



IN THE SUPREME COURT OF NAURU  
AT YAREN

APPEAL NO. 42/2015

Being an appeal against a decision of the Nauru Refugee  
Status Review Tribunal brought pursuant to s43 of the  
*Refugees Convention Act 2012*

BETWEEN

EMP007

APPELLANT

AND

The Republic of Nauru

RESPONDENT

Before: Khan ACJ  
Date of Hearing: 8 March 2017  
Date of Judgment: 27 September 2017

Case may be cited as: EMP007 v The Republic

CATCHWORDS:

Whether the Tribunal misconceived the appellant's claim and therefore did not believe him.

HELD – the Tribunal considered the appellant's claim but had concerns with his credibility and dismissed the claim – appeal dismissed.

APPEARANCES:

Counsel for the Appellant: In person (Ms Montalban as McKenzie friend)  
Counsel for the Respondent: R O'Shannessy

JUDGMENT

INTRODUCTION

1. The appellant filed an appeal against the decision of the Refugee Status Review Tribunal ("the Tribunal") pursuant to s 43(1) of the *Refugees Convention Act 2012* ("the Act") which states:

A person who, by a decision of the Tribunal, is not recognised as a refugee may appeal to the Supreme Court against that decision on a point of law.

2. The Tribunal delivered its decision on 15 March 2015 affirming the decision of the Secretary for the Department of Justice and Border Control (“the Secretary”) that the appellant is not recognised as a refugee and is not owed complementary protection under the Act.
3. The appellant filed an appeal in this Court on 27 August 2015.

#### EXTENSION OF TIME

4. The decision of the Tribunal was delivered on 15 March 2015 which was received by the appellant on 23 March 2015. Section 43(3) provides that a notice of appeal must be filed within 28 days of the receipt of the decision by the appellant.
5. On 15 April 2015, the Registrar by consent of the parties made an order that the time for filing of the appeal be extended to 30 June 2015. However, the appeal was not filed by 30 June 2015 and it seems that the appellant filed the notice of appeal on 27 August 2015 without any further orders of the Court.
6. Following the decision of *Kun v Secretary for Justice and Border Control*<sup>1</sup> the Registrar did not have the powers to grant an extension. In any event, the notice of appeal was filed without seeking any further orders for extension and the grounds of appeal dated 27 August 2015 is not competent.
7. Section 43(3) of the Act was amended by s 43(5) of the *Refugees Convention (Amendment) Act 2015* which increased the period of time for filing of appeal from 28 to 42 days; and it further gave the Registrar or Judge powers to extend the period of time beyond 42 days if satisfied that it was in the interests of justice to do.
8. On 3 February 2017, the appellant filed an application for an order to extend time and the Court made an order by consent to extend the time for filing the appeal and it was agreed that the notice of appeal filed on 27 August 2015 shall be treated as the notice of appeal in this matter.

#### BACKGROUND

9. The appellant is a 28-year-old single male Sunni Muslim from Bangladesh.
10. He lived on his family’s farm in Tangail District.
11. His parents and his six married siblings all still live in Bangladesh.
12. The appellant is illiterate and his occupation in Bangladesh was working on the family farm.

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<sup>1</sup> [2015] NRSC 18 (Khan J).

13. The appellant became a supporter of the Awami League (“AL”) in 2009. While not a formal member, he canvassed door-to-door and distributed tea and cigarettes to potential voters. He was paid for his expenses.
14. In about March 2013, he was involved with a political march near his village. The appellant fled from the march when fighting broke out between AL members and members of the Bangladesh Nationalist Party (“BNP”).
15. In the week following this incident, the appellant was approached by members of BNP, who told him to join BNP or he would be killed. He refused but came to no harm on this occasion.
16. A week following this incident, he was approached by a group of armed BNP supporters on the road. When he again refused them, he was chased by three people wielding machetes.
17. After these confrontations, the appellant was repeatedly harassed by local BNP members. He suffered no further physical harm but was intimidated. He felt unable to make any complaint to the police because of a belief that the area was controlled by the BNP.
18. In about April 2013, the appellant’s brother was beaten by members of the BNP when returning home alone at night.
19. After hiding at home for seven weeks, the appellant left Bangladesh on 20 May 2013. He arrived on Christmas Island after travelling through Myanmar and Indonesia. He was subsequently transferred to Nauru.
20. He has since heard that his brother was subjected to another beating in about January 2014, a fortnight before the general election. He sustained a head injury.

#### APPLICATION TO THE SECRETARY

21. On 19 November 2013, the appellant attended a Transfer Interview.
22. On 28 January 2014, the appellant made an application to the Secretary for recognition as a refugee and for complementary protection under the Act.
23. On 21 September 2014, the Secretary made a determination that the appellant is not a refugee and is not owed complementary protection.

#### APPLICATION TO THE TRIBUNAL

24. The appellant made an application for review of the Secretary’s decision pursuant to s 31(1) of the Act which provides:

A person may apply to the Tribunal for merits review of any of the following:

- a) a determination that the person is not recognised as a refugee;
  - b) a decision to decline to make a determination on the person's application for recognition as a refugee;
  - c) a decision to cancel a person's recognition as a refugee (unless the cancellation was at the request of the person).
  - d) a determination that the person is not owed complementary protection.
25. On 11 January 2015, the appellant made a statement and his lawyers, Craddock Murray Neumann, made written submissions to the Tribunal. His lawyers provided further written submissions on 27 January 2015.
  26. On 20 January 2015, the appellant appeared before the Tribunal to give evidence and present his arguments with his representative and an interpreter in Bangla and English languages.
  27. The Tribunal handed down its decision on 15 March 2015 affirming the decision of the Secretary that the appellant is not recognised as a refugee and is not owed complementary protection under the Act.

#### THIS APPEAL

28. The appellant uses a "dot point" format without numbering the grounds of appeal. The grounds of appeal read as follows:

The appellant hereby appeals pursuant to section 43 of the Refugees Convention Act 2012 against the decision of the Refugee Status Review Tribunal made on 15<sup>th</sup> day of March 2015 on the following grounds:

- Ground One - The Tribunal didn't believe what I said. The Tribunal thought what I said was fabricated.
- Ground Two - Since I have no option to go to my country, and have to stay here, in order to keep myself lawfully residing here, I want to appeal.
- Ground Three - They said they wouldn't take anyone to Australia who arrived after 19 July. But they didn't keep their word. They have taken some people.

#### SUBMISSIONS

29. The appellant was self-represented and did not file any written submissions. He made very brief oral submissions at the hearing of the appeal. The respondent filed written

submissions and made oral submissions at the hearing which was of assistance to the Court.

## CONSIDERATION

### Grounds Two and Three

30. The respondent submits that grounds two and three do not challenge the Tribunal's decision. Ground two simply states that he does not want to go to his country and therefore will have to stay in Nauru. Ground three is in the form of a complaint that the appellant and others were told by the authorities that anyone arriving after 19 June (the year is not clear) will not be taken to Australia; but the authorities changed their decision and allowed some to go to Australia. This complaint has nothing to do with the Tribunal's decision.
31. I agree that grounds two and three do not challenge the decision of the Tribunal or raise a point of law and are dismissed.

### Ground One – "Believe" and "Fabrication" Complaints

32. The respondent submits at [17] of its submissions that the "believe" and "fabrication" complaints mischaracterise the Tribunal's findings. Although the Tribunal had "some concerns" with the appellant's credibility that some aspects of his claim were "embellished and/or exaggerated", the Tribunal accepted that the appellant's story remained consistent throughout the refugee determination process: [50] of its decision.
33. The Tribunal accepted the following at [51]:
- a) That the appellant had a low-level involvement with the AL and has done a variety of small tasks for them, for remuneration, since 2009, including participating in local rallies;
  - b) He is not a formal member of the AL and suffered no harm for reason of his association with it from 2009 until shortly before his departure from Bangladesh in 2013;
  - c) He had a confrontation with some BNP supporters near a tea shop in his village seven weeks before his departure from Bangladesh but escaped harm;
  - d) None of his friends who were similarly involved with the AL have suffered any harm.
34. The Tribunal quoted UNHCR Guidelines at [54]:

Persecution is normally related to action by the authorities of a country. It may also emanate from sections of the population that do not respect the standards established by the laws of the country concerned. ... Where serious discriminatory acts are committed by the local populace, they can be

considered as persecution if they are unknowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection.

35. Having used the UNHCR Guidelines the Tribunal stated at [55]:
- a) That the appellant did not seek any protection whatsoever;
  - b) That he neither informed his friends nor any senior AL official about the harassment from BNP;
  - c) That he did not report to the police after the tea shop incident because the Chairman would not allow the police to enter the village;
  - d) He said he did not report to the local police station as the police only do what the Chairman tells them to do.
36. At [57] the Tribunal stated:
- a) That the appellant made no attempt to ascertain the willingness or ability of the local police or any other agent of the State to assist him as he never made any complaint;
  - b) That there was no “serious discriminatory act... by the local populace”;
  - c) That the appellant faced a confronting situation with several men aligned to BNP, but the situation was resolved by the appellant’s speedy departure;
  - d) That there was no harm and there was no ongoing discrimination;
  - e) That it cannot be said that “the authorities refused, or proved unable, to offer effective protection” – as the authorities were never asked for assistance by the appellant;
  - f) That the appellant made assumptions about what he felt the Chairman might do, but there is no evidence to support his assumptions.
37. Having discussed the above the Tribunal at [58] made a finding that the appellant did not suffer serious harm, let alone harm amounting to persecution, in the past for the reason of his actual or imputed opinion.

#### Possibility of harm in the future

38. At [60] the Tribunal held that since the appellant’s departure, his area has become more strongly dominated by AL. All eight MPs from Tangail District are now AL members, whereas when he lived there only six were AL MPs, one independent and one BNP; and hence he would be able to seek State protection if he feared harm by reasons of his imputed pro-AL political support.

39. The Tribunal found that the appellant does not have a well-founded fear of persecution in the foreseeable future.

40. In the circumstances, ground one of the appeal has no merit and is dismissed.

CONCLUSION

41. Under s 44(1) of the Act, I make an order affirming the decision of the Tribunal.

DATED this 27<sup>th</sup> day of September 2017



Mohammed Shafiullah Khan  
Judge

