IN THE NAURU COURT OF APPEAL
CIVIL APPELLATE JURISDICTION
AT YAREN

Civil Appeal Number 01 of 2026
Supreme Court Civil Case 33 of 2025

BETWEEN	BG25	Appellant
AND	Republic of Nauru	Respondent

Before: Khan P
Palmer JA
Coates JA

Date if Hearing: 13 June 2026
Date of Judgement: 25 June 2026

Case may be cited as: *BG25 v The Republic*

CATCHWORDS: Procedural fairness – Fresh ground of appeal – Appellant not represented in the Supreme Court – Ground of appeal was not raised in the Court below – Leave granted for fresh ground of appeal – Whether the Tribunal was required to disclose the dispositive issues.

APPEARANCES

Counsel for the Appellant: M Kenneally (instructed by International Crossover Pty Ltd)
Counsel for the Respondent: R O'Shannessy (instructed by the Republic of Nauru)

<u>JUDGMENT</u>

1. **BY THE COURT:** This is an appeal against the decision of Brady J which dismissed the appeal against a decision of the Refugee Status Review Tribunal (Tribunal) that the appellant was not recognised as a refugee and not owed complementary protection.

2. International Crossover Pty Ltd were the solicitors on record for the appellant. On 27 November 2025 they made an application before Brady J to withdraw from acting for the appellant and leave was granted. The appellant therefore did not have any legal representation in the Supreme Court and appeared in person.

3. Following our ruling on 10 May 2026 in *AI 25 and others v Republi*c Civil Appeal No. 10 of 2025 International Crossover Pty Ltd came on the record to represent the appellant and have engaged Mr Kenneally as counsel.

<u>BACKGROUND</u>

4. The appellant is from Bangladesh. On 23 January 2025, he applied for Refugee Status Determination (RSD). In his statement of claim attached to the RSD application he claimed that he feared persecution in Bangladesh as an Awami League (AL) supporter and as a victim of violent acts of revenge from Bangladesh Nationalist Party (BNP) supporters.

5. The appellant claimed that he was an AL supporter and had been involved in politics for approximately 10 years. He directly helped the local AL MP Choyen Islam which included sometimes travelling in his car to visit people. He claimed that on one occasion he got into a car with Choyen Islam and 4 others and was attacked by about 15-20 BNP supporters who broke the car windows and dragged Choyen Islam out and beat him.

6. The appellant managed to run away. He claimed that the BNP supporters were looking for him after that attack. One person called the appellant and threatened to beat him. The appellant initially fled to his sister's village nearby and left Bangladesh to go to Australia.

7. The appellant claimed that he had borrowed 7 lakh from 2 different loan sharks and had 6 months to repay the loans. The appellant claimed that his family would be pressured to pay the interest on the loans if he cannot pay and he feared that they will be physically harmed.

8. The appellant claimed that after Sheik Hasina (the former Prime Minister) fled Bangladesh, AL supporters' lives are at risk and many BNP supporters are still seeking to hurt people associated with AL.

9. The appellant claimed that he would not receive any protection from the State in Bangladesh.

10. On 6 March 2025, the appellant attended an RSD interview and on 1 April 2025 the Secretary determined that the appellant is not recognised as a refugee and is not owed complementary protection.

11. On 4 April 2025 the appellant applied to the Tribunal for review of the Secretary's determination.

12. On 1 May 2025, the appellant's representative provided submissions and statement to the Tribunal. Those submissions and statements effectively repeated the appellant's claim that he feared harm for reasons of his actual and/or imputed opinion as a supporter of AL and a victim of loan sharks.

13. On 12 May 2025 the appellant's representative provided submissions to the Tribunal. Those submissions addressed the potential consequences of the appellant's return to Bangladesh in light of AL being banned by the interim government.

14. On 13 May 2025, the appellant appeared before the Tribunal at a hearing. He was assisted by an interpreter in the Bengali language and his representative was present.

15. On 14 May 2025, the appellant's representative provided a letter to the Tribunal with references to news articles concerning the ban on AL.

16. On 23 June 2025, the Tribunal affirmed the decision of the Secretary that the appellant is not recognised as a refugee and is not owed complementary protection.

17. On 27 July 2025 the appellant filed a Notice of Appeal in the Supreme Court. The appeal was heard on 27 November 2025 and the judgment was delivered on 24 February 2026.

<u>FRESH GROUND OF APPEAL</u>

18. The appellant has filed a fresh ground of appeal which states that he was denied procedural fairness and/or that the Tribunal failed to comply with the provisions of s40(1) of the *Refugees Convention Act 2012*.

19. The respondent does not oppose the fresh ground of appeal and applying the principles set out in *WET054 v The Republic of Nauru*[1] we grant leave to the appellant to raise the fresh ground of appeal.

20. The appellant's counsel submits that s 40(1) requires the Tribunal to invite the appellant to appear before it to give evidence and present arguments relating to the issue in determination under review; that the High Court of Australia considered a similar provision in *SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs and Another*[2] in which the Court held at [35]–[36] that a visa applicant is entitled to assume that the dispositive issues before the Tribunal are those identified in the decision under review unless the Tribunal indicates otherwise. Where the Tribunal intends to rely on a reason not identified in the primary decision it must give the applicant an opportunity to address that reason[3].

<u>THE CLAIM - 7 LAKH</u>

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[1] [2023] NRCA 8

[2] (2006) 228 CLR 152

[3] Paragraph 11 of the appellant's written submissions filed on 5 June 2026

21. In the RSD application the appellant claimed that his father had borrowed a sum of 7 lakh from money lenders and he feared harm because of his inability to pay the loan.

22. The Secretary accepted the appellant's account of loan was possible and consistent with the country information and he stated at [AB88-89] as follows:

> I do, however, find the Applicant's account of accruing debt to be both plausible and credible. Independent country information supports this, indicating that for migrant workers, the perceived ability to migrate and send remittances is considered by lenders as a form of security. As such, money lending is commonly associated with migration. Furthermore, country information also supports the practice of obtaining small loans from various sources, including extended family and other members of the community, which is consistent with the Applicant's account of how he funded his travel.
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> I accept that the Applicant has outstanding debts in Bangladesh amounting to approximately 7 lakhs, borrowed from 2 money lenders within his local community. I also accept that, given the lenders are from the Applicant's family's locality, it is possible that they would have approached his family regarding repayment of the loan. However, I do not accept that these approaches occurred in a threatening manner as described by the Applicant.

23. The Secretary did not find that the Applicant had been threatened with harm and would be harmed. Mr Kenneally submits that the issue in review prior to the Tribunal hearing did not include the Applicant's loan, or whether his capacity to migrate was a possible form of security.

THE TRIBUNAL HEARING AND FINDING

24. The Tribunal after hearing the applicant made the following relevant findings at [72], [73], [74], [75] and [76] which is set out as follows:

[72] The Tribunal has concerns about the reliability of the applicant's claim and evidence relating to the loan.

[73] Firstly, the evidence indicates the Applicant was working up until his departure from Bangladesh and suggests he had access to undisclosed funds. Secondly, the Applicant's evidence indicates it was his father who agreed to the debt and not the Applicant. While he stated he spoke to the money lenders who made clear the repayment terms, being 50,000 taka interest per lakh borrowed, that is inconsistent with his earlier evidence which was he did not specifically know who his father borrowed the money from and did not know the interest but then stated it was 70,000 taka interest per lakh borrowed.

[74] The Tribunal also has difficulty accepting that money lenders lend money to people, including his father, without first ascertaining their capacity to repay the money or obtain some other form of recoverable capital. The Tribunal also put the Applicant at hearing that DFAT said in 2022 money lenders were more likely to

lend more money to fund further migration attempts than they were to use violence to recover a debt and violence would not lead to money being repaid.

[75] The Tribunal finds the Applicant's evidence in relation to his own involvement in his father's debt as well as his evidence in relation to his father's debt has changed and is unreliable. While the Tribunal accepts there is country information that suggests there may be aggressive attempts to recover debt, the Tribunal remains unconvinced money lenders would lend money to his father, who he claimed was elderly and no longer worked, on the unsecured terms the Applicant has alleged.

[76] Taking all these factors into account, the Tribunal does not accept the Applicant has taken out any loans and is unpersuaded he has been telling the truth about the claimed loan and its terms. In any event, if any such loans exists [sic] on the Applicant's evidence it was his father who entered into them and agreed to those loans and not the Applicant. It therefore finds the Applicant's evidence unreliable about the loans, including its terms and whether he or his family have been, or will be, subject to threats of harm from money lenders.

25. Mr Kenneally submits that the Tribunal rejected the loan claim on two basis – firstly, due to the inconsistencies in the appellant's evidence whether he spoke to the lenders, and the terms relating to the interest payable and secondly, the Tribunal had difficulty accepting that money lenders would lend money to the appellant's father without determining whether he had another means of repaying apart from the appellant's remittances.

26. Mr Kenneally submits that the Tribunal's reasoning was on a general factual premise about informal lending practices in Bangladesh – that lenders would require conventional security or capacity to repay before advancing funds apart from remittances. He submitted that the premise contradicted the Secretary's finding that such lending was common in Bangladesh and the Tribunal was required to raise that issue with the applicant.

27. Mr Kenneally concedes that the Tribunal raised with the applicant that his evidence was inconsistent about interest on the loan; whether he spoke to the money lenders and that the appellant was on notice that the Tribunal may not accept that he took out a loan.

28. Mr Kenneally submits that the Tribunal did not put to the appellant that it considered implausible that money could be lent to his elderly father solely in reliance of the appellant's capacity to remittance, without independent means of repayment.

29. Mr Kenneally submits that there was an exchange between the Tribunal and the appellant when the appellant was invited to explain the commercial rationale and the appellant answered that remittances-based lending was common practice – that answer was not challenged nor was it put to him that the Tribunal rejected or doubted that lending practice.

30. Mr Kenneally further submits that there was a further exchange with a different member of the Tribunal about the nature of the loan contract and whether there was security. The appellant confirmed it was a verbal and informal agreement. The DFAT

country information was put to the appellant which stated that if he returned to Bangladesh, money lenders would likely lend more money to facilitate further migration rather than use violence to recover the loan. It is submitted that that question was significant rather than challenging the appellant's answer about the business model of informal lending for migration purposes - the Tribunal subsequently assumed its existence.

31. The appellant's representative made submissions that the country information that was provided by the applicant suggested that money lenders can use violence to recover debt. Mr Kenneally further submitted that the hearing proceeded on the basis that lending practice was not in contention.

32. Mr Kenneally submits that the applicant suffered practical injustice. If the issue had been raised amongst others, he could have submitted that DFAT country information provided that lenders were likely to facilitate further migration rather than resort to violence; and that confirms that remittances were considered as a good form of security generating more income. The appellant could have mentioned that higher interest rates as to how the lenders manage risk of unsecured lending.

33. Mr O'Shannessy pointed out the amended ground of appeal states that the Tribunal failed to comply with s40(1) of the Act. He submits that s40 speaks of: "*Tribunal shall invite applicant to appear*". He stated that he was not taking any issues with that and submits that it is simply a case about "*procedural fairness*". He also relied on the case of *SZBEL* where it is stated at [26], [27], [28], [33] and [48] as follows:

> [26] It has long been established that the statutory framework within which a decision-maker exercises statutory power is of critical importance when considering what procedural fairness requires. It is also clear that the particular content to be given to the requirement to accord procedural fairness will depend upon the facts and circumstances of the particular case. As Kitto J said in *Mobil Oil Australia Pty Ltd v Federal Commissioner of Taxation*[4]:
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> "[T]he books are full of cases which illustrate both the impossibility of laying down a universally valid test by which to ascertain what may constitute such an opportunity ['to correct or contradict any relevant statement prejudicial to their view'[5]] *in the infinite variety of circumstances that may exist, and the necessity of allowing full effect in every case to the particular statutory framework within which the proceeding takes place.*" (emphasis added)
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> In the present case, attention in argument, both in this Court and in the courts below, was directed more to the particular circumstances of the case than to the relevant statutory framework, but it is necessary to notice some aspects of that framework. Unless that is done, the argument proceeds at too high a level of abstraction and may proceed upon assumptions that are ill founded.

4 (1963) 113 CLR 475 at 503-504.

5 *Local Government Board v Arlidge* [1915] AC 120 at 133.

[27] First, the *Migration Act* 1958 (Cth) ("the Act") obliged[6] the Tribunal to "invite the applicant to appear before the Tribunal to give evidence and present arguments relating to the issues arising in relation to the decision under review". The Tribunal was not bound to extend such an invitation to appear, if it considered that "it should decide the review in the applicant's favour on the basis of the material before it"[7].

[28] Secondly, the Act empowered[8] the Tribunal to seek additional information that it considered relevant, and obliged[9] the Tribunal to give to an applicant particulars of certain information that the Tribunal considered would be the reason, or a part of the reason, for affirming the decision under review. That latter obligation did not apply[10] to information "that is not specifically about the applicant or another person and is just about a class of persons of which the applicant or other person is a member".

[33] The Act defines the nature of the opportunity to be heard that is to be given to an applicant for review by the Tribunal. The applicant is to be invited "to give evidence and present arguments relating to *the issues arising in relation to the decision under review*"[11]. The reference to "the issues arising in relation to the decision under review" is important.

[48] Secondly, as Lord Diplock said in *F Hoffmann-La Roche & Co AG v Secretary of State for Trade and Industry*[12]:

"the rules of natural justice do not require the decision maker to disclose what he is minded to decide so that the parties may have a further opportunity of criticising his mental processes before he reaches a final decision. If this were a rule of natural justice only the most talkative of judges would satisfy it and trial by jury would have to be abolished."

Procedural fairness does not require the Tribunal to give an applicant a running commentary upon what it thinks about the evidence that is given. On the contrary, to adopt such a course would be likely to run a serious risk of conveying an impression of prejudgment.

34. He referred to [72] of the Tribunal's decision where the Tribunal mentions that it has had concerns about the reliability of the applicant's claim and evidence relating to the loans and at [73] - [75] the Tribunal states that it does not accept that the appellant had taken any loan and is not persuaded that he was telling the truth about the claim, loan and its terms.

35. Insofar as [74] is concerned he submitted that there is no inconsistency between what the Secretary's findings was "the perceived ability to migrate and send remittances is

6 s 425(1).
7 s 425(2)(a).
8 s 424(1).
9 s 424A(1).
10 s 424A(3)(a).
11 s 425(1) (emphasis added).
12 [1975] AC 295 at 369.

considered by lenders as a form of loan security" and the Tribunal's finding that the lenders operate by "first ascertaining [borrower's] capacity to repay the money or some other form of recoverable capital" – that the Tribunal's description encompasses the Secretary's findings.

36. Mr O'Shannessy referred us to the appellant's first statement of claim at [CB at 62] as follows:

[3] I fear persecution in Bangladesh for the following reasons:

1) Political opinion – Awami League (AL) supporter

2) Imputed political opinion – Awami League (AL) supporter

3) Membership of a particular social group – victim of violent acts of revenge from BNP supporters

37. Mr O'Shannessy emphasised that it makes no mention of a loan.

38. Mr O'Shannessy referred us to [31] and [33] as follows:

[31] I borrowed 7 Lakhs from two different loan sharks. I have six months to repay these loans.

[33] This is the other reason why I can't return to Bangladesh. If I can't pay this there will be a lot of pressure on my family to pay the interest. If they can't pay then I fear they will be physically harmed.

39. Mr O'Shannessy referred us to the appellant's second statement of claim at [CB 76] where he states at [1] and [11] as follows:

[1] I wish to correct aspects of my claim. I am extremely worried about mine and my family's future and consequently I felt compelled to embellish aspects of my claim for protection.

[11] The loan sharks I borrowed from are from my local village area. I borrowed at an extremely high interest rate thinking I would be able to pay this back relatively quickly. But that is now spiralling out of control. This adds to my current stress levels. They are contacting my wife and coming to my home demanding payment.

40. Mr O'Shannessy referred us to the Secretary's decision at Court Book [CB83] where at the last bullet point it is stated:

He borrowed 7 lakh from two different loan sharks and has 6 months to pay these loans. This is other reason why he can't return to Bangladesh. If he can't pay this there will be a lot of pressure on his family to pay the interest. If he can't pay, then the applicant fears that they will be physically harmed.

41. Mr O'Shannessy referred to [58] of the Court Book where the Secretary states as follows:

The Applicant claimed to have borrowed 7 lakh from two different loan sharks and stated that he had six months to pay these loans. In his RSD application, he cited this debt as another reason why he cannot return to Bangladesh. During his RSD interview, the Applicant stated that the arrangements were made over the phone and that he owed money to *"village people"* and *"neighbours"*. When asked to clarify he explained that he borrowed 7 lakh from two individuals: 4 lakh from one person and 3 lakh from another. When asked for further details about the lenders, the Applicant stated that it was his father who arranged for the loans. He explained that he had asked his father to borrow 7 lakh on his behalf and he was not exactly sure from whom the money was borrowed. When asked whether he meant he had spoken to his father when he earlier said he arranged the loan over the phone the applicant said yes.

42. Mr O'Shannessy emphasised that this was the first time that the applicant stated that his father obtained the loan on his behalf.

43. Mr O'Shannessy also referred us to CB 91 where it is stated:

> "...For migrant workers, a person's capacity to migrate overseas and send remittances is considered by lenders as a form of security against a loan and therefore money lending is particularly associated with migration, particularly to Middle East."

44. Mr O'Shannessy referred us to transcript CB 156, 157 and 158 where the following exchange took place between the Tribunal and the appellant:

Miss Cranston: Alright. But I guess I'm more curious about why they gave the loan to your family.

Interpreter: So just for my travel to Nauru, my family didn't have much savings. That's why they managed to borrow that money from two different lenders, close by village. So it was an agreement made between two parties of like, every – for 100,000 we pay 50,000 Bangladeshi Taka in six months time.

Miss Cranston: And how ...

Interpreter: That was the agreement made between these two parties.

Miss Cranston: How do you know that agreement was made?

Interpreter: Okay. So I came to know through my dad over the phone while I was staying at my sister's place. And my dad confirmed me saying that he has borrowed 7 lakh which is 70,000 Bangladeshi currency. And with an agreement of paying 50,000 for every 100,000 in six month period. That's what I came to know from my dad.

Miss Cranston: So why were these guys from your village prepared to give your father that amount of money?

Interpreter: My dad hasn't mentioned their names, but there are some lenders. They actually lend money to their clients in a higher interest. That's what they usually do. They had an – so, my dad managed to get money from them.

Miss Cranston: But why would they take the risk of giving that amount of money to your father? Do you think they thought about it if he couldn't repay? Did you think about that situation, if that situation arose?

Interpreter: They lend that money to my dad when my dad mentioned actually I'm going to Australia. As soon as I reach Australia I'll be able to repay that whole amount. So in that impression they lend the money to my dad.

Miss Cranston: That's a bit risky for them, isn't it? Those kinds of vague terms.

Interpreter: That's how they actually lend money, in their words or something like that. That's how they run their business.

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Miss Cranston: And did you talk to the money lenders on phone before you left Bangladesh?

Interpreter: That's not me. Actually, my dad actually spoke to them.

And then later on –

Mr Lynch: And was there a deal that you arranged yourself or did your father arrange that? Agents.

Interpreter: So that's me actually, not my father. I get the contact number through another friend of my village so I did contact him and I just arranged everything and have negotiated whatever I need to do for my travel. I did everything. That's me not my dad.

45. Mr O'Shannessy referred us to [Court Book 170, 171 and 172] where it is stated:

Mr Lynch: So I've got a question around the loan. I would like to ask you about what security for the loan that your father took was provided. Apart from the promise that you would go to Australia to work and repay? Stop until he finished.

Interpreter: (indistinct) probably (indistinct) question. So there was no agreement. There was no security, only a verbal agreement and verbal words. They have come to the agreement. These lenders actually provide and lend money on the basis of words not with any agreement.

Mr Lynch: The Department of Foreign Affairs and Trade. Thank you. The Department understands that lenders are more likely to lend more money to fund a further attempt to migrate than to use violence to recover the debt. Would you like me to repeat that Mr Interpreter?

Interpreter: Yeah.

Mr Lynch: All right. The department understands that lenders are more likely to lend money to fund a further attempt to migrate than they have to use violence to recover the debt (indistinct) give money to further attempt to migrate. And from the lender's perspective, violence will not lead to money being repaid, whereas another migration attempt might. Is there something that you would be aware of. That lenders are more likely to lend more money to you to fund another attempt to migrate at Malaysia, Dubai or another part of the world where migrant labour is possible.

Interpreter: Yeah. So they didn't have any understanding that an (indistinct) migrated to a country but they are not convinced that I have been detained here. They are thinking that we just are not – we are refusing to pay off. This is the intention, the lender's intention.

...at page 174

Miss Cranston: Because I'm going to go back, but I think earlier you said you didn't have that conversation with the money lenders. Today, you told me earlier I think, from memory that you didn't have that conversation.

Interpreter: Yeah. I just recall I have a short conversation (indistinct) one day just for a few minutes or 2 minutes conversation with them.

46. Mr O'Shannessy drew our attention to [24] and [25] of the Tribunal's decision where it is stated as follows:

[24] The applicant stated his family borrowed from two different lenders. The agreement was 50,000 taka in interest per lakh and the entire amount was due in six month period. He knew the payment terms through his father over the phone. He indicated the money was lent because his father mentioned the applicant was going to Australia and could repay the amount. The Tribunal put to him he told the RSD officer he did not know who his father borrowed the money from and was unsure of the interest. He said he kept mentioning the interest. The Tribunal put to him in his most recent statement he said his father borrowed the money after the money lenders spoke to the applicant on the phone and it was 50,000 taka per lakh payable within 6 months. When asked why he did not state that to the RSD officer, he said he mentioned it to the RSD officer.

[25] The Tribunal put to him that it was his father who had taken out the loan. You also confirmed that before you left Bangladesh, it was his father and not he who spoke with the money lenders.

47. Mr O'Shannessy urged us to read the Tribunal's decision as a whole and what the Tribunal stated at [72] was in the context of the appellant's evidence. In written

submissions filed on behalf of the Republic it is stated at [28] that read "fairly and as whole it is clear that [74] that the Tribunal's reasons for the decision did not contradict to the Tribunal's course of reasoning in relation to the loan – rather the Tribunal's dispositive reasoning is contained in [73] where the Tribunal identifies two separate issues – essentially turning on credibility on which it based its finding.

48. It is submitted that if there is an error of law in [74] or failure to put relevant matters to the appellant – it cannot have any bearing on the outcome of the review.

49. We agree that the Tribunal's decision has to be read as a whole and in particular [72]-[76] are to be read together to understand the Tribunal's decision.

50. The applicant was on notice of the Tribunal's dispositive issue – that is clear from the Tribunal's questioning of the loan of 7 Lakh and the interest payable thereon. The Tribunal was not required to expose its mental process or giving a running commentary on the evidence – *SZBEL* [29] and [48].

51. The Tribunal discharged its duty by challenging the applicant's evidence and by bringing it to his attention that the loan of 7 Lakh was in issue and that maybe dispositive – see [42] and [47] of *SZBEL* where it is stated:

> [42] But closer examination reveals that the appellant's complaint is more deep-seated than a complaint about the making of unstated cultural assumptions. It is that he was not on notice that his account of how his ship's captain came to know of his interest in Christianity, and his account of the captain's reaction to that knowledge, were issues arising in relation to the decision under review.
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> [47] First, there may well be cases, perhaps many cases, where either the delegate's decision, or the Tribunal's statements or questions during a hearing, sufficiently indicate to an applicant that everything he or she says in support of the application is in issue. That indication may be given in many ways. It is not necessary (and often would be inappropriate) for the Tribunal to put to an applicant, in so many words, that he or she is lying, that he or she may not be accepted as a witness of truth, or that he or she may be thought to be embellishing the account that is given of certain events. The proceedings are not adversarial and the Tribunal is not, and is not to adopt the position of, a contradictor. But where, as here, there are specific aspects of an applicant's account, that the Tribunal considers *may* be important to the decision and may be open to doubt, the Tribunal must at least ask the applicant to expand upon those aspects of the account and ask the applicant to explain why the account should be accepted.

52. The appellant has not been able to identify any error and the appeal is dismissed.

<u>ORDER</u>

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 Appea

Coates JA
Justice of the Nauru Court of Appeal