claims pursuant to the provisions of the Aboriginal Land Rights (NT) Act. It is not concerned with, nor does it address private litigation in the courts. It was argued that the litigation is incidental to a land claim. That may be so, but the litigation itself is not a land claim and s23(1)(f) simply has no application to the litigation.

As to the plaintiffs' argument that this is public interest litigation, I am of the opinion that any element of general public importance or interest involved in this case does not justify a departure from the normal rule that costs should follow the event.

The plaintiffs brought about this litigation and thus the consequent costs incurred by the defendants. The litigation was commenced in an effort to exclude the second defendants from pursuing their claims to the land. It can not be said that these proceedings were brought in the public interest.

The case was not a test case, but one of statutory construction. As I have said, in my view there is no public interest feature in this case sufficient to warrant a costs order other than the normal order.

The fact that the litigants (or any of them) receive public (or any other) funds in respect of their legal costs is not a relevant consideration for the court.

The order of the court will be that the plaintiffs pay the defendants' costs.
