

Lansen & Ors v NT Minister for Mines and Energy & Ors
[2007] NTSC 36

PARTIES: LANSEN, HARRY and OTHERS

v

NORTHERN TERRITORY MINISTER
FOR MINES AND ENERGY

AND:

NORTHERN TERRITORY OF
AUSTRALIA

AND:

McARTHUR RIVER MINING PTY LTD

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE
TERRITORY EXERCISING GENERAL
JURISDICTION

FILE NO: 157 OF 2006 (20632687)

DELIVERED: 25 MAY 2007

HEARING DATES: –

JUDGMENT OF: ANGEL J

REPRESENTATION:

Counsel:

Plaintiffs:	S Glacken
First and Second Defendants:	T Pauling QC and S Brownhill
Third Defendant:	G Gibson QC

Solicitors:

Plaintiffs: R Levy, Principal Solicitor, Northern
Land Council

First and Second Defendants: Solicitor for the Northern Territory

Third Defendant: Cridlands

Judgment category classification: C

Judgment ID Number: Ang200705A

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

Lansen & Ors v NT Minister for Mines and Energy & Ors
[2007] NTSC 36
No. 157 OF 2006 (20632687)

BETWEEN:

HARRY LANSEN and OTHERS
Plaintiffs

v

**NORTHERN TERRITORY MINISTER
FOR MINES AND ENERGY**
First Defendant

**AND:
NORTHERN TERRITORY OF
AUSTRALIA**
Second Defendant

**AND:
McARTHUR RIVER MINING PTY LTD**
Third Defendant

CORAM: ANGEL J

REASONS FOR JUDGMENT

(Delivered 25 May 2007)

- [1] On 30 April last I delivered reasons for judgment in this proceeding, concluding that Authorisation No. 0059–01 granted to the third defendant pursuant to s 35 Mining Management Act NT did not authorise the third defendant's open cut mining operation at the McArthur River Mine and that

the first defendant's acceptance of an amended Mining Management Plan was of no effect because the Mining Management Plan was not in respect of the mining activities to which Authorisation No. 0059–01 related.

- [2] On 3 May I made Orders declaring that the decision of the first defendant to accept the Mining Management Plan dated 13 October 2006 and a Grant of Authorisation No. 0059–2 were invalid and of no effect.
- [3] The plaintiffs sought orders that the defendants pay the plaintiffs' costs of the proceedings. The question of costs was reserved with liberty to the parties to make written submissions as to the appropriate cost orders. The last of those written submissions were received on 21 May.
- [4] All the defendants submitted that the appropriate order for costs was that the defendants pay one–fifth of the plaintiffs' costs on the basis that the case was decided on a narrow issue and neither side had been successful upon many issues which took up the bulk of the preparation and hearing time of five days as to which neither party should pay the other party's costs. The decisive issue at trial could have been disposed of within a day.
- [5] As a general rule the costs of proceedings are in the discretion of the Court: Order 63.03(1) Supreme Court Rules. Ordinarily costs follow the event. As a general rule a successful party is entitled to his or her costs in the absence of particular circumstances justifying some other order, such as costs in relation to a particular issue, whether of fact or law, or some particular question in, or a particular part of, a proceeding: Order 63.05 Supreme Court

Rules. A successful party who has failed on certain discrete issues may not only be deprived of the cost of those issues but may be ordered as well to pay the other party's costs of those issues: see generally the well known cases of *Forster v Farquhar* [1893] 1 QB 564; *Cretazzo v Lombardi* (1975) 13 SASR 4. Order 63.05 Supreme Court Rules expressly confers on the Court the discretion to make orders apportioning costs according to success or failure of one party or the other on various issues.

- [6] The trial was conducted over five days involving legal argument on extensive affidavit and documentary material. There was no oral evidence.
- [7] The plaintiffs' written submissions of 19 March 2007 raised four issues: first, whether the first defendant acted in excess of the powers conferred by the Mining Management Act NT in approving the change from underground to open-cut mining by acceptance of an amended Mining Management Plan in lieu of a variation or revocation and grant of an Authorisation under the Act; secondly, whether the first defendant's approval of the amended Mining Management Plan was invalid on account of an invalid environmental assessment which it was said had impermissibly invoked Clause 14A Environmental Assessment Administrative Procedures NT to conduct an assessment of the modified open pit proposal; thirdly, whether the first defendant's approval of the amended Mining Management Plan was invalid because it had regard to an allegedly invalid environmental assessment in that there had been no supplement to the Public Environmental Report as required by Clause 10A Environmental Assessment Administrative

Procedures NT, and fourthly, whether the first defendant's approval of the amended Mining Management Plan was invalid because the first defendant had failed as required by s 82 Mining Management Act NT to take into account the outcome of an earlier valid environmental assessment namely Environmental Assessment Report No. 51.

- [8] The case ultimately was decided on the first of these four issues. In pursuing these four issues the plaintiff abandoned a number of other causes and issues raised in its Statement of Claim of 8 February 2007. The defendants filed Defences traversing all causes of action and say they incurred costs in preparing and filing a substantial body of evidence addressing those abandoned causes of action.
- [9] The defendants say that the plaintiffs having succeeded on a very narrow issue should not have their costs either in respect of the causes of action abandoned prior to trial or in respect of the three issues contested at trial upon which there was no decision on the merits. The plaintiffs for their part submit that they succeeded and obtained the relief they sought.
- [10] The plaintiffs submit that the object of costs is to indemnify the successful party in regard to the expenses it has been put by reason of the proceedings and that costs should follow the event. The plaintiffs submit that it was not unreasonable to have raised the issues upon which there was no decision and that it is not the Court's function on a costs application to predict the

outcome of a hypothetical case: *re Minister for Immigration; ex parte Lai Qin* (1997) 186 CLR 622 at 624, 626.

[11] As I have said costs normally follow the event in the absence of circumstances justifying some other order. What are the circumstances here? The plaintiffs were wholly successful in obtaining the relief sought. One of four issues contested at trial resulted in the plaintiffs obtaining the relief sought. The other issues at trial upon which there was no decision on the merits involved all the parties in extensive pre-trial costs and costs of an extended trial, which although ultimately to no benefit, can not be said to have been wasted. There was no issue at trial upon which the plaintiffs were unsuccessful. There is no suggestion the plaintiffs acted unreasonably in going to trial on all four issues. The defendants have apparently incurred costs addressing a number of causes and issues which were abandoned by the plaintiffs shortly prior to trial. Those costs have not been particularised. I am not able to say, even approximately, what percentage of the overall costs they would represent. That could only be ascertained following a taxation of costs. This being so it would not be appropriate to award the plaintiffs a percentage of their costs. I can not divine a percentage. I do not sit under a palm tree: *Arthur v Public Trustee* (1988) 90 FLR 203 at 213. In the circumstances of the defendants having incurred costs on issues abandoned shortly before trial there is no apparent reason why they should not have those wasted costs.

[12] In the circumstances it seems to me just that the plaintiffs should have their costs of the proceedings including the trial save those costs incurred with respect to the causes and issues abandoned prior to trial and the defendants should have their costs wasted on the causes and issues abandoned by the plaintiffs prior to trial.

[13] There will be orders as follows:

- (1) The defendants are to pay the plaintiffs' taxed costs of the proceedings save for those costs incurred by the plaintiffs in respect of the causes and issues raised in the Statement of Claim which were abandoned by the plaintiffs prior to trial.
- (2) The plaintiffs are to pay the defendants' taxed costs wasted on the causes and issues raised in the plaintiffs' Statement of Claim and abandoned by the plaintiffs prior to trial.
