

IN THE WARDEN'S COURT
HOLDEN AT SYDNEY
ON 25TH JULY, 1986
BEFORE J.L. McMAHON,
CHIEF MINING WARDEN.

ARNOLD VERDON BARKER v. ROBIN RUTH HUGHES
ASSESSMENT OF COMPENSATION

BENCH:

This has been the hearing of an application by the joint holder of Gold Lease Nos. 5897 and 5904 (Act 1906), Mr. A.V. Barker for an assessment of compensation over lands owned by the respondent, Mrs. R.R. Hughes. Initially there was another respondent, a Mr. J. Briggs but at the hearing at Bathurst Court House on 15th July, 1986, Mr. Briggs did not attend and I accept statements by the other parties that Mr. Briggs is in the course of selling or has sold the land which he owned to Mr. Blackburn. Assessment of compensation in respect of the land previously owned by Mr. Briggs is not being made at this time.

Mr. Barker has given evidence along with his plant manager, Mr. Rayner, in connection with his proposed operations at Sofala. Currently the area is subject to extensive open cuttings operations but at this time there has been no entry upon the land of Mrs. Hughes in relation to actual mining disturbance. Mr. Barker has deposed of some confusion in the boundaries and although he concedes that eventually the land of Mrs. Hughes may have to be actually mined that is estimated to be some 10 years hence. Mr. Rayner believes that the period might well be lesser and put a 5 year span on it. In the light of that, all parties have agreed that I not assess compensation in respect of the proposed mining operations and that I deal only with a clarification of the respective parties rights and the question of any compensation arising out of the removal by the applicants of several trees from the land of the respondent, such removal being necessitated, according to the applicant, by the fact that the timber from the trees was used in connection with the mining operation.

From the evidence it appears that the leases were granted in the early 1970's but have been subsequently renewed. At the time they were granted, the land of Mrs. Hughes, then owned by their pre-decessor in title, was in the nature of a Crown lease under the Crown Lands Consolidation Acts. When Mrs. Hughes and her husband decided to buy the land they negotiated with the previous owner and one of the conditions of their purchase was that the previous owner convert the land from Crown lease to freehold title. According to Mrs. Hughes, when she and her husband took possession of the land it was under freehold title and they held it as joint tenants.

Mr. Barker has raised the question as to whether or not his mining title in the nature of Gold Leases justifies the removal of the trees and queries as to the right of Mrs. Hughes to claim compensation, although I gather that he has put his mind to the determination of some question of what amount should be paid to her in the event of a decision that Mrs. Hughes is entitled to compensation.

Mrs. Hughes is not using the subject land at the moment but intends to fence the area by employing a fencing contractor and then run stock on it, perhaps through a lease to a stock owner. She has never, it seems, used the land for agricultural or grazing purposes. Her difficulties are simple to understand. Firstly the fencing on the perimeter of the land is in a poor state in some parts and secondly some three years ago her husband was killed in an accident. She has now children to care for and lives in the Sydney suburb of Cromer.

I turn firstly to the determination of the question of the right of Mrs. Hughes as against Mr. Barker to the trees. The trees are obviously native trees so they have not been sown by any person to give them the

characteristic of being emblements, and therefore the property of the sower. However I take judicial notice of the fact that native timber from such trees can be valuable not only as posts or poles but also in the form of firewood. If they are attached to land they are the property of the owner of the land subject to any claim in the form of resumption by the Crown or any sale of them severed or otherwise by the owner of the land. There is no evidence of resumption or sale in this matter and I am of the view that the mining titles held by Mr. Barker and his wife do not bestow upon them any right to remove the trees without recompense to the owner of the land. In the circumstances, Mrs. Hughes, in my opinion, is entitled to compensation.

I turn then to the question of quantum.

Mr. Barker has said that some 32 trees were removed. Because of the confusion with boundaries there was some doubt as to the ownership of the land from which the trees were removed but he now concedes that several trees were taken from the land of Mrs. Hughes. Mr. Rayner, the plant manager, has agreed that there were some 38 trees removed and he also pointed to problems with determination of boundaries. He felt that some 20 trees were taken from the land of Mrs. Hughes and that each tree weighed approximately 15 tonnes and at a figure of \$1 per tonne this would make their value at \$300. Mrs. Hughes has said that the trees removed from her land were some 30 in number, many had a diameter of 50 cms and were some 4 metres long. Some others were smaller, of a diameter of 30 cm and 4.5 metres. On the basis of the trunks of the trees being used as shed poles she had a price of \$25 each, but if used as firewood could produce approximately 30 tonnes at \$50 per tonne, making a total of \$1500. If they were used as fence posts at \$4, some 400 of them could be cut from the trunks making a total of \$1600. She agreed however that the prices that were quoted to her of \$1500 or \$1600 were retail prices with the included ingredients of labour and cartage.

On the basis of the evidence before me I am satisfied, as I have said, that she is the owner of the trees and as such is entitled to compensation. I accept the evidence of Mrs. Hughes that some 30 trees were removed and in order that I may make an assessment of compensation in the matter I am of the view that I should determine, given the variation in the size of the trees, that each of them is worth an average figure. This figure, on the evidence I believe should be \$27.00 for each of thirty trees, making compensation at \$810.00. I make that assessment.

The applicant is to pay the sum of \$810 to Mrs. Hughes within 2 months from today.

Mrs. Hughes sought no compensation for the fence which she believed had been cut but which was explained by Mr. Barker to have been merely undone. In any case, she agreed that the fences are in poor condition and in the circumstances I make no assessment of compensation in respect of fences.

Another matter raised by Mrs. Hughes was the question of notification to her of entry by the applicant upon her land. While I cannot see in the lease documents any requirement for notification to be given I believe as a matter of fairness it would be appropriate for a telephone call to be made by Mr. Rayner to Mrs. Hughes giving her some advice as to when entry is proposed on her land and the nature of what is planned on it. A period of 24 hours oral notice only ought be given. Further, if the operation is an on-going one, oral monthly reports to Mrs. Hughes, as the owner of the land, ought to be given to her as a matter of courtesy.