

128. Milirrpum and Others v Nabalco Pty Ltd and Commonwealth of Australia, Supreme Court of the Northern Territory. Amended statement of claim, 16 March 1970

“1. (a) The Plaintiff Milirrpum is the head of the Rirratjingu clan of the Australian aboriginal natives and brings this action on behalf of himself and other members of that clan.

(b) The Plaintiff Munggurawuy is the head of the Gumatj clan of the Australian aboriginal natives and brings this action on behalf of himself and other members of that clan.

(c) The Plaintiff Daymbalipu is the head of the Djapu clan of the Australian aboriginal natives and brings this action on behalf of himself, those other members of that clan, and those members of the following clans of Australian aboriginal natives, namely the Marrakuli, Galpu, Munyuku, Ngamil, Wangurri, Djambarrpuyngu, Manggalili, Dhalwangu, Warramirri and Madarra clans, who normally reside on the land in the Melville Bay to Port Bradshaw area of the Northern Territory commonly referred to as the Cove Peninsula.

“2. Nabalco Pty. Ltd. is and was at all material times a body corporate capable of being sued in its own name.

“3. The aforesaid aboriginal clans are groups of natives, each group or clan being bound together by common patrilineal descent from early ancestors, each child at birth becoming a member to the clan to which its father belongs.

“4. Pursuant to the laws and customs of the aboriginal native inhabitants of the Northern Territory, each clan holds certain communal lands. The interest of each member of the clan in such communal lands is a proprietary interest and is a joint interest with each other member of the clan. Each such individual interest arises at birth and continues until death.

“5. Pursuant to the said laws and customs, the interest of each clan in the land which it holds is inalienable and its incidents include—

- (a) the right to occupy and move freely about the said lands;
- (b) the right to exclude others from the said lands;
- (c) the right to live off the waters and the plant and animal life of the said lands;
- (d) the right to dig for and use the flints, clays and other useful minerals in the said lands; and
- (e) the right to dispose of any products in or of the land by trade or ritual exchange.

“6. Pursuant to the said laws and customs, the Rirratjingu and the Gumatj clans hold and exercise the said rights over, and have from time immemorial held and exercised the said rights over, all that land comprising a peninsula generally North of Port Bradshaw and East of Melville Bay in the Northern Territory and commonly referred to as the Cove Peninsula. The whole of the land referred to is hereinafter called ‘the said land’. Further particulars in the form of a map showing the approximate boundaries of the areas held by the said clans respectively will be supplied before the hearing of this action.

“7. Until the happening of the events referred to in paragraph 28 hereof, the Rirratjingu and Gumatj clans had remained in quiet and undisturbed possession of their respective portions of the said land.

“8. In or about the year 1788 the British Crown asserted sovereignty over much of the Eastern and Central parts of the Australian continent, including the said land.

“9. By reason of the matters referred to in paragraph 8 hereof the ultimate or radical title to the said land became vested in the British Crown. However, the proprietary interests of the Gumatj and Rirratjingu clans, referred to in paragraphs 4, 5 and 6 hereof, remained undisturbed and were and are recognized by the common law of England and Australia.

“10. In order to extinguish the aforesaid proprietary interest of the said clans it would have been necessary for the Crown—

- (a) to obtain their consent;
- (b) further or alternatively, to pay compensation;
- (c) further or alternatively, to extinguish the said interests by express enactment or other act of state.

“11. The said clans have at no time consented to the extinction of their said respective interests in the said land.

“12. The said clans have at no time received any compensation for the extinction of their said respective interests in the said land.

“13. No enactment or other act of state has ever extinguished the said interests of the said clans either expressly or by necessary implication.

“14. Alternatively to paragraphs 9-13 hereof the said clans acquired title to the said land by possession adverse to the Crown by reason of the fact that they exclusively occupied and intended to possess their respective portions of the said land from 1788 for a period in excess of 60 years.

“15. Further or alternatively to paragraphs 9-14 hereof, by Letters made Patent by King William the Fourth on the 19th February, 1836 whereby South Australia was erected into a province, it was provided in the proviso to the Letters Patent, ‘that nothing in these our Letters Patent contained shall affect or be construed to affect the rights of any Aboriginal Natives of the said Province to the actual occupation or enjoyment in their own persons or in the persons of their descendants of any lands therein now actually occupied or enjoyed by such Natives’. The said proviso operated within South Australia as an order under the authority of, or having the force and effect of, an Act of the Imperial Parliament...

“28. Nabalco Pty. Ltd. has wrongfully entered the said land with bulldozers, excavators, trucks and other machinery and a number of servants and workmen and broken down the native bush, erected structures, taken valuable bauxite ores, destroyed or damaged plant life and destroyed or driven away animal life (on both of which the persons referred to in paragraph 1 hereof depend for their food, art beliefs and way of life) and violated sacred areas and objects of the Rirratjingu and Gumatj clans. Particulars of the said sacred areas and objects will be supplied before the trial of this action

“34. By reason of the matters herein alleged the secondnamed defendant had and has no interest in the said land enabling it effectively to grant any leases or other rights over the said land in pursuance of the said Ordinance or agreement

“And The Plaintiffs Claim:—

- (i) Damages against the Defendant Nabalco Pty. Limited.
- (ii) An Injunction to restrain Nabalco Pty. Limited from repeating or continuing any of the acts complained of.
- (iii) A Declaration that the abovenamed clans are entitled to the occupation and enjoyment of the said land free from interference.
- (iv) A Declaration that the Minerals (Acquisition) Ordinance 1953-1954 is *ultra vires* and void in so far as it purports to have compulsorily acquired for the Crown in right of the Commonwealth bauxite ores and other minerals as defined in that Ordinance, existing in their natural condition in the Northern Territory.
- (v) A Declaration in the terms of paragraph 34 above.
- (vi) Such further or other orders as the Court may think fit.”