



**IN THE NAURU COURT OF APPEAL
CIVIL APPELLATE JURISDICTION
AT YAREN**

Civil Appeal No 15 of 2025
Supreme Court Civil Case
Number 15 of 2025

BETWEEN: AO25 Appellant

AND: Republic of Nauru Respondent

BEFORE: Khan P
Palmer JA
Coates JA

Date of Hearing: 06 May 2026
Date of Judgment: 22 May 2026

Case may be cited as: AO25 v The Republic

CATCHWORDS: Refugee law – Local land dispute – Claim that appellant cannot return home – Irrationality of decision claim – Test for irrational decision.

APPEARANCES:

Counsel for the appellant: A Aleksov (instructed by International Crossover Pty Ltd)
Counsel for the respondent: J Lucas (instructed by the Republic of Nauru)

JUDGMENT

1. **BY THE COURT:** The appellant seeks protection based on a well-founded fear of persecution if he returns to his home country of Bangladesh, because of a land dispute he states involves himself and his family.
2. The appeal is short in scope.
3. The ground of appeal is that the decision made by the Refugee Status Review Tribunal (the Tribunal) in not classifying him as a refugee was irrational and should never have been upheld in the subsequent Supreme Court appeal.
4. The appellant seeks orders that the Supreme Court decision of 8 August 2025 and Tribunal decision of 23 February 2025 be overturned and the matter returned to the Tribunal for rehearing.
5. The respondent Republic opposes the appeal.
6. By way of background, the appellant's family had allegedly been in a dispute with a neighbour for 15 years, wherein the neighbour claims the land.
7. The dispute has involved violence with the neighbour, but not to him, and a court case, which the neighbour did not win.
8. The appellant is in Nauru pursuant to an agreement between Australia and Nauru which allows illegal entrants into Australia to be sent to Nauru where they are free to make an application for asylum.
9. The appellant arrived in Australia in February 2024 and pursuant to the agreement was transferred to Nauru on 18 February 2024. The Secretary for Multicultural Affairs on considering his case determined that he did not present evidence acceptable to be classified as a refugee. The appellant then made application under the *u* Refugee Convention Act(2012)(the Act) on 8 March 2024.
10. The Tribunal hearing was told of the land dispute and that the neighbour had pushed his mother on one occasion so that she fell over and the appellant thought he would be beaten up.
11. In further disputes, the neighbour had lodged a complaint against his mother and his brother which required them to appear in court. We were not given particulars of that matter. The appellant said he was not involved in that case.
12. The appellant told the Tribunal that if he returned to Bangladesh, he feared he would be further dragged into the dispute and harassed and abused. He said he had never sought protection of the police because he did not want to get them involved, but his mother and brother had approached police but he was not sure of the result. He said he could not live peacefully in the city of Dhaka or any other part of Bangladesh because he is not connected to anyone and would not be able to support himself.

13. Counsel for the appellant submitted the dispute had gone on for a long time and that it was a continuing dispute, and in those circumstances the final decision of the Tribunal that he was not in need of protection was irrational.
14. He said there was a reasonable possibility that he could suffer harm, despite the Tribunal stating there was no such reasonable possibility.
15. Counsel for the Republic said the legal test for irrationality to amount to legal error can only be discovered on the evidence and the irrationality has to be gleaned from that evidence by examining the reasoning process.
16. She referred to the Supreme Court decision in *CRI 020*¹ which relied on the Australian High Court case *Minister for Immigration and Citizenship and SZMD*² for an explanation of legal unreasonableness. In that case Crennan and Bell JJ stated:

[131] What was involved here was an issue of jurisdictional fact upon which different minds might reach different conclusions. The complaint of illegal illogicality or irrationality was said to lie in the process of reasoning. But, the test for illogicality or irrationality must be to ask whether logical or rational or reasonable minds might adopt different reasoning or might differ in any decision or finding to be made on evidence upon which the decision is based. If probative evidence can give rise to different processes of reasoning and if logical or rational or reasonable minds might differ in respect of the conclusions to be drawn from that evidence, a decision cannot be said by a reviewing court to be illogical or irrational or unreasonable, simply because one conclusion has been preferred to another possible conclusion.

Was the Tribunal's fact finding illogical or irrational?

[132] Because illogicality or irrationality may constitute a basis for judicial review in the context of jurisdictional fact finding as explained above, it becomes necessary to decide whether the Tribunal's conclusion about the state of satisfaction required by section 65 and its findings on the way to that conclusion revealed illogicality or irrationality amounting to jurisdictional error. It is clear, from the extracts from the Federal Court decision set out above, that the Federal Court emphatically disagreed with the Tribunal's finding that the first respondent returned to Pakistan and failure to seek asylum in the United Kingdom was conduct which was inconsistent with the claimed fear of persecution arising as a result of homosexuality. It also seems clear that the Federal Court, acting on the same material or evidence on which the decision was based, would have been satisfied that the first respondent feared persecution as alleged.

[133] However the correct approach is to ask whether it was open to the tribunal to engage in the process of reasoning in which it did engage and to make the findings it did make on the material before it. There was evidence that the first respondent was married with four children and that he regularly visited Pakistan to see his family after the time at which he said he commenced, as he put it, "the practice of

¹ [2021] NRSC 23 at 36

² (2010) 240 CLR 611 at 131 and 133

homosexuality” in the UAE. In particular, he visited his family for three weeks before coming to Australia. During the time when he said he engaged in the “practice of homosexuality” in the UAE, and when he visited the United Kingdom, the evidence was that under both civil law and Shari’a in the UAE i.e. Homosexual activity was criminalized. The first respondent also gave comprehensive evidence of homosexual activity in the UAE homosexual activity was criminalised. The first respondent also gave comprehensive evidence of homosexual activity in the UAE which was uncorroborated. The Tribunal saw the first respondent give evidence and sought answers and explanations from him. Such was the evidentiary context in which the Tribunal determined that the first respondent’s conduct, first in returning to Pakistan and secondly in failing to seek asylum in the United Kingdom, was conduct which was inconsistent with his claim fears of persecution as a result of homosexuality.

17. Counsel for the Republic submitted that this statement directed the court to be aware of the reasoning process, and she took the court to the facts here – that even after 15 years the neighbour did not have the appellant’s family land, the conflict was low level, it was the appellant’s brother and mother who appeared to be drivers of the dispute, there was only one incident of harm, there was a court case in which the neighbour was not the victor, the appellant knew nothing of the court case or its outcome, and his whole story indicates that he was a spectator not a participant.

18. It is the words used by the Tribunal in its decision from which the test stated in *SZMDS* can be assessed, searching for a different reasoning path which could be embarked upon because probative evidence available would give rise to the possibility of a different pathway and one which could show the irrationality of the decision under appeal. At paragraph 44, the Tribunal stated:

[44] However, as described by the applicant at hearing, the long running dispute appears to be intermittent and low level given that according to the applicant, the dispute has resulted in one previous episode of physical violence. In addition, the applicant’s family continued to have control over and legal title to the property, are supported by the government authorities who have not only [sic] and confirmed the applicant’s families ownership over the disputed boundary area, but have also dismissed the court action Nazmul’s [the neighbour] brought against the applicant’s mother and brother.

[it is also clear from the applicant's evidence that the applicant's mother and brother are primarily involved in the dispute, in the sense that the applicant has not been involved in the court case, and was not made aware of the details of its outcome since his mother did not want to worry him. The applicant was also working in another village since 2021 and up until November/December 2023 which was the month before he departed Bangladesh in January 2024. Given this, the Tribunal is of the view that the applicants actual involvement is what is essentially the concern of his mother and brother is limited and at most, he appears a spectator of the conflict rather than a participant.

19. Counsel said the Tribunal decision embarked on that course of reasoning, and such was a logical basis for its decision to be made.

20. She said viewed in that light, the decision could be classified as completely logical and there was nothing inherently illogical when addressing those strands of the evidence.
21. We hold then, on examining the words used by the Tribunal on the facts it found, that a logical, rational and reasonable assessment of the evidence occurred, and that we were not taken to evidence probative of another set of conclusions so as to make the current decision irrational. The Tribunal turned its mind to the evidence, that the neighbour was said to have political connections which had failed to protect him, that the appellant had given evidence in conflict with previous statements (over when the neighbour erected a bamboo fence), that he introduced new evidence about the neighbour building and destroying two houses on the disputed land, that the dispute had gone on for 15 years, was low level and he had not suffered harm and his mother and brother were the victor in a court case concerning the neighbour. The Tribunal conclusion on that was that the appellant did not demonstrate the fear he claimed.
22. Applying the ordinary meaning to the words used, the phraseology, the content considered and ordinary human comprehension, the facts leave little by way of considering that the facts were not taken into account.
23. The claim was very short in scope and we find that no irrationality is apparent to support the appellant's contentions.
24. On that basis, we dismiss the appeal.

ORDER:

1. The appeal is dismissed.

Dated this 22 day of May 2026



Khan P
President of the Nauru Court of Appeal



Palmer JA
Justice of the Nauru Court of Appeal



Coates JA
Justice of the Nauru Court of Appeal

