

**LEEDHAM PAPERTALK ON BEHALF OF THE MULLEWA WADJARI PEOPLE v  
STATE OF WESTERN AUSTRALIA [2022] FCA 221**

**Summary**

*This summary is intended to assist in understanding the outcome of this proceeding and is not a complete statement of the conclusions reached by the Court. The only authoritative statement of the Court's reasons is that contained in the published reasons for judgment which will be available on the internet at [www.fedcourt.gov.au](http://www.fedcourt.gov.au) together with this summary.*

This decision is about agreements made between representatives of the Mullewa Wadjari native title claim group and the representatives of the Nanda and Wajarri Yamatji native title claim groups. Nanda and Wajarri Yamatji say the Court should enforce the agreements made. Mullewa Wadjari say there were no final agreements made.

The Mullewa Wadjari People have made native title claims over an area of land that is also claimed by the Nanda People, and another area of land that is also claimed by the Wajarri Yamatji People. These areas of land are both northeast of Geraldton, and north of the Yamatji Nation native title determination area. In the Court's reasons for judgment, these areas are called the **overlap areas**. They are all old claims, and people have been waiting a very long time to get their native title recognised.

From 2018, the Court has been conducting mediations between the three groups about the overlap areas. Thirty mediations were conducted by the Court between 2018 and 2021. A lot of time and money has been spent on them. Lots of lawyers and anthropologists did a lot of work to help the groups reach an agreement.

The agreement between Wajarri Yamatji and Mullewa Wadjari began at a Court mediation in February 2019. All the Wajarri Yamatji and Mullewa Wadjari people present at the mediation signed a document called an "in principle agreement". That document set out the most important parts of the agreement. The important parts were:

- Another ancestor – Angelina – would be added as a Wajarri Yamatji apical ancestor on the Wajarri Yamatji claim to the overlap areas, as well as other Wajarri Yamatji native title claims over different areas. Some Mullewa Wadjari families are descendants of Angelina.

- The descendants of Angelina were supposed to work together with other Wajarri Yamatji people to help set up the Wajarri Yamatji Prescribed Body Corporate.
- In return, the Mullewa Wadjari would pull back and withdraw their claim to the parts of the overlap areas that the Wajarri Yamatji had claimed.

The agreement between Nanda and Mullewa Wadjari began at a Court mediation in May 2019. All the Nanda and Mullewa Wadjari people at that mediation agreed:

- Mullewa Wadjari would pull back from and withdraw their claim to the parts of the overlap areas that Nanda had claimed.
- Nanda would recognise the connection of some Mullewa Wadjari families to that land, and Nanda would consult with those families about cultural heritage and big developments on the land.
- The lawyers for the Mullewa Wadjari and Nanda would put the agreement in writing later.

The agreements had to be taken back to the claim groups as a whole, so the claim groups could understand them and decide whether to give their approval to the agreements becoming final. This process took longer than it was supposed to, partly because of sorry business and partly because of the COVID-19 pandemic. Some of the groups wanted some changes to the agreements, so there was more negotiation backwards and forwards. But no group said the agreements were off.

Nanda and Wajarri Yamatji held expensive group meetings to approve the agreements. The Nanda group agreed on a contract between the Nanda Prescribed Body Corporate and the Mullewa Wadjari native title applicant about Mullewa Wadjari people using the country in the overlap area and having a say about what happens on it. The Wajarri Yamatji group agreed to change their claims to include Angelina as an apical ancestor.

By early 2021, the Court told Mullewa Wadjari to hurry up. In May 2021, Mullewa Wadjari asked the Court for more time to put its part of the agreements into place – but they did not tell the Court, or the Western Australian Government, or Wajarri Yamatji or Nanda that they were rejecting the agreements. All those other parties and the Court went on believing the agreements were going ahead, and that Mullewa Wadjari would withdraw their claims to the overlap areas.

In June 2021, there was a Mullewa Wadjari claim group meeting. Only twelve or thirteen people were at the meeting. Only four of the six Mullewa Wadjari people who had made the agreements with Nanda and Wajarri Yamatji were at the June 2021 meeting, and only three of the ten members of the Mullewa Wadjari native title applicant were at the meeting. The twelve or thirteen people who were there decided Mullewa Wadjari would not pull back from and withdraw their claims to the overlap areas. Instead, they would contest native title in the overlap areas.

After the June 2021 meeting, Mullewa Wadjari told Nanda and Wajarri Yamatji about what they had decided. Wajarri Yamatji went ahead with their side of the agreement, and formally changed their claims and determinations to include Angelina as an apical ancestor. The Nanda PBC approved the agreement with Mullewa Wadjari about use of country.

Nanda and Wajarri Yamatji complained to the Court about Mullewa Wadjari changing their mind. The Court ordered Mullewa Wadjari to come to a hearing to show why the Court should not make Mullewa Wadjari stick by the agreements they had made with Nanda and Wajarri Yamatji. The Court also ordered Mullewa Wadjari to show why their claims to the overlap areas should not be dismissed because they had “abused” the process of the Court. Abuse of process is about whether a party has acted unfairly and unreasonably, whether they have caused other parties unnecessary expense, or have wasted the time of the Court and the other parties for no good reason. It can also be about whether a party has paid respect to the Court’s processes, or instead has damaged the Court’s reputation by making it seem like the Court’s processes could be ignored. Abuse of process is a serious matter.

After the hearing, the Court has decided that it cannot force Mullewa Wadjari to withdraw their claims to the overlap area, even though Nanda and Wajarri Yamatji thought there were agreements about this. The Court has decided that although Mullewa Wadjari acted for several years as if they were sticking by the agreements, all groups made some changes to the agreements and all groups knew that the agreements had to be approved at claim group meetings.

When agreements are made in native title claims, it is important that the *whole claim group* has the chance to approve the agreement, because native title is mostly about group rights.

The Court has decided the Mullewa Wadjari claim group, *as a whole*, have not had a proper chance to decide whether to approve the agreements with Nanda and Wajarri Yamatji. Instead,

only a small number of people seem to have decided not to stick with the agreements. The Court's view is that there must be a full Mullewa Wadjari claim group meeting and as a whole the claim group needs to decide whether to honour the agreements made with their neighbours, or not.

But the Court has decided that the members of the Mullewa Wadjari applicant *have* abused the Court's processes. The Court has decided the members of the Mullewa Wadjari applicant have:

- not respected the Court's mediation processes;
- acted over three years as though they would stick by the agreements;
- through their lawyers, allowed Nanda and Wajarri Yamatji, and the Western Australian government, and the Court, to believe they were going to withdraw their overlap claims;
- allowed a lot of time, money and resources to be wasted.

The Court has decided this behaviour was "oppressive", meaning it was unfair and unreasonable to all the other parties, and caused a lot of time, money and resources to be wasted.

Even though there has been abuse of process, the Court has decided not to dismiss the Mullewa Wadjari claims. That would be unfair to the Mullewa Wadjari claim group as a whole, who are not responsible for what happened at the mediations or for the way a small number of Mullewa Wadjari people have acted afterwards, mostly through their lawyers. Dismissal might also be unfair to future generations of Mullewa Wadjari.

Instead, the Court is considering ordering the Mullewa Wadjari claim group to meet again and decide whether to honour and respect the agreements made with their neighbours, Nanda and Wajarri Yamatji.

If, after a claim group meeting, the agreements are not to be honoured by the Mullewa Wadjari claim group as a whole, there will need to be a full trial on who are the right people for the country in the overlap areas. That may take several more years to complete, a lot more resources and money, and is likely to be stressful for all claim group members. In the meantime, none of the three groups can get any more native title determinations in these areas.

The Court will make its orders at a later date once it has listened to what the parties have to say about what orders should be made. The Court will write another judgment about the orders when it makes them, and publish another summary like this one.