

CITATION: *Cole v Rigby & Ors* [2023] NTSC 20

PARTIES: COLE, David Alan

v

RIGBY, Kerry Leanne

And:

O'NEILL, Julie Ann

And:

CARTMILL, Robert

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: APPEAL from LOCAL COURT exercising
Territory jurisdiction

FILE NO: LCA 1 of 2023 (22134034)
LCA 2 of 2023 (22203951)
LCA 3 of 2023 (22205498)
LCA 4 of 2023 (22207025)

DELIVERED ON: 1 March 2023

HEARING DATE: 1 March 2023

JUDGMENT OF: Grant CJ

CATCHWORDS:

Appeal not brought from a 'conviction, order, or adjudication' of the Local Court – Appeal dismissed.

Local Court (Criminal Procedure) Act (NT), s 163

Step v Atkins [2008] NTCA 5, applied.

REPRESENTATION:

Counsel:

Appellant: Self-represented
Respondent: I Rowbottam

Solicitors:

Appellant: Self-represented
Respondent: Office of the Director of Public Prosecutions

Judgment category classification: C
Judgment ID Number: Gra2304
Number of pages: 4

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

Cole v Rigby & Ors [2023] NTSC 20
LCA 1 of 2023 (22134034)
LCA 2 of 2023 (22203951)
LCA 3 of 2023 (22205498)
LCA 4 of 2023 (22207025)

BETWEEN:

DAVID ALAN COLE
Appellant

AND:

KERRY LEANNE RIGBY
First Respondent

AND:

JULIE ANN O'NEILL
Second Respondent

AND:

ROBERT CARTMILL
Third Respondent

CORAM: GRANT CJ

REASONS FOR JUDGMENT

(Delivered *ex tempore* on 1 March 2023)

- [1] The appellant is charged variously by information and complaint with a number of offences across four files. Those offences include three counts of unlawfully assaulting a police officer in the execution of his duty, three counts of engaging in conduct in contravention of a

direction made by the Chief Health Officer, behaving in a disorderly manner in a public place, taking part in a riot, entering onto Aboriginal land without a permit to do so and breach of bail.

[2] In the course of those criminal proceedings before the Local Court, the appellant raised a preliminary issue for determination. The appellant's contention was that the Australian *Constitution*, the laws of the Commonwealth and the laws of the Northern Territory have no application to him as a 'sovereign tribal man'. The appellant asserts that, as a consequence, the Local Court has no jurisdiction or power to hear and determine the charges which have been brought against him.

[3] On 15 November and 6 December 2022, Judge Woodroffe of the Local Court conducted a hearing and received submissions on that preliminary issue. On 6 December 2022, Judge Woodroffe determined that he was bound by authorities from the High Court and this Court to the effect that indigenous Australians are subject to the laws of the Commonwealth, and the laws of the States and Territories in which they reside. As a consequence, the appellant's application on the preliminary issue was dismissed.

[4] By Notices of Appeal filed in this Court on 6 January 2023, the appellant seeks to appeal that decision on the basis that it is contrary to a number of other decisions of the High Court and inconsistent with the *United Nations Declaration on the Rights of Indigenous Peoples*.

[5] By way of preliminary observation, there would appear to be insurmountable barriers to the acceptance of the appellant's contentions in either the Local Court or in this Court. That is because there is High Court authority to contrary effect: see *Walker v State of New South Wales* (1994) 182 CLR 45; *Coe v The Commonwealth* (1979) 53 ALJR 403; as cited in *Kerinaiua v Andreou* [2018] NTSC 87. The appellant would need to make good his contentions before the High Court if he is to succeed. Moreover, there is nothing in *Mabo v Queensland (No 2)* (1992) 175 CLR 1, or the more recent High Court authorities referred to by the appellant, which would support the notion that Australian legislatures lack competence to regulate the rights of Aboriginal people, or that the laws enacted by those legislatures are subject to the acceptance, adoption, request or consent of an Aboriginal person to which they would otherwise have application.

[6] However, it is unnecessary to decide that matter for present purposes. The appeals are purportedly brought pursuant to the *Local Court (Criminal Procedure) Act 1928* (NT). Section 163 of that Act provides relevantly that a party to proceedings before the Local Court may appeal to this Court from a 'conviction, order, or adjudication' of the Local Court on a ground which involves sentence, or an error or mistake on the part of the Local Court.

[7] The operation of that provision was considered by the Northern Territory Court of Appeal in *Step v Atkins* [2008] NTCA 5 (at a time

before the *Justices Act* was renamed). In that decision, Thomas J (with whom Martin (BR) CJ and Southwood J concurred), tracked the history of the provision and the manner in which it had been interpreted over that time. The right of appeal lies only from an order determining the subject matter of the complaint; that is, from a final and not from an interlocutory order: see *Macey v Cooper* (1999) 150 FLR 476; *Tchernav v Garner* (1999) 154 FLR 243.

[8] The appeals presently before this Court are from a ruling of the Local Court which is properly characterised as an interlocutory order. It did not finally determine the criminal proceedings, or the rights of the parties in the criminal proceedings. Accordingly, they are not appeals from a ‘conviction, order, or adjudication’ of the Court in the relevant and necessary sense.

[9] For these reasons, the appeals must be dismissed.
