



HIGH COURT OF AUSTRALIA

7 August 2013

LEO AKIBA ON BEHALF OF THE TORRES STRAIT REGIONAL SEAS CLAIM GROUP v
COMMONWEALTH OF AUSTRALIA & ORS

[2013] HCA 33

Today the High Court unanimously held that successive Commonwealth and Queensland legislation, which prohibited taking fish and other aquatic life for commercial purposes without a licence, did not extinguish the native title right of certain island communities in the Torres Strait to take resources from defined areas of water. The Court unanimously held that certain reciprocity-based rights between members of the island communities did not constitute native title rights and interests within the meaning of s 223 of the *Native Title Act* 1993 (Cth).

The appellant, on behalf of 13 island communities in the Torres Strait, sought a determination of native title over a large part of the waters of the Torres Strait. In August 2010, the Federal Court of Australia made a native title determination which defined the native title rights held by each of the communities. In defining the native title rights and interests, the Federal Court rejected the appellant's claim that certain reciprocal rights, which arose out of personal relationships in Islander society, were rights in relation to land or waters and were thereby native title rights. The determination did, however, include the native title right to access and take for any purpose resources in the native title areas. One of the ways in which that right could be exercised was by the taking of fish or other aquatic life for commercial purposes. Throughout the litigation, the appellant accepted that such commercial fishing could only be undertaken if any necessary statutory licences had been obtained.

The first respondent appealed the Federal Court's decision to the Full Court of the Federal Court of Australia in relation to the native title right to access and take resources for any purpose. The appellant cross-appealed in relation to the conclusion that reciprocal rights were not native title rights and interests. The Full Court allowed the first respondent's appeal, holding that successive Commonwealth and Queensland fisheries legislation had extinguished any native title right to take fish and other aquatic life for commercial purposes. The Full Court rejected the appellant's cross-appeal, holding that the reciprocal rights were not rights in relation to the waters the subject of the native title determination. By special leave, the appellant appealed to the High Court.

The High Court held that the successive statutory regimes which prohibited commercial fishing without a licence were not inconsistent with the continued existence of the native title right to access and take for any purpose resources in the native title areas. The Court also held that the claimed reciprocal rights were rights of a personal character dependent upon status. Such rights were not rights in relation to the waters the subject of the native title determination.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*