



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

Civil Appeal Number 19 of 2025  
Supreme Court Civil Case Number 18 of 2025

BETWEEN                      AR25                                      Appellant  
  
AND  
  
                                    Republic of Nauru                                      Respondent

Before                      Khan P  
  
                                    Palmer JA  
  
                                    Coates JA

Date of Hearing              15 June 2026

Date of Judgment        25 June 2026

Case may be cited as : AR25 v The Republic

**CATCHWORDS:** APPEAL – Asylum seeker – Misconstruction or misunderstanding of evidence - Claim of political association – Claim that such poses a threat

**APPEARANCES**

Mr Kenneally for the Appellant

Mr O'Shannessy for the Respondent

**JUDGMENT**

1. **BY THE COURT:** In this appeal against decisions not granting the appellant refugee status, or complementary protection under the *Refugees Convention Act 2012* (the Act), a challenge is mounted as to the interpretation of evidence

considered by the Supreme Court on appeal from the Refugee Status Review Tribunal (the Tribunal).

2. The focus of the consideration for this Court is that the appellant, who was claiming a political basis for his well-founded fear of returning to Bangladesh, is that conflicting evidence of a speech and failing to vote led the Tribunal to misconstrue or misunderstand the evidence.
3. The appellant, born 18 August 1984, arrived illegally in Australia in February 2024 and was transferred to Nauru on 18 February 2024 pursuant to an agreement between Australia and Nauru for the consideration of refugee status claims.
4. He seeks that his matter be returned to the Tribunal for another hearing.
5. His case is that his political association is the cause of the well-founded fear of returning to Bangladesh.
6. The particulars of that claim, briefly, are that he is a supporter of the Bangladesh Nationalist Party (BNP), and members of the opposing Awami League (AL) party, on 1 January 2024, when AL was still in government, demanded money of him to remain in his village.
7. In the way the evidence is stated in the Tribunal decision and in the Supreme Court appeal judgment, we assume that the amount of money demanded and paid by the appellant was significant. For completeness, we will say that 1 Lakh Taka was demanded but we were not given evidence as to the relative value of that amount, other than the appellant stating he had trouble paying it.
8. He said four days later when asleep, people came to his home woke him and demanded another 1 Lakh Taka. He said he did not have the money and had no option but to leave his home.
9. He said he borrowed money from his relatives and in-laws and sold part of his family home and was living with his brother in another part of the house and he is indebted to in-laws.
10. He said he could not go to the police as they would extort money from him.
11. He said he had to flee Bangladesh.
12. In exploring these claims, issues as to the extent of being an activist and party worker arose before the Tribunal.

13. In particular, the question of whether he gave a speech in a market, obviously along political lines, became an issue, as did why he had not voted in elections.
14. At paragraph 35 of the Tribunal decision, it is recorded that the appellant did not give any speech either at a clubhouse or a market. At paragraph 88 of the decision, the Tribunal records the appellant stating he did not give a speech to BNP supporters.
15. Then at paragraph 53 of the decision, the Tribunal states:

In his review statement the applicant said that it was incorrect that he made a political speech at the market as he made the speech at the local BNP meeting room. In his written response to the RSD officer, he clearly stated he gave the speech at the market. When asked about this at the Tribunal hearing he could not remember giving a speech at the markets or the BNP meeting room. This is a significant event to forget if it was an event that triggered the extortion demands.

16. Counsel for the appellant said the difficulty is that the paragraph is inconsistent with paragraphs 35 and 88, however, in context there is a misunderstanding of the evidence.
17. The context being referred to was a clarification of what he had stated, and at page 12 line 10 of the transcript, the appellant was being questioned about the clubhouse and the market to determine whether they were situated together. He said:

It's one and a half kilometres away from my village home, so it's not in the big market, the – it's one and a half kilometres away, there's a small market area, there this clubhouse is located.

18. His counsel pointed out there is obviously no ambiguity but his point was that from this exchange, the basis for the Tribunal findings were not apparent.
19. It was also put the Tribunal did not seek clarification in all the circumstances when it appeared two answers had been given.
20. He further submitted that the critical reason, stated at paragraph 53, that the appellant could not remember, did not allow a finding to reject his application.
21. The Tribunal also considered the issues that the appellant had not voted in an election, which did not indicate a strong commitment to a political cause. On that issue the appellant claimed that AL members had prevented people from voting.

22. Counsel put that the question as to whether such a conclusion was open on the evidence or whether it had been misconstrued or misunderstood was in issue.
23. He said had the Tribunal not been in error, it may not have found the appellant's evidence unacceptable.
24. Counsel for the respondent, the Republic, in opposing the case being put, highlighted that the Tribunal's focus on inconsistent evidence was correct and unimpeachable.
25. He pointed to a letter sent to the appellant after the assessment of his claim by the Secretary's delegate, dated 4 August 2024, providing further opportunity to provide further information. The letter refers to a speech the appellant mentioned as being given in the market.
26. In response, the appellant's representatives replied that while the appellant had lectured people, he "did not give a speech in the market". This is to be compared with the words he stated to the Tribunal, that he gave a speech.
27. The appellant's statement for the hearing, prepared with legal assistance, stated the decision (of the Secretary) records that he made a political speech in the market, which was incorrect, as he made a speech to local BNP supporters at the BNP meeting room.
28. Counsel said that was a clear repudiation of having made a speech in a market.
29. He said the inconsistency was then recorded at paragraph 53 of the decision, as stated above.
30. Nor could the appellant elaborate on the content of the speech or the circumstances which led to it being given.
31. At this point, the comments of Crennan and Bell JJ in *Minister for Immigration and SZMDS*<sup>1</sup>, which both counsel referred to, are useful:

[129] It can be acknowledged that the contemporary invocation of "illogicality" or "irrationality" as a basis for judicial review may well have first emerged in Australia, as intimated by Gleeson CJ in *S20*, as a reaction to the ouster of the review ground of "*Wednesbury* unreasonableness" in immigration law. Equally it may be that the development of "irrationality" as a basis for judicial review in England grew out of dissatisfaction with the inherent circularity of the *Wednesbury* test and the implicit suggestion in *Wednesbury* that there were degrees or grades of unreasonableness. Be that

---

<sup>1</sup> [2010] HCA 16 [129] – [133]

as it may, accepting that an allegation of "illogicality" or "irrationality" must mean something other than emphatic disagreement as explained above by reference to *Eshetu* and *S20*, and also accepting that a demonstration of *bona fides* will not save an illogical or irrational decision or finding on a jurisdictional fact as stated in *SGLB*, how do "illogicality" and "irrationality" fit with the clearly related body of law concerned with error, particularly jurisdictional error, in respect of reasoning which is "clearly unjust", "arbitrary", "capricious" or "*Wednesbury* unreasonable"?

[130] In the context of the Tribunal's decision here, "illogicality" or "irrationality" sufficient to give rise to jurisdictional error must mean the decision to which the Tribunal came, in relation to the state of satisfaction required under, is one at which no rational or logical decision maker could arrive on the same evidence. In other words, accepting, for the sake of argument, that an allegation of illogicality or irrationality provides some distinct basis for seeking judicial review of a decision as to a jurisdictional fact, it is nevertheless an allegation of the same order as a complaint that a decision is "clearly unjust" or "arbitrary" or "capricious" or "unreasonable" in the sense that the state of satisfaction mandated by the statute imports a requirement that the opinion as to the state of satisfaction must be one that could be formed by a reasonable person. The same applies in the case of an opinion that a mandated state of satisfaction has not been reached. Not every lapse in logic will give rise to jurisdictional error. A court should be slow, although not unwilling, to interfere in an appropriate case.

[131] What was involved here was an issue of jurisdictional fact upon which different minds might reach different conclusions. The complaint of 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 s 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's return 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...

[134] The process of reasoning followed by the Tribunal, which needs to be considered in the light of all of the evidence set out above, was as follows...

32. Applying that, not every lapse of logic gives rise to error, and the correct approach is to ask whether the process of reasoning was open to the Tribunal. So again, as is often repeated, the decision as a whole should be considered in light of the (potentially) impugned error. If the Tribunal was confused, and we do not hold that it was, it would be caused by the conflicting information and evidence given over time by the appellant. It chose an obvious path when facing statements, material to the claim of having fear because of political activity, which were conflicting.
33. The Tribunal's role was to examine the appellant's claims as to his refugee status and come to a decision.
34. That conflicting evidence arises on those basic claims – that the appellant had a well-founded fear of persecution due to political activities, came up short when he could not persuade the Tribunal of basic political activity such as speech-making and voting.
35. We find no misapplication or misunderstanding of the evidence by the Tribunal or the Supreme Courts assessment, and dismiss the appeal. The Tribunal's process of reasoning, taken as a whole with all of the evidence, is not a misconstruction or a misunderstanding.
36. Could it take another path? That is a question posed but one we do not need to address, because delving into the reasons, it can be seen that even the amounts of money said to be demanded changed and was inconsistent, as were the circumstances as to how amounts of money were demanded, as recorded in paragraph 82 of the decision.
37. The Tribunal also found the appellant appeared to unaware of the political situation in January 2024.
38. The appellant having set out on his claim, simply did not have the answers ready or his evidence in order as it related to the alleged political threat he claimed he was under. His evidence was not cogent or persuasive and political threats he claimed existed were just not supported by additional information, such as country information the Tribunal had access too.
39. Taking that into account, the path of the Tribunal's reasoning was open to it, and consequently, we dismiss the appeal.

ORDER

1. The appeal is dismissed

DATED this 25 day of June 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

