



## HIGH COURT OF AUSTRALIA

5 December 2018

### TTY167 v REPUBLIC OF NAURU [2018] HCA 61

Today the High Court unanimously allowed an appeal from a decision of the Supreme Court of Nauru. The High Court quashed the decision of the Refugee Status Review Tribunal ("the Tribunal") that the appellant was neither a refugee nor owed complementary protection and remitted the matter to the Tribunal for reconsideration.

The appellant is a citizen of Bangladesh. He applied under the *Refugees Convention Act 2012* (Nr) to the Secretary of the Department of Justice and Border Control ("the Secretary") to be recognised as a refugee or a person owed complementary protection. He was assisted in preparing his application by a representative of a Nauru claims assistance provider called CAPS. His application was refused by the Secretary. The appellant applied to the Tribunal for merits review of the Secretary's determination. By a letter addressed to a "Team Leader" at CAPS, the Tribunal invited the appellant to appear before it. The appellant provided a statement to the Tribunal that highlighted the appellant's deteriorating physical and mental health, including his depression and anxiety. He also stated that he would provide further information in relation to his protection claims at the hearing. His lawyers provided submissions indicating their expectation that the appellant would take the opportunity to appear before the Tribunal. Although the appellant had been highly engaged with the application process, he failed to attend the scheduled hearing. Also, it could be inferred that no representative of the appellant attended the hearing. The Tribunal affirmed the determination of the Secretary, observing that the appellant's failure to attend the hearing prevented it from exploring many aspects of his claims. The appellant appealed to the Supreme Court, which dismissed his appeal and held, relevantly, that it was open to the Tribunal to make a decision without taking further action to enable the appellant to appear.

The appellant appealed as of right to the High Court on two bases. First, the appellant alleged that he was not given an invitation to appear before the Tribunal. The High Court held that, because of the absence of evidence as to whether the Team Leader at CAPS had been authorised by the appellant to receive the invitation, the issue could not be raised for the first time on this appeal. Secondly, the appellant alleged that the Tribunal acted unreasonably in deciding the matter without taking further action to allow or enable the appellant to appear before it. The High Court held that the circumstances of this case were so exceptional that it was legally unreasonable for the Tribunal to proceed to decide the matter without making an enquiry about the appellant's absence on the date of the hearing.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*