A very broad and complex question to answer and one that I would like to tackle by providing the following script as a framework for students and others to use for studying, analysing and critically assessing the Yorta Yorta Native Title Case, 1994-2002.

Given the failure of all the past attempts to achieve land justice, we put some faith in the Native Title process, knowing that the barrier to achieving land justice in Australia-Terra Nullius was abolished by the High Court in Mabo. The image of a more level playing field on which the long and outstanding issue of land justice could be resolved were other factors that were encouraging signs.

We also exercised due caution as to whether or not the Anglo legal system that failed to deliver on all of the previous claims, would deliver the fair and just outcomes that we and our ancestors patiently waited for, and were entitled to enjoy.

Our hopes were raised somewhat by Mabo, a more level playing field, and an independent umpire who had the opportunity to apply the rules of engagement in accordance with the fair and just principles of law. The opportunity for us to present the history of our long and continued struggle for land justice were other factors that we thought may have been in our favour.

We trusted that the Court would listen to the full story of the underlying and causative effects of land loss and the conflict, violence and blood that was shed over the ownership and control of land and resources as a result of Colonisation.

In agreeing to take part in the Native Title process we also hoped that it would be conducted in accordance with the Mabo principles, free of any preconceived notions of Aboriginality, or frozen in time views of Aboriginal culture and land use. The legal authority of Mabo that looked promising was the way that it challenged draconian views, and the racial ideology that was used to deny land justice, and called for the need to depart from ‘antiquated assumptions about Indigenous societies’ and land use. The High Court supported the departure from antiquated notions of Aboriginality, by saying that it is imperative in today’s world that the common law should neither be nor be seen to be frozen in an age of racial discrimination. The fiction of terra nullius by which the rights and interests of indigenous inhabitants in land were treated as non-existent was justified by a policy which has no place in the contemporary law of this country (Mabo (No. 2) Brennan J. at 29, 40–3; Johnson v McIntosh (1823)).
These were other encouraging factors that increased our faith in the process, setting the stage for the long and gruesome Native Title process to be acted out before Justice Olney in the Federal Court.

As one of the principle Claimants in the Yorta Yorta Case, I’m presenting this summary of the Native Title process as a framework for Students to use in their analysis of the dynamics of law and justice that unfolded in the Yorta Yorta Native Title Case, 1994-2002. I’m confident that students studying law and those doing similar studies in Land Justice and Native Title, are more than capable of critically assessing the outcome of the Yorta Yorta case, in accordance with the fundamental principles of justice and equality before the law, and the way the question of land justice was dealt with in our case.

I look forward to your analysis and conclusions.

Gulpa Gaka anganya -Gaka Yawall Ngulla Yenbena Yorta Yorta Woka

Welcome friend come and walk with us the people of Yorta Yorta Woka, Traditional Sovereign Owners, welcome you to Country

Dr Wayne Atkinson- Principle Claimant in Yorta Yorta Native Title Claim, 1994-2002
Senior Fellow
School of Social and Political Science
University of Melbourne
http://waynera.wordpress.com/