

Eddie Koiki Mabo (1936 - 1992)

Person: Eddie Koiki Mabo (1936 - 1992)

Author: Ravi de Costa , McMaster University

Date Entered: 2005-03-30

Description Eddie Mabo fought a long legal battle in Australian courts to prove title to his family's land on the tiny island of Mer in the Torres Strait between Queensland and Papua, New Guinea. Sadly, Eddie Mabo died just five months before his claim was vindicated. However, when the rights of the Meriam people to the island of Mer "as against the whole world" were recognized by the High Court of Australia in 1992, he had revolutionized land law in Australia and shattered colonial assumptions.

Mabo's struggle had overturned the legal doctrine of terra nullius (empty land) in Australian land law. Against considerable evidence to the contrary, early settlers and authorities simply assumed that because Indigenous peoples were nomadic, they moved randomly over the land without owning it. It was an assumption that underpinned a long history of dispersal and dispossession as European interest covered the continent. Nowhere in the Australian colonies were Indigenous rights ever acknowledged by the treaties and purchases that characterized British colonization of North America and New Zealand.

The Mabo judgment (Mabo v. Queensland No. 2 1992) in the High Court of Australia, overturned this doctrine. The judges found that Indigenous people may retain "native title" — collective rights of possession and use — where they had not been explicitly extinguished by the colonial sovereign.

This was a controversial and divisive moment in Australian political history. After the judgment, the Commonwealth government introduced the Native Title Act (1993) in order to formalize the procedures by which Indigenous communities could seek to have their title restored. Subsequent legislation has significantly diluted the legal force of Native title in Australia.

The Mabo judgment, however, marks the moment when Australian law joined the broad stream of jurisprudence on Indigenous rights in common-law countries. It has been cited in Canadian cases and elsewhere — a process which reinforces the possibility of global principles for dealing with Indigenous claims for recognition and justice.