

Decision

Smith DP dismissed the application on the grounds that there was no serious question to be tried and that, in the alternative, the balance of convenience did not favour the applicants. Furthermore, costs were awarded against the applicant as their case, whilst not frivolous or vexatious, was not sufficiently supported in law to have been continued if proper legal advice had been sought.

NATIVE TITLE ISSUES DECISION*

Re Rusin & Ors ([2003] QLRT 130 (Koppenol P and Smith DP))

Application for mining lease – Agreement between native title parties and miner – Contract conditions

Background

A mining lease had been granted but subsequently native title claims were lodged over the lease area. Accordingly, the Tribunal was required to make a native title issues decision pursuant to s 734(4)(c) of the MRA in which it must either grant the mining lease, grant it subject to conditions, or refuse the grant.

Native Title

In order to make the relevant decision, the Tribunal has held that it requires the submission of logically probative evidence to demonstrate how the grant of the proposed mining lease will affect native title. As in previous native title issues decision, the Tribunal was presented with little or no evidence.

Agreement Between the Parties

The native title parties and the applicant had previously agreed that the lease should be granted subject to conditions. This agreement was signed by all but one of the native title parties. The Tribunal is empowered by s 675(1)(b)(ii) to grant a lease subject to conditions and it concluded that the evidence of agreement between the parties was sufficient for it to impose the agreed conditions on the grant of the mining lease.

REVIEW OF MINING REGISTRAR'S DIRECTION

Re Wallace and State of Queensland ([2003] QLRT 137 (Koppenol P))

Discretion to readvertise public notice – Heading of notice incorrect – Notice misleading

Background

The applicant had inserted in the requisite newspapers notices outlining the proposed mining leases. The notice in one of the newspapers contained an incorrect mining lease number in the heading of the notice. The correct mining lease number was stated in the body of the advertisement. The Mining Registrar directed that the applicant correct the notice and undertake the relevant statutory procedures again. The applicant applied to have the direction rescinded pursuant to s 406 of the MRA.

* Richard Brockett, Research Officer to the Presiding Members, Queensland Land and Resources Tribunal.