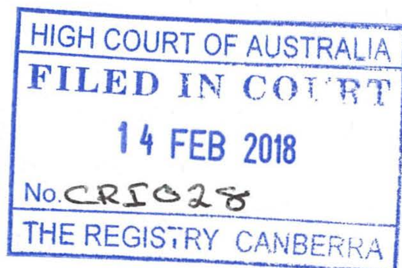
IN THE HIGH COURT OF AUSTRALIA

MELBOURNE REGISTRY

BETWEEN:

No M66 of 2017



CRI 028

Appellant

THE REPUBLIC OF NAURU

Respondent

RESPONDENT'S OUTLINE OF ORAL SUBMISSIONS

Jurisdictional matters

1. The appeal to this Court from the final judgment of the Supreme Court of Nauru is an appeal as of right, involving the exercise of this Court's original jurisdiction.

   - *BRF038 v The Republic of Nauru* [2017] HCA 44 at [35]-[41]; *HFM045 v The Republic of Nauru* [2017] HCA 50 at [5].
   - Respondent's submissions at [2].

The grounds of appeal

2. In order to succeed on the appeal, the Appellant must succeed on Ground 3 – namely, whether the Tribunal erred in law by failing to take into account the threat to family unity in its consideration of whether the Appellant could reasonably relocate to [K] district – together with either Ground 1 or Ground 2.

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3. While Grounds 1 and 2 are directed to threshold issues concerning whether the principles relating to internal relocation were applicable and whether the Tribunal was required to consider the reasonableness of relocation to [K] as a "home area" of the Appellant, the Tribunal did in fact proceed to consider and make findings on the following questions:

   3.1. whether the Appellant could practically, safely and legally relocate to [K] village, where he would not face a risk of persecution or other serious or significant harm; and

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   3.2. whether it would be reasonable for the Appellant to relocate to [K], in the sense that he could lead a relatively normal life without facing undue hardship in all the circumstances.

   - Tribunal's reasons at paras [95]-[104] **AB 138-139**.

4. Those findings did not rest on a finding that [K] was a "home region" or "home area" of the Appellant for the purposes of the relocation principles. Indeed, the findings assumed that the Appellant's only home region was Karachi. Any error as alleged in Grounds 1 or 2 could not affect the findings sought to be impugned by Ground 3.

Ground 1 – application of the "relocation principles"

5. If a claimant has a well-founded fear of persecution in one part of his or her country of origin, the claimant will not be a refugee within Article 1A of the Refugees Convention if there is another part of the country in which he or she does not have a well-founded fear of persecution and to which he or she can reasonably be expected to relocate. In such circumstances, the "causative condition" in Art 1A will not be satisfied.

   - *SZATV v Minister for Immigration and Citizenship* (2007) 233 CLR 18 at 25-26 [19].
   - *Minister for Immigration and Citizenship v SZSCA* (2014) 254 CLR 317 at 326-327 [22]-[23], 331 [39].

10 6. Analogous questions can arise where the claimant does not face a real chance of persecution in an area in which he or she had previously lived, but would face a real chance of persecution if he or she were to travel to another area and could not reasonably be expected to avoid that area.

   - *SZSCA* at 327 [25], 328 [29], 331 [39], 332 [40]-[41], 334 [46].

7. There was no error in the Tribunal's finding that [K] was a "home area" of the Appellant, in addition to Karachi, based on his "close, longstanding and ongoing connection" to the area: **AB135** [81]. This was doing no more than identifying a place in Pakistan to which the Appellant was likely to return, or to be returned. The Tribunal did not ignore whether it was possible and reasonable for the Appellant to return to [K].

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   - *CSO15 v Minster for Immigration and Border Protection* [2018] FCAFC 14 at [22], [37], [41]-[42].
   - *SZQEN v Minister for Immigration and Citizenship* (2012) 202 FCR 514 at 523 [38].

Ground 2 – Tribunal's finding that [K] was a home area of the Appellant

8. The finding that [K] was a home area of the Appellant was a finding of fact that was open to the Tribunal. In making that finding, the Tribunal clearly had regard to the circumstances of the Appellant's wife, including evidence that she was reluctant to go to [K] and did not want to leave her family in Karachi. Further, in determining whether [K] was a home area for the Appellant, the Tribunal expressly took into account that [K] may not be a home area for the Appellant's wife.

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   - Tribunal's reasons at [77]-[81] **AB135**

Ground 3 – Tribunal's finding that the Appellant could reasonably relocate to [K]

9. The question whether it is reasonable, in the sense of practicable, for a claimant to relocate to a safe place within his or her country of origin is a factual inquiry having regard to the claimant's particular circumstances of the impact on him or her of relocation.

- *SZATV* at 26-27 [23]-[24].
- *SZSCA* at 327 [23]-[26].
- *Randhawa* (1994) 52 FCR 437 at 442-443.

10. The Tribunal properly considered whether it was reasonable to expect the Appellant to go to [K] in order to avoid the feared persecution in Karachi. For such purposes, and reading the Tribunal's reasons as whole:

 10.1. The Tribunal found that the Appellant had a "close, longstanding and ongoing connection with [K] where the rest of his family resides". **AB135** [81]

 10.2. The Tribunal found that the Appellant did not have a well-founded fear of persecution in [K]. **AB137** [93], **AB138-139** [100]-[101]

 10.3. The Tribunal found that the Appellant had no subjective fear of returning to [K], including with his wife. **AB134** [73]

 10.4. The Tribunal addressed the Appellant's claims that he could not go to [K] or to Punjab province because his wife didn't want to leave her family in Karachi. The Tribunal found that the Appellant's family in [K] did not have any significant issues with his wife. **AB135** [76], [80]

 10.5. The Tribunal found that the Appellant would be able to lead a relative normal life without facing hardship in [K]. He would not lack a support network and was not estranged from his family. He had a solid work history with experience in a range of jobs. **AB139** [102]-[103]

11. The Tribunal was not required to address separately whether or not it was reasonable for the Appellant's wife and child to relocate to [K]. The Tribunal referred to the evidence that the wife did not want to move to [K] or to leave her family in Karachi. The Tribunal found that, notwithstanding that reluctance, the Appellant's wife and child could have gone to [K] with the Appellant. Thus, it made findings that this would not give rise to any problems for the Appellant in [K], and that he could lead a relatively normal life in [K].

12. The Tribunal was not bound to have regard to "family unity" or Article 23 of the ICCPR as a mandatory relevant consideration, separately from having regard to the particular circumstances of the Appellant. In any event, the unity of the Appellant's family was equally or more greatly affected by his departure from Pakistan, leaving his wife and child in Karachi.

Dated: 14 February 2018

CHRIS HORAN

NICK WOOD