

HIGH COURT OF AUSTRALIA

GLEESON J

IN THE MATTER OF AN APPLICATION BY
FRANK JAMES CONNOLLY & ANOR FOR
LEAVE TO ISSUE OR FILE

[2025] HCASJ 2
Date of Judgment: 24 January 2025
S157 of 2024

ORDER

- 1. The application filed on 13 December 2024 for leave to issue or file the writ of summons is refused.*

Representation

The applicants are unrepresented

1 GLEESON J. By application filed on 13 December 2024, the applicants (Mr Connolly and Ms Connolly) seek leave to issue or file a writ of summons dated 7 November 2024, which names the Jerrinja Local Aboriginal Land Council as the defendant ("the writ of summons"). On 8 November 2024, pursuant to r 6.07.2 of the *High Court Rules 2004* (Cth), Edelman J made a direction to the Registrar to refuse to file or issue the writ of summons without the leave of a Justice first had and obtained by the party seeking to issue or file it.

2 The current application complies with r 6.07.3 and is supported by an affidavit affirmed by both applicants and dated 29 November 2024.

3 For the following reasons, leave to file the proposed application should be refused without listing the application for a hearing.

Principles to be applied

4 The discretion to refuse the leave sought is to be exercised by reference to the criteria set out in r 6.07.1, namely whether the proposed application "appears ... on its face to be an abuse of the process of the Court, to be frivolous or vexatious or to fall outside the jurisdiction of the Court".¹ The facts stated in the proposed application are assumed to be correct. Implicit in the requirement that a document the subject of an application under r 6.07.3 be considered "on its face" is that such an application falls to be determined on the papers,² that is, without an oral hearing. While there are no "closed categories" of what amounts to an abuse of process, that concept captures attempts to invoke the jurisdiction of the Court on bases that are confused or untenable.³

Consideration

5 The proposed application concerns a property in New South Wales. The defendant is the registered owner of the property. Ms Connolly previously occupied the property in accordance with the defendant's internal policy as to housing allocation, which is based upon family succession of tenancy. Mr Connolly is Ms Connolly's brother. He affirms that he has been recognised by a judge of the New South Wales District Court as "a traditional native title owner" of the property.

6 On 12 December 2019, the New South Wales Civil and Administrative Tribunal ("NCAT") declared that a Residential Tenancy Agreement ("RTA")

1 *Re Young* (2020) 94 ALJR 448 at 451 [11]; 376 ALR 567 at 570.

2 *Re Young* (2020) 94 ALJR 448 at 451 [12]; 376 ALR 567 at 570; *Re Simmonds* [2020] HCA Trans 34.

3 *Re Young* (2020) 94 ALJR 448 at 451 [13]; 376 ALR 567 at 570.

2.

existed between Ms Connolly and the defendant in relation to the property. On 26 September 2023, NCAT made orders requiring Ms Connolly to pay rent arrears, and to continue to pay rent in accordance with the RTA. The defendant asserted that Ms Connolly failed to comply with the orders and on 23 October 2023, served a Notice of Termination on Ms Connolly. On 6 December 2023, the defendant filed an application in NCAT under the *Residential Tenancies Act 2010* (NSW) seeking that the RTA be terminated and that Ms Connolly give up possession of the property. NCAT was satisfied that Ms Connolly breached the RTA and made orders to the effect sought by the defendant on 12 August 2024.

7 The applicants seek relief described as: recognition that they are "Native Owners Blood linked" to the property; compensation for their mother being removed from the property; and that the defendant "Cease & Desist" from taking action "upon [the applicants'] Country, Lands and Family home". The applicants assert that this matter arises in the jurisdiction of the Court for two reasons. The first is that NCAT has "indicated that the matter will not be, or [is] unable to be addressed in [its] jurisdiction". The second is that the matter concerns an issue of Aboriginal property rights and equality before the law.

8 Neither the issues raised in the proposed application, nor the grounds of relief sought, engage the original jurisdiction of the Court. The defendant is a statutory corporation established under the *Aboriginal Land Rights Act 1983* (NSW) and therefore not an officer of the Commonwealth for the purpose of s 75(iii) or (v) of the Constitution. No aspect of the application otherwise raises any matter arising under the Constitution or involving its interpretation.

9 It follows that this Court's original jurisdiction does not extend to granting the relief sought by the applicant. The proposed application therefore appears on its face to be an abuse of process.

10 The application filed on 13 December 2024 for leave to issue or file the writ of summons is refused.