CRI028 v REPUBLIC OF NAURU (M66/2017)

Court appealed from: Supreme Court of Nauru [2017] NRSC 32

Date of judgment: 11 May 2017

The appellant was born in the "K" District of Pakistan in October 1983. He is a Sunni Muslim, a Punjabi by ethnicity and a citizen of Pakistan. He is a married man and his wife is a Shiaa Muslim. He attended school until grade 9 and then worked in various trades. He went to Karachi to look for work in 2004. He later met and married his wife in Karachi. It was a 'love match' which did not have the approval of his family. On many occasions whilst living in Karachi he was forced to attend demonstrations and other gatherings and contribute money to the Muttahida Quami Movement (the "MQM") under threat of being assaulted and after having his identity cards confiscated. He could not go to the police for help because many members of the police were also MQM supporters.

In May 2013 some MQM supporters came to his house demanding that he attend a demonstration and threatened him with harm if he did not do so. As a result the appellant decided to flee Pakistan as he feared that if he remained he would be detained, harmed or killed in the on-going civil and political violence. In August 2013 the appellant travelled to Malaysia, then onto Indonesia where after a couple of months he boarded a boat for Australia. This was intercepted and he was taken to Christmas Island in December 2013; a few days later he was transferred to Nauru where he remains. On 8 March 2014 he made an application for refugee status determination under the *Refugees Convention Act* 2012 (NR).

The Secretary of the Nauru Department of Justice and Border Control refused the application on 17 July 2014. The appellant made an application for merits review of that decision to the Refugee Status Review Tribunal. The Tribunal affirmed the decision of the Secretary that the appellant was not recognised as a refugee and was not owed complementary protection under the Act. The Tribunal found that the appellant had two 'home areas': the first in the "K" District where he had lived for 22 years, and the second in Karachi where he had lived, worked, married and had a child in the 6 years before leaving Pakistan. While the Tribunal was satisfied that the appellant may well have had a well-founded fear of persecution from the MQM, it viewed this threat to be restricted to the Karachi area. The appellant was found to not have a reasonable possibility of persecution in his home area of the "K" District either based on the MQM threats or his mixed-faith marriage. Having determined that he could return and lead a normal life in Pakistan the Tribunal found that the appellant was not a refugee. The Tribunal found 'the ordinary principles of relocation to not apply in the situation' of having two home areas.

The appellant then appealed to the Supreme Court of Nauru (Crulci J). His grounds of appeal were:

1. Whether a person can have more than one 'home area' and thus negate the principles of the relocation alternative, and whether it is correct that a

decision-maker is not required to assess the reasonableness of relocation from one home area to another;

2. If the existence of a second home area negates the requirement of a reasonableness of relocation question, does this second area need to be considered for the appellant alone or as appropriate for he and his family together;

3. If there is not a second home area exception, was the Tribunal required to take into consideration the appellant's claim that the family unit could not relocate to the "K" District.

With respect to the issue of there being two home areas, the Court found that the Tribunal's finding on this issue was a finding of fact and could therefore not be the subject of an appeal. With respect to Ground 2, the Court noted that the Tribunal had made a finding that the appellant did not have a subjective fear of returning to Karachi, including with his wife. The Court found that the Tribunal did consider the appellant's family situation and in particular whether his wife could be safe in the "K" District.

As to Ground 3, her Honour noted the Tribunal had made a determination that at no time had the appellant's wife said that she would not leave Karachi; rather for various reasons that she did not wish to do so. In those circumstances the Court held that this was a determination open to the Tribunal on the evidence before it and this ground of appeal had no merit. The appeal was dismissed.

The appellant appealed to the High Court on 25 May 2017.

The grounds of appeal include:

- The Supreme Court of Nauru erred by failing to find that the Refugee Status Review Tribunal made an error of law in misconceiving and misapplying the 'internal protection' or 'relocation' principles as if relocation from one home area to a second was not subject to the relocation principle of reasonableness;

- The Supreme Court erred in failing to find the Tribunal made an error of law by failing to ask the correct question in relation to its consideration of the "K" District as another home area, namely whether it was another home area to the appellant and his family.