TTY167 v REPUBLIC OF NAURU (S46/2018)

Court appealed from: Supreme Court of Nauru
                         [2018] NRSC 4

Date of judgment: 20 February 2018

The Appellant is a national of Bangladesh. He is a Sunni Muslim of Bengali ethnicity. After arriving in Australia by sea in August 2013, in July 2014 the Appellant was transferred to Nauru. There he applied for a determination that he was a refugee or alternatively that he was owed complementary protection. That was on three bases: his political opinion (because he was both an active supporter of the movement Jamaat-e-Islami and personally opposed to the ruling Awami League in Bangladesh), his religion and as a member of a particular social group (failed asylum seekers who had left Bangladesh illegally).

On 9 October 2015 the Secretary of the Nauruan Department of Justice and Border Control ("the Secretary") determined that the Appellant was not a refugee within the meaning of the *Refugees Convention Act* 2012 (Nauru) ("the Refugees Convention Act") and that he was not owed complementary protection by Nauru.

The Appellant applied for a review of the Secretary's decision by the Refugee Status Review Tribunal ("the Tribunal"). The Appellant filed a statement of evidence with the Tribunal and his lawyer provided written submissions on his behalf. He did not appear at the hearing scheduled by the Tribunal however. The Tribunal proceeded to determine the review, giving its decision two months later. That decision affirmed the determination of the Secretary.

The Appellant appealed to the Supreme Court of Nauru. In that proceeding he represented himself. He did not file written submissions and he said little during the hearing. The Appellant relied on two grounds of appeal. The first was that the Tribunal had unfairly failed to adjourn the hearing, in circumstances where he had been feeling unwell and very stressed and had instructed his lawyer to obtain an adjournment. The Appellant's second ground of appeal was that the Tribunal had been unreasonable and biased against him.

Judge Marshall dismissed the appeal and affirmed the decision of the Tribunal. His Honour held that in the absence of a request for the hearing to be rescheduled, which could have been made at any time prior to the Tribunal's giving of its decision, the Tribunal was entitled to proceed under s 41(1) of the Refugees Convention Act and determine the review without taking steps to enable the Appellant to appear. Judge Marshall also held that the Tribunal's decision was not unreasonable. His Honour found no evidence to support a contention of either actual bias or a reasonable apprehension that the Tribunal was not open to persuasion on some matters before it.

The Appellant seeks an extension of time in which to appeal to the High Court, invoking its jurisdiction to hear and determine appeals from the Supreme Court of Nauru by virtue of s 5 of the *Nauru (High Court Appeals) Act* 1976 (Cth) and Article 1A(b)(i) of an agreement between the governments of Australia and

Nauru relating to such appeals that was signed on 6 September 1976 (and came to an end on 13 March 2018).

The grounds of appeal are:

- The Supreme Court of Nauru erred in failing to find that the Tribunal made an error of law by exercising its powers under s 41(1) of the Refugees Convention Act to decide the application after the Appellant failed to attend the hearing without convening a further hearing in circumstances where the Appellant had not been invited to appear at that hearing, in breach of s 40 of that Act.

- The Tribunal acted unreasonably in exercising its powers under s 41(1) of the Refugees Convention Act, in circumstances where it:
  a) did not provide notice to the Appellant of the hearing date;
  b) had prior notice of the Appellant's mental health concerns;
  c) had prior notice of the Appellant's desire to give evidence before the Tribunal;
  d) did not make any inquiries as to the Appellant's failure to appear before it; and
  e) relied on findings of adverse credibility and lack of detail in the previous evidence given by the Appellant.